Final assessment of application to vary the rules governing Certification Trade Mark Application 1366033 lodged by Arthritis Foundation of Australia

The Australian Competition and Consumer Commission (the ACCC), in accordance with the requirements of the *Trade Marks Act 1995* (TMA), has completed its final assessment of the above application.

Pursuant to s178(3) of the TMA, the ACCC's final assessment is that it is satisfied that the rules governing the use of the certification trade mark identified above, as varied:

(a) would not be to the detriment of the public; and

(b) are satisfactory having regard to the criteria prescribed for the purposes of s175(2)(b) of the TMA.

Pursuant to Trade Marks Regulation 16.10, the ACCC is also satisfied that the rules as varied provide that the attributes a person must have to become an approved certifier are sufficient to enable the person to assess competently whether goods or services meet the certification requirements.

Signed..... **(Deputy Chair)**

Date.23 October 2020.....

ARTHRITIS FOUNDATION OF AUSTRALIA (ACN 002 598 594)

EASE OF USE CERTIFICATION PROGRAM
CERTIFICATION TRADE MARK RULES

TRADE MARK NO. 1366033

1. INTRODUCTION

1.1 The Arthritis Foundation of Australia ACN 002 598 594 ("**Arthritis Australia**") is a national, not for profit public company incorporated on 9 April 1984, which represents the interests of those with Arthritis resident in Australia.

1.2 The principal objective of Arthritis Australia is to promote the livelihood of people living with Arthritis by providing a range of services throughout the community ("**Principal Objective**").

1.3 In addition to the Principal Objective, Arthritis Australia is committed to aligning itself with organisations, people, products and services that are:

(a) sustainable and socially responsible;

(b) ethically responsible;

(c) whose objects and values are consistent and compatible with those of Arthritis Australia;

(d) knowledgeable and provide a trusted source of quality information for arthritis consumers;

(a) where the organisation or person produce products that makes claim/s around benefits to the health of arthritis consumers and / or associated conditions, those products are proven or supported by independent scientific evidence that demonstrate these benefits;

(b) promote and are of some benefit to the enhancement and furtherance of the Principal Objective;

(c) are not harmful to people, animals or the environment;

(d) reputable and that will not bring Arthritis Australia into disrepute

("**AAust Aims**").

1.4 The Ease of Use Certification Trade Mark set out in Schedule 1 ("**Trade Mark**") was established by Arthritis Australia to denote products and packaging that have met certain criteria in relation to their usability and ease of use.

1.5 Each Applicant must send product or packaging samples to Arthritis Australia to be evaluated by an Assessment Panel. Applicants must complete an Application and submit it to Arthritis Australia.

2. THE RULES

2.1 This document constitutes the rules governing the use of the Trade Mark ("**Rules**") required by section 173 of the *Trade Marks Act 1995* (Cth) ("**Trade Marks Act**").

2.2 These Rules set out provisions regarding the following:

(a) the requirements that the products or packaging must meet to be Certified;

(b) the process for determining whether the products or packaging meet the Certification requirements;

(c) the persons (Certified Assessors and Assessment Panels) who may be approved for the purpose of Certifying aspects of products or packaging;

(d) the requirements that an approved user must meet to use the Trade Mark in relation to a product or packaging or otherwise;

(e) the use of the Trade Mark by Arthritis Australia and any approved user; and

(f) the procedure for resolving a dispute arising from a refusal by Arthritis Australia:

(i) to award Certification in relation to a product or packaging; or

(ii) to allow the use of the Trade Mark.

2.3 Capitalised terms appearing in these Rules not otherwise defined in the body of these Rules are defined in the Glossary contained in Rule 22.

3. APPLICATION OF THE RULES

3.1 The Rules apply to:

(a) Arthritis Australia;

(b) all Applicants applying to use the Trade Mark for Certification of products and packaging;

(c) all Licensees of the Trade Mark, whose Licence agreements to use the Trade Mark are executed by Arthritis Australia and being those persons whose products or packaging are awarded Certification in accordance with Rule 6.10(c);

(d) all Sublicensees of the Trade Mark entering sub-licence agreements and who are entitled to use the Trade Mark in accordance with Rule 16.

3.2 The Trade Mark may not be used by any person, other than as provided

in Rules 15, 16 and 17, without the express permission of Arthritis Australia.

3.3 A Licence to use the Trade Mark does not give any entitlement to be a member of Arthritis Australia. A Licensee does not, by receiving Certification, acquire any rights, interests or other entitlements with respect to the ownership, administration or control of the Trade Mark.

3.4 The Rules do not take precedence over statutory requirements, as set out in the Trade Marks Act or otherwise. It is the responsibility of Licensees to ensure that their use of the Trade Mark does not contravene any statutory requirements.

4. USE OF TRADE MARK BY ARTHRITIS AUSTRALIA

Arthritis Australia may use the Trade Mark for administrative, educational, advertising and promotional purposes.

5. THE EASE OF USE CERTIFICATION PROGRAM

5.1 Arthritis Australia has established the Ease of Use Trade Mark Programme to recognise organisations that design products and packaging that do not inhibit or cause injury or discomfort to people living with Arthritis and/or a disability (the "**EOU Certification Program**").

5.2 The EOU Certification Program is a comprehensive scheme to allow all consumers to identify user-friendly products and packaging.

5.3 The EOU Certification Program evaluates the usability of products, based on a number of criteria that are determined on a case by case basis, to evaluate the usability of products or packaging.

5.4 The EOU Certification Program is intended to:

(a) establish a common language and standard of measurement of the usability of products and packaging;

(b) promote ergonomic product and packaging design;

(c) raise awareness of Arthritis in Australia;

(d) reduce the incidence of injury caused to consumers from using hard to open products or packaging;

(e) provide recognition for manufacturers and brand owners who have developed user friendly products and packaging; and

(f) increase availability and purchasing of easy to use products, resulting in:

(i) decreased pain and discomfort for people with Arthritis;

(ii) increased feeling of independence for people with Arthritis; and

(iii) increased funding for programs and research that benefit people with Arthritis.

5.5 As part of the EOU Certification Program, Arthritis Australia utilises the expertise of a Testing Body to create specific testing tools ("**Testing Tools**") to assess the usability of products and packaging. After such testing, each product or packaging is then specifically tested by the Arthritis Consumer Panel based on a number of criteria to substantiate the usability of the product and/or packaging.

5.6 As the EOU Certification Program is to be used for a vast array of products or packaging, the methodology in evaluating the usability of a product or package is refined to test its own unique attributes. For example, the methodology for testing the usability of a mattress will vary greatly from the methodology used to test the usability of a pair of garden shears.

6. THE CERTIFICATION PROCESS

6.1 Introduction

(a) As the EOU Certification Program is reviewed periodically by Arthritis Australia, the Certification process may be amended over time. This Rule 6 sets out the Certification process at the time of submission of these Rules to IP Australia.

(b) For the most recent information on the Certification process email *design@arthrtisaustralia.com.au* or go to the Website.

6.2 Application Process

This Application process applies to all Applicants applying for a Licence to use the Trade Mark.

(a) Each Applicant must apply to Arthritis Australia to assess its product or packaging.

(b) Applications for Certification are available from Arthritis Australia.

(c) Any owner of a product or packaging may apply for it to be Certified under the EOU Certification Program by completing an Application, and lodging the following items with Arthritis Australia:

(i) a completed Application;

(ii) a copy of a recent Australian Securities and Investments Commission company search (where applicable) in relation to the Applicant;

(iii) a copy of the Design Testing Agreement between Arthritis Australia and the Applicant, which has been executed by the Applicant; and

(iv) up to thirty-eight (38) product samples or such lesser number that is otherwise determined at the time of application by Arthritis Australia in conjunction with the Testing Body, including packaging if applying for a product; or

(v) up to Fifty-six (56) packaging samples or such lesser number that is otherwise determined at the time of application by Arthritis Australia in conjunction with the Testing Body, of any product that the packaging will contain, if applying for packaging.

(d) On receipt of the Testing Fee, Administrative Fees, samples and the above documentation from the Applicant, Arthritis Australia will determine, having regard to the AAust Aims, whether the Application in respect of the product or packaging is suitable to undergo the assessment process.

(e) In the case of product Applications (which is intended to assess the ease of use of the product itself rather than the packaging), the product and the packaging are evaluated together for their ease of use. However, if the packaging does not meet the requirements for Certification, but the products do meet the requirements for Certification, Arthritis Australia may still consider assessing the product independently of the packaging.

(f) In the case of Applications relating only to packaging:

(i) if Arthritis Australia reasonably considers that the packaging gives the false impression to consumers that the Certification applies to the associated product, then the packaging Application will be rejected; but

(ii) if the packaging Application is rejected under the terms of clause (i) above, then the Applicant may resubmit the Application as a product Application.

(iii) if the Application in respect of the product or packaging is accepted for testing by Arthritis Australia, Arthritis Australia will procure the Testing Body to conduct an Independent Assessment of the product or packaging.

(g) On receipt of the Application, the Testing Fee and the relevant product or packaging samples from the Applicant, the Testing Body will pre-test the product or packaging in a manner determined by the Certified Assessor and issue an Initial Scientific Review to the Applicant. Alternatively, the Applicant may elect to forego the Initial Scientific Review and proceed directly to a Full Scientific Review.

(h) The Testing Fee is not generally refundable once Arthritis Australia has signed a contract with the Testing Body for testing of any kind. However, in the event that a product or packaging fails the Initial Scientific Review, Arthritis Australia will refund the Testing Fee, less the cost of the Initial Scientific Review.

(i) Should the product or packaging fulfil the requirements of the Initial Scientific Review, the Applicant must instruct Arthritis Australia that the Testing Body is to proceed with the testing of the product or packaging by conducting a Full Scientific Review.

(j) Upon receipt of instructions from Arthritis Australia, the Testing Body will conduct a Full Scientific Review in a manner determined by the Certified Assessor. It will also supervise the Usability Tests which will be conducted by the Arthritis Consumer Panel.

(k) Should the product or packaging fulfil the requirements of the Full Scientific Review and the Usability Tests, the Testing Body will issue a Favourable Review in respect of the product or packaging on the recommendation of its Certified Assessors to Arthritis Australia and the Applicant.

(l) The results of the Testing Body testing are not negotiable, except in the case of mistake or omission, in which case the Applicant must raise the dispute directly with the Testing Body.

(m) On receiving a Favourable Review in respect of an Applicant's product or packaging from the Testing Body, Arthritis Australia will direct its Arthritis Australia Panel to assess the usability of the product or packaging based on its performance in a series of Usability Tests determined, on a case by case basis, by Arthritis Australia in a Final Evaluation.

(n) In situations where the Applicant does not agree to abide by these Rules or the product or packaging is not awarded Certification, the Application will be rejected.

(o) In instances where the Application for Certification is rejected, these Rules provide a mechanism for review of the decision.

(p) In order for the Applicant to be able to use the Trade Mark ("**Certification**"), the product or packaging must:

(i) have its Application accepted by Arthritis Australia;

(ii) attain a Favourable Review from the Testing Body; and

(iii) be awarded a Satisfactory Evaluation by an Arthritis Australia Panel in its Final Evaluation.

6.3 **Favourable Review - Criteria**

To be awarded a Favourable Review from the Testing Body, the product or packaging must:

(a) satisfy the requirements determined by the Certified Assessor in respect of the Full Scientific Review;

(b) satisfy the criteria relevant to the Testing Tools determined for each product or packaging;

(c) allow for not less than 60% of the Arthritis Consumer Panel to be able to successfully perform the Usability Tests in respect of the product or packaging;

(d) not allow for more than 10% of the Arthritis Consumer Panel to have great difficulty in performing the Usability Tests in respect of the product or packaging; and

(e) be recommended by the Certified Assessors to receive a Favourable Review.

6.4 **Satisfactory Evaluation – Criteria**

To be awarded a Satisfactory Evaluation from the Arthritis Australia Panel in its Final Evaluation, the product or packaging must:

(a) allow for not less than 60% of the people on the Arthritis Australia Panel to be able to successfully perform the Usability Tests in respect of the product or packaging;

(b) not allow for more than 25% of the people on the Arthritis Australia Panel to have great difficulty in performing the Usability Tests in respect of the product or packaging;

(c) comply with any claims made by the product and/or on its packaging;

(d) not contain a poison;

(e) not pose a potential health or safety risk to consumers; and

(f) not contain alcohol or tobacco.

6.5 **Certification – Criteria**

An Applicant's product or packaging will be awarded Certification if:

(a) the product or packaging:

(i) attains a Favourable Review; and

(ii) attains a Satisfactory Evaluation; and

(b) the Applicant:

(i) fully complies with its obligations under these Rules;

(ii) pays the Fees; and

(iii) is granted a Licence to use the Trade Mark.

6.6 **Certification – Assessment**

The granting of a Licence to use the Trade Mark will be provided by Arthritis Australia if the Applicant satisfies the testing requirements, and the product, packaging, and Applicant all reflect the principles of AAust Aims and Principal Objectives.

6.7 **Certification Inquiries**

The Applicant must make enquiries by email to design@arthritisaustralia.com.au or by phone on +61 2 9518 4441.

6.8 **Fees**

It shall be a condition of the issue of Certification that the Applicant must pay the following Fees to Arthritis Australia:

(a) the Testing Fee for the Independent Assessment;

(b) the Administrative Fees;

(c) Licence Fees calculated in accordance with Schedule 2 and payable upon the grant of a Licence by Arthritis Australia.

In order for Arthritis Australia to calculate the applicable Licence Fees, the Applicant or Licensee (as applicable) shall provide a certified statement as to actual or prospective gross sales revenue in the manner and form and for the time period required by Arthritis Australia.

Note: For the avoidance of doubt, it is the intention of Arthritis Australia that Applicants are required to provide a certified statement of gross sales for applicable products and packaging for the preceding financial year. In the case of a new product or packaging, then Applicant must supply prospective gross sales for period of the Licence i.e. three years.

6.9 **Payment**

Payments by electronic funds transfer to Arthritis Australia must be made to the following account:

Bank name:	Bendigo Bank
Account name:	Arthritis Foundation of Australia
BSB number:	633 108
Account number:	120 559 406

Applicants may also make payments by cheque made payable to, Arthritis Foundation of Australia, and then mailed to:

Arthritis Foundation of Australia
GPO Box 550
Broadway NSW 2007
Australia

(a) **Procedure for Payment**

(i) Arthritis Australia will deliver to the Applicant a Tax Invoice for any Fee due by the Applicant.

(ii) Arthritis Australia will ensure that the Tax Invoice specifies:

(1) that it is a Tax Invoice;

(2) the ABN of Arthritis Australia;

(3) the Services for which the Fee is due;

(4) the date of supply for those Services;

(5) the aggregate total amount of the claim for the Fee;

(6) any other amount then due and payable to Arthritis Australia; and

(7) the GST amount (if any) comprised in the total amount of the invoice.

(b) **Fee Payment**

(i) The Applicant must pay any Fee before the later of the Payment Date applicable to that Fee and the date being 28 days subsequent to the date of the Tax Invoice for that Fee.

(ii) The Applicant shall pay interest on any Fee or other amount that is not paid on or prior to the due Payment Date for that Fee determined in accordance with Rule 6.9(b)(i), at the rate of 10% per annum, to accrue from day to day from the due date down to and including the actual date of payment in full.

(iii) Arthritis Australia may withhold the final results of the Final Evaluation until all Fees due and owing by the Applicant to Arthritis Australia have been paid.

(iv) The Applicant acknowledges that any charging of interest pursuant to Rule 6.9(b)(ii) or withholding of the final results of the Final Evaluation pursuant to Rule 6.9(b)(iii) by Arthritis Australia is in addition to and is not to the exclusion of any other rights or remedies Arthritis Australia may have against the Applicant for failure to pay any Fee when due pursuant to Rule 6.9(b)(i).

(v) Any payment to be made by the Applicant pursuant to these Rules shall be made in clear funds or any other manner agreed by Arthritis Australia.

(c) **GST**

(i) The Applicant acknowledges that unless expressly stated to the contrary in these Rules, the Fees and all other monetary sums referred to or calculated in accordance with these Rules are exclusive of GST and the Applicant must pay GST in addition to the Fees and other monetary sums referred to or calculated in accordance with these Rules.

(ii) The Applicant must pay Arthritis Australia any GST payable or which may become payable as a result of any Taxable Supply made by, under or in connection with these Rules.

(iii) The Applicant must pay the GST payable to Arthritis Australia at the same time as the Applicant is required to make payment for the relevant supply at the rate prescribed by Law from time to time for GST.

6.10 **Responsibilities of Arthritis Australia**

Arthritis Australia will:

(a) project-manage each Independent Assessment;

(b) supervise or arrange the Usability Tests to be conducted by the Arthritis Australia Panel; and

(c) subject to Rule 6.11(a), upon receiving and considering the Favourable Review and Satisfactory Evaluation, if all relevant criteria have been fulfilled and the Applicant is not in breach of these Rules, award the Applicant Certification evidenced by an EOU Program Certification Certificate and a letter confirming Certification of the product or packaging.

6.11 **Arthritis Australia's Discretion**

(a) Arthritis Australia may decline to accept an application for Certification for use of the Trade Mark:

(i) pursuant to Rule 6.2(d), prior to an Independent Assessment, in which event no further Fees will be payable ; and

(ii) at any time during or after the conduct of the Independent Assessment and prior to the award of Certification in accordance with Rule 6.10(c),

where Arthritis Australia considers that the acceptance of the application for Certification will detract from or be contrary to its vision, mission or purpose and/or the principles set out in these Rules.

(b) Administrative Fees incurred by Arthritis Australia in respect of the application will not be refunded.

(c) The Testing Fee is not generally refundable once Arthritis Australia has made arrangements with the Testing Body for testing of any kind. However, in the event that a product or packaging fails the Initial Scientific Review, Arthritis Australia will refund the Testing Fee, less the cost of the Initial Scientific Review.

(d) In the event of an application for Certification being declined, Arthritis Australia will provide the applicant with details of the ground(s) of refusal. In providing the reasons in accordance with this Rule, the Arthritis Australia will where possible offer the applicant advice in respect of amendments to the application, product or packaging to address the inadequacy which led to the application being declined. If the applicant remedies the inadequacy, the Applicant may submit a new application in accordance with the Rules which will be considered by Arthritis Australia in accordance with these Rules.

7. CERTIFIED ASSESSORS WHO MAY BE APPROVED FOR THE PURPOSE OF ASSESSING PRODUCTS OR PACKAGING

7.1 The Testing Body will be an organisation, body or person who is committed to furthering the Principal Objectives and satisfied the AAust Aims, and has an understanding of products and packaging design, and the skills and resources required to undertake accessibility evaluations to scientifically assess products and packaging based on various usability requirements, demonstrated by:

(a) Either:

(i) having at least 6 months' prior experience working on projects that have resulted in written case studies, reports or published outcomes, involving:

(1) working directly with consumers with limited dexterity and hand strength, such as consumers with arthritis, during their iterations with products to understand the limitations of such factors on the consumer experience, for example consumer-useability testing with consumers with arthritis;

(2) capturing data on the consumer experience when interacting with products and/or packaging including the use of evaluation questionnaires and scales (such as a Wong-Baker Faces Pain Rating Scale), strength assessments including grip strength (such as with a Hydraulic Hand Dynamometer) and pinch force (such as with a Hydraulic Pinch Gauge), or equivalent evaluation methods;

(3) conducting quality research in the area of product and/or packaging design; or

(ii) engaging one or more Certified Assessors;

(b) when testing is conducted through an organisation, this can be an institute, University or a non-for-profit body with a minimum of 3 years' experience in consumer testing for people with arthritis or similar conditions; and

when a person nominated by Arthritis Australia conducts testing, they will have a minimum of 3 years experience in their field and holds a relevant industry membership, such as: the Human Factors and Ergonomic Society of Australia, Occupational Therapy Australia or Australasian Society for Experimental Psychology, or equivalent.

7.2 Under the EOU Certification Program, a Testing Body utilises its accessibility evaluation facilities to scientifically assess products and packaging based on various usability requirements.

7.3 One or more Certified Assessors will coordinate assessment of the Initial Scientific Review and the Full Scientific Review and provide recommendations to the Testing Body in relation to the Assessor's Report for a product or packaging.

7.4 Certified Assessors must:

(a) be committed to furthering the Principal Objectives and satisfied the AAust Aims;

(b) be knowledgeable in area and capable of performing task analysis of the tasks a consumer would undertake to operate relevant aspects of the products and packaging under consideration for evaluation purposes, demonstrated by training in the degree / course of study referred to in rule 7.4(d) or having completed training for that purpose administered by the Testing Body;

(c) have at least 6 months practical experience in product research, design and development industries;

(d) hold a Bachelor degree or higher in one or more of the following categories:

(i) Experimental psychology;

(ii) Industrial design (Product Design);

(iii) Human factors;

(iv) Ergonomics;

(v) Applied Science (Occupational Therapy); or

(vi) equivalent degrees in related fields in:
(1) Sociology
(2) Public health
(3) Engineering
(4) Anthropometry
(5) Interaction Design
(6) User experience; and

(e) have completed training, either through the degrees completed as contemplated in rule 7.4(d), or delivered by the Testing Body for the purpose of enabling, to enable the Certified Assessor to:

(i) operate scientific instruments and evaluation processes;

(ii) objectively capture data without introducing bias;

(iii) understand accessible, inclusive and universal design principles (which may be demonstrated by completion of the Arthritis Essentials online training course).

8. COMPOSITION OF THE ARTHRITIS CONSUMER PANEL

8.1 An Arthritis Consumer Panel will consist of eight (8) persons each of

whom have symptoms of Arthritis.

8.2 Each member of the Arthritis Consumer Panel will test the product or packaging in accordance with the Usability Tests prescribed by the Certified Assessors.

8.3 The composition of the Arthritis Consumer Panel will be determined by the Testing Body, acting reasonably and in keeping with universally accepted scientific standards and practice for objective testing procedures, having regard to the product or packaging.

9. COMPOSITION OF EACH ARTHRITIS AUSTRALIAPANEL

9.1 An Arthritis Australia Panel will consist of Australian consumers living with Arthritis and/or another disability and members of Arthritis Australia management.

9.2 Each member of the Panel must test the product or packaging in accordance with the Usability Tests prescribed by Arthritis Australia on a case by case basis.

9.3 The composition of an Arthritis Australia Panel will be determined by Arthritis Australia, acting reasonably and in keeping with universally accepted scientific standards and practice for objective testing procedures having regard to the product or packaging.

10. APPLICANT OBLIGATIONS

10.1 Certification Process - Applicant Obligations

As part of the Certification Process the Applicant must:

(a) provide both the Testing Body and Arthritis Australia with all information reasonably requested in order to complete the Independent Assessment and Final Evaluation, respectively;

(b) provide Arthritis Australia with a list of the consultants and contractors engaged with the product or packaging.

10.2 Ongoing Restrictions on the Applicant

During the Certification Process and at any time after the award of Certification, the Applicant:

(a) must not represent that it owns any part of the Trade Mark nor apply for ownership of the Trade Mark, or oppose any application by Arthritis Australia for registration of the Trade Mark or the maintenance of that registration;

(b) must not do or cause to be done any act or thing which may impair Arthritis Australia's right, title and interest in the Trade Mark;

(c) must ensure that the information the Applicant provides to the Testing Body and Arthritis Australia, their employees, agents

and independent contractors is true, accurate and complete in all respects;

(d) must have the authority of all relevant persons to apply to the EOU Certification Program;

(e) must not promote the Certification of a product, by any act or omission or in any way that Arthritis Australia reasonably considers gives the impression that the Certification applies to the packaging, should Certification be awarded only in relation to a product and not the product's packaging;

(f) must not promote the Certification of the packaging, by any act or omission or in any way that Arthritis Australia reasonably considers gives the impression that the Certification applies to the product, should Certification be awarded only in relation to a product's packaging and not the product;

(g) must not promote the Certification of the packaging together with any product that has not been awarded Certification. The Applicant can submit additional products or packaging for approval to Arthritis Australia after Certification. Arthritis Australia will acting reasonably and in accordance with Principal Objectives and the AAust Aims to determine whether the products or packaging can then be approved by the Arthritis Australia Panel or approved for testing with the Testing Body;

(h) must use its best efforts to ensure that any products and/or packaging (as relevant) manufactured or distributed by the Applicant following Certification of a particular product or packaging conform in all respects with the samples of products and/or packaging (as relevant) supplied by the Applicant in accordance with Rule 6.2;

(i) must inform Arthritis Australia of any change to a Certified product or packaging not later than 30 days prior to the proposed implementation date for such change, including providing samples of the altered product or packaging; and

(j) must not disparage nor otherwise adversely comment in respect of the Testing Body, Arthritis Australia, their officers, agents, employees or independent contractors, any Certified Assessor, any Assessment Panel, the Application process, the consideration and determination of the Application or the Certification by the Testing Body or Arthritis Australia.

10.3 **Applicant's Intellectual Property Undertakings**

(a) The Applicant will not sell, modify, assign, deal with or use the Trade Mark except in accordance with the Licence and the Style Guide as amended by Arthritis Australia from time to time.

(b) The Applicant will not reproduce, display or distribute any documents provided to it in connection with any Application for Certification, in any way for any public or commercial purpose, including display on a website or in a networked environment, unless expressly authorised to do so under these Rules.

(c) Unauthorised use of the Trade Mark by the Applicant may violate trade mark, copyright and other Laws, and is prohibited.

10.4 **Applicant's Liability**

(a) Except to the extent caused or contributed to by any act, omission, negligence or default of Arthritis Australia, or its officers, employees, agents and contractors, and subject to the terms of these Rules, upon lodging its Application for Certification in respect of a product or packaging, the Applicant releases and indemnifies each of Arthritis Australia, its officers, employees, agents, contractors (including the Testing Body, its Certified Assessors, any member of any Assessment Panel) and agrees to keep them indemnified from and against any claims, demands, liabilities, losses, damages, costs or expenses arising out of its Application, Arthritis Australia's assessment of its Application, each Assessment Panel's evaluation of its product or packaging, the Independent Assessment or any use it may make of these, or any exercise of its rights (if any) to publicise information pursuant to these Rules, and subject to these Rules, causes of action for any injury, loss, destruction or damage (including, without limitation, equitable relief and economic loss) that the Applicant may now or hereafter have a right to assert against such parties as a result of the Applicant's use of, or reliance on, the relevant documentation.

(b) The releases and indemnities given by the Applicant under this Rule shall continue to apply whether or not the product or packaging the subject of the Application is awarded Certification.

11. LIMITS ON THE LIABILITY OF ARTHRITIS AUSTRALIA

11.1 **Exclusion of liability**

To the maximum extent permitted by Law, Arthritis Australia excludes liability (including without limitation for negligence or any other tort), for any inaccuracy within or omission relating to the Certification, the Website or any related documentation and makes no warranty, statutory, expressed or implied, including any warranty of merchantability and fitness for a particular purpose, nor assumes any legal liability or responsibility to the Applicant, any Sublicensee or any third parties for the accuracy, completeness, or use of, or reliance on, any information contained in or omitted from the Certification or any related documentation, or for any injuries, losses or damages (including, without limitation, equitable relief and economic loss) arising out of such use or

reliance.

11.2 **Limitation of damages**

In no event will Arthritis Australia be liable under the law of tort (including negligence), contract or otherwise for any indirect or consequential, special, incidental, non natural or economic loss or damage, including any loss of profit, savings, use, goodwill or business suffered by the Applicant or a Sublicensee, however arising, and the liability of Arthritis Australia for any default in the performance of its obligations to supply any Services or thing under these Rules shall be limited, in the decision of Arthritis Australia to:

(a) the resupply of the Services or thing; or

(b) payment of the cost to the Applicant for the resupply of the Services or thing.

11.3 **Statutory protection**

Nothing in this Rule 11 operates to exclude, restrict or modify the application of any mandatory provision of the *Competition and Consumer Act 2010* (Cth) or any equivalent legislation in any State or Territory or any inalienable rights conferred or liability implied by such provisions.

11.4 **Monetary Limit**

If, notwithstanding this Rule 11, the Applicant is proven at Law to have a valid claim for damages against Arthritis Australia (it being the intention that no such damages may be recovered) then, to the maximum extent permitted by Law, Arthritis Australia's total liability to the Applicant under these Rules will be limited to the Fees paid by the Applicant at the date such claim is notified to Arthritis Australia.

12. LIMITATION OF LIABILITY OF TRUSTEE

12.1 **Application**

This Rule will apply where the Applicant or any Sublicensee ("**Trustee**") gives the undertakings set out in these Rules in its capacity as trustee or responsible entity of a trust ("**Trust**").

12.2 **Capacity**

The Trustee gives the undertakings set out in these Rules in its capacity as trustee and/or responsible entity of the Trust and in no other capacity. Any liability arising under or in connection with these Rules is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the property of the Trust and for which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of these Rules and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to these Rules.

12.3 **Action against the Trustee**

Arthritis Australia may not sue the Trustee in any capacity other than as trustee of the Trust, including the appointment of a receiver (except in relation to the property of the Trust), a liquidator, an administrator or any similar person to the Trust, or prove in any liquidation, administration or arrangement of or affecting the Trustee (except to the property of the Trust).

12.4 **Obligations of the Trustee**

The Trustee does not have to incur any obligation under these Rules unless its liability in respect of that obligation is limited in the same manner as in this Rule 12.

12.5 **Exceptions**

The provisions of this Rule 12 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing or otherwise governing the Trust or by operation of Law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust, as a result of the Trustee's fraud or negligence.

13. DISPUTE RESOLUTION PROCEDURES

13.1 **Application**

This section sets out a complaints and dispute resolution process with which all Applicants and Licensees must comply.

13.2 **Right of reconsideration of decision of Arthritis Australia or its Panel**

(a) In the event that an Applicant or other person in relation to which a decision is made by Arthritis Australia or the Arthritis Australia Panel ("**Complainant**") wishes a decision in relation to any of the following matters to be reconsidered:

(i) a decision by Arthritis Australia to refuse an Application prior to an Independent Assessment in relation to a product or packaging;

(ii) a decision by the Arthritis Australia Panel to refuse to grant a Satisfactory Evaluation in relation to a product or packaging;

(iii) a decision by Arthritis to refuse to allow the use of the Trade Mark for any reason whatsoever; or

(iv) a dispute about any other issue relating to the Trade Mark, including these Rules but not in relation to a decision by the Testing Body not to grant a Favourable Review in relation to a product or packaging,

the Complainant and Arthritis Australia shall comply with the procedure set out in this Rule.

(b) The Complainant shall, within 14 days of having received written notification of a decision referred to in paragraph (a), give notice in writing ("**Dispute Notice**") to the Secretary of Arthritis Australia at the address set out on the Website requesting the decision be reconsidered pursuant to this Rule and setting out the grounds on which the Complainant wishes to have the decision reconsidered.

(c) Upon receipt of a Dispute Notice, by Arthritis Australia must convene a meeting between the Complainant and a senior executive of Arthritis Australia on a date not less than 14 days nor more than 30 days after the date on which Arthritis Australia received the Dispute Notice, and the Complainant shall be given at least 7 days' notice of the time and place of such meeting.

(d) At such meeting the Complainant shall be entitled to appear and be heard in relation to the decision for which it is requesting reconsideration. The senior executive of Arthritis Australia shall provide the Complainant with his or her decision in writing within 30 days of the meeting.

13.3 **Initiation of Appeal**

(a) In the event that a Complainant wishes to appeal any decision of a senior executive of Arthritis Australia arising from any reconsideration in accordance with Rule 13.2, the Complainant shall, within 14 days of having received written notification of such decision, give notice in writing ("**Appeal Notice**") to the Secretary of Arthritis Australia at the address set out on the Website, seeking an appeal of such decision.

(b) The Complainant and Arthritis Australia shall agree upon the appointment of a suitable qualified person or body to be the independent body or failing such agreement the parties shall appoint any person or body recommended by the President of the Law Society of New South Wales at the request of either the Complainant or Arthritis Australia.

(c) The independent person or body shall agree a process for both parties to make submissions in respect of the appeal.

(d) The independent person or body shall notify the parties in writing of its decision together with reasons not later than 10 business days after the independent person or body reaches a decision in respect of the appeal.

(e) Unless otherwise determined by the independent person or body and subject to paragraph (f), the parties agree to each bear half the costs of the independent person or body in hearing the appeal.

(f) Reasonable out of pocket expenses associated with the conduct of an unsuccessful appeal, will be borne by the Complainant.

(g) The appeal shall be scheduled as quickly as possible after notification by the Complainant to Arthritis Australia.

(h) The decision of the independent person or body shall be final and binding on all parties.

13.4 **Reconsideration of a decision by the Testing Body**

(a) A Complainant may only seek reconsideration of a decision by the Testing Body not to grant a Favourable Review in relation to a product or packaging if the Complainant reasonably believes that such a decision was due to a mistake or omission by the Testing Body.

(b) A Complainant wishing a decision by the Testing Body to be reconsidered, shall within 14 days of having received written notification of such a decision, give notice in writing to the the Testing Body to have the decision reconsidered and provide a copy of such notification to Arthritis Australia.

(c) The Complainant shall then attempt to resolve the Complainant's request for reconsideration directly with the Testing Body via conference telephone calls. Arthritis Australia shall use reasonable endeavours to ensure that appropriate representatives of the Testing Body are available by conference call to discuss the Complainant's request, but shall not, itself be required to participate in such discussion.

13.5 **Right of appeal against Testing Body**

(a) In the event of a Complainant wishing to appeal against any decision of the Testing Body arising from any reconsideration it shall, within 14 days of having received notification of such decision, give notice in writing to the Testing Body, the Secretary of Arthritis Australia, seeking determination by an independent person or body.

(b) The Complainant, the Testing Body and Arthritis Australia shall agree upon the appointment of a suitable qualified person or body to be the independent body or failing such agreement the parties shall appoint any person or body recommended by the President of the Law Society of New South Wales at the request of either the Complainant, the Testing Body or Arthritis Australia.

(c) The independent person or body shall agree a process for both parties to make submissions in respect of the appeal.

(d) The independent person or body shall notify the parties and Arthritis Australia in writing of its decision together with reasons.

(e) The Testing Body and the Complainant agree to each bear half the costs of the independent person or body in hearing the appeal.

(f) The appeal shall be scheduled as quickly as possible after notification by the Complainant, the Testing Body or Arthritis Australia and may take place via a conference call.

(g) The decision of the independent person or body shall be final and binding on all parties.

14. CONFIDENTIALITY

14.1 Confidential information

Subject to any other provision of these Rules, each of Arthritis Australia, the Applicant, and any Sublicensee appointed by the Applicant, will keep confidential all the Confidential Information provided to it.

14.2 Limited disclosure

Each of Arthritis Australia, the Applicant and any Sublicensee appointed by the Applicant may disclose Confidential Information of the other, if:

(a) such disclosure is required by Law or pursuant to any government action, regulatory requirement or request, or otherwise to comply with Arthritis Australia's, the Applicant's (or the Sublicensee's) own regulatory obligations, disclosure or reporting procedures, or where such disclosure is to persons who hold or propose to acquire securities in the Applicant (or the Sublicensee) provided that if the disclosure of the Confidential Information is required to enable the Applicant (or the Sublicensee) to comply with its own disclosure or reporting procedures, or disclosure to current or potential investors, the Applicant (or the Sublicensee as the case may be) must procure that the recipient of such Confidential Information is liable by agreement to maintain the confidentiality of the Confidential Information;

(b) such disclosure is required by the rules and regulations of any stock exchange on which the shares of the Applicant or Sublicensee are traded;

(c) the Confidential Information is or becomes generally available in the public domain; or

(d) Arthritis Australia, the Applicant or the Sublicensee (as relevant) can demonstrate that it knew the Confidential Information before the other party disclosed such Confidential Information.

15. CONDITIONS UNDER WHICH AN APPROVED USER IS TO BE ALLOWED TO USE THE TRADE MARK IN RELATION TO A PRODUCT OR PACKAGING OR OTHERWISE

15.1 Use of the Trade Mark

(a) The Trade Mark is used for the following purposes:

(i) by Arthritis Australia, to promote its organisation and the EOU Certification Program;

(ii) by Applicants who are awarded Certification by Arthritis Australia, and therefore a Licence to use the Trade Mark in relation to an aspect of a product or packaging, to promote the Certification awarded to them;

(iii) by Sublicensees, to whom an Applicant has granted a Sublicence to use the Trade Mark in relation to the product or packaging; and

(iv) by other third parties whom Arthritis Australia may allow to use the Trade Mark for purposes consistent with the objects of Arthritis Australia set out in its Constitution.

(b) With the exception of Arthritis Australia, no person may use the Trade Mark unless granted a Licence by Arthritis Australia or a Sublicence by the Applicant.

(c) The design of the Trade Mark cannot be altered under any circumstances. Licensees must not make alterations to the graphic proportions of the relevant logo, its colour combinations or its individual elements. However, the logo may be sized to meet the Licensee's or any Sublicensee's requirements.

15.2 When a Licence is Awarded

(a) If the Applicant is awarded Certification by Arthritis Australia, the Applicant will be granted a limited non-transferable, non-exclusive licence ("**Licence**") from the Certification Date, to use and display the Trade Mark in accordance with the Style Guide and the Licence.

(b) The Applicant agrees that it must comply with the terms and conditions of the Licence in using the Trade Mark;

(c) The Licence may be sub-licensed by the Licensee in the manner set out in Rule 16.

(d) If the Applicant is not awarded Certification, the Applicant will not be granted a Licence.

(e) Arthritis Australia retains all copyright, trade mark rights and other proprietary rights in the EOU Certification Program and Arthritis Australia retains all copyright, trade mark rights and other proprietary rights in the Trade Mark. The Applicant and any Sublicensee is prohibited from selling, modifying, or using the Trade Mark except in accordance with these Rules and the Style Guide.

15.3 **Publicity**

(a) If Certification is awarded to the Applicant in relation to the use of the Trade Mark, the Applicant and any Sublicensee may:

(i) engage in commercial promotions relating to the Applicant's participation in the Independent Assessment and the Final Evaluation; and

(ii) publicise the Certification of the Applicant's product or packaging.

(b) The Applicant and any Sublicensee must comply with the Licence and the Style Guide when conducting any publicity or promotion by the Applicant of the nature specified in this Rule 15.3.

(c) Neither Arthritis Australia, the Applicant nor any Sublicensee may engage in any publicity or promotion of the nature specified in this Rule unless the other party(ies) has given prior written approval to the content of any publication or other form of publicity or promotion, provided that such approval shall not be unreasonably withheld.

15.4 **Licence Term**

(a) The Licence granted by Arthritis Australia in accordance with Rule 15.2 is for the Term, unless terminated earlier in accordance with these Rules.

(b) At the end of each Term, the Applicant must submit an application for renewal of the Licence, in the form stipulated by Arthritis Australia, together with three samples of the Certified product or packaging.

(c) In the event that Arthritis Australia is reasonably satisfied that:

(i) the samples supplied in connection with the application for renewal of the Licence conform with the samples supplied by the Applicant for Certification purposes in accordance with Rule 6.2; and

(ii) the Applicant is not in breach of these Rules nor any other agreement between Arthritis Australia

and the Applicant in connection with the Licence and/or the Certified product and/or packaging,

Arthritis Australia will extend the Licence for a further Term.

15.5 **Ongoing Compliance**

(a) Arthritis Australia will conduct random audits of the Certified product or packaging at least once each year during the Term including:

(i) in the case of products and/or packaging manufactured or distributed by or on behalf of the Applicant to retailers for sale to or use by consumers, inspection and/or purchase of the Certified product or the product bearing the Certified packaging from retail outlets selected by Arthritis Australia; and

(ii) in the case of packaging distributed by or on behalf of the Applicant to other businesses or as consumables, randomly selecting and requesting samples of such packaging from persons advised by the Applicant in accordance with paragraph (b) of this Rule,

to assess the Applicant's compliance with these Rules, including in particular, to ensure that the product or packaging distributed by the Applicant is identical in all material respects to the Certified product or packaging.

(b) The Applicant agrees to provide Arthritis Australia with all information reasonably required by Arthritis Australia to conduct audits in accordance with this Rule, including but not limited to contact details for all persons to whom packaging is supplied where such packaging is distributed by or on behalf of the Applicant to other businesses or as consumables. The Applicant further agrees to notify Arthritis Australia of any change to such contact details, not later than 30 days after the Applicant becomes aware of such change.

15.6 **Annual Meeting**

During the Term, Arthritis Australia and the Applicant must meet at least once each year and not later than one month after each anniversary of the Certification Date, or such later date agreed by the parties, to review the Applicant's marketing plan for the Certified product and/or packaging and to discuss the Applicant's ongoing compliance with these Rules as assessed by Arthritis Australia in accordance with Rule 15.5.

15.7 **Approval of Marketing Materials**

The form and content of all artwork and designs of any kind for use in any media in connection with the Certified product or packaging and/or the

Trade Mark must be approved in writing by Arthritis Australia prior to its use by the Applicant.

16. SUBLICENSING

16.1 Sublicensing by Applicant

If the Applicant is granted a Licence, the Applicant may grant a sublicence to use and display the Trade Mark in accordance with the Style Guide ("**Sublicence**") to the following classes of users:

(a) Related Bodies Corporate of the Applicant;

(b) resellers of the Certified product or packaging;

(c) contractors and consultants who advised the Applicant in relation to the Certified product or packaging; and

(d) any other person approved by Arthritis Australia,

each a "**Sublicensee**". The Applicant must notify Arthritis Australia of any Sublicence or revocation of any Sublicence pursuant to this Rule 16.

16.2 Revocation of Sublicence

Either the Applicant or Arthritis Australia may revoke any Sublicence granted to a Sublicensee pursuant to this Rule 16 at any time by giving not less than one week's written notice to the other parties.

16.3 Sublicensee's Undertakings

Rules 10.2, 10.3 and 10.4 shall also apply in relation to any Sublicence and shall be interpreted by replacing the word "Applicant" with the word "Sublicensee".

16.4 Termination of Sublicence

Rule 18.1 shall also apply in relation to any Sublicence and shall be interpreted by replacing the word "Applicant" with the word "Sublicensee".

17. TRANSFER OF RIGHTS IN THE PRODUCT OR PACKAGING

In the event that the Applicant intends to sell, transfer, assign or otherwise dispose of or deal with its rights in relation to a product or packaging the subject of an Application or Certification ("**Rights**"), in relation to which the Applicant has applied for or been awarded Certification, the Applicant must:

(a) notify Arthritis Australia in writing of its intention to transfer the Rights before the transfer occurs;

(b) notify all the parties to which the transfer of Rights may apply, of its obligations under these Rules; and

(c) inform the purchaser, assignee or other acquirer of the Rights

("**Purchaser**") that the Purchaser can acquire the Rights by the Applicant assigning or novating the relevant rights and obligations to the Purchaser subject to the written consent of Arthritis Australia; and

Arthritis Australia will seek to withhold its consent to an assignment or novation of the Rights to the Purchaser where:

(d) Arthritis Australia determines acting reasonably and in accordance with the Principal Objectives and the AAust Aims that the Purchaser does not meet the AAust Aims;

(e) the products or packaging will cease to meet the requirements for Certification;

the Purchaser does not agree in writing in advance to such conditions (if any) as Arthritis Australia may, in its reasonable discretion in accordance with the Principal Objectives and the AAust Aims, impose on the Purchaser.

18. TERMINATION OF LICENCE BY ARTHRITIS AUSTRALIA

18.1 Termination by Arthritis Australia

Arthritis Australia may terminate the Applicant's Licence and all the Applicant's rights arising under it, by written notice to the Applicant, if the Applicant:

(a) engages in any conduct in relation to Certification, the Independent Assessment, Final Evaluation or the Trade Mark which in Arthritis' Australia's reasonable opinion is likely to, or does, mislead or deceive; or

(b) sells, transfers, assigns or otherwise disposes of the Rights, without obtaining Arthritis Australia's prior written approval for the assignment of the Rights to the Purchaser or transferee of the Rights,

or any of the following events occur by or in relation to the Applicant:

(c) any material default under these Rules resulting from failure by the Applicant to perform any provision of, or liability under, these Rules (including but not limited to manufacturing or distribution of products or packaging that do not conform in all respects with the Certified product and/or packaging), except for a rectifiable default, which is rectified within 30 days following written notice from Arthritis Australia requiring rectification;

(d) material non-compliance by the Applicant or the fact of material inaccuracy of any representation made or deemed to be made or repeated by the Applicant in these Rules, or in any document delivered to Arthritis Australia under or in connection with these Rules;

(e) the appointment of any receiver over, or possession being

taken by any secured party of, any asset of the Applicant;

(f) cessation of payment generally by the Applicant or the inability of the Applicant, or Arthritis Australia reasonably deciding the Applicant is unable to pay all its debts as and when they become due and payable;

(g) the appointment of any administrator of the Applicant;

(h) any legal action, not being in the reasonable decision of Arthritis Australia a disputed action, being commenced, judicial order made or resolution passed for the liquidation of the Applicant;

(i) the creation by the Applicant of any debt arrangement with its creditors generally or any class of creditors;

(j) the cessation or proposal for cessation of business generally by the Applicant;

(k) the Applicant, if a natural person, committing an act of bankruptcy or compounding with his or her creditors;

(l) the Applicant, if a natural person, bringing his or her estate within the operation of any Law relating to bankrupts; or

(m) the Applicant, if a natural person, becoming the subject of a sequestration order or entering into a composition, deed of assignment or deed of arrangement with his or her creditors or in respect of Arthritis Australia pursuant to Part X of the *Bankruptcy Act 1966* (Cth).

18.2 **Termination of Licence by the Applicant**

(a) The Applicant may terminate the Licence by giving 30 days' written notice to Arthritis Australia.

(b) If the Applicant terminates the Licence it will have no claim for reimbursement of any Fee paid or payable to Arthritis Australia under these Rules unless the termination is caused by or arises as a result of a default under these Rules by Arthritis Australia.

18.3 **Consequences of termination**

(a) **Termination by Arthritis Australia**

If Arthritis Australia terminates the Applicant's Licence in accordance with Rule 18.1:

(i) any termination of the Licence will not prejudice Arthritis Australia's rights to seek and obtain damages for any breach of these Rules. Arthritis Australia shall not be liable to the Applicant for any sum in the event of termination of the Licence under

these Rules.

(ii) Arthritis Australia will be entitled to retain all Fees received by it at the date of termination and the Applicant will remain liable for any Fees due to Arthritis Australia but unpaid by the Applicant at the date of termination.

(b) **Applicant's Responsibilities on Termination**

Upon termination of the Licence whether by the Applicant or Arthritis Australia, the Applicant shall and shall cause any Sublicensee of the Applicant to:

(i) immediately cease any and all use of the Trade Mark;

(ii) cease to promote or otherwise refer to the Certification of the product or packaging; and

(iii) do such further things as may be reasonably required by Arthritis Australia to protect Arthritis Australia's right, title and interest in the Trade Mark and the EOU Certification Program.

(c) **Reciprocal responsibilities on termination**

On termination of the Applicant's Licence for any reason, Arthritis Australia and the Applicant will promptly deliver to the other (and the Applicant will cause any Sublicensee to promptly deliver to Arthritis Australia) in the manner and at the time as specified in any written notice by that other party all Confidential Information relating to the other party in its possession at the date of termination.

(d) **Effect on Sublicensees**

The termination of any Licence in favour of any Applicant automatically operates to terminate any Sublicence, unless otherwise agreed by Arthritis Australia in writing.

19. AMENDMENT

Subject to the Trade Marks Act, Arthritis Australia may vary the Rules at any time. Arthritis Australia will give written notice to all Licensees and Applicants of any variation to the Rules and the date from which the variation will have effect. Licensees must notify their Sublicensees accordingly.

Any amendments made to the Rules must first have been approved by the IP Australia and the Australian Competition and Consumer Commission.

20. REGISTER OF RULES AND AUTHORISED USERS

20.1 Arthritis Australia shall keep at its principal office a copy of these Rules, and such copy shall be open to the inspection of the public by appointment.

20.2 Arthritis Australia shall establish and maintain a register containing details of all Licensees and Sublicensees of the Trade Mark. The register shall be available for inspection by the public by appointment.

21. NOTICES

21.1 Any notice or other communication to be given or sent by Arthritis Australia to any person in relation to these Rules shall be deemed to be duly given or sent if sent by email, post or facsimile transmission to the address last known to Arthritis Australia and shall be deemed to be given at the time when the same would ordinarily have been received depending upon the method employed.

21.2 The addresses for notices to Arthritis Australia shall be the address specified on the Website.

22. GLOSSARY OF TERMS USED IN THESE RULES

"**Administrative Fees**" means any fees and expenses reasonably incurred by Arthritis Australia in processing Applications, including any Fees paid for conducting reasonable searches relating to Applicants;

"**Applicant**" means a person who has applied for a Certification of its product or packaging under the EOU Certification Program;

"**Application**" means the EOU Certification Program application form to be completed by an Applicant;

"**Arthritis**" means the range of medical conditions that affect the musculoskeletal system, specifically joints where two or more bones meet including, but not limited to osteoarthritis, rheumatoid arthritis, gout, ankylosing spondylitis, systemic lupus erythematosus (lupus) and Scleroderma;

"**Arthritis Australia**" means the Arthritis Foundation of Australia ACN 002 598 594;

"**Arthritis Australia Panel**" means a panel consisting of Australian consumers living with Arthritis and/or a disability and other members of Arthritis Australia management;

"**Arthritis Consumer Panel**" means the panel of 8 Arthritis sufferers who engage the Usability Tests in respect of products or packaging under the supervision of the Certified Assessors;

"**Assessment Panels**" mean any Arthritis Australia Panel and any Arthritis Consumer Panel;

"**Assessor's Report**" means the report in respect of an Assessment of a product or packaging;

"**Certification**" means the award granted by Arthritis Australia for a product or packaging that fulfils the requirements of Rule 6.2(p) and "**Certify**" and "**Certifying**" have corresponding meanings;

"**Certification Date**" means the date of confirmation in writing by Arthritis Australia to the Applicant that the Applicant has received Certification to the use the Trade Mark from Arthritis Australia;

"**Certified Assessor**" means a person, knowledgeable and with experience in the product research, design, implementation and science, who has such assessment qualifications as contemplated by clause 7.4 and as the Testing Body may from time to time determine;

"**Confidential Information**" means any confidential information relating to the current or future operations, affairs or business of Arthritis Australia, the Applicant, any Sublicensee and any associated person of Arthritis Australia which is provided to the another party directly on the another party's behalf or of which a party becomes aware of pursuant to these Rules;

"**Design Testing Agreement**" means the agreement so entitled to be entered into between Arthritis Australia and the Applicant pursuant to which Arthritis Australia is to procure an Independent Assessment of the Applicant's product or packaging;

"**EOU Certification Program**" means the Ease of Use Trade Mark Program established by Arthritis Australia to recognise organisations that design products and packaging that do not inhibit or cause injury or discomfort to sufferers of Arthritis;

"**EOU Program Certification Certificate**" means a certificate to be awarded to the Applicant to provide confirmation of Certification in relation to the Trade Mark awarded by Arthritis Australia, at the conclusion of the Satisfactory Evaluation that results in Certification;

"**Favourable Review**" means an Independent Assessment that satisfies the requirements of Rule 6.3;

"**Fees**" means:

(a) the Testing Fee;

(b) the Administrative Fees; and

(c) fees payable by the Applicant for inquiries which do not fall within Rule 6.8,

in each case, the amount of which is as notified by Arthritis Australia on its Website from time to time;

"**Final Evaluation**" means the evaluation of a product or packaging that is conducted by an Arthritis Australia Panel;

"**Full Scientific Review**" means the assessment of a product or packaging by the Certified Assessors based on the Testing Tools;

"**GST**" means any State or Federal goods and services tax, value added tax, consumption tax, gross receipt tax or any other tax or charge of a similar nature including such tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time;

"**Independent Assessment**" means the Initial Scientific Review, the Full Scientific Review based on the Testing Tools and the Usability Tests;

"**Initial Scientific Review**" means the initial pre-testing assessment of a product or packaging conducted by the Testing Body that gives an Applicant an indication of whether its product or packaging is likely to gain a Favourable Review;

"**IP Australia**" means IP Australia, a prescribed agency within the Australian Department of Innovation, Industry, Science and Research;

"**Law**" includes any requirement of any statute, regulation, proclamation, ordinance or by-law, present or future, and whether State, Federal or otherwise and any order of a court, tribunal or regulatory body;

"**Licence**" has the meaning given in Rule 15.2(a);

"**Licensee**" means an Applicant awarded Certification and who has been authorised under a Licence by Arthritis Australia to use the Trade Mark;

"**Licence Fee**" means the fees outlined in Schedule 2 as updated on the Website from time to time;

"**Payment Date**" means the due date for payment of any Fee by the Applicant to Arthritis Australia under Rule 6.9(b), being in relation to the Testing Fee, the date of lodgement of an Application by the Applicant for Certification of a product or packaging;

"**Product or Packaging Range"** means product/s or packaging which have the same purpose and using the same brand but using multiple sizes and/or product models to achieve this purpose.

Example: A shampoo brand with multiple sizes or different ingredients is considered to be part of the same packaging range. If the packaging was applied to different shampoo brand or the contents of the packaging had a different purpose, like containing food or cleaning shoes, then it is not part of the same packaging range.

An electric shaver with multiple models would be considered part of the same product range. If the same company made electrical appliances but for different purpose, it would not be considered part of the same product range.

"**Related Body Corporate**" has the meaning given in the *Corporations Act 2001* (Cth) and, in relation to a trustee or responsible entity of a trust, includes any custodian or manager of the trust;

"**Rules**" means these rules as amended from time to time and includes the recitals and any schedules or attachments to these Rules;

"**Satisfactory Evaluation**" means a positive evaluation of a Final Evaluation by an Arthritis Australia Panel;

"**Services**" means:

(a) the Final Evaluation; and

(b) all other obligations and services to be performed by Arthritis Australia under these Rules;

"**Style Guide**" means the guide for use of the Trade Mark published by Arthritis Australia from time to time;

"**Sublicence**" has the meaning given in Rule 16.1;

"**Sublicensee**" means a licensee of a Licensee;

"**Tax Invoice**" means an invoice in the format required by *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or as otherwise required by Law;

"**Taxable Supply**" has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and as amended from time to time;

"**Term**" means three years or such other period as agreed by the parties;

"**Testing Body**" means Arthritis Australia or an institution, body or person nominated by Arthritis Australia from time to time, who has the necessary qualifications, skills or abilities to competently assess products or packaging and develop Testing Tools as required under these Rules as contemplated in clause 7.1;

"Testing Fee" means any fee payable by the Applicant to Arthritis Australia for the Independent Assessment;

"**Testing Tools**" means the assessment tests and procedures determined to by the Certified Assessors to assess the usability of a product or packaging;

"**Trade Mark**" means the trade mark owned by Arthritis Australia as set out in Schedule 1 to these Rules;

"**Usability Tests**" means tests determined to assess the usability of a product or packaging; and

"**Website**" means the website of Arthritis Australia, currently located at www.arthritisaustralia.com.au.

SCHEDULE 1

TRADE MARK

SCHEDULE 2

LICENCE FEES*

The Licence Fees are based on the annual gross sales of the preceding tax year of up to three products within Australia within the same Product or Packaging Range, that have been Certified by Arthritis Australia.

The Licence Fees payable to Arthritis Australia for use of the Trade Mark are calculated using the following method:

- for annual gross sales in Australia of $20,000,000 or more, the Fee is AU$30,000 per year for three years;

- for annual gross sales in Australia of AU$10,000,000 or more, but less than AU$20,000,000, the Fee is AU$25,000 per year applicable for three years;

- for annual gross sales in Australia of AU$5,000,000 or more, but less than AU$10,000 annual gross sales in Australia, the Fee is AU$20,000 per year, applicable for three years;

- for annual gross sales in Australia which are AU$2,000,000 or more, but less than AU$5,000,000, the Fee is AU$15,000 per year, applicable for three years; and

- for less than AU$2,000,000 annual gross sales in Australia, the Fee is AU$10,000 per year, applicable for three years.

Licence Fees must be paid annually on each anniversary of the execution of the Licensee's Licence agreement.

* Licence Fees are subject to change. Further details are available upon request to Arthritis Australia by email on *design@arthritisaustralia.com.au*.

ARTHRITIS FOUNDATION OF AUSTRALIA
(ACN 002 598 594)

EASE OF USE PROGRAM
Website: www.arthritisaustralia.com.au

CERTIFICATION TRADE MARK RULES

TRADE MARK NO. 1366033

October 2020
Version 2[1]

[1] May be subject to change

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