

# **RULES GOVERNING THE USE OF THE UPF CERTIFICATION TRADE MARK**

Version 23

## 1. Objects

- 1.1 The Commonwealth of Australia ("the Commonwealth") acting through the Australian Radiation Laboratory of the Commonwealth Department of Human Services and Health has developed a scheme for rating the protection from ultraviolet radiation transmission provided by fabrics and materials. The degree of protection is rated in accordance with an Ultraviolet Protection Factor.
- 1.2 In order to enable suitable persons manufacturing or importing Articles (as herein defined) to identify that those Articles (or representative samples thereof) have been tested in accordance with the UPF Scheme (as herein defined) by the Australian Radiation Laboratory, or person(s) authorised by it, and have been found to have a particular UPF Rating (as herein defined), the Commonwealth, through the Australian Radiation Laboratory, proposes to license the use of the certification trade mark described herein in accordance with the following provisions.

## 2. Definitions

- 2.1 In these Rules unless the contrary intention appears:

"Articles" means articles of fabrics, textiles, clothing, headgear, umbrellas, parasols, tents, awnings or tarpaulins; windscreens and windows and tinted windscreens and tinted windows used in or in relation to vehicles; glass, plastic and other transparent or translucent building materials; and such other goods which the Proprietor prescribes from time to time, being goods included in the type of goods in respect of which the Mark is registered;

"Australian Radiation Laboratory" means the laboratory of the Commonwealth Department of Human Services and Health known as the Australian Radiation Laboratory currently situated at Lower Plenty Road, Yallambie, Victoria, 3085, and its successors;

"Director" means the Director of the Australian Radiation Laboratory or person acting in that position from time to time or, if that position ceases to exist, the chief executive officer by whatever name called of the Australian Radiation Laboratory;

"Licence" means a licence to use the Mark granted in accordance with these Rules;

"Licensee" means any person who is authorised to use the Mark pursuant to a Licence;

"Mark" means the certification trade mark registered under the Trade Marks Act 1955 (Commonwealth) and having the Registration Nos. 564094, 564095, 564096, 608127, 669658 and 669659 a representation of which is set out in Schedule 1, and any renewals and further registrations of that mark;

"Proprietor" means the proprietor for the time being of the Mark which initially is the Commonwealth of Australia acting through the Australian Radiation Laboratory;

"Register" means the register established pursuant to clause 9.1;

"Rules" means the rules and schedules herein and includes any amendments, variations, additions or replacements made from time to time in accordance with the provisions herein;

"Undertakings" means any undertakings, warranties or representations of or by a Licensee, or applicant for a Licence, to the Proprietor, relating to a Licence, an application for a Licence, or the use of the Mark.

"UPF Rating" means the Ultraviolet Protection Factor rating number attributed to Articles by the Australian Radiation Laboratory or person(s) authorised by it, after testing the Articles (or representative samples thereof) in accordance

with the UPF Scheme;

"UPF Scheme" means the scheme developed by the Australian Radiation Laboratory for testing fabrics and materials and rating the amount of protection provided by such fabrics and materials from ultraviolet radiation transmission.

2.2 In these Rules, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing one gender include the other genders;
- (c) reference to a person includes a government, a body corporate, a partnership, an unincorporated association and a natural person;
- (d) headings are for guidance only and shall not affect the interpretation of the clauses to which they refer;
- (e) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (g) where the day on, or by which, anything is to be done, is a Saturday, Sunday, public holiday or day on which the banks are closed, in the place in which that thing is to be done, then that thing need not be done until the next day which is not a Saturday, Sunday, public holiday or day on which the banks are closed, in that place;
- (h) reference to a clause is a reference to a clause of these Rules and includes all sub-clauses, paragraphs and parts of that clause;

2.3 In the event of any conflict or inconsistency between the provisions in the body of these Rules and the Schedules hereto or any Licence, the provisions in the body of these Rules shall prevail.

### 3. Application for and Grant of Licence

3.1 A Licence may be granted to an applicant who satisfies the Proprietor of the following:

- (a) that the applicant is of good repute and of good financial standing;
- (b) that the Articles in respect of which the applicant has applied for a Licence are manufactured or imported by, or on behalf of, the applicant;
- (c) that the Articles in respect of which the applicant has applied for a Licence are of good quality, are not scandalous or offensive, and are not, and do not promote, anything deleterious to health;
- (d) that representative samples of the Articles in respect of which the applicant has applied for a Licence have been tested in accordance with the UPF Scheme and been given a UPF Rating by the Australian Radiation Laboratory, or person(s) authorised by it;
- (e) that the applicant will abide by these Rules; and
- (f) that the applicant has complied with its obligations under any previous Licence granted to the applicant.

3.2 The Proprietor may require the applicant to give various Undertakings concerning the applicant's business or the proposed use of the Mark before entertaining the applicant's application for a Licence.

3.3 Every application for a Licence shall be substantially in the form of Schedule 3 and shall be accompanied by the Licence Fee prescribed from time to time by the Proprietor as payable for the grant of a Licence.

3.4 If an application for a Licence is accepted, the applicant will be invited to execute a Licence substantially in the form of Schedule 4 (in two or more counterparts). If the applicant wishes to accept the invitation he must execute and return all counterparts to the Proprietor. The Proprietor will then execute and date the counterparts and return to the applicant one counterpart duly executed by both the applicant and the Proprietor. From the date of the Licence the applicant will be entitled to use the Mark as a Licensee as provided herein.

3.5 If an application for a Licence is not accepted, the applicant will be informed of the non-acceptance, including brief reasons therefor, and will be refunded any Licence Fee (but not any fees for the provision of services such as, but not limited to, testing, assessing or inspecting) already paid. The Licensee may appeal any non-acceptance in accordance with the provisions of clause 8.

4. Conditions of Use of the Mark

4.1 The Mark may only be used by a Licensee in accordance with these Rules, the Licence granted to the Licensee and any Undertakings given by the Licensee.

4.2 The Mark may only be used by a Licensee upon or in relation to the Articles described in the Schedule to the Licence granted to the Licensee and which conform in all respects with the samples provided to, and tested by, the Australian Radiation Laboratory, or person(s) authorised by it, in accordance with the UPF Scheme. The Proprietor and Licensee may by written agreement (which can be by way of exchange of letters) add or delete Articles from such Schedule. The addition of Articles may be subject to the payment of a fee prescribed from time to time by the Proprietor.

4.3 Unless otherwise notified in writing by the Proprietor, the Mark shall not be used upon or in relation to any Articles unless the Mark :

- (a) includes the UPF Rating attributed to those Articles (or representative sample thereof) in the manner (but not necessarily with the same UPF Rating) shown in Schedule 2;
- (b) includes the statement "Australian Radiation Laboratory UPF Rating" in the manner shown in Schedule 2;
- (c) includes the copyright symbol "©" and the trade mark symbol "TM" in the manner shown in Schedule 2.

4.4 A Licensee shall not attribute a UPF Rating to Articles other than the UPF Rating attributed to those Articles (or a representative sample thereof) by the Australian Radiation Laboratory, or person(s) authorised by it, after testing such Articles in accordance with the UPF Scheme.

4.5 A Licensee may use the Mark:

- (a) by means of hang tags, adhesive tags, price tags or sew-in tags;
- (b) in advertisements, packaging, and promotional and publicity material;

Provided That the same have first been approved in writing by the Proprietor.

4.6 A Licensee shall:

- (a) not alter or add to the Mark or any designations or expressions required to be used in connection with the Mark;
- (b) not use the Mark in any manner which in the opinion of the Proprietor would be misleading, be scandalous or offensive, bring the Mark or the Proprietor into disrepute, be in connection with anything deleterious to health, or adversely affect the Mark's legal validity;
- (c) not use the Mark in any way which may be contrary to law or in connection with anything that is unlawful;
- (d) not use the name of the Australian Radiation Laboratory, or the Commonwealth, or any words, marks or devices which may imply a connection with the Australian Radiation Laboratory or the Commonwealth, in connection with the promotion or sale of any Articles, otherwise than in accordance with these Rules or any prior written approval of the Proprietor,
- (e) not make any representations or statements as to the meaning of the use of the Mark or any UPF Rating or the attributes of Articles by reason of their association with the Mark or any UPF Rating, without the prior written approval of the Proprietor,
- (f) not use the Mark in connection with any Articles unless such Articles are clearly labelled with the manufacturer's or importer's name, brand or trade mark so as to clearly identify the manufacturer or importer of the Articles;
- (g) submit to the Proprietor, and obtain the Proprietor's prior written approval to the use thereof, all specimens of the Licensee's proposed use of the Mark and any UPF Rating;

- (h) pay within 30 days of the date of invoice, all fees from time to time prescribed by the Proprietor in relation to administering the Licence granted to the Licensee, including, but not limited to, the Licence Fee and fees payable for services provided in assessing, auditing, supervising, inspecting, checking, testing or consulting, but the Licensee shall not be entitled to a refund of any fees in the event of any termination, alteration or suspension of the Licence;
- (i) ensure that all Articles upon or in relation to which it applies the Mark, conform with the samples tested by the Australian Radiation Laboratory, or person(s) authorised by it, and maintain an adequate system of quality control to check that such Articles so conform;
- (j) keep records of the quantities, types and destination of Articles in relation to which the Licensee uses the Mark, in such form, if any, as the Proprietor may from time to time prescribe, and provide copies thereof to the Proprietor at its request;
- (k) keep specimens of the labels, tags, advertisements and other publicity and promotional materials incorporating or referring to the Mark or any UPF Rating, used by the Licensee, and provide copies thereof to the Proprietor at its request;
- (l) give such information (including, but not limited to, the provision of samples of Articles in relation to which the Licensee uses, or proposed to use, the Mark or any UPF Rating and copies of the representations and labels which the Licensee uses, or proposes to use, in connection with such Articles) as the Proprietor from time to time requires in order to check compliance with the Licensee's obligations herein;
- (m) not do anything to oppose or challenge the registration of the Mark or seek expungement, amendment, or the imposition of a condition or limitation affecting, the Mark.

4.7 Representative(s) of the Proprietor, or person(s) authorised by it, shall be entitled to go onto the premises of the Licensee during working hours for the purposes of ascertaining whether the Licensee is complying with its obligations herein (including obligations which survive the expiration or termination of a Licence) and may take away samples of Articles, labels and other materials on which, or in relation to which, the Mark or any UPF Rating is, or may be, represented, and may test any samples of Articles to ascertain whether the Licensee is complying with its obligations herein (including obligations which survive the expiration or termination of a Licence) and the Licensee shall be liable for the fees prescribed by the Proprietor from time to time for doing any of the foregoing.

## 5. Duration and Termination of Licence

- 5.1 Subject to earlier termination as provided herein, each Licence shall remain in force for a period of one (1) year from the date of its grant.
- 5.2 An existing Licensee may apply for a further Licence to commence at the expiration of its existing Licence by having representative samples of the Articles it wishes to include in the Licence tested, and by applying for a Licence and paying the prescribed Licence Fee, in the same manner as for a new applicant. If any Articles included in an existing Licence are the subject of an application for a further Licence, the Proprietor may, in its absolute discretion, waive the requirement to test those Articles or any of them.
- 5.3 On the happening of any of the following events:
  - (a) if any amount payable by a Licensee under these Rules or its Licence is in arrears and the Licensee fails to pay the same within 21 days after the date of a notice in writing requiring payment;
  - (b) if a Licensee fails to perform or observe any of the other terms and conditions on its part to be performed and observed under these Rules or its Licence;
  - (c) if an order is made or an effective resolution passed for the winding-up or dissolution of a Licensee;
  - (d) if a Licensee makes any assignment for the benefit of its creditors or any arrangement, compromise or composition with its creditors;
  - (e) if a Licensee suffers an execution against any of its assets;
  - (f) if a Licensee suspends payment of its debts or is unable to pay its debts;
  - (g) if a receiver or receiver and manager, official manager, trustee, provisional liquidator, inspector or similar

officer is appointed for a Licensee or in respect of all or part of its undertaking;

(h) if a Licensee ceases to carry on business in relation to Articles the subject of its Licence;

the Proprietor may, by written notice to the Licensee, terminate the Licence granted to the Licensee, and/or require that the Licensee cease to use the Mark, or any UPF Rating, or any statements or designations associated therewith, in any particular way or in relation to any particular Articles, and/or cancel any particular Articles from the Licence, but without prejudice to the right of the Proprietor to sue for and recover any fees or other amounts then due or to pursue any right of action or remedy which may have accrued or which may accrue thereafter.

5.4 A Licensee may terminate any Licence granted to it (without refund of any fees) by notice in writing to the Proprietor and return of the Licence.

5.5 Upon the expiration or termination of a Licence granted to a Licensee, the Licensee shall forthwith :

- (a) cease all use of the Mark, any UPF Rating, and all Articles, labels, advertising, packaging, publicity and promotional materials, and other matter, incorporating, or referring to, the Mark or any UPF Rating;
- (b) cease all statements or representations which connect in any way the Commonwealth or the Australian Radiation Laboratory with the Licensee's Articles, including the use of any materials containing such statements or representations; and
- (c) destroy all items referred to in paragraphs (a) and (b) in the possession or control of the Licensee or alter them in such a manner so that they do not contravene the provisions hereof;

Provided That nothing in this clause shall apply to items bona fide already in channels of distribution outside the control of the Licensee.

5.6 Notwithstanding the expiration or termination of a Licence the provisions of clauses 4.6(m), 4.7, 5.5, 6.1 and 12.6 shall remain in force to the extent necessary to give effect to the terms thereof.

## 6. Liability

6.1 Each Licensee shall release, indemnify and hold harmless the Proprietor and its officers, employees, agents and authorised representatives, from and against all liability, losses, claims, proceedings, damages, costs and expenses directly or indirectly relating to, or arising from, the Licensee's use of the Mark, or sale, disposal, promotion or distribution, of Articles or other materials incorporating or referring to the Mark, any UPF Rating, the Commonwealth, or the Australian Radiation Laboratory.

## 7. Alterations to Rules

7.1 The Proprietor may apply to the Registrar of Trade Marks for alteration of these Rules but no proposed alteration to the Rules shall have effect until the Registrar of Trade Marks has made such alteration in accordance with the provisions of section 87 of the Trade Marks Act 1955.

## 8. Appeals

8.1 If the Proprietor does, or refuses to do, any act, or exercises a discretion, under these Rules or any Licence, which, in the opinion of a person who is an applicant for a Licence or who is a Licensee, is contrary to the interests of that person, that person ("the Aggrieved Person") may within 21 days after the act, refusal, or exercise of discretion, by notice in writing to the Director request that the matter be reconsidered.

8.2 Within one month of receipt of a notice pursuant to clause 8.1, the Director shall consider the matter and notify the Aggrieved Person in writing of his decision on the matter.

8.3 If the Aggrieved Person is not satisfied with the decision made by the Director pursuant to clause 8.2, or the Director fails to make a decision pursuant to clause 8.2, the Aggrieved Person may, within 21 days after notification of the decision, or if no decision was made, within 21 days after the last day on which the decision should have been made, or within such further time as the Registrar of Trade Marks shall allow, appeal to the Registrar of Trade Marks.

8.4 An appeal to the Registrar of Trade Marks shall be in writing and a copy of the notice of appeal shall be served on the Director within such time as the Registrar of Trade Marks allows.

8.5 After considering such evidence as the Aggrieved Person and the Proprietor may submit, including any evidence

asked for by the Registrar of Trade Marks, and after the Aggrieved Person and the Proprietor have had an opportunity of being heard, the Registrar of Trade Marks shall decide the matter.

9. The Register

9.1 The Proprietor shall establish and maintain a Register in which shall be recorded the names and addresses of Licensees; the date of registration, renewal, withdrawal, expiration and termination of Licences; and such other particulars as the Proprietor from time to time considers relevant.

9.2 The Register shall be open to public inspection at the office of the Australian Radiation Laboratory, or such other office as the Proprietor may from time to time prescribe, during the normal business hours of those offices.

10. Copies of Rules and UPF Scheme

10.1 The Proprietor shall keep at the office of the Australian Radiation Laboratory, or such other offices as the Proprietor may from time to time prescribe, a copy of the Rules and of the specifications setting out the UPF Scheme and any amendments thereto, and the said copies shall be open to public inspection during the normal business hours of those offices. Copies of the same will be made available on request subject to the payment of a fee prescribed by the Proprietor from time to time determined on a cost recovery basis.

11. Proprietor acting through the Australian Radiation Laboratory

11.1 References to the Proprietor mean the Proprietor acting through the Australian Radiation Laboratory and, unless the contrary intention appears, includes the officers, employees, agents and authorised representatives of the Proprietor.

11.2 The Proprietor may engage a manager to manage the licensing of the Mark and do such other things as are authorised by the Proprietor in connection with the promotion, management and administration of the certification trade mark scheme with respect to the Mark.

12. Miscellaneous

12.1 Any notice to be given or served pursuant to these Rules or a Licence shall be in writing and delivered by hand or sent by prepaid post, facsimile transmission or telex. Notices to a Licensee shall be sent to the address, facsimile number or telex number of the Licensee as notified on the Licensee's application for a Licence or as otherwise notified in writing by the Licensee to the Proprietor. Notices to the Proprietor shall be sent to the address, facsimile number or telex number of the Australian Radiation Laboratory or as otherwise notified in writing by the Proprietor to the Licensee.

12.2 A Licensee is not entitled to assign or sub-license any Licence granted to it or any rights, obligations or interests thereunder.

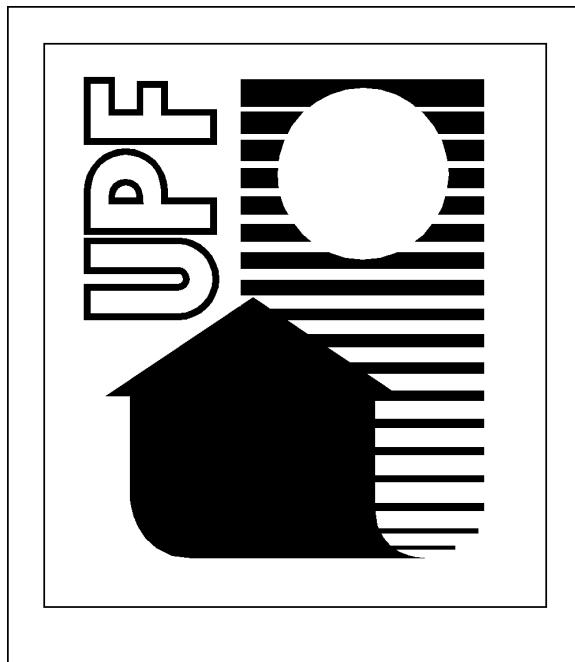
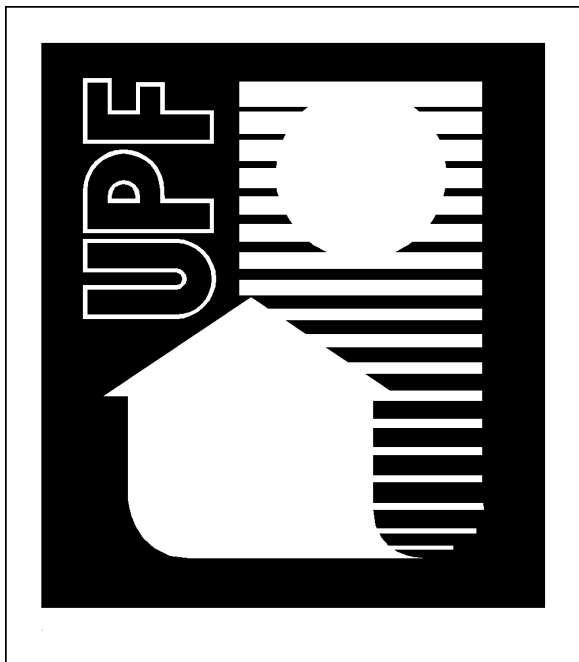
12.3 A Licensee is not an employee, partner, agent or representative of the Proprietor and has no authority or power to bind, or contract in the name of, or create any liability against, the Proprietor, in any way or for any purpose.

12.4 Failure by the Proprietor to enforce any provision of these Rules or any Licence or Undertakings, or the giving of any indulgence to a Licensee, shall not be construed as a waiver of any obligations of the Licensee.

12.5 Each Licence shall be governed by, and construed in accordance with, the laws for the time being in force in the State of Victoria, Australia.

12.6 Except for rights of use specifically granted under a Licence, use by a Licensee of the Mark does not give the Licensee any rights in, nor shall the Licensee claim any rights in, the Mark. Any reputation in the Mark arising from a Licensee's use of the Mark shall be deemed to have been derived and acquired by the Proprietor.

**SCHEDULE 1 (clause 2.1 "Mark")**

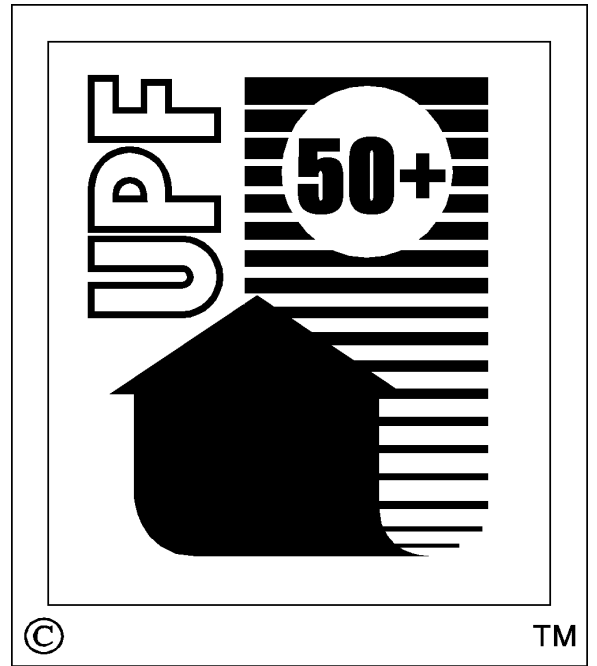


**SCHEDULE 2 (clause 4.3)**

Australian Radiation Laboratory  
UPF Rating



Australian Radiation Laboratory  
UPF Rating



**SCHEDULE 3 (clause 3.3)**

**APPLICATION FOR A LICENCE TO USE  
THE UPF CERTIFICATION MARK**

To : Australian Radiation Laboratory

I/We ..... [name of applicant]

of ..... [address of applicant]

having had representative samples of the articles described in the attached Schedule tested by the Australian Radiation Laboratory, or person(s) authorised by it, hereby apply for a Licence to use the UPF Certification Mark ("the Mark") with respect to those articles, subject to the Rules governing the use of the Mark.

I/We provide the following information and warrant that to the best of my/our knowledge and belief such information is true and correct:

This is a list of all company names, trademarks, brands, and labels and that will be used on my/our products in conjunction with ARL's UPF Certification Trade Mark:

.....  
.....  
.....  
.....  
.....

I/We enclose the sum of \$ ..... for the Licence Fee which sum will be refunded if this Application is unsuccessful.

Signature .....

Name and Title (please print) .....

Witness .....

Date :

If you are a small business with less than 20 employees, please provide an estimate of the time taken to complete this form.

hrs  mins

**SCHEDULE 3 (continued)**

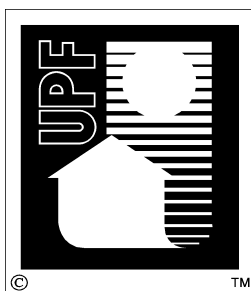
**SCHEDULE TO THE APPLICATION FOR A LICENCE  
TO USE THE UPF CERTIFICATION MARK**

Type and Style of Articles  
subject of the Application

UPF Rating  
per test results

**SCHEDULE 4 (clause 3.4)**

Australian Radiation Laboratory  
UPF Rating



**UPF CERTIFICATION TRADE MARK LICENCE**

The Commonwealth of Australia, represented by the Australian Radiation Laboratory, 100 Lower Plenty Road, Yallambie, Victoria, 3085; Fax (03) 9432 1835; Telex AA31726, hereby grants to

..... (Name of Licensee)

of ..... (address of Licensee)  
("the Licensee")

the non-exclusive, non-transferable, right to use the UPF Certification Trade Mark being Nos. 564094, 564095, 564096, 608127, 669658 and 669659 ("the Mark") in accordance with the Rules governing the use of the Mark and only in respect of the Articles described in the attached Schedule by reference to the UPF Rating attributed to those Articles in the attached Schedule. This Licence is granted subject to the Rules governing the use of the Mark and to any Undertakings which the Licensee has given to the Australian Radiation Laboratory or its representatives or agents and the Licensee hereby covenants to fully comply with and observe such Rules and Undertakings.

Signed for and on behalf of the  
Commonwealth of Australia by:

.....  
(Name and Title-print)

.....  
(Signature)

.....  
(Witness)

Signed for and on behalf of  
the Licensee by:

.....  
(Name and Title-print)

.....  
(Signature)

.....  
(Witness)

Date of Grant of Licence:

Expiry Date of Licence:

Licence No. :

*Do not fill in this form - it is an example only of a UPF Certification Trade Mark licence.*

**SCHEDULE 4 (continued)**

**SCHEDULE TO THE UPF CERTIFICATION  
TRADE MARK LICENCE**

Licensee :..... (name of Licensee)

Type of Articles the subject of the  
Licence to use the UPF Mark

UPF Rating attributed to  
the Articles

**Do not fill in this form - it is an example only of a UPF Certification Trade Mark licence.**

Signed for and on behalf of the  
Commonwealth of Australia by:

.....  
(Name and Title-print)

.....  
(Signature)

Date of Grant of Licence:

.....  
(Witness)