

# FoodEssentials API License Agreement

## General Terms

This Data Subscription agreement ("Agreement") is entered into by and between FoodEssentials Corporation ("FoodEssentials"), with its principal place of business at 615 Olive St, Suite 1343, St. Louis, MO 63101 and \_\_\_\_\_ ("Company"), with its principal place of business at \_\_\_\_\_ . The parties agree as follows:

### **Our Developer Support Pledge:**

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Provided you agree to the below terms of service, FoodEssentials makes the pledge in good faith to ensure the ongoing provision of data via our platform and support to help you to achieve your goals.

Our aim is to make this data available to as many people as possible and so we will strive to provide you with the support you need to deliver the next generation of innovative label data technologies.

### **Terms of Service:**

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PLEASE READ THESE TERMS OF USE ("AGREEMENT" OR "TERMS OF USE") CAREFULLY BEFORE USING THE WEBSITE AND SERVICES OFFERED BY FoodEssentials Corporation ("Company"). THIS AGREEMENT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE WEBSITE AT [HTTP://FoodEssentials.com](http://FoodEssentials.com) (THE "SITE") AND ALL SERVICES PROVIDED BY FoodEssentials ON THE SITE.

By using the Site and/or Data in any manner, including but not limited to visiting or browsing the Site and/or Data, you (the "subscriber" or "you") agree to be bound by this Agreement, including those additional terms and conditions and policies referenced herein and/or available by hyperlink. This Agreement applies to all users of the Site and/or Data, including without limitation users who are vendors, customers, merchants, contributors of content, information and other materials or services on the Site and/or Data.

### **1. Organization.**

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This Agreement is comprised of these General Terms and one or more Order Forms. Each product or additional feature for a product purchased by Company and the applicable pricing will be reflected in an Order Form unique to that product or feature. All changes to this Agreement must be in writing and agreed to by both parties. If there is a conflict among the General Terms and the terms of an Order Form, the terms in the Order Form will prevail for the transaction described therein.

### **2. Definitions.**

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2.1 "Data" means a subscription to FoodEssentials' data via LabelAPI as set forth on an Order Form to be incorporated into Company's product to be delivered by Company.

2.2 "Subscriber" is defined as a user of the Product.

2.3 "Product" means Company's approved product or application incorporating the Data as described on an Order Form.

### **3. Relationship of the Parties**

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3.1 Mutual Obligations. Each party agrees that: (i) it will be responsible for its own expenses regarding fulfillment of its obligations under the terms of this Agreement, (ii) it will comply with all applicable laws and regulations when performing its respective responsibilities and obligations under this Agreement; and (iii) it will treat as confidential and not disclose the terms of this Agreement to any third party.

3.2 FoodEssentials Obligations. FoodEssentials agrees to make available the

Data to Company for use as part of the Product as set forth on the applicable Order Form.

3.3 Company Obligations. Company agrees: to be responsible for all Company actions and all Subscriber contact; to provide and administer subscriptions to Subscribers under its own name; not to remove any copyright, trademark or other proprietary notices of FoodEssentials and its suppliers as they appear in Data; to conduct its operations in a manner that will not adversely affect the high image, credibility or reputation of FoodEssentials; to make no claims, warranties, representations or guarantees on behalf of FoodEssentials; and to hold harmless and indemnify FoodEssentials from and against any third party claims arising from or related to Company or any Subscriber's use of the Data.

#### **4. Subscriber Restrictions - Disclaimers.**

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In a written or on-line subscription agreement Company shall contractually disclaim Subscriber's use of the Data substantially as follows: *"Please note that the data included in this application is a guide only and not intended as medical advice. Any dietary health concerns or queries any individuals may have should be discussed with a duly registered Dietician or Physician. The information or data contained in this application has been prepared by FoodEssentials and every effort has been made to ensure that information is accurate. However FoodEssentials cannot confirm the accuracy of the information or data, and accepts no liability for any act or omission, done or omitted in reliance, in whole or part, on the information or data being accurate."*

#### **5. Audit.**

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FoodEssentials may periodically review Company's compliance with this Agreement. Company agrees to provide FoodEssentials or its auditors, within three days of FoodEssentials' request, all relevant records relating to Data use and payments and the basis for calculating such payments, and

Company agrees to maintain such records for a period of three (3) years after termination or expiration of this Agreement. Any payment discrepancies discovered as a result of such audit shall be corrected, including payment or crediting of amounts owed, as appropriate, within fifteen (15) days of completion of the audit. In the event FoodEssentials is underpaid by 5% or more in any month, Company shall promptly reimburse FoodEssentials for its costs of audit and shall pay interest in the underpaid amount of the lesser of (i) 1.5 percent per month; or (ii) the greatest amount allowed by law.

#### **6. Liability:**

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The Data are obtained from a variety of third party sources, and FoodEssentials does not guarantee the accuracy of the Data. Accordingly, Data are provided "as is" and without warranties of any kind, express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and the statutory warranty of non-infringement. Except for claims for indemnification made hereunder, the amount of any loss or damage arising from either party's negligence, willful misconduct or material breach of the Agreement shall be no more than the amount owed to FoodEssentials by Company hereunder. UNDER NO CIRCUMSTANCES (EXCEPT AS REQUIRED BY LAW) IS EITHER PARTY LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS OR SAVINGS) EVEN IF SUCH PARTY IS INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE BASIS ON WHICH DAMAGES MAY BE CLAIMED. FoodEssentials is not and shall not be directly liable to Subscribers for any damages whatsoever, including direct, indirect, special, incidental or exemplary damages, and Company shall defend, indemnify and holds FoodEssentials harmless from such damages in accordance with Section 7 below.

## **7. Indemnification.**

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Company shall indemnify, defend and hold FoodEssentials harmless from any claim, suit or proceeding (including FoodEssentials' reasonable costs and attorneys' fees) arising out of (i) any Subscriber or Company's use of the Data; (ii) any guarantees, representations or warranties made by Company; or (iii) any claim made against FoodEssentials by any Subscriber. FoodEssentials will (i) give Company prompt written notice of any such claim; (ii) allow Company to control the defense and settlement of any such claim provided no settlement or defense admits liability on the part of FoodEssentials; and (iii) provide Company with reasonable information and assistance, at Company's expense, as requested for defense and settlement of such claim. Company will pay any settlement and damages awarded and any costs as incurred. In the event that Company fails to meet its indemnification obligations, FoodEssentials may conduct its own defense at its own cost and shall be promptly reimbursed for such defense by Company.

## **8. Term and Termination.**

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This Agreement shall be in effect until terminated by the either party, and each Order Form shall have the term stated therein. Either party may terminate this Agreement or an Order Form for cause: (i) if one party believes that the other party has failed to perform a material obligation of the Agreement, the non-breaching party may give notice of the alleged failure and allow the other thirty (30) days to cure such failure and if such cure is not completed within such thirty (30) day period, the non-breaching party may immediately terminate the Agreement upon written notice to the other party; or, immediately upon notice if the other party liquidates or terminates its business, is adjudicated a bankrupt, makes an assignment for the benefit of creditors, invokes the provisions of any law for the relief of debtors or files or has filed against it any similar proceeding. In addition, this

Agreement may be terminated at any time by mutual written agreement of the parties. Upon termination of this Agreement or an Order Form for any reason, all applicable subscriptions to Subscribers shall terminate and all of Company's rights under the Agreement shall cease. Company shall cease all use of the Data, and remove all attribution to FoodEssentials and any of FoodEssentials' trademarks. Upon termination for any reason all payment obligations of Company shall be immediately due and payable.

## **9. Payment:**

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Payment to FoodEssentials shall be set forth in each Order Form. Order Forms may not include taxes - Company shall assess and pay its own taxes, including but not limited to sales, use, excise, import or export, value added or similar tax not based on FoodEssentials' net income, or other duty or fee imposed by any governmental authority with respect to any payment to be made by Company to FoodEssentials under this Agreement, if any, due for its use of the Data, and any taxes due by FoodEssentials for Company's use the Data shall be invoiced to and paid by Company. In the event any taxes become due on Company's use of the Data, such taxes shall be billed to and paid by Company as they are paid by FoodEssentials, in addition to any amounts set forth on an Order Form. FoodEssentials may charge interest on overdue amounts in the lesser of (a) 2% per month; or (b) the maximum amount allowed by law. FoodEssentials shall be entitled to reimbursement of any costs incurred (including reasonable attorney fees, collection agency costs and court costs) to collect overdue amounts and amounts incurred by FoodEssentials for Company's indemnification obligations, from Company.

## **10. General.**

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This Agreement shall be governed and interpreted by the laws of the State of Missouri, without reference to its conflict of laws

principles. The parties agree that the United Nations Convention on contracts for the International Sales of Goods is specifically excluded from Product to this Agreement. The parties agree to submit to the exclusive jurisdiction and venue of the state and federal courts located in St. Louis, Missouri for any litigation arising from this Agreement. Except for payment obligations hereunder, neither party shall be deemed in default of this Agreement if prevented from complying with any obligation due to an act of God or any other cause not within the reasonable control of the party whose performance is interfered with and which, by the exercise of reasonable diligence a party is unable to prevent. Company agrees to comply strictly with all export/import laws and regulations of any jurisdiction in which subscriptions are sold, and Company shall obtain any import/export licenses and permits as are necessary at its sole expense. All notices given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery if delivered personally or by overnight courier, to the attention of Legal Counsel of the applicable party at the address set forth above. Either party may change the address to which such communications are to be directed by giving written notice to the other party. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, such portion shall be deemed eliminated to the extent unenforceable or illegal and the remainder of this Agreement shall remain in effect. The failure by either party to insist on performance of the Agreement or to exercise a right when entitled does not prevent the party from doing so at a later time, either in relation to that default or any subsequent one. FoodEssentials and

Company are independent contractors to each other and neither of the parties is a legal representative or legal agent of the other, nor does this Agreement create a joint venture between them. Company has no authority to modify any warranty contained in this Agreement or issued by FoodEssentials or make any other commitment on behalf of FoodEssentials. The parties shall be entitled to rely upon and enforce a facsimile of any authorized signature as if it were the original.

#### **11. Retention.**

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You may cache data you receive through use of the API in order to improve your application's and/or website's user experience, but you should not try to keep the data up to date and must delete all old data. This permission does not give you any rights to cached data. For clarity, and without limitation, you may not cache or store any FoodEssentials label information (including supporting info and photos) for more than 30 days without refreshing and in no event may you cache any data for more than 30 days. If you stop using the API or we disable your application and/or website, you must delete all FoodEssentials Data.

#### **12. Survival.**

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Sections 5 - 13 shall survive termination or expiration of the Agreement.

#### **13. Entire Agreement.**

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This Agreement and any Order Forms entered into between the parties contain the entire and only understanding between the parties and supersedes all prior agreements, either written or oral, relating to the subject matter hereof.

This Agreement shall be effective as of the date last shown below. Agreed to by the following authorized signatories:

**[COMPANY]**

**FOODESSENTIALS CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**FoodEssentials™ Order Form No. 311**

This Order Form is effective 5<sup>th</sup> February 2012 adopts and incorporates by reference the terms and conditions of the API License Agreement between FoodEssentials Corporation and ----- (“Company”) dated 5<sup>th</sup> February 2012 (the "Agreement"). All capitalized terms not defined herein are as defined in the Agreement. All deliverables and services provided under this Order Form are subject to the terms of the Agreement, and in the event of a conflict between the Agreement and this Order Form, this Order Form shall control.

**A. USE OF DATA; TERM**

FoodEssentials will provide to Company access to Food Label information (excluding images) via the FoodEssentials core API's for use in Company's application. Company shall not republish the Data, or use the Data for any other purpose or in any other form.

**B. PAYMENT**

Company shall pay FoodEssentials in accordance with the following schedule:

- 1. \$US1000.00 per annum
- 2. Payable on or before 30 days after the signing of this agreement

**C. ADDITIONAL TERMS**

- 1. This license agreement is limited to a single application
- 2. This license agreement relates to the Full API's as outlined in the test api documentation provided to company.
- 3. Storing FoodEssentials product data outside of licensed company application is prohibited.
- 4. FoodEssentials must be referenced as the provider of the data by the inclusion of the text, “data by FoodEssentials” on the application landing page including a hyperlink to <http://foodessentials.com>
- 5. Company must include the following disclaimer within Product

*Please note that the data included in this application is a guide only and not intended as medical advice. Any dietary health concerns or queries any individuals may have should be discussed with a duly registered Dietician or Physician. The information or data contained in this application has been prepared by FoodEssentials and every effort has been made to ensure that information is accurate. However FoodEssentials cannot confirm the accuracy of the information or data, and accepts no liability for any act or omission, done or omitted in reliance, in whole or part, on the information or data being accurate.*

This Order Form is accepted and agreed to by the authorized signatories below:

**[COMPANY]**

**FOOD ESSENTIALS CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_