****

**Application for product certification and license to the**

**FODMAP FRIENDLY**

**Certification Trade Mark**

**of**

**Fodmap Pty Ltd**

|  |  |  |
| --- | --- | --- |
| Application by: |  |  |
| of: |  |  |
|  | ACN:  |  |
| Dated: |  |  |

This application form includes:

|  |  |
| --- | --- |
| [x]  | this cover page |
| [x]  | License agreement, incorporating the approved Rules, for use of the FODMAP FRIENDLY Certification Trade Mark |
| [x]  | Fodmap Fee policy attached as Schedule 6 to the License Agreement |
| [x]  | Template schedule uniquely identifying the (or each) Proposed Product(s) for testing attached as Schedule 7 to the License Agreement |

To be included in this application by the applicant: (please check each box confirming item attached)

|  |  |
| --- | --- |
| [ ]  | this cover page |
| [ ]  | information about the Applicant and evidence that the Applicant meets the Licensee requirements and Approved User Requirements in accordance with these Rules; in particular as specified in Schedule 3 to the License Agreement |
| [ ]  | License agreement incorporating the approved Rules for use of the FODMAP FRIENDLY Certification Trade Mark, **signed by the applicant** |
| [ ]  | Fodmap Fee policy attached as Schedule 6 to the License Agreement, **signed by the applicant** |
| [ ]  | Completed schedule uniquely identifying the (or each) Proposed Product(s) for testing attached as Schedule 7 to the License Agreement |
| [ ]  | the non-refundable Application Fee (cheques may be made payable to Fodmap Pty Ltd) |

To be supplied before this application can be processed

|  |  |
| --- | --- |
| [ ]  | 10 samples of each of the Proposed Product(s) for testing  |

Once testing demonstrates Proposed Products comply with the Rules for use of the FODMAP FRIENDLY Certification Trade Mark, Fodmap Pty Ltd will approve these products as Approved Products in Schedule 7 to the license and execute the License agreement. The License Agreement will commence on the Commencement Date, being the date Fodmap executes the agreement and notifies the Licensee products are Approved Products.

The Low FODMAP Guidelines and all test results are copyright and the intellectual property of Fodmap. The Low FODMAP Guidelines and test results must not be used for any purpose other than establishing a product’s eligibility under the FODMAP FRIENDLY certification trade mark program. The Low FODMAP Guidelines and test results must not be copied or distributed to third parties without prior authorisation from Fodmap.

**License incorporating the Rules**

**for the use of the**

**FODMAP FRIENDLY**

**Certification Trade Mark**

**of**

**Fodmap Pty Ltd**

****

|  |  |
| --- | --- |
| **BETWEEN**  | Fodmap Pty Ltd, ACN 154 738 459  |
|  | of 1st Floor, 109 Canterbury Road, Heathmont, Victoria, 3135, Australia |
|  | (“**Fodmap**”) |
| **AND**  |  |
|  | of  |
|  | (“**Licensee**”) |

BACKGROUND

1. The Licensee has applied to Fodmap for grant of a license on the following terms.
2. General
	1. Fodmap Pty Ltd is the owner of the Trade Mark.
	2. The Trade Mark will be used to indicate that an Approved Product bearing the Trade Mark:
		1. has been certified by Fodmap as meeting the Low FODMAP Guidelines as specified in Schedule 1 to these Rules; and
		2. is suitable for inclusion in a low FODMAP diet.
	3. The use of the Trade Mark is governed by these Rules. These Rules apply to:
		1. all Applicants applying to use the Trade Mark after the date of approval of these Rules; and
		2. all Licensees who are granted a License by Fodmap after the date of approval of these Rules.
3. Definitions
	1. In these Rules:
		1. **Approved Product** means a food product approved in accordance with these Rules and in relation to which a License has been granted;
		2. **Approved Serving Size** means a Approved Product’s serving size determined by reference to the Low FODMAP Guidelines as set out in Schedule 1;
		3. **Approved User Requirements** means the requirements a Licensee must demonstrate, as set out in Schedule 3;
		4. **Applicant** means a party who has made an Application;
		5. **Application** means an application made by a party for the grant of a License to use the Trade Mark in connection with a Proposed Product in accordance with these Rules;
		6. **Application Fee** means the fee set out in the Fee Policy as amended from time to time;
		7. **Commencement Date** means the date of commencement of the License, being the date Fodmap notifies the Applicant in writing that the Proposed Product meets and complies with the Rules and the Low FODMAP Guidelines, and is an Approved Product;
		8. **Fee Policy** means the License fee policy of Fodmap as amended from time to time;
		9. **Fodmap** means Fodmap Pty Ltd, ACN 154 738 459, whose business address is 1st Floor, 109 Canterbury Road, Heathmont, Victoria, 3135, Australia;
		10. **FODMAP** means Fermentable Oligosaccharides, Di-saccharides, Mono-saccharides and Polyols;
		11. **Fodmap Friendly** means a product that meets the Low FODMAP Guidelines.
		12. **License** means a non-exclusive written license granted by Fodmap to an Applicant to use the Trade Mark in the Territory in connection with an Approved Product, the terms of which are set out in these Rules;
		13. **License Fee** means the fee payable by the Licensee to Fodmap for the grant of a License, calculated in accordance with the Fee Policy;
		14. **Licensee** means the party authorized under a License to use the Trade Mark;
		15. **Low FODMAP Guidelines** means the guidelines set out in Schedule 1 of these Rules, including categorisation of food products, serving sizes and maximum FODMAP levels per serving;
		16. **NATA Accredited laboratory** means a laboratory accredited by the National Association of Testing Authorities (NATA), Australia;
		17. **NATA Mutual Recognition laboratory** means a laboratory accredited by an association recognized by NATA under a mutual recognition agreement, including laboratories accredited by an association recognized by the International Laboratory Accreditation Cooperation (ILAC) under the ILAC Mutual Recognition Arrangement;
		18. **Policies** means the policies, procedures and guidelines developed and maintained by Fodmap as amended from time to time, including the Fee Policy;
		19. **Proposed Product** means a food product listed in an Application and submitted for Testing and approval in accordance with these Rules;
		20. **Rules** means the Rules for the use of the Trade Mark, including this document, recitals, background and any schedules, annexures or attachments to it;
		21. **Territory** means South Africa;
		22. **Testing** means analysis of samples of a Proposed Product or Approved Product, undertaken using:

High Performance Liquid Chromatography (HPLC) with Evaporative Light Scattering Detection (ELSD) enzymatic analysis equipment or equipment of greater sensitivity in accordance with the procedure specified in Schedule 2; or

bio-analysis test kits Fructans (Hexokinase format), D-Fructose/D-Glucose, Lactose/D-Galactose, D-Mannitol/L-Arabitol, Raffinose/D-Galactose, D-Sorbitol/Xylitol, D-Xylose;

by

a hospital or university laboratory; a NATA Accredited or NATA Mutual Recognition laboratory; a laboratory owned or operated by Fodmap Pty Ltd or one of its subsidiaries; a staff member of Fodmap Pty Ltd or one of its subsidiaries in a hospital, university, NATA Accredited or NATA Mutual Recognition laboratory; and

* + 1. **Trade Mark** means the trade mark or trade marks defined in Schedule 4.
1. INTERPRETATION
	1. In these Rules where the context permits or requires:
		1. headings are inserted for convenience only and do not affect the interpretation of these Rules;
		2. words in the singular include the plural and vice versa;
		3. where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
		4. a reference to a person includes an individual, a partnership, a body corporate, a joint venture, an association (whether incorporated or not), government and a government authority or agency;
		5. a reference to a statute, legislation, regulation or provision of a statute or regulation (**Statutory Provision**) includes any statutory modification or replacement and any subordinate or delegated legislation issued under such Statutory Provision;
		6. a reference to a party includes that party’s successors or assigns;
		7. a reference to “R”, ”ZAR” or Rand means the South African currency and a reference to payment means payment in Rand (both of which do not include VAT); and
		8. the word “including” is not a word of limitation.
2. Property in the Trade Mark
	1. The Trade Mark is the absolute property of Fodmap and must not be used by any person other than with the express written authority of Fodmap.
	2. Applicants and Licensees acknowledge that Fodmap owns all rights in the Trade Mark.
	3. Any and all goodwill which accrues from the use of the Trade Mark by the Licensee accrues for the benefit of Fodmap.
	4. An Applicant or Licensee must not:
		1. breach, or encourage or permit any breach of, the rights in the Trade Mark;
		2. challenge Fodmap's rights in or ownership of, the Trade Mark; or
		3. use the Trade Mark for purposes outside the scope of these Rules.
	5. Fodmap will pay all renewal and other fees necessary to maintain the registration of the Trade Mark.
3. Grant of a License to use the Trade Mark
	1. Fodmap will only grant a License to an Applicant who makes an Application in accordance with these Rules if:
		1. the Applicant meets the Approved User Requirements;
		2. the Applicant's Proposed Product, following Testing, meets the Low FODMAP Guidelines;
		3. the Applicant demonstrates that it will comply with the requirements of these Rules and the Low FODMAP Guidelines; and
		4. Fodmap is satisfied that the Applicant's proposed:
			1. use of the Trade Mark in connection with the Proposed Product; and
			2. supply or promotion of the Proposed Product;

will not mislead or deceive the public, or breach any provision of applicable consumer law.

* 1. A Licensee must not sublicense use of the Trade Mark other than as absolutely necessary to enable manufacture and packaging of the Licensee's Approved Product.
	2. The Licensee must not assign any rights under the License expect with the prior written consent of Fodmap, which consent may be given or withheld at its absolute discretion and subject to any terms and conditions that Fodmap thinks fit.
	3. Subject to applicable trade mark law, Fodmap may, at its absolute discretion, assign the right to use the Trade Mark.
1. Use of the Trade Mark
	1. Only Fodmap or Licensees may use the Trade Mark.
	2. Fodmap may only use the Trade Mark for administrative, educational, promotional and advertising purposes. Fodmap will not use the Trade Mark on food products in competition with Licensees.
	3. A person may apply to become a Licensee and may be authorised by the grant of a License by Fodmap to use the Trade Mark in accordance with these Rules and the License.
	4. The Trade Mark must only be used by Licensees on Approved Products in respect of which the License was granted.
	5. The Licensee may not:
		1. bring an action for infringement of the trade mark; or
		2. initiate or register for action by the Customs service a notice objecting to the importation or exportation of goods that infringe the trade mark; or
		3. revoke a notice or registration for action by the Customs service objecting to the importation or exportation of goods that infringe the trade mark; or
		4. give permission to any person:
		5. to alter or deface; or
		6. to make any addition to; or
		7. to remove, erase or obliterate, wholly or partly;

the Trade Mark applied to any goods, or in relation to any goods or services, in respect of which the Trade Mark is registered;

except with the written consent of Fodmap.

1. Application process for obtaining permission to use the Trade Mark
	1. An Application to Fodmap for Licensee status must be made in writing in the form required by Fodmap from time to time, and be addressed to:

Fodmap Pty Ltd

1st Floor, 109 Canterbury Road

Heathmont Victoria 3135

Australia

info@fodmap.com

or new address as notified by Fodmap from time to time.

* 1. An Application must include:
		1. written material giving information about the Applicant and evidence that the Applicant meets the Licensee requirements and Approved User Requirements in accordance with these Rules;
		2. the non-refundable Application Fee; and
		3. samples of the Proposed Product in the form and quantities required by Fodmap from time to time.
	2. Where Fodmap requires more information or evidence in relation to the Application, the Applicant must provide the required information or evidence to Fodmap.
	3. As soon as practicable, on receipt of the Application, Fodmap or its authorised representatives will in its absolute discretion, and by reference to Schedule 1:
		1. categorise the Proposed Product; and
		2. assess the proposed serving size of Proposed Product.
	4. Fodmap assessors will have the following skills, experience and/or qualifications:
		1. be a Dietitian who has completed a tertiary level course accredited by the Dietitians Association of Australia; or
		2. be a professional member of the Australian Institute of Food Science and Technology Inc; or
		3. have the qualifications and professional experience required from time to time to become a professional member of the Australian Institute of Food Science and Technology Inc.
	5. All fees and costs associated with Testing of the Proposed Product are payable by the Applicant and at Fodmap’s sole discretion are payable in advance and/or directly to the laboratory and are not refundable under any circumstance.
	6. A hospital, university, NATA Accredited or NATA Mutual Recognition laboratory, laboratory owned or operated by Fodmap Pty Ltd or one of its subsidiaries, or staff member of Fodmap Pty Ltd or one of its subsidiaries in a hospital, university, NATA Accredited or NATA Mutual Recognition laboratory, experienced in food testing approved from time to time by Fodmap will undertake Testing of the submitted samples and issue a report on the Proposed Product.
	7. A list of Fodmap approved hospital, university, NATA Accredited or NATA Mutual Recognition laboratories will be available from Fodmap.
	8. As soon as practicable on receipt of the laboratory report, Fodmap must notify the Applicant in writing whether Fodmap is satisfied that the Applicant and Proposed Product meets and complies with the Rules and the Low FODMAP Guidelines.
	9. If Fodmap is satisfied that the Applicant and Proposed Product meets and complies with the Rules and the Low FODMAP Guidelines, the Proposed Product will be considered an Approved Product and Fodmap must grant a License to the Applicant and the Applicant shall be deemed to be a Licensee and the Licensee may use the Trade Mark in accordance with the License.
	10. If Fodmap is not satisfied that the Applicant and/or Approved Product meet and comply with the Rules and the Low FODMAP Guidelines, Fodmap must notify the Applicant of the reasons why it is not so satisfied and will not grant a License to the Applicant.
	11. An unsuccessful Applicant for a License may make another Application pursuant to this clause.
	12. The laboratory report and all documents provided by the Applicant to Fodmap and to the Applicant by Fodmap are the exclusive property of Fodmap and the Applicant must not use any of those documents for any purpose other than the purposes set out in this Licence. Without limiting the generality of the above the Applicant must not use the laboratory report as the basis for making any claims that a product is suitable for consumers with FODMAP intolerance or Irritable Bowel Syndrome (IBS), including by the use of any words, logo or device on the products, other than in accordance with this Licence.
1. record keeping
	1. A Licensee is required to keep records in accordance with Schedule 5.
2. monitoring and auditing the use of the trade mark
	1. Upon giving reasonable notice to a Licensee, Fodmap or its representatives may, from time to time and during the term of the License, conduct random inspections to ensure that a Licensee is using the Trade Mark exclusively in association with its Approved Product and in accordance with the Rules and License.
	2. In the event that Fodmap is not satisfied that the Trade Mark is being used by the Licensee exclusively in association with its Approved Product, Fodmap must notify the Licensee of the result of its inspection and the Licensee must, within 14 days of such notification, ensure, to the satisfaction of Fodmap, that the Trade mark is being used exclusively in association with its Approved Product.
	3. If Fodmap is still not satisfied that the Trade Mark is being used exclusively by the Licensee in association with its Approved Product, Fodmap may immediately terminate the License by providing writing notice to the Licensee.
3. Application of the Trade Mark to Approved Products
	1. Approved Products to which the Trade Mark is applied must have the Approved Serving Size clearly shown as the recommended serving size in the nutritional information panel, or where the product is not required to carry a nutritional information panel, the Approved Serving Size must be located near the Trade Mark.
	2. The Trade Mark must:
		1. be applied only to Approved Products;
		2. be applied without alterations, additions or amendments to the representation of the Trade Mark as set out in these Rules, unless special permission for an exemption is granted in writing at its absolute discretion by Fodmap:
			1. be applied in full colour using Pantone (PMS) colours green PMS 363C and PMS 376C ;
			2. be applied on the front of the packaging of the Approved Product;
			3. be sized such that the text of the Trade Mark is of similar size to other dominant text on the front of the packaging of the Approved Product; and
			4. constitute at least 5% of the area of the front of the packaging and in any event shall have a minimum dimension of 5 mm high and 5 mm wide.
	3. Unless special permission for an exemption is granted under this clause, the use and representation of the Trade Mark must not:
		1. be obscured by overlying matter including text, pictures, graphics, trade mark, logo or name; or
		2. be incorporated into other matter including text, pictures or graphics, trade mark, logo or name.
4. Use and Reputation of the Trade Mark
	1. Fodmap is concerned to ensure the reputation and integrity of the Trade Mark is maintained and therefore:
		1. Licensees must respect the aims and objectives of the Low FODMAP Guidelines and must not:
			1. act in a manner likely to adversely affect the interests of Fodmap or the reputation of the Trade Mark; or
			2. engage in conduct that may mislead or deceive the public, or breach any provision of applicable consumer law.
	2. Licensees must comply with the terms and conditions of the License in using the Trade Mark.
	3. Fodmap may, from time to time, review:
		1. an Approved Product and any related materials;
		2. the manner in which the Trade Mark is being used by the Licensee including associated promotions and advertising;
		3. the manufacturing facilities in which the Approved Product is manufactured; and
		4. any other matter or thing connected with compliance with these Rules;

to ensure that the Licensee complies and continues to comply with the Rules.

* 1. In the event that any of the Rules is found to have been breached by a Licensee, Fodmap will notify the Licensee of the breach and the Licensee must, within such reasonable time as Fodmap directs:
		1. rectify the breach; or
		2. withdraw an Approved Product from sale and withdraw any associated promotions or advertising; or
		3. surrender the License and cease using the Trade Mark.
1. Policies, Procedures and Guidelines
	1. Fodmap may make Policies and give directions to an Applicant and/or Licensee not inconsistent with these Rules on all matters relevant to the Trade Mark including but not limited to:
		1. use of the Trade Mark;
		2. promotion of the Approved Products;
		3. administration of the process for obtaining or extending the term of a License;
		4. Licenses or Licensees;
		5. any matters that may bring Fodmap into disrepute or affect the reputation of the Trade Mark.
	2. Licensees must comply with:
		1. these Rules;
		2. Fodmap’s Policies;
		3. any changes to the Policies required by law; and
		4. any new Policies or changes to existing Policies, within a period of six (6) months following notice from Fodmap of the changes.
	3. The Licensee must immediately comply with directions or instructions from Fodmap to remedy any non-compliance with the Policies.
2. License Term and Extensions
	1. The License commences on the Commencement Date and is granted for twelve (12) months.
	2. A License for a period other than twelve (12) months may be granted by Fodmap at its sole discretion.
	3. The parties may agree at any time in writing to extend the term of the License in which event the provisions of the License shall continue in full force and effect provided that:
		1. the Approved Product is categorised, assessed and Tested according to the process for a Proposed Product in clauses 7.4 to 7.12 of the Rules within the period specified in Fodmap’s Policy on License term and re-certification and in any event within thirty-six months of the previous categorisation, assessment and Testing.
3. License Fees
	1. In consideration of the grant of the License, the Licensee must pay the License Fee to Fodmap within 14 days of receiving notice of the License fee from Fodmap.
	2. License Fees must be calculated in accordance with the Fee Policy.
	3. So that Fodmap may verify the License Fee, the Applicant or Licensee must:
		1. provide to Fodmap on an annual basis or following Fodmap's request, a certified statement as to past, projected and/or actual sales of the Proposed Product and/or Approved Product including gross revenue for each Proposed Product or Approved Product in the manner and form required by Fodmap from time to time;
		2. provide to Fodmap on a quarterly basis, a report as to actual sales including gross revenue for each Approved Product; and
		3. following Fodmap's request, permit an independent third party audit of sales by an auditor, selected by Fodmap.
	4. Where the Licensee's actual sales of the Approved Product are more than stated in a certified statement provided under clause used to calculate a License Fee, the License Fee may be recalculated and the difference is payable by the Licensee to Fodmap on written notice to the Licensee, within a period of 14 days of receipt of the notice.
	5. Where third party audit under clause identifies actual sales are more than 5% higher than reported in a certified statement, the cost of the third party audit is payable by the Licensee in accordance with the terms of the License.
	6. Fodmap may charge interest on payments pursuant to these Rules that are overdue, in accordance with the terms of the License.
4. infringement
	1. The Licensee must immediately give written notice to Fodmap of any infringement or threatened infringement of the Trade Mark which may come to the Licensee's knowledge.
	2. Fodmap may, at its sole discretion, institute or defend any legal proceedings for infringement of or otherwise relating to the Trade Mark.
	3. Fodmap is under no obligation to institute or defend any legal proceedings whether for infringement of or otherwise relating to the Trade Mark.
	4. If Fodmap takes any action in respect of any infringement of the Trade Mark, the Licensee must do all things and give all assistance as reasonably may be required to assist Fodmap taking that proceeding.
	5. The Licensee must not institute or defend any legal proceedings for infringement of or otherwise relating to the Trade Mark.
5. Termination or expiry of license
	1. The License may be terminated by either party by giving one-month notification in writing to the other party.
	2. Fodmap may terminate the License by notice in writing to the Licensee in any of the following circumstances:
		1. the non-payment of any fees for Testing and those set out in the Fee Policy (including the License Fee) which are due to Fodmap by the Licensee and are unpaid within 30 days from the date those fees were due and payable;
		2. the Licensee stops or suspends payments of all or a class of its debts or is insolvent or bankrupt;
		3. there is a material change in control of the Licensee;
		4. the Licensee commits a material breach of the Policies, Rules or License and, if the breach is capable of being remedied, the Licensee fails to remedy the breach within 14 days after being required to do so;
		5. fraudulent conduct by the Licensee, including conduct in connection with its application for grating the License pursuant to the Rules, including a wilful and material falsification or error by the Licensee of any report, statement or other written data furnished to Fodmap;
		6. the Licensee conducting its business in any way that endangers public health and safety;
		7. the Licensee voluntarily abandoning its business;
		8. the Licensee agreeing to terminate the License;
		9. the Licensee fails to continually meet the Approved User Requirements;
		10. the Licensee, or a member of its staff, is convicted in a court of law of an offence where, in the reasonable opinion of Fodmap, that conviction materially and adversely affects Fodmap or the good name, goodwill or good reputation of Fodmap or the Trade Mark;
		11. the Licensee fails to comply with or is in breach of these Rules; or
		12. where Fodmap is not satisfied that the Licensee is using the Trade Mark exclusively in connection with the Approved Products.
	3. Upon expiry, termination or surrender of a License:
		1. the former Licensee must cease to use the Trade Mark in any way (including, but not limited to, ceasing to sell or distribute the Approved Product bearing the Trade Mark);
		2. the former Licensee must either destroy or return to Fodmap all relevant packaging bearing the Trade Mark; and
		3. the former Licensee is not relieved of any obligation to make payments of outstanding fees under the Fee Policy.
	4. The termination of the License will be without prejudice to any other rights of Fodmap under the License prior to the date of termination, including the right to pursue all remedies available to Fodmap at law or in equity.
6. Amendment of the Rules
	1. Subject to applicable trade mark law, Fodmap may alter these Rules at any time and at its absolute discretion.
	2. Fodmap will give written notice to Applicants and Licensees of any changes to the Rules.
7. Public Access to Register of Authorised Users, Rules and Policies
	1. Fodmap will make the Low FODMAP Guidelines and these Rules including any amendments made from time to time available to the public.
	2. Fodmap will maintain a register of Authorised Users of the Trade Mark and make it available to the public.
	3. Fodmap will make the Policies including any amendments made from time to time available to the public by appointment on a confidential basis.
8. Dispute resolution
	1. Where there is a dispute between Fodmap and an Applicant or Licensee arising:
		1. from a refusal by Fodmap to allow use of the Trade Mark; or
		2. from the construction, termination or breach of these Rules;

then such a dispute shall, unless resolved within 14 days from the date on which notice of the dispute is given by a party, be referred for mediation in accordance with the *Mediation and Conciliation Rules* for the time being of the Institute of Arbitrators & Mediators of Australia.

* 1. Either party to a dispute may refer a dispute to mediation under this clause by:
		1. both parties agreeing on a mediator; or
		2. if the parties to the dispute are unable to agree on a mediator, a mediator will be appointed by the then current President of the Law Institute of Victoria or a person of an equivalent position at an equivalent organisation of another State as determined by Fodmap in its sole discretion.

Mediation must commence within seven (7) days of the referral of a dispute to mediation, or at such later time as agreed by the parties to the dispute. Mediation must be conducted in accordance with the Mediation and Conciliation Rules for the time being of the Institute of Arbitrators & Mediators of Australia.

* 1. The parties in dispute must co-operate with each other and use reasonable endeavours to resolve a dispute.
1. licensee's warranties
	1. The Licensee must not attempt to register or use any trade mark, business name, corporate name or style or get up which is substantially identical or deceptively similar in any way to the Trade mark except with the prior written approval of Fodmap.
	2. The Licensee must use the Trade Mark in accordance with the terms and conditions of the License and Rules and must comply with all reasonable directions issued by Fodmap from time to time regarding the manner of use of the Trade Mark.
	3. The Licensee will use its best endeavours to preserve the value and validity of the Trade Mark and in particular, will:
		1. endeavour to create, promote and retain the goodwill in the business relating to the production, marketing and sale of the Approved Product; and
		2. not use the Trade Mark in such a manner that the goodwill in the Trade Mark is diminished.
	4. The Licensee will not apply to revoke or de-register the Trade Mark or contest the validity of the Trade Mark.
2. LICENSOR'S WARRANTIES AND CERTIFICATIONS
	1. Fodmap warrants that it will use its reasonable endeavours to ensure that Proposed Products and Approved Products which are tested in accordance with these Rules are tested by what Fodmap considers to be the latest testing procedures and processes available at the time.
	2. The Trade Mark does not certify and Fodmap does not warrant that Approved Products will reduce or remove all symptoms of FODMAP intolerance or IBS.
	3. Fodmap shall, to the maximum extent permitted by law, not be liable to the Applicant or Licensee or any other party for any damage, loss or injury caused as a result of the use of a Proposed Product or Approved Product.
3. INDEMNITY
	1. The Licensee will be liable and must indemnify Fodmap, its servants, agents and employees, from and against any and all liabilities, losses, damages, costs, legal costs, profession and other expenses of any kind whatsoever incurred or suffered by Fodmap whether direct or consequential (including but without limitation to any economic loss or other loss of profits, business or goodwill) arising out of any dispute or contractual, tortuous or other claims or proceedings brought against Fodmap by a third party claiming relief against Fodmap arising directly or indirectly from the Licensee's use of the Trade Mark.
4. jurisdiction
	1. These Rules are governed by and construed in accordance with the laws of Victoria, Australia, and the parties hereby submit to the exclusive jurisdiction of Victorian courts and any courts which have jurisdiction to hear appeals from any of those courts.
5. severability
	1. Each provision of these Rules is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from these Rules in the relevant jurisdiction, but the rest of these Rules will not be affected.
6. costs
	1. Fodmap and the Applicant and Licensee must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and stamping of any documents and for any service or obligation contemplated by these Rules.
	2. In particular, and without limiting the generality of this clause, the Applicant and Licensee are responsible for all costs and expenses associated in any way with Testing the Proposed Product and Approved Product.

EXECUTED by the parties

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Executed** by  | ) |  |  |  |
|  | ) |  |  |  |
|  | ) |  |  |  |
|  |  | *Signature*  |  | *Signature*  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  | *Name (print)* |  | *Name (print)* |
|  |  | Date of Signing:  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Executed** by  **FODMAP PTY LTD**  | ) |  |  |  |
|  | ) |  |  |  |
|  | ) |  |  |  |
|  |  | *Signature*  |  | *Signature*  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  | *Name (print)* |  | *Name (print)* |
|  |  | Commencement Date:  |  |  |

Schedule 1 – Low FODMAP Guidelines

1. FOOD CATEGORIES and Permitted FODMAP levels per serving

The FODMAP content of product samples sized 105% of the proposed Approved Serving Size must meet each of the criteria specified in the relevant category tabled below.

* 1. CATEGORY - ALL FOODS, EXCEPT CEREALS, GRAINS AND FOODS MADE FROM CEREALS AND/OR GRAINS

|  |  |
| --- | --- |
|  | **Criteria** |
| **FODMAP** |  |
| -Excess Fructose | ≤ 0.2 g (Excess fructose = total fructose – total glucose) |
| -Lactose | ≤ 4 g  |
| -Sorbitol | ≤ 0.3 g however total polyols must not exceed 0.5 g  |
| -Mannitol | ≤ 0.3 g however total polyols must not exceed 0.5 g  |
| -Oligosaccharides | The sum total of all fructans and galacto-oligosaccharides (GOS) cannot exceed 0.2 g  |
| -Polyols | ≤ 0.5 g |

* 1. CATEGORY - CEREALS AND GRAINS AND FOODS MADE FROM CEREALS AND/OR GRAINS

|  |  |
| --- | --- |
|  | **Criteria** |
| **FODMAP** |  |
| -Excess Fructose | ≤ 0.2 g (Excess fructose = total fructose – total glucose) |
| -Lactose | ≤ 4 g  |
| -Sorbitol | ≤ 0.3 g however total polyols must not exceed 0.5 g  |
| -Mannitol | ≤ 0.3 g however total polyols must not exceed 0.5 g  |
| -Oligosaccharides | The sum total of all fructans and galacto-oligosaccharides (GOS) cannot exceed 0.3 g  |
| -Polyols | ≤ 0.5 g |

1. TESTING AND Serving Sizes

Products certified under the FODMAP FRIENDLY certification trade mark program are certified on the basis of an Approved Serving Size. This means a small serving of a product may become an Approved Product where a large serve will not.

Testing of a Proposed Product, or re-Testing of an Approved Product, is undertaken using samples sized 105% of the proposed Approved Serving Size set by Fodmap. This increases confidence that every Approved Product will in practice meet the Low FODMAP Guidelines despite variations in manufacture or natural size variations in products such as fruit, which may be approved on the basis of an average serving size.

An Approved Serving Size must be a realistic and reasonable quantity consumed as a serve.

Where a product has a natural serving size, such as a biscuit, muesli bar or the like, the Approved Serving Size must correspond to the natural serving size. Disingenuous and unrealistic definitions of serving size are not permitted. By way of a non-limiting example, where a “30 gram serving” equates to 0.5 biscuits, the Approved Serving Size will be 60 grams equating to 1.0 biscuits. If the 60 gram biscuit exceeds the permitted FODMAP level, it cannot become an Approved Product.

A minimum Approved Serving Size will be set by Fodmap in its absolute discretion.

The Approved Serving Size must be clearly marked on the product as the recommended serving size in grams, kilograms, millilitres or decilitres as appropriate. Optionally corresponding and accurate volumetric measures (such as 0.5 metric cups), or portion measures (such as 1 biscuit or 2 squares of chocolate or 1 sachet) can be marked as a recommended serving size in addition to weight or liquid volume.

The Low FODMAP Guidelines are copyright and the intellectual property of Fodmap. The Low FODMAP Guidelines must not be used for any purpose other than establishing a product’s eligibility under the FODMAP FRIENDLY certification trade mark program. The Low FODMAP Guidelines must not be copied or distributed to third parties without prior authorisation from Fodmap.

Schedule 2 – Testing Regime

|  |  |  |
| --- | --- | --- |
|  **Method Summary of**  | **VL295\_Common Sugars**  |  |
| **Summary Issued**  | **17th February 2010**  |
| Determination of Common Sugars in Foods by HPLC  |
| **Analysis Description**  | **Determination of common Sugars in Foods**  |
| **Matrix / Matrices**  | **Foods**  |
| **Reference Method(s)**  | **AOAC 13th Ed. 31.138-31.142**  |
| **Limit of Reporting (LOR)**  | **0.2 g/100g with refractive index detector.** **0.05 g/100g with ELSD detector.**  |
| **NATA Accredited**  | Yes  |
| **Preparation & procedure**  | **Preparation:** Sample is homogenised and a sub sample is accurately weighed. Sugars are extracted with 25 ml water at 60°c for 30 minutes. The extract is clarified with 25 ml acetonitrile and filtered through a 0.45um filter into a 2ml vial, suitable for HPLC. **Determination for common sugars:** Filtered solution is analysed by HPLC using amino column with an acetonitrile/water mobile phase containing salt and refractive index detection. Quantitation is made against a standard solution containing known amounts of fructose, glucose, sucrose, maltose and lactose. **Determination for low level sugars:** Filtered solution is analysed by HPLC using carbohydrate ES column with an acetonitrile/water mobile phase and evaporative light scattering detector (ELSD). Quantitation is made against a standard solution containing known amounts of fructose, glucose, sucrose, maltose and lactose. **Calculation:** Result calculation is performed by HPLC software and a report generated.  |
| **Comments, limitations or known interferences**  | Sorbitol, galactose and other sugar alcohols may interfere with glucose or other sugars. When this occurs the glucose is determined using different mobile phase or separately using a Bio-Rad HPX column. The method uncertainty is relatively high at levels approaching the Limit of Reporting (0.2g/100g).  |
| **Equipment used**  | Flasks and glassware Balance Blender HPLC with RI or ELSD Detection and appropriate column(s) Software to perform integration and calculation of results  |
| **QA Protocols per batch**  | 1 duplicate each batch (up to 15 samples usually) A standard is run every 5 samples A control reference is run each batch A recovery test in every batch  |
| **Mass of Sample required**  | 15 g per sample, however more sample would be required for QA.  |

Schedule 3 – APPROVED USER REQUIREMENTS

An Applicant and/or Licensee must be able to demonstrate, to the satisfaction of Fodmap, that it:

* + - * 1. has the capacity, skill and expertise to meet all of the requirements set out in the Rules and, in particular, to produce a food product in accordance with the Low FODMAP Guidelines;
				2. has a commercially sound business plan or business operation;
				3. is not in default under a decree, or a by-law or regulation of any government, statutory, municipal body or organisation having jurisdiction over the health and food industries and is compliant and will continue to be compliant in all material respects with and not in breach of all relevant laws; and
				4. holds all licenses, permits, authorisations and consents required for the conduct of all aspects of its business, and to the best of its knowledge, all such licenses, permits and authorisations as required are in full force and effect.

Schedule 4 – TRADE MARK(s)

Trade mark means the certification trade mark which is the subject of

South African application nos. 2012/30294, 2012/30295, 2012/30296, 2012/30297 and 2012/30298

in the name of Fodmap Pty Ltd



SCHEDULE 5 – RECORD KEEPING

For all labels, packaging, advertising or other materials (“materials”) to which the Trade Mark has or will be applied the Licensee must keep records including:

* the Approved Product and Approved Serving Size;
* a copy of artwork;
* a production sample;
* the quantity of materials ordered or produced;
* the quantity of materials used;
* the product in respect of which the materials were used;
* relevant dates between which materials were in use;
* sales information including units sold and gross revenue, for each Approved Product and Approved Serving Size.

SCHEDULE 6 – FODMAP FEE POLICY

## License Fee

Application Fee

As varied from time to time and available on request.

License Fee

As varied from time to time and available on request.

Applicant’s signature:

SCHEDULE 7 – PRODUCTS

|  |  |
| --- | --- |
| Applicant to complete | Fodmap Pty Ltd to complete |
| SKU or other unique product identifier | Product description | Proposed Serving size for approval | Testing completed (date) | Product and proposed serving size complies / does not comply with Low Fodmap Guidelines? Complying products are granted an Approved Serving size and Approved Product status.  | Signed |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |