



# ECOLABEL LICENSING AGREEMENT

BETWEEN	MSCI	MARINE STEWARDSHIP COUNCIL INTERNATIONAL LIMITED (Company no. 3486485) ("MSCI"). MSCI's address for notices under this Agreement is Marine House, 1 Snow Hill, London, EC1A 2DH, United Kingdom, Tel: + 44 (0) 20 7246 8900, Fax: + 44 (0) 20 7246 8901 for the attention of: MSCI Director ( <a href="mailto:ecolabel@msc.org">ecolabel@msc.org</a> ).	
	Licensee	Full company name	Alimentos congelados FRIMAN,S.A
		Registered Office	Crta de Berga, Km 1. Polígono Industrial Sant Isidre 08272- Sant Fruits de Bages. -Barcelona -España
		Contact name and title	Milangela Sosa Prieto/Responsable Calidad
		Address for Notices (if different from Registered Office)	
		Telephone Number	93 877 30 00
		Email address	mila.sosa@friman.cat

## INFORMATION FOR THE LICENSEE

- A. The Marine Stewardship Council ("MSC"), a charity registered at the Central Register of Charities under number 1066806, is the owner of the Ecolabel shown in Annex 1, and other related trade mark, copyright and design rights, which it has devised to promote sustainability and enhance awareness of the marine ecosystem and to certify that the seafood products in respect of which the Ecolabel is used has been obtained from an ecologically sustainable source.
- B. Marine Stewardship Council International Ltd ("MSCI") is the wholly owned trading subsidiary of MSC and is authorised by MSC to issue licences for the use of the Ecolabel and associated intellectual property rights on its behalf in respect of seafood products that have been sourced from certified sustainable fisheries.
- C. The Licensee shall not use the Ecolabel or any associated intellectual property of MSC in connection with the distribution or sale of any Licensed Product unless and until the Licensee and/or, where appropriate, its suppliers have obtained their Certification (as defined below). It is the Licensee's responsibility to ensure at all times that the Certification remains valid in force and covers all Licensed Products.

## KEY CONTACTS

MSCI: Mr Jeremy Anglin

Licensee:

I confirm that I have read and agree to the terms and conditions below.

## SIGNATURES

Signed for and on behalf of

MSCI by:

Signed.....

Name.....Jeremy Anglin.....

Position.....Finance Director.....

Date.....20/05/2019.....

Signed for and on behalf of

the Licensee by:

Signed.....

Name.....Milangela Sosa Prieto.....

Position.....Responsable de Calidad.....

Date.....14/05/2019.....



# TERMS AND CONDITIONS

## 1 DEFINITIONS

In this Agreement the following expressions have the following meanings:

- 1.1 **"Affiliate"** means a party's parent undertaking or subsidiary undertaking or any other subsidiary undertaking of any such parent undertaking, where a 'parent undertaking' either holds a majority of the voting rights, or has the right to appoint or remove the majority of the directors, or otherwise has the right to exercise a dominant influence over a 'subsidiary undertaking'.
- 1.2 **"Agreement"** means the agreement between MSCI and the Licensee incorporating these terms & conditions, the annexes and the completed MSC Approval Form(s).
- 1.3 **"Annual Fee"** means the fee specified in Clause 6.2.
- 1.4 **"Commencement Date"** means the date of the last signature of this Agreement.
- 1.5 **"Certification"** means the chain of custody certification granted to the Licensee and/or its suppliers (if appropriate) by an ASI accredited certification body and the certification of a fishery to the MSC's standard and **"Certified"** shall be construed accordingly.
- 1.6 **"Consumers"** means individual members of the public acting as private individual consumers and not in any business capacity.
- 1.7 **"Consumer Facing Product"** means a product that could be available for sale to Consumers in its current packaging.
- 1.8 **"Consumer Facing Small Business"** means a business with a Net Purchase Price of no more than GBP£ 130,000 in a Year which sells Consumer Facing Products which are fresh fish counter products and/or certified seafood used for menu items (including a restaurant and fishmonger) directly to Consumers.
- 1.9 **"Day"** means a usual business day in London.
- 1.10 **"Fees"** means the Annual Fee and Royalty specified in the Agreement.
- 1.11 **"Licensed Products"** means the Consumer Facing Products and Non-Consumer Facing Products listed in a MSC Approval Form and approved by MSCI.
- 1.12 **"MSC Approval Form"** means either the MSC Licensed Product Approval Form or the MSC Licensed Seafood Approval Form, each of which is attached to this Agreement as Annex 2.
- 1.13 **"Net Purchase Price"** means the total aggregate amount invoiced by the Licensee's supplier(s) to the Licensee in respect of Consumer Facing Products which are fresh fish counter products and/or certified seafood used for menu items.
- 1.14 **"Net Sales Price"** means the price that the Licensee receives for Licensed Products (other than Consumer Facing Products which are fresh fish counter products and/or certified seafood used for menu items) exclusive of:
  - (i) any allowances for trade discounts;
  - (ii) returns for which the Licensee has issued a credit note; and
  - (iii) sales and excise taxes (including VAT, if any), subject in all cases to the same being separately charged on customer invoices,provided that where Licensed Products are:
  - used by the Licensee or any of its Affiliates; or
  - incorporated into another article and supplied at a price which is included in the price of the other article,then the Net Sales Price of each such Licensed Product shall be deemed to be the Net Sales Price which would have been received, had that Licensed Product been sold individually to an arm's length customer.
- 1.15 **"Non-Consumer Facing Product"** means the opposite of Consumer Facing Product. The product could not be available for sales to consumers in its current packaging. E.g. item will be repacked or unpacked within supply chain.
- 1.16 **"Quarter"** means one of the four three month periods of a Year, the first commencing on 1 April.
- 1.17 **"Royalty"** means the royalty specified in Clause 6.4.
- 1.18 **"Royalty Period"** means:
  - (i) If the Net Sales Price/Net Purchase Price is more than GBP£ 7,000,001 per Year: a Quarter;
  - (ii) If the Net Sales Price/Net Purchase Price is between GBP£ 130,001 and GBP£ 7,000,000 per Year: the first and second six month period of a Year; and
  - (iii) If the Net Sales/Purchase Price is up to GBP£ 130,000 per Year: a Year.
- 1.19 **"Rules"** means the rules and policies published by MSCI, as amended or added to from time to time, which are made available on the MSC website or notified by MSCI to the Licensee from time to time.
- 1.20 **"Senior Management"** means the respective line manager of each party's contact person identified on the first page of this Agreement.
- 1.21 **"Territory"** means the countries set out in the MSC Approval Form where the Licensed Products are authorised to be sold.
- 1.22 **"Trade Mark"** means any of the following (for the full duration of those rights including any extensions or renewals):
  - (i) the registered trade marks (including the main MSC Ecolabel listed in Annex 1);
  - (ii) the unregistered trade name "THE MARINE STEWARDSHIP COUNCIL INTERNATIONAL";
  - (iii) MARINE STEWARDSHIP COUNCIL;
  - (iv) MSC;
  - (v) any trade mark applications (and trade marks granted thereunder) in respect of any such trade mark or name in any part of the world;
  - (vi) any further trade marks which may be registered or applied for by or on behalf of MSC or MSCI and which MSCI publishes on its website or such other address as MSCI may notify, are to be Trade Marks for the purposes of this Agreement;
  - (vii) all copyright, design rights and any other intellectual property rights in or relating to any of the above; and
  - (viii) any goodwill connected with the Trade Marks.
- 1.23 **"Turnover Declaration"** means the declaration in the form notified by MSCI to be completed for each Licensed Product.
- 1.24 **"Year"** means a twelve (12) month period commencing 1<sup>st</sup> April.
- 1.25 **"Writing"** includes e-mail and fax but not SMS.



## TERMS AND CONDITIONS

### 2 LICENCE

- 2.1 Subject to the Licensee's obligations under this Agreement and the payment of the Fees, MSCI grants the Licensee a non-exclusive licence to use the Trade Marks in relation to the manufacture, promotion, distribution and sale of the Licensed Products in the Territory, provided that the Licensee may only use the Trade Marks in relation to the promotion, distribution and sale of Licensed Products in respect of which the Licensee holds valid and current Certification.
- 2.2 Nothing in this Agreement shall prevent MSCI or any person other than the Licensee authorised by MSCI from using the Trade Marks in any manner and in relation to any goods

### 3 OWNERSHIP AND APPLICATION OF THE TRADE MARKS

- 3.1 The Licensee shall only use the Trade Marks on or in relation to the Licensed Products and only in the form and manner approved or specified in the Rules or as MSCI may, in its absolute discretion, direct the Licensee from time to time.
- 3.2 The Licensee acknowledges that MSC is the owner of the Trade Marks and agrees that:
- (i) the Licensee will do nothing inconsistent with such ownership to prejudice or to endanger the value or validity of the Trade Marks, and in particular the Licensee shall:
  - (ii) only make use of the Trade Marks for the purposes authorised in this Agreement and in a manner that conforms to the Rules, and
  - (iii) not use the Trade Marks in any way which would cause them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation or image of MSC or MSCI;
  - (iv) all goodwill and reputation generated in the Trade Marks shall be generated on behalf of MSC and be for its benefit;
  - (v) nothing in this Agreement shall give the Licensee any right, title or interest in or to the Trade Marks, other than the right to use them in accordance with the terms and conditions of this Agreement; and
  - (vi) the Licensee will not dispute or challenge the validity of the Trade Marks or any related rights of MSCI or MSC, either during the term of this Agreement or at any time thereafter.
- 3.3 The Licensee must not apply for or obtain registration of any other trade mark or certification mark which is identical or similar to the Trade Marks for any goods or services in any part of the world.
- 3.4 The Licensee must not use the Trade Marks in conjunction with any other logo, trade mark or certification mark (save for its own logo or trade mark) without MSCI's prior written consent, such consent not to be unreasonably withheld or delayed. Where any such trade marks are used by the Licensee, that trade mark shall be presented separately from the Trade Marks so that each appears to be a trade mark in its own right distinct from the other trade marks.

### 4 DUTIES OF THE LICENSEE

- 4.1 The Licensee shall at its own expense:
- (i) ensure that whenever a Trade Mark which is a registered trade mark is used by the Licensee, such use shall be accompanied by clear marking by the use of the TM symbol;
  - (ii) inform MSCI without delay of any change to the status of its Certification or of any other changes which may affect the licence granted to the Licensee pursuant to Clause 2.1;
  - (iii) supply, in advance and at no cost to MSCI, any relevant artwork, proofs or design drawings of any materials in respect of which the Licensee proposes to use the Trade Marks. MSCI will notify the Licensee that the proposed use of the Trade Marks is approved or not approved, and if the latter what deficiencies must be corrected before approval will be granted. No material containing the Trade Marks shall be used without MSCI's prior written consent, and, following approval, the Licensee shall, if requested, provide representative samples of the approved materials to MSCI as soon as it is in a position to do so;
  - (iv) provide to MSCI, promptly upon MSCI's request, a written report in reasonable detail of any matter concerning the use of the Trade Marks or any Licensed Product as MSCI shall in its absolute discretion specify;
  - (v) permit any duly authorised representative of MSCI, on reasonable prior written notice, to enter any premises of the Licensee (or use best efforts to enable such representative to access, in such circumstances, the premises of any third party) where any of the Licensed Products or any material used in connection with the Licensed Products are manufactured, packed, stored or otherwise sold by or for the Licensee, in order to inspect them and take samples of them;
  - (vi) comply with the Rules;
  - (vii) maintain records to demonstrate that the Licensed Products are sourced from Certified suppliers and show these records to MSCI upon request; and
  - (viii) keep proper records and books of account recording the information used to complete the Turnover Declaration.
- 4.2 The Licensee must act, and must ensure that the Trade Marks shall be used, in good faith and consistently with MSC's objectives and policies and shall not cause any harm or prejudice to the good name, goodwill, reputation or image of MSC and MSCI.

### 5 REPORTING AND AUDIT

- 5.1 Within 30 days following the end of each Royalty Period, the Licensee shall deliver a complete, up to date and accurate Turnover Declaration to MSCI in relation to each Licensed Product.
- 5.2 After giving written notice of at least 10 clear days, MSCI, or any other person authorised by MSCI, may inspect the Licensee's records (during normal business hours) and take away copies in order to verify the information provided by the Licensee in the Turnover Declaration. Any shortfall or excess identified shall be paid or reimbursed immediately. If a shortfall is identified the Licensee shall also pay the cost of such audit.

### 6 FEES

#### Annual Fee



## TERMS AND CONDITIONS

- 6.1 MSCl shall invoice the Licensee for the Annual Fee annually in advance of a Year. The Annual Fee is payable in full for each Year or part Year that this Agreement is in force, irrespective of the date of commencement or termination of this Agreement.
- 6.2 The Annual Fee for Licensed Products shall be:
- (i) where the Net Sales Price/Net Purchase Price per Year is up to GBP£ 130,000: GBP£ 160;
  - (ii) where the Net Sales Price/Net Purchase Price per Year is between GBP£ 130,001 and GBP£ 330,000: GBP£ 800; and
  - (iii) where the Net Sales Price/Net Purchase Price per Year is more than GBP£ 330,000: GBP£ 1,600;
  - (iv) in each case based on the Net Sales Price/Net Purchase Price for the previous Year and where the first Annual Fee shall be based on an estimate of Net Sales Price/Net Purchase Price for that Year provided by the Licensee to MSCl.

### Royalty

- 6.3 Subject to clause 6.6, MSCl shall invoice the Licensee for a Royalty on Consumer Facing Product following receipt by MSCl of each Turnover Declaration.
- 6.4 The Royalty on Consumer Facing Product shall be payable according to the following bands:
- (i) where the Net Sales Price/Net Purchase Price per Year is up to GBP£10,000,000: 0.5% of the Net Sales Price/Net Purchase Price;
  - (ii) where the Net Sales Price/Net Purchase Price per Year is between GBP£10,000,001 and GBP£20,000,000: 0.45% of the Net Sales Price/Net Purchase Price;
  - (iii) where the Net Sales Price/Net Purchase Price per Year is between GBP£20,000,001 and GBP£30,000,000: 0.4% of the Net Sales Price/Net Purchase Price;
  - (iv) where the Net Sales Price/Net Purchase Price per Year is between GBP£30,000,001 and GBP£40,000,000: 0.35% of the Net Sales Price/Net Purchase Price; and
  - (v) where the Net Sales Price/Net Purchase Price per Year is more than GBP£40,000,001: 0.3% of the Net Sales Price/Net Purchase Price,

For the avoidance of doubt, the Royalty amounts are payable within each of the applicable bands so if, for example, a Licensee submits Turnover Declarations in a Year of GBP£43,000,000 then the Licensee shall pay to MSCl a Royalty of: 0.5% of the Net Sales Price/Net Purchase Price on GBP£10,000,000, 0.45% of the Net Sales Price/Net Purchase Price on the next GBP£9,999,999, 0.4% of the Net Sales Price/Net Purchase Price on the next GBP£9,999,999, 0.35% of the Net Sales Price/Net Purchase Price on the next GBP£9,999,999, and 0.3% of the Net Sales Price/Net Purchase Price on the next GBP£2,999,999.

- 6.5 Should the Licensee fail to submit a Turnover Declaration in accordance with Clause 5.1, MSCl may invoice the Licensee for an amount based on MSCl's estimate of the Net Sales Price/Net Purchase Price of Consumer Facing Product and such amount shall be payable by the Licensee. If the Licensee subsequently submits a Turnover Declaration in respect of the relevant Royalty Period, MSCl shall reconcile and make the necessary adjustment to the estimated Royalty invoiced by MSCl and the actual Royalty payable.

### Consumer Facing Small Business

- 6.6 MSCl shall waive the Royalty ordinarily payable by a Licensee to MSCl if, in a Year, the Licensee is a Consumer Facing Small Business. If the Licensee does not pay a Royalty to MSCl throughout the Year on the assumption it is a Consumer Facing Small Business and only later discovers at the end of the Year that it is not a Consumer Facing Small Business then the Licensee shall pay to MSCl the Royalty due and owing for that Year (on the basis that it is not a Consumer Facing Small Business) in full at the end of the Year. If the Licensee pays a Royalty to MSCl on the assumption it is not a Consumer Facing Small Business and only later discovers at the end of the Year that it is a Consumer Facing Small Business then MSCl shall refund any Royalty paid to MSCl in that Year at the end of the Year.

### Payment

- 6.7 All invoices shall be payable within 30 days of the invoice date.

## 7 CURRENCY

- 7.1 All sums payable under this Agreement shall be calculated and paid in United States Dollars, Euros, Japanese Yen or Pounds Sterling (the "Accepted Currencies").
- 7.2 MSCl shall convert any Net Sales/Purchase Price not expressed in any of the Accepted Currencies to one of the Accepted Currencies at the open middle market spot rate of exchange in London as published in The Financial Times (or any such other published source as MSCl may reasonably select).

## 8 TAXES AND WITHHOLDINGS

- 8.1 All payments to be made by the Licensee under this Agreement are exclusive of valued added tax, consumption tax or other sales tax or customs duty, which shall, where appropriate, be payable by the Licensee.
- 8.2 All payments to be made by the Licensee under this Agreement shall be paid in full without any withholding, deduction, set-off or counterclaim whatsoever.

## 9 ADVERTISING AND MARKETING

- 9.1 The Licensee undertakes to ensure that all marketing materials used in its advertising and marketing of Licensed Products shall be in good taste, shall comply with all relevant and applicable laws and regulations (including relevant marketing and advertising codes of conduct), shall not be blasphemous, libellous or obscene, and shall in no way reduce or diminish the good name, goodwill, reputation or image of any of the Trade Marks of the MSC or MSCl.

## 10 COMPLIANCE WITH APPLICABLE LAWS

- 10.1 The Licensee shall at its own costs obtain all necessary regulatory approvals for the Licensed Products in the Territory.
- 10.2 Each Licensed Product shall comply with all applicable laws and regulations of governmental or other competent authorities from time to time and with good industry practice and such other standards as would be applicable to a reputable provider of products the same as or similar to the Licensed Products, and be safe for the use for which the Licensed Product is intended.
- 10.3 The Licensee shall promptly notify MSCl of any actual or alleged breach of Clauses 10.1 or 10.2 that comes to its attention. The



## TERMS AND CONDITIONS

Licensee must report to MSCI the steps undertaken to address such actual or alleged breach.

### 11 WARRANTIES

- 11.1 The Licensee warrants and undertakes to MSCI that:
- (i) it is entitled to enter into this Agreement;
  - (ii) it has and shall maintain for the duration of this Agreement, or is in the process of obtaining, Certification in respect of all Licensed Products, and that it is not aware of any circumstances that may lead to the Certification that it has (or that its suppliers have), or is in the process of obtaining (or that its suppliers are in the process of obtaining), to be suspended or withdrawn; and
  - (iii) it shall not promote, distribute or offer for sale the Licensed Products without Certification.
- 11.2 MSCI warrants and undertakes to the Licensee that:
- (i) MSCI has the right to grant to the Licensee the rights and licences in the Trade Marks; and
  - (ii) to the best of its knowledge, the use of the Trade Marks on or in relation to the Licensed Products does not infringe the rights of any third party.
- 11.3 MSCI gives no warranty and makes no representation whatsoever as to the efficacy or usefulness of the Trade Marks to confer benefit on the business or other interests of the Licensee, nor that any of the Trade Mark applications shall proceed to grant or that any resulting Trade Mark will be valid.

### 12 INDEMNITY

- 12.1 Subject to Clause 12.2, the Licensee shall indemnify MSCI and its Affiliates against all claims, liabilities and expenses arising out of or connected with the Licensee's activities under this Agreement, or out of defects (whether obvious or hidden) in any Licensed Products supplied by the Licensee, or from any infringement of any rights of MSCI or any of its Affiliates or of any third party by the sale, possession or use of the Licensed Products by the Licensee, or from the Licensee's failure to comply with all applicable laws and regulations.
- 12.2 MSCI shall indemnify the Licensee against all claims, liabilities and expenses arising out of any claim that the Licensee's use of the Trade Marks duly approved in accordance with this Agreement infringes the rights of any third party. This obligation will be subject to the following terms and conditions:
- (i) the Licensee shall give MSCI prompt written notice of the Infringement claim upon becoming aware of the claim;
  - (ii) the Licensee shall grant MSCI and/or MSC, as MSCI shall direct, in writing, exclusive control over the defence and settlement of the claim;
  - (iii) the Licensee shall mitigate its losses; and
  - (iv) the Licensee shall give MSCI and MSC all reasonable assistance in the defence and/or settlement of the claim, as requested by MSCI or MSC (all of Licensee's reasonable out-of-pocket expenses in giving assistance will be paid by MSCI).
- 12.3 Nothing in this Agreement shall operate so as to limit or exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.
- 12.4 Subject to Clause 12.3, nothing in this Agreement shall be construed or shall provide for MSCI to be liable to the Licensee in contract, tort, negligence, breach of statutory duty or otherwise (i) for any increased costs or expenses, loss of profits, data, business, revenues, anticipated savings, goodwill or (ii) for any indirect or consequential damages of any nature.
- 12.5 The Licensee agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Agreement and that its only remedies pursuant to this Agreement (whether in contract, negligence, breach of statutory duty or otherwise) can be for breach of contract (unless the statement was made fraudulently).
- 12.6 The Licensee confirms that on the basis of: (i) the charitable status of MSC; (ii) the purpose of the Trade Marks to promote sustainability and enhance awareness of the marine ecosystem; and (iii) other relevant circumstances, the limitations of MSCI's liability to the Licensee set out in this Agreement are fair and reasonable as between the parties and reflect the nature of this Agreement.
- 12.7 Neither party shall be liable for any delay or failure in performing its duties under this Agreement caused by any circumstances beyond its reasonable control.

### 13 INFRINGEMENT

- 13.1 Each party shall promptly notify the other of any actual or suspected infringement within the Territory of the Trade Marks or any other intellectual property rights in or relating to them, including any relevant acts of passing off or unfair competition, or of any application to register trade marks which may conflict or be confused with the Trade Marks, which may come to its attention and shall make no comment or admission to any third party in respect of such circumstances ("Infringement").
- 13.2 The Licensee shall co-operate fully with MSCI in taking all steps required by MSCI, in its sole discretion, in connection with any Infringement or in respect of any application to register trade marks which may conflict or be confused with the Trade Marks, including, without limitation, legal proceedings in the name of MSCI, MSC or in the joint names of the parties. MSCI shall be responsible for the cost of any legal proceedings it requires and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its best endeavours to assist MSCI in any legal proceedings relating to any Infringement.

### 14 TERM AND TERMINATION

- 14.1 This Agreement shall commence on the Commencement Date and shall continue unless and until terminated by either party upon 90 days' prior written notice to the other, or otherwise in accordance with this Clause 14.
- 14.2 Either party shall be entitled to terminate this Agreement in relation to all or some of the Licensed Products immediately: (a) if the other party commits any material breach of this Agreement which is incapable of remedy, or if the breach is capable of remedy, fails to remedy that breach within 30 days written notice (and for the avoidance of doubt any breach of Clauses 3.2, 4.2 or 9.1 shall be material and incapable of remedy); or (b) if Clause 14.3 applies or (c) if the other party has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts or any other similar process in any relevant jurisdiction which has a similar or analogous effect; or (d) if the other party fails to make payment when it falls due.



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- 14.3 This Clause shall apply on:
- (i) the expiry (if not re-instated within 30 days), suspension or withdrawal of the Licensee's Certification for the Licensed Products; and
  - (ii) use of any of the Trade Marks in breach of this Agreement by the Licensee or any of the companies in the supply chain(s) of the Licensed Products.
- 14.4 If the Licensee is, or if MSCI has reasonable grounds to believe that the Licensee is, in breach of its obligations pursuant to this Agreement, MSCI may, notwithstanding any rights to claim damages or to terminate or otherwise, suspend immediately the rights granted to the Licensee in relation to any or all of the Licensed Products.
- 14.5 Subject to Clause 15.2, on termination or suspension of this Agreement as a whole or part of it only the Licensee must:-
- (i) immediately cease to use the Trade Marks in relation to the relevant Licensed Products; and
  - (ii) immediately cease to supply or promote, in part or as a whole, Licensed Products or services of any type or description under or by reference to the Trade Marks or any similar mark.

## 15 EFFECT OF TERMINATION

- 15.1 Upon termination of this Agreement:
- (i) all rights granted to the Licensee shall immediately revert to MSCI;
  - (ii) all outstanding sums payable by the Licensee shall immediately become due and payable;
  - (iii) the Licensee must promptly return to MSCI all property belonging to MSCI (including, for the avoidance of doubt, all materials bearing any Trade Mark), erase or destroy all copies of such items and provide written certification that it has done so;
  - (iv) the rights and duties which expressly or by implication are intended to continue in force on or after termination of this Agreement (including Clauses 5, 12, 16, 18 and 20) shall survive and remain in full force and effect; and
  - (v) any rights of either party which arose on or before termination shall be unaffected.
- 15.2 On termination or suspension of this Agreement, the Licensee may sell for a period of 30 days, unsold Licensed Products to which the Trade Marks had been applied in the normal course of business prior to termination or suspension. The Licensee shall account and pay Royalties in respect of such sales/purchases within 60 days after the end of that period. This Clause shall not apply in the event of termination by MSCI pursuant to Clauses 14.2 (a), 14.2 (b), or 0 or as otherwise determined by MSCI.
- 15.3 Following termination, MSCI shall be entitled to take all steps necessary to remove the name of the Licensee from any register or record of Trade Marks within any trade mark registry or other relevant authority and the Licensee shall at its own expense give all assistance required by MSCI for that purpose.

## 16 CONFIDENTIAL INFORMATION

- 16.1 Each party shall keep in strict confidence and use for the purpose of this Agreement only all documents, information and materials disclosed to it by the other party or its Affiliates (the "Disclosing Party") which are of a confidential nature and any other confidential information concerning the Disclosing Party's business, its products or its customers which the other party (the "Receiving Party") may obtain. Each party shall restrict disclosure of the other party's confidential material to such of its Affiliates, employees, consultants, agents, sub-contractors or regulators as need to know it for the purpose of performing the party's obligations under this Agreement, and shall ensure that they are subject to obligations of confidentiality corresponding to those which bind the parties in this Agreement.
- 16.2 This Clause 16 shall not apply to any Confidential Information which:
- (i) enters the public domain other than as a result of a breach of this Clause 16;
  - (ii) is lawfully received from a third party which is under no confidentiality obligation in respect of that information; or
  - (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or
  - (iv) is already in the Receiving Party's lawful possession prior to its disclosure by the Disclosing Party of its Affiliates.

## 17 ASSIGNMENT AND SUBCONTRACTING

- 17.1 This Agreement is personal to the Licensee. The Licensee shall not assign or otherwise transfer this Agreement or any of its rights and duties under this Agreement without MSCI's prior written consent.
- 17.2 MSCI may sub-contract the performance of any of its duties under this Agreement.

## 18 RIGHTS OF THIRD PARTIES

- 18.1 This Agreement does not create any right enforceable by any person who is not a party, except that:
- (i) the terms of this Agreement may be enforced by MSC subject to and in accordance with the terms of this Agreement and the Contracts (Rights of Third Parties) Act 1999;
  - (ii) Clauses 4.2 or 12.1 may be enforced by MSCI's Affiliates; and
  - (iii) a person who is the permitted successor to or assignee of the rights of MSCI is deemed to be a party to this Agreement and the rights of such successor or assignee shall, subject to and upon any succession or assignment permitted by this Agreement, be regulated by the terms of this Agreement.
- 18.2 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any such third party.

## 19 VARIATION

- 19.1 Subject to Clause 19.2, no changes to this Agreement shall be valid unless notified in writing (including but not limited to email) by the authorised representatives of MSCI to the Licensee.



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- 19.2 MSCl may change the terms of this Agreement. For example, changes may be necessary as a result of a change in the law, a change in the business or contract model
- 19.3 For the avoidance of doubt and subject to clause 19.2, no change to the Royalties will be made during a Year unless written notification (including but not limited to email) has been given to the Licensee of any change prior to the start of that Year.. MSCl will give the Licensee as much notice as practicable of any change.
- 19.4 Notwithstanding Clause 19.1, no changes to the Licensed Products may come into effect without a MSC Approval Form duly signed by the Licensee and approved by MSCl.

### 20 GENERAL PROVISIONS

- 20.1 **Publicity.** The Licensee irrevocably consents to MSCl referring to the Licensee as a licensee of MSCl and inserting images of the Licensed Products on its literature (including its website). MSCl reserves the right to make a reference on its website and notify any interested third party if the Agreement is terminated or suspended in relation to any of the Licensed Products as is necessary to protect the integrity of the Trade Marks.
- 20.2 **Remedy.** The parties agree that any breach of the Licensee's obligations contained in this Agreement may cause irreparable harm to MSCl and MSCl shall be entitled to injunctive relief without the necessity of proving damages or the inadequacy of money damages, posting any bond or other security in addition to all other legal or equitable remedies.
- 20.3 **Disputes.** Subject to Clause 20.2, any dispute arising under this Agreement should first be escalated to the contacts named on the first page of this Agreement. If the dispute remains unresolved for at least 14 days, it shall be referred to the Senior Management of each party who shall attempt resolution through negotiations. If the dispute remains unresolved for a further 14 days, either party may refer the dispute to the courts. This Clause in no way affects the rights of MSCl to exercise any remedy granted to it under this Agreement.
- 20.4 **Relationship.** Nothing in this Agreement shall render the Licensee a partner or an agent of MSCl and the Licensee shall not purport to undertake any obligation on MSCl's behalf nor expose MSCl to any liability nor pledge or purport to pledge MSCl's credit.
- 20.5 **Entire Agreement.** This Agreement supersedes any prior contracts, arrangements and undertakings between the parties (whether written or oral) in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.
- 20.6 **Severance.** If any part of this Agreement is held unlawful or unenforceable, that part shall be struck out and the remainder of this Agreement shall remain in effect.
- 20.7 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Agreement shall be a waiver of or prejudice those rights.
- 20.8 **Notices.** All notices (which include invoices and correspondence) under this Agreement shall be in writing and shall be sent to the address of the recipient set out on the front page of this Agreement or to such other address as the recipient may have notified from time to time. Any notice may be delivered personally, by post, by fax, or by email and shall be deemed to have been served if by hand when delivered, by post by 10.00 am GMT on the third Day after posting, if by fax or email, at 10.00 am GMT on the next Day following the date of dispatch provided that a hard copy is also sent by post and no delivery failure note is received.
- 20.9 In proving service by post it shall be sufficient to prove that the envelope containing the notice was properly addressed, stamped and posted and in proving service by fax or email it shall be sufficient to prove that the notice was transmitted to the fax number or e-mail address of the relevant party set out on the first page of this Agreement.

### 21 LAW AND JURISDICTION

- 21.1 This Agreement is governed by, and shall be construed in accordance with, the laws of England and each of the parties irrevocably submits to the non-exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with this Agreement. The Licensee waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.



# ECOLABEL LICENSING AGREEMENT

## Annex 1: Trade Marks



All other Trade Marks published on the MSC website or such other address as MSCI may notify.





# **ECOLABEL LICENSING AGREEMENT**

Annex 2: MSC Licensed Product Approval Form / Seafood Approval Form