

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

**FODMAP FRIENDLY**

**Certification Trade Mark**

**of Fodmap Pty Ltd**

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

**Instructions for completion of Application – please read carefully in order to avoid delays in processing, testing and grant of a License:**

The Applicant must complete and return two (2) originally signed and dated copies of the Application, completed as specified below.

This Application form includes:

|  |  |
| --- | --- |
|  | this cover page |
|  | License Agreement, incorporating the Rules for use of the FODMAP FRIENDLY Certification Trade Mark, including Schedules thereto |
|  | Fodmap Fee Policy attached as Schedule 6 to the License Agreement |
|  | Proposed Product(s) Template schedule attached as Schedule 7 |

Instructions for completion (please check each box)

|  |  |
| --- | --- |
|  | **Insert** Applicant’s name, address, company number and date of Application on this cover page |
|  | **Insert** Applicant’s name, address and company number on page 1 of the Agreement |
|  | **Applicant to sign but not date** page 15 of the Agreement; |
|  | **Applicant to sign but not date** the Fodmap Fee policy attached as Schedule 6 to the License Agreement |
|  | **Applicant to insert** the (or each) Proposed Product(s) for testing, attached as Schedule 7 |
|  | **Applicant to attach** information and evidence that the Applicant meets the Licensee requirements and Approved User Requirements in accordance with the License Agreement; in particular as specified in Schedule 3. |
|  | **Applicant to return** two (2) original copies of Application |
|  | **Applicant to pay** the non-refundable Application Fee (cheques may be made payable to Fodmap Pty Ltd) |

To be supplied before this Application can be processed

|  |  |
| --- | --- |
|  | **Applicant to supply** ten (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 will commence on the Commencement Date, being the date Fodmap executes the Licence 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 Agreement 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, 91 Maroondah Hwy, Ringwood Victoria, 3134, Australia |
|  | (“**Fodmap**”) |
| **AND** |  |
|  | of |
|  | (“**Licensee**”) |

BACKGROUND

1. The Licensee has applied to Fodmap for grant of a non-exclusive license to use the Trade Mark in the Territory 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 the Rules; and
      2. is suitable for inclusion in a low FODMAP diet.
   3. The use of the Trade Mark is governed by the Rules. For the avoidance of doubt, the Rules apply to:
      1. all Applicants applying to use the Trade Mark; and
      2. all Licensees who are granted a License by Fodmap.
3. DEFINITIONS
   1. In this License Agreement and the Rules:
      1. **Approved Product** means a food product approved in accordance with the 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 the 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 under clause 7.12 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, 91 Maroondah Hwy, Ringwood Victoria, 3134, 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 in accordance with the 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 a party (including the Licensee) authorized under a License Agreement to use the Trade Mark;
      15. **Low FODMAP Guidelines** means the guidelines set out in Schedule 1, 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 the Rules;
      20. **Rules** means the Rules for the use of the Trade Mark, as set out in this document, including the recitals, background and all schedules, annexures or attachments to it;
      21. **Territory** means the territory or territories defined in Schedule 4;
      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

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

or equipment of greater sensitivity;

in accordance with procedures specified in Schedule 2;

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 the interpretation of this License Agreement and the Rules where the context permits or requires:
      1. headings are inserted for convenience only and do not affect the interpretation of this License Agreement and the 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 “$” or dollars means Australian dollars and a reference to payment means payment in Australian dollars (both of which do not include GST); and
      8. use of 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 the Rules.
   5. Without otherwise limiting the previous four (4) clauses and for the avoidance of doubt, the Applicant or Licensee may not and must not use and/or register the Trade Mark or the words "*FODMAP FRIENDLY*" as or as part of:
      1. a domain name, a business name, a company name; or
      2. an account name, user name, page name, hash tag or other identifier of origin on Twitter, Facebook or any other social media,

without first obtaining Fodmap's written consent, which consent may be given or withheld at Fodmap's absolute discretion.

* 1. Fodmap will pay all renewal and other fees necessary to maintain the registration of the Trade Mark.

1. 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 the 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 the 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 the Australian *Competition and Consumer Act 2010* or equivalent law in the Territory.

* 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 the Australian *Trade Marks Act 1995 (Cth)* or the New Zealand *Trade Marks Act 2002,* Fodmap may, at its absolute discretion, assign the right to use the Trade Mark.

1. USE OF THE TRADE MARK
   1. Only Fodmap and 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 the Rules and a License Agreement.
   4. The Trade Mark must only be used by Licensees on Approved Products in respect of which the License was granted.
   5. Section 26 of the Australian *Trade Marks Act 1995 (Cth*) does not apply.
   6. 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:
2. to alter or deface; or
3. to make any addition to; or
4. 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, 91 Maroondah Hwy

Ringwood Victoria 3134

Australia

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 the 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. For the sake of certainty:
      1. the grant of a License in respect of a Proposed Product under clauses 7.9 and 7.10; and
      2. the rejection of a License in respect of a Proposed Product under clauses 7.9 and 7.11;

will be given effect by Fodmap providing the Applicant with a duly executed counterpart of this License Agreement incorporating Schedule 7 duly completed as required and executed by Fodmap.

* 1. An unsuccessful Applicant for a License may make another Application pursuant to this clause.
  2. 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 prescribed by the Rules. 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 the Rules.

1. RECORD KEEPING
   1. The Licensee must keep records in accordance with Schedule 5.
2. MONITORING AND AUDITING THE USE OF THE TRADE MARK
   1. Upon giving reasonable notice to the Licensee, Fodmap or its representatives may, from time to time and at any time 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. Each Approved Product 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:
      1. can be applied only to Approved Products; and
      2. must be applied without alteration, addition or amendment to the representation of the Trade Mark as set out in the 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. must be used with an indication that it is a certification mark, which may be achieved by including the words CERTIFICATION TRADE MARK, CERTIFICATION MARK or CERT TM adjacent the Trade Mark.
   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

the Licensee 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 the Australian *Competition and Consumer Act 2010,* including breach the Australian Consumer Law, or equivalent law in the Territory.
  1. The Licensee must comply with the terms and conditions of the License in using the Trade Mark.
  2. 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 the 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 the 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 the 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. The Licensee must comply with:
      1. the 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 the Approved Product is categorised, assessed and Tested according to the process for a Proposed Product in clauses 7.4 to 7.13 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 14.3.1 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 14.3.3 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 the 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 the Licensee by giving one (1) month's notification in writing to Fodmap.
   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 granting 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 the 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 the License:
      1. the Licensee must cease using the Trade Mark and the words "*FODMAP FRIENDLY*" in any way including:
         1. ceasing to sell or distribute the Approved Product bearing the Trade Mark); and
         2. where approval for use has been given under clause 4.5; and
         3. where approval for use under clause 4.5 is required and has not been obtained;
      2. the Licensee must either destroy or return to Fodmap all relevant packaging bearing the Trade Mark; and
      3. the Licensee is not relieved of any obligation to make payments of outstanding fees under the Fee Policy, including any unpaid portion of the License Fee where Fodmap has afforded the Licensee credit terms in connection with its payment.
   4. In order to better secure and preserve Fodmap's interests, the Licensee irrevocably appoints Fodmap and its directors, jointly and severally, its true and lawful attorneys to execute such documents on behalf of the Licensee and to do anything else on behalf of the Licensee which Fodmap deems in its absolute discretion as being necessary or desirable in order to ensure the Licensee's total compliance with the previous clause in relation to:
      1. a domain name, a business name, a company name; or
      2. an account name, user name, page name, hash tag or other identifier of origin on Twitter, Facebook or any other social media.
   5. The termination of the License will be without prejudice to any other rights of Fodmap under this Licence Agreement 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 the Australian *Trade Marks Act 1995 (Cth)* or the New Zealand *Trade Marks Act 2002* andthe prior approval of the New Zealand Commissioner of Trade Marks, Fodmap may from time to time and at any time alter the Rules in 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 the Rules, including any amendments made from time to time, available to the public.
   2. Fodmap will maintain a register of Licensees (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 on the one hand and the Applicant or the Licensee on the other hand arising:
      1. from a refusal by Fodmap to allow use of the Trade Mark; or
      2. from the alteration, construction, termination or breach of this License Agreement including the Rules,

such dispute (the "**Dispute**") must be attempted to be resolved by the following procedure ("**Mediation**") before a party may commence any Court proceedings in connection with the Dispute:

* + 1. either party may start a Mediation by serving a notice to that effect on the other party (the "**Mediation Notice**");
    2. the Mediation Notice must state that a dispute has arisen and identify what is in dispute;
    3. the parties must jointly appoint a mediator within fourteen (14) days of service of the Mediation Notice, failing which a mediator is to be appointed by the then CEO of the Law Institute of Victoria, Australia on the application of either party (in either case, the person so appointed is now called the "**Mediator**");
    4. the parties must observe the instructions of the Mediator about the conduct of the Mediation; and
    5. if the Dispute is not resolved within fourteen (14) days after the Mediator has been appointed, or any other time which the parties agree to in writing, the Mediation ceases.
  1. The parties must bear and pay an equal share of the Mediator's costs.
  2. If the Dispute is resolved at Mediation, the parties must sign a note or memorandum recording the terms of that resolution, which will become final and binding on them.
  3. The Mediation procedure will be confidential to the extent that:
     1. written statements prepared for the Mediator or for a party; and
     2. any discussion between the parties and between each of them and the Mediator during the Mediation,

cannot be used in any subsequent proceedings in connection with the Dispute.

* 1. If the parties are unable to resolve the Dispute at Mediation, either of them may refer the Dispute to a Court having the appropriate jurisdiction.
  2. The previous five (5) clauses are not intended to nor can they prevent Fodmap from commencing Court proceedings seeking urgent injunctive relief.
  3. Despite the Dispute and the Mediation, the Licensee must continue to comply with its obligations under this License Agreement, including the Rules.

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 this License Agreement and the Rules and must comply with all reasonable directions issued by Fodmap from time to time and at any time regarding the manner of use of the Trade Mark.
   3. The Licensee must use its best endeavours to preserve the value and validity of the Trade Mark and, in particular:
      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. must not use the Trade Mark in such a manner that the goodwill in the Trade Mark is diminished.
   4. The Licensee must 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 the 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 will, 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 for and must indemnify, Fodmap, its servants, agents and employees, to a maximum of $10,000,000, 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 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. This License Agreement, including the Rules, are governed by and construed in accordance with the laws of Victoria, Australia, and the parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of Victoria, Australia and courts of appeal therefrom.
5. SEVERABILITY
   1. Each provision of this License Agreement, including the 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 this License Agreement in the relevant jurisdiction, but the rest of this License Agreement will not be affected.
6. COSTS
   1. Fodmap, the Applicant and the Licensee must bear and pay their own respective costs and expenses in connection with the negotiation, preparation, execution, delivery and stamping of this License Agreement.
   2. Without limiting the generality of the previous clause, the Applicant and the Licensee will be and are solely responsible for all costs and expenses associated in any way with Testing the Proposed Product and Approved Product.
7. CONFIDENTIALITY
   1. The parties acknowledge that this License Agreement, the negotiations leading up to its formation, and the exchange of information between the parties under this License Agreement after the Commencement Date (collectively called "**Confidential Information**") are confidential between them.
   2. A party may not disclose to any other person or entity the Confidential Information or any part of it without first obtaining the written consent of the other party, which consent may be given or withheld at the absolute discretion of the party concerned.
   3. The two (2) previous clauses will not operate:
      1. to prevent a party from making a disclosure to its legal, accounting and/or financial advisers and/or to its bank;
      2. where a party is required to make a disclosure, by law (including the parties to the License, the previous or future publication of the terms of the License and the Rules as part of the registration of the Trade Mark in any country or as evidence before any Court or Tribunal; or
      3. to prevent Fodmap from making a disclosure evidencing use of the Trade Mark by the Licensee to a Trade Marks Office or interested third party in any country.
   4. For the avoidance of doubt, the Licensee acknowledges that Fodmap will and must at all times be free to:
      1. publish the Rules and pro-forma Licence Agreements incorporating the Rules including as part of obtaining and maintaining trade mark registrations and dealing with other Applicants for product certification and license to use the Trade Mark;
      2. keep and maintain a public record of authorised users of the Trade Mark;
      3. submit evidence of use of the Trade Mark by the Licensee to Trade Marks Offices in any country, which such regulatory authorities may publish such evidence on the internet or through other media; and
      4. disclose to:
         1. Trade Marks Offices in any country, which such regulatory authorities may publish such evidence on the internet or through other media ; and/or
         2. third parties involved in a dispute or potential dispute in connection with the Trade Mark;

sales figures and other otherwise sensitive material arising out of this License Agreement.

1. NOTICE
   1. Any demand, notice or document under this License Agreement may be made or given by a party, or the solicitor for that party, and will be sufficiently served or delivered:
      1. if served or delivered personally on the party to be served or on that party's solicitor;
      2. if posted by pre-paid post addressed to the party to be served at that party's address appearing in this License Agreement or to that party's solicitor;
      3. if sent by facsimile transmission to the party to be served or to that party's solicitor;
      4. if sent by Electronic Communication to the party to be served or to that party's solicitor; or
      5. if served or delivered in any other manner authorised by the Supreme Court Rules of Victoria, Australia for service of documents on parties or their solicitors.
   2. Service or delivery by pre-paid post will be deemed to have been made or given at 12:00 noon on the Business Day following posting.
   3. Service or delivery:
      1. by facsimile transmission will be deemed to have been made or given at the moment the sender's facsimile machine confirms transmission to the recipient's machine, subject to the production of a transmission report to that effect; and
      2. by Electronic Communication will be deemed to have been made or given at the time of receipt under the *Electronic Transaction Act* 1999 (Cth) (Australia).
2. FURTHER ASSURANCES
   1. The parties must sign (and where applicable, procure the signing of) such documents and do (and where applicable, procure the doing of) anything else which may be necessary or desirable to give full effect to this License Agreement.
3. Non-Merger of Provisions
   1. A provision of this License Agreement which can and is intended to operate after its conclusion will remain in and continue to have full force and effect.
4. Waiver
   1. A Waiver by Fodmap of the Licensee's default under this License Agreement, will not constitute a release of the Licensee's obligation to observe and perform all of its obligatins under this License Agreement, including the Rules, in the future.
5. Entire Agreement
   1. This License Agreement embodies the entire agreement and understanding between the parties concerning its subject matter and succeeds and cancels all other agreements and understandings concerning the subject matter of this License Agreement.
6. Counterparts
   1. This License Agreement may be executed in two or more counterparts each of which will be deemed an original, but all of which will constitute one and the same document.
7. JOINT AND SEVERAL
   1. Any obligation imposed by this License Agreement on two or more persons binds them jointly and each of them severally.
8. TRUSTEE CAPACITY
   1. If the Licensee is acting as a trustee, it is bound personally and in its capacity as trustee for the Trust concerned.
9. CONTRA PROFERENTUM
   1. The legal doctrine of *contra proferentum* does not apply to this License Agreement, which means that a provision in this License Agreement must not be construed to the disadvantage of Fodmap merely because Fodmap was responsible for the preparation of this License Agreement, including the Rules.

THE PARTIES HAVE EXECUTED THIS LICENSE AGREEMENT

with effect on the day of 20 in the following manner:

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| --- | --- | --- |
| SIGNED for and on behalf of FODMAP PTY LTD | )  ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signatory)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name of Signatory - please print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Capacity of signatory to bind Fodmap Pty Ltd eg Director - please print) |
| SIGNED for and on behalf of THE LICENSEE | )  ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Signatory)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Name of Signatory - please print)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  (Capacity of signatory to bind the Licensee eg Director - please print) |

SCHEDULE 1 – LOW FODMAP GUIDELINES

1. FOOD CATEGORIES AND PERMITTED FODMAP LEVELS PER SERVING

The FODMAP content of product samples 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 of the proposed Approved Serving Size set by Fodmap. Products such as fruit having natural size variations may be approved on the basis of an average serving size at Fodmap’s absolute discretion.

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 REGIMES**

|  |  |  |
| --- | --- | --- |
| **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. | |

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| **Method Summary of** | **Common Sugars** |  |
| **Summary Issued** | **19 June 2013** |
| Determination of Common Sugars in Foods by Spectrophotometric Enzymatic analysis | |
| **Analysis Description** | **Determination of common Sugars in Foods** | |
| **Matrix / Matrices** | **Foods** | |
| **Reference Method(s)** | **AOAC Methods: 999.03, 984.15, Industry Standards** | |
| **Limit of Reporting (LOR)** | **Fructose: 1mg/100g, Glucose: 1mg/100g, Sorbitol: 2mg/100g,**  **Mannitol: 5mg/100g, GOS: 50mg/100g, Lactose: 30mg/100g**  **Fructans: 20mg/100g** | |
| **Certification** | Enzyme kits: ISO 9001:2008 Certification | |
| **Preparation & procedure** | **Preparation:**  Wet samples are pooled and homogenised. A sub sample is accurately weighed and frozen in a container appropriate for freeze drying. Once completely dried the sample is reweighed to calculate water content.  Dry samples are pooled and homogenised to pass a 0.5mm screen. A sub sample is accurately weighed. Sugars are extracted with 80 ml water at 80°c for 15 minutes. The extract is cooled and made up to a final volume of 100ml with distilled water.  The extract is filtered through a 0.45um filter into a 2ml vial, suitable for the assay.  **Determination for common sugars:**  Filtered solution is analysed by individual enzyme kits appropriate to the sugar being measured. Quantitation is made by a linear absorbance relationship.  **Calculation:**  Result calculation is performed by Megazyme software and a report generated. | |
| **Comments, limitations or known interferences** | Internal standards are included to account for any potential interference. Losses in sampling handling and extraction can be identified by performing recovery experiments. | |
| **Equipment used** | Flasks and glassware  Balance  Blender  Spectrophotometer with variable wavelengths  Freeze dryer and vacuum pump  Software to perform integration and calculation of results | |
| **QA Protocols per batch** | Samples run in triplicate each batch  A duplicate standard is run every batch  A control reference is run each batch | |
| **Mass of Sample required** | 5 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;
        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; and
        5. has in place on or before the Commencement Date a policy of insurance in respect of product liability for an amount not less than $10,000,000, with the period of cover to be not less than the term of this License.

SCHEDULE 4 – TERRITORY and TRADE MARK(S)

|  |  |
| --- | --- |
| Territory means: | Trade mark means the trade mark shown below,  which is the subject of: |
| New Zealand | Trade Mark No. 968527 |
|  | 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

Application Fee

$100 per Proposed Product, and which is non-refundable.

License Fee

As varied from time to time and available on request, and which is non-refundable.

Applicant’s signature:

Note: alterations to the Application Fee are subject to clause 17, and any fee disputes are subject to clause 19

SCHEDULE 7 – PRODUCTS

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