

SCHEDULE 1



Certified copy  
pursuant to section 175(2)(b)  
of the Trade Marks Act 1995

*M. S. Gupta*  
.....  
Commissioner

07 December 2010  
.....  
Date

## SCHEDULE 2

Licensee:

Approved Product:

Chief Executive Officer: Stephanie Martin

Commencement Date:

Term:

Laboratory: Sydney University Glycemic Index Research Service ("SUGiRS") or another approved laboratory

Licensee Fee: The fee identified in Schedule D to the Rules or such other fee as Glycemic Index Limited and the Licensee may agree upon from time to time in writing.

Notice: Licensors  
The Chief Executive Officer  
Glycemic Index Limited  
PO Box 9824  
SYDNEY NSW 2001  
Ph: 0458 477 706 (m)  
Ph: 9966 0400  
Email: [smartin@jdrf.org.au](mailto:smartin@jdrf.org.au)

## SCHEDULE 3

### RULES

for the use of

THE CERTIFICATION TRADE MARK

of the

GLYCEMIC INDEX LIMITED



#### The Certification Trade Mark

##### General

1. The Certification Trade Mark is the mark shown above which is the mark the subject of Australian Application no. 1322299 and is owned by the University of Sydney.
2. The Certification Trade Mark is to be used to indicate that Products bearing the mark are Products that have been assessed by Glycemic Index Limited to have a particular ranking according to their effects on blood glucose levels in comparison with a specified reference food. In Australia this concept has been pioneered by Jennie Brand-Miller, Professor in the Human Nutrition Unit School of Molecular and Microbial Biosciences at the University of Sydney. Prof. Brand-Miller has clinically shown the positive relationship between a low Glycemic Index (GI) and slow digestion and absorption of foods. Further, low GI foods have been recognised as providing benefits to people with diabetes and those who are overweight whilst foods of both high GI and low GI may improve elite athletic performance.

3. The GI is a ranking of carbohydrates in foods on a scale from 0 to 100 based on their immediate effect on blood glucose levels. High GI carbohydrates are digested and absorbed rapidly and give high blood glucose responses. Low GI carbohydrates are preferable for most people because they are digested and absorbed gradually and produce less fluctuation in blood glucose levels.

### **Definitions and Interpretation**

4.1 In these rules and the schedules hereto, where the context so permits or requires words in the singular shall include the plural, words in the plural shall include the singular and words importing the masculine gender shall include the feminine and neuter.

4.2 In these rules:

**"AS 4694-2007"** means Australian Standard AS 4694-2007 Glycemic index of foods prepared by the Standards Australia Committee FT-024, Food Products.

**"Business Hours"** means 9.00 a.m. to 5.00 p.m. Monday to Friday (excluding public holidays).

**"Business Manager"** means the business manager of Glycemic Index Ltd referred to in schedule B.

**"Certification Trade Mark"** means trade mark application number 1322299.

**"Commission"** means Australian Competition and Consumer Commission.

**"GI"** means Glycemic Index.

**"Laboratory"** means Sydney University Glycemic Index Research Service ("SUGIRS") or another laboratory approved by Glycemic Index Limited and tested in accordance with Australian Standard AS 4694-2007.

**"Products"** means foods including beverages

**"Registrar"** means Registrar of Trade Marks.

**"Reformulation"** any change that would likely affect the GI value of the product or its eligibility to meet the programs nutrient criteria. Changes may include (but are not limited to): substitution of ingredients; changes to the relative amounts of ingredients; addition or subtraction of ingredients; changes to the source (eg: cultivar) of the ingredients; and/or the processing of the ingredients.

### **Property in the Certification Trade Mark**

5. The Certification Trade Mark is the absolute property of the University of Sydney. The University of Sydney has granted an exclusive licence for Australia to Glycemic

Index Limited. No person shall use the Certification Trade Mark except with the written authority of Glycemic Index Limited.

### **Use of the Certification Trade Mark**

- 6.1 Use of the Certification Trade Mark in connection with Products shall be authorised by the grant of a licence to use the Certification Trade Mark to an applicant who makes application for such a licence in accordance with these rules provided:
- (a) the Products meet the standards prescribed in schedule A of these rules;
  - (b) Glycemic Index Limited is satisfied that both the use of the Certification Trade Mark on Products, or in relation to the Products, will not offend the provisions of the Trade Practices Act 1974, or the guidelines on misleading conduct set out by the Commission from time to time;
  - (c) The Products meet the requirements of State and Federal legislation; and
  - (d) The Products meet all relevant codes of practice.
- 6.2 A licence to use the Certification Trade Mark will be granted for a period of twelve months but a licence for a period other than twelve months may be granted when, in the opinion of Glycemic Index Limited the circumstances are deemed to be appropriate.
- 6.3 A licensee shall only use the Certification Trade Mark on Products which are covered by the licence and which comply with the standard prescribed in schedule A.
- 6.4 The product must be retested after any reformulation of the Product. After a Product has been licensed for a total of 36 months, the Product may be retested (in accordance with AS 4694-2007) at the absolute discretion of Glycemic Index Limited to a maximum of once every three years if no reformulation has been notified to Glycemic Index Limited. ~~The product must be retested after any reformulation of the Product.~~
- 6.5 Any cost of retesting in accordance with clause 6.4 will be borne by the licensee.

### **Application and Procedures for Permission to Use the Mark**

7. An application for a licence to use the Certification Trade Mark shall be made in writing and addressed to the Chief Executive Officer and be in the form set out in Schedule B.
8. An application made in accordance with clause 7 of these rules shall normally include:
- (a) information relating to the market profile of the Products including but not limited to

budgeted gross ex-factory sales of the applicant for which a licence to use the Certification Trade Mark is sought;

- (b) samples of the Product and all intended packaging and promotional material;
- (c) any available GI testing report including raw data from the Laboratory; and
- (d) nutrient content as per the nutrition information panel and other nutrients required by schedule A.

9. If the product has not already had its GI measured in accordance with AS 4694-2007:

- (a) As soon as practicable (but no later than 30 days) after receiving an application in accordance with clause 7 of these rules, the Chief Executive Officer shall arrange for the applicant to submit a sample of the Products in respect of which a licence to use the Certification Trade Mark is sought to the Laboratory for GI testing.
- (b) Samples then submitted by the applicant to the Laboratory shall be taken in accordance with AS4694-2007.
- (c) The samples submitted by the applicant to the Laboratory shall be accompanied by a Sample Submission Form in accordance with schedule C to these rules, containing all the information, data and details indicated in the Sample Submission Form.
- (d) A separate Sample Submission Form is required for each of the Products of the applicant in respect of which a licence is sought.
- (e) By submitting a Sample Submission Form to the Laboratory the applicant for a licence thereby agrees to pay the Laboratory on demand the analysis fee for the analysis of the samples of the Products submitted with the Sample Submission Form, which fees are set out in schedule D to these rules.

10. As soon as practicable (but no later than three months) after the receipt of samples accompanied by a Sample Submission Form and payment of the analysis fees as prescribed, the Laboratory shall analyse the samples as required in accordance with the methods of AS 4694-2007.

11.1 As soon as practicable (but no later than 30 days) after the completion of the analysis of samples in accordance with clause 10 of these rules the Laboratory shall send the results of the analysis of samples to the Chief Executive Officer.

11.2 The applicant expressly authorises the Laboratory to send and disclose the results of the analysis of samples to Glycemic Index Limited.

12. If:

- (a) the results of the analysis of samples by the Laboratory show that the Products of the applicant meet the standards prescribed in schedule A to these rules; and
  - (b) Glycemic Index Limited is satisfied that the other criteria set out in clause 6 are met, Glycemic Index Limited shall issue a licence to the applicant to use the Certification Trade Mark in respect of those Products which meet the prescribed standards.
13. Within six (6) weeks of receiving samples accompanied by a Sample Submission Form, the Products do not meet the standards prescribed by schedule A to these rules, or Glycemic Index Limited is not satisfied that the other criteria of clause 6 have been met, Glycemic Index Limited will refuse to grant a licence to the applicant to use the Certification Trade Mark in connection with that Product, and shall notify the applicant in writing of its refusal to grant a licence.
14. If in a 36 month period prior to an applicant applying for a licence in accordance with clauses 7 and 8 of these rules, the Product for which a licence is sought has already been analysed by a Laboratory (in accordance with the methods of AS 4694-2007) and the results of the analysis are sent by the Laboratory to the Chief Executive Officer, Glycemic Index Limited may in its absolute discretion determine that the analysis provided for in clauses 9 and 10 is not required in respect of those Products, before it makes its determination in accordance with clauses 12 and 13.

### **Licence Conditions**

15. It shall be a condition of each licence to use the Certification Trade Mark granted in accordance with these rules that the licensee shall pay to Glycemic Index Limited, a licence fee which:
- (a) in the event that the licence is granted for a period of twelve months shall be determined in accordance with schedule D to these rules; and
  - (b) in the event that the licence is granted for a period other than twelve months, it shall be determined in accordance with schedule D of these rules multiplied by the ratio of  $X/12$  where X is the period in months of the granted licence.
16. The licence fee payable in accordance with clause 15 of these rules is payable to Glycemic Index Limited on acceptance of the grant of the licence from Glycemic Index Limited.

### **Monitoring the Use of the Mark**

17. Glycemic Index Limited may from time to time during the period of the licence to use the Certification Trade Mark in respect of the Products, effect random sampling of such Products in the market place and may cause such sample Products to be analysed to ensure

that they meet the standards prescribed in schedule A to these rules. In the event that any of the sample Products do not meet the standards prescribed in schedule A to these rules, Glycemic Index Limited shall notify the licensee in writing of the result of its sampling of the Products of the licensee.

18. The licensee shall, within fourteen days of receipt by the licensee of a notification in accordance with clause 17 cause the Products to meet the standards prescribed in schedule A to these rules. If the licensee fails to comply with this rule then its licence granted to use the Certification Trade Mark is revoked.

#### **Action by a Licensee on Expiry of a Licence**

19. Upon expiry of the period for which a licence is granted or upon revocation by a licensee of a licence in accordance with the provisions of clause 18, the licensee:
  - (a) agrees not to use the Certification Trade Mark in its advertising or other promotional activities or hold itself out as being entitled to use the Certification Trade Mark;
  - (b) will send to Glycemic Index Limited all relevant packaging bearing the Certification Trade Mark, and all unused labels, stickers, tags, posters and the like bearing the Certification Trade Mark; and
  - (c) pay any outstanding amounts to Glycemic Index Limited.

#### **Amendment of the Rules and Schedules**

20. (a) If Glycemic Index Limited wishes to alter these rules or any of schedules A, B, & C to these rules, it shall apply to the Registrar for permission to make such alterations.
  - (b) no proposed alteration of these rules or of schedules A, B, or C to these rules shall have effect until the Commission has made such alteration in accordance with the provisions of section 178 of the Trade Marks Act 1995.
21. (a) Glycemic Index Limited may alter schedule D to these rules at any time. Glycemic Index Limited will use its best endeavours to ensure the fees outlined in Schedule D are reasonable.
  - (b) Glycemic Index Limited shall give notice in writing to the Registrar and to all licensed users of the Certification Trade Mark and all applicants for permission to use the Certification Trade Mark of any such alteration of schedule D and in each such notice shall specify a date from which it is proposed that the alteration of schedule D shall have effect.

#### **Register of Authorised Users of the Certification Trade Mark**



22. Glycemic Index Limited shall establish and maintain a register which shall contain details of all licensed users of the Certification Trade Mark. This register shall be kept at the office of Glycemic Index Limited and shall be open to the inspection of the public during Business Hours of Glycemic Index Limited.
23. Glycemic Index Limited may if it so desires from time to time specify additional particulars for inclusion in the register.
24. Glycemic Index Limited shall keep at its principal office a copy of these rules including the schedules to these rules, and of all of the standards, specifications and testing procedures referred to in these rules and in the schedules to these rules and of any amendments thereof and such copies shall be open to the inspection of the public during Business Hours.

### **Resolving Disputes**

25. Where a dispute arises under these rules between Glycemic Index Limited and the licensee, the parties must comply with the following dispute resolution process:
  - (a) the complainant must tell the other party in writing:
    - (i) the nature of the dispute; and
    - (ii) what outcome the complainant wants; and
    - (iii) what action the complainant thinks will settle the dispute.
  - (b) the parties should then try to agree about how to resolve the dispute;
  - (c) if the parties can not agree under sub-clause (b) above within 14 days, either party may refer the matter to a mediator;
  - (d) if the parties can not agree on the mediator, then the parties agree that the President of the Law Society for the time being can nominate the mediator;
  - (e) the mediator may decide the time and place for mediation however, the parties agree that mediation shall be held in Sydney, Australia;
  - (f) the parties must attend the mediation and try to resolve the dispute.
26. Despite the dispute resolution procedures above, a party to this agreement may seek injunctive relief from an appropriate court, where failure to obtain such relief would cause irreparable damage to the party concerned.

### **Miscellaneous**

27. A licence is non-exclusive and non-transferable.

28. A list of licensees shall be kept by the Company Secretary of Glycemic Index Limited and be available for inspection during Business Hours.