

TRADEMARK LICENCE AGREEMENT

PARTIES

	CARBERY	LICENSEE
Legal Name	Carbery Food Ingredients Limited	TSUNAMI NUTRITION SRL
Incorporated in:	Ireland	Italy
Registered No.	22819	1504370
Address	Ballineen Co. Cork Ireland	Via Mura dei Francesi, 14 00043 Ciampino – Italy ITALY
Telephone:	+353 23 8822200	+39 06 51847983
Contact Person:		Luca Di Pietrantonio
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(each a "Party" and together the "Parties")

KEY TERMS

Carbery Ingredient:	OPTIPEP® whey protein hydrolysate
Licensed Mark:	OPTIPEP®
Notice Period:	90 days
Permitted Use:	Inclusion of the Licensed Mark in words in the ingredient branding on the Permitted Products. Use of the Licensed Mark logo on the packaging and point of sales materials in accordance with Brand Guidelines. All use is subject to prior approval.
Permitted Product:	[TSUNAMI NUTRITION - HYDRO PURE PROFESSIONAL], which must contain whey protein hydrolysate of which 100% is OPTIPEP®

This licence agreement between Carbery and the Licensee in connection with the Licensee's use of the Licensed Mark ("**this Licence**") is constituted by this memorandum of agreement and the attached Schedule 1 (*terms and conditions*).

This Licence is executed by the Parties, and each person executing this Licence represents that he or she has the authority to sign on behalf of the Party which he or she purports to bind.

SIGNED for and on behalf of CARBERY FOOD INGREDIENTS LIMITED by	SIGNED for and on behalf of <INSERT FULL NAME OF THE LICENSEE>
Signed: <u></u>	Signed: <u></u>
Name: <u>DEIRDRE CLAEISSON</u>	Name: <u>LUCA DI PIETRANTONIO</u>
Title: <u>Commercial Manager</u>	Title: <u>OWNER</u>
Date: <u>12/02/2019</u>	Date: <u>06/02/2019</u>

SCHEDULE 1

TERMS & CONDITIONS

1. **Grant:** In consideration of the Licensee's agreement to purchase the Carbery Ingredient and comply with the terms of this Licence, Carbery grants to the Licensee a non-exclusive, non-transferable, non sub-licensable fully-paid up royalty-free licence to use the Licensed Mark for the Permitted Purpose during the Term upon the terms and subject to the conditions of this Licence.
2. **Condition:** The Licence shall at all times be conditional on:
 - (a) the Licensee purchasing the Carbery Ingredient from Carbery or its authorised supplier and
 - (b) the Permitted Product containing whey protein hydrolysate of which 100% is OPTIPEP®
3. **Sub-licensing:** The Licensee shall not be entitled to grant any sub-licences of its rights under this Licence.
4. **No other licence:** It is acknowledged and agreed by the Licensee that no licence in respect of the Licensed Mark is granted by Carbery to the Licensee other than the licence expressly granted by the provisions of Clause 1. The Licensee shall not make any use of Carbery's name in any connection otherwise than is expressly permitted by this Licence.
5. **Ownership:** The Licensee acknowledges the Licensed Mark is and shall remain the exclusive property of Carbery, and any goodwill associated with the Licensed Mark shall enure exclusively for the benefit of Carbery.
6. **Terms of Use:**
 - (a) The Licensee shall use the Licensed Mark in accordance with the brand guidelines issued by Carbery from time to time, the current copy of which is included at Appendix 1.
 - (b) Before commencing to use the Licensed Mark in a given manner, the Licensee shall seek Carbery's approval for that usage by submitting to Carbery a request for approval together with such details and information (including visual representations) regarding the proposed usage as Carbery may reasonably require. Any changes to any usage previously approved by Carbery shall require the prior approval of Carbery.
 - (c) The Licensee shall promptly provide to Carbery all such information, documentation and explanations regarding the use of the Licensed Mark under this Licence as Carbery may from time to time request.
 - (d) The Licensee shall, at the written request of Carbery from time to time, immediately discontinue, and procure that its personnel discontinue, any usage of the Licensed Mark that (in the opinion of Carbery) is not in compliance with this Licence.
7. **Registered Users:** If and when Carbery so requests, the Licensee shall join with Carbery in applying for registration of the Licensee as a registered user of the Licensed Mark or any part of it.
8. **Infringement of the Licensed Mark:**
 - (a) The Licensee shall immediately inform Carbery if it becomes aware of any infringement or potential infringement of the Licensed Mark.
 - (b) Carbery shall be entitled, at its sole expense, to take action against the third party to enforce its rights in respect of the Licensed Mark, and the Licensee shall (subject to being indemnified and secured in a reasonable manner with regard to any costs, damages, expenses or other liability in connection with such action) do all acts and things (including joining in any litigation) which Carbery may reasonably request of it for the purposes of enforcing its rights in the Licensed Mark and subject to having so indemnified the Licensee Carbery shall be entitled to all damages or other sums received as a consequence of such action.

- (c) All damages or other sums received as a consequence of action to enforce the rights in respect of the Licensed Mark (net of the direct costs of such recovery, which shall go to reimburse the Party or Parties incurring them) shall be shared between Carbery and the Licensee in such a manner as is fair and reasonable, regard being had to the infringement concerned and its effect on the Licensee and its effect on Carbery and any other persons using any of Carbery's trademarks or brands with its consent. The Licensee acknowledges that the infringement of rights in respect of the Licensed Mark may operate to the prejudice of the persons using other trademarks or brands belonging to Carbery and for these purposes, Carbery shall be taken to have the interests, and to have suffered the effects, losses and damages of all persons (other than the Licensee) using all or any of Carbery's with Carbery's consent.

9. **Infringement of Third Party Rights**

- (a) If any warning letter or other notice of infringement is received by a Party, or legal suit or other action is brought against a party, alleging infringement of third party rights in the use of the Licensed Mark, that Party shall promptly provide full details to the other party, and the Parties shall discuss the best way to respond to that communication.
 - (b) The Licensee shall be entitled (for itself but not for Carbery or any other authorised user of any of Carbery's trademarks or brands) to defend and to settle any suit, action or proceedings brought against it in respect of any such infringement **provided that** if any such defence or settlement involves the making of any statement, express or implied, concerning the validity of Carbery's intellectual property any part of it, the consent of Carbery must be obtained before taking such action or making such settlement.
 - (c) Carbery makes no representation or warranty as to its entitlement to use, register or license the Licensed Mark to the Licensee, and the Licensee acknowledges that it uses the Licensed Mark entirely at its own risk.
10. **Permitted Products:** The Licensee shall ensure that each Permitted Product is manufactured to a high and consistent quality and is compliant with all applicable laws and regulations concerning the manufacture, distribution and advertising of that Permitted Product.
11. **Indemnity:** The Licensee shall indemnify and hold harmless Carbery on demand from and against any and all costs, fees, awards, penalties, liabilities, judgements and claim arising out of or in connection with any defect in the Permitted Product or any claims relating to the manufacture, distribution, sale or marketing of Permitted Products.
12. **No implied terms:** The terms of Licence are in lieu of all other conditions, warranties and other terms which might but for this Clause have effect between Carbery and the Licensee or would otherwise be implied or incorporated into this Licence or any collateral contract, whether by statute, common law or otherwise (including the implied conditions, warranties or other terms as to non-infringement, satisfactory quality, fitness for purpose or as to the use of reasonable skill and care), all of which are excluded.
13. **Duration:** This Licence shall commence on the date it is executed by both Parties and shall continue in full force and effect provided always the conditions in Clause 2 (*condition*) are met and shall be subject to early termination by Carbery in accordance with Clauses 14 or 15.
14. **Termination by either Party:** Either Party shall be entitled to terminate this Licence without cause at any time by giving to the other written notice of not less than period of notice specified on the signature page to this Licence.
15. **Termination by Carbery:** Carbery shall be entitled to terminate this Licence by written notice to the Licenses (with immediate effect or with effect from such later date as Carbery may specify in that notice) if any of the following events occur in respect of the Licensees (regardless of whether such events are voluntary or involuntary or occur by operation of law or pursuant to or in compliance with any judgement, decree or order of any court or otherwise):
- (a) the Licensee fails to comply with any obligation on its part under this Licence, which failure is, in the opinion of Carbery, material, and either that failure is not (in Carbery's opinion) susceptible to remedy or, if (in Carbery's opinion) it is susceptible to remedy, it is not remedied within 30 days' notice having been given by Carbery to the Licensee requiring that failure to be remedied;

- (b) the Licensee is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent or any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Licensee, or any liquidator, receiver or examiner is appointed to or in respect of the Licensee or any of its assets;
 - (c) the Licensee suffers a change of control (whether direct or indirect) and for this purpose "control" means possession of the power to direct or cause the direction of the management and policies of a person whether by membership, ownership, contract or otherwise.
16. **Consequences of Termination:** On termination of this Licence for whatever reason:
- (a) the Licensee shall immediately discontinue all use of the Licensed Mark save as provided in Clause (b);
 - (b) save where this Licence has been terminated pursuant to Clauses (a), the Licensee shall be entitled to dispose of any Permitted Products containing the Licensed Mark within a period of one month from date of termination; and
 - (c) the Licensee shall have no right whatsoever to any payment or compensation arising out of or in connection with that termination and/or its ceasing to be entitled to use the Licensed Mark.

Carbery shall also be entitled to terminate this Licence by giving not less than 30 days' notice in writing if Carbery ceases to own the Licensed Mark or discontinues its use.

17. **Survival of Obligations:** The provisions of this Clause and Clauses 11 (*indemnity*), 16 (*consequences of termination*), 17 (*accrued rights*), 25 (*law*) and 26 (*jurisdiction*) and shall survive the termination of this Licence however it arises, and shall continue to bind the Parties or the relevant Party (as applicable) in accordance with their respective provisions and subject to any applicable statute of limitation periods.
18. **Accrued Rights:** Termination of this Licence shall not affect any rights of the Parties accrued up to the date of termination.
19. **No Assignment:** The Licensee shall not, without the prior written consent of Carbery assign, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under this Licence, purport to transfer, sub-contract or delegate any of its obligations under this Licence.
20. **Severability:** If the whole or any part of a provision of this Licence is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in that jurisdiction of the remainder of the provision in question or any other provision of this Licence; or the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Licence.
21. **Counterparts:** This Licence may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
22. **Sole and Entire Agreement:** The express terms of this Licence constitute the sole and entire agreement between the Parties in relation to the Licensee's use of the Licensed Mark, and supersedes all prior written and oral arrangements, understandings, representations, warranties and agreements between them in that regard (if any). Each Party acknowledges that it is not relying, and will not seek to rely, on any arrangement, understanding, representation, warranty, agreement, term or condition which is not expressly set out in this Licence.
23. **Waivers, Remedies Cumulative:** Each of the rights of each Party under this Licence may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that Party may have under this Licence, law or otherwise; and may be waived only in writing and specifically. Delay by a Party in exercising, or the non-exercise by a Party of, any such right will not constitute a waiver of that right.

24. **Amendments:** Any amendment to this Licence must be in writing and duly signed for and on behalf of each of the Parties.
25. **Law:** This Licence and any non-contractual obligations arising out of or in connection with this Licence shall be governed by, and construed in accordance with, the laws of Ireland.
26. **Jurisdiction:** The Irish courts shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Licence and any non-contractual obligations arising out of or in connection with this Licence and the Parties submit to the exclusive jurisdiction of the Irish courts for that purpose.
27. **Construction:** In this Licence, unless the contrary intention is stated, a reference to:
- (a) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - (b) a person includes that person's legal personal representatives, successors and permitted assigns;
 - (c) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
 - (d) a clause or other provision is a reference to a clause or provision of this Licence, and any reference to a sub provision is, unless otherwise stated, a reference to a sub provision of the provision in which the reference appears;
 - (e) 'including' means comprising, but not by way of limitation to any class, list or category;
 - (f) any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned, and
 - (g) 'writing' shall include a reference to any electronic mode of representing or reproducing words in visible form.
28. **Certain Rules of Construction dis-applied:** If any ambiguity or question of intent or interpretation arises, this Licence shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Licence.
29. **Headings:** Headings and captions are to be ignored in the construction of this Licence.

APPENDIX 1

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