

## FOODPLUS GMBH CONTRACT WITH APPLICANT

### PARTIES

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This contract is made between and binds the following parties:

- 1 **FoodPLUS GmbH**
- 2 **^Applicant name and ACN^ ^registered address^ (the Applicant)**

### PURPOSE

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This contract is made in the following context:

- A The Applicant has made an application to FoodPLUS GmbH for the assessment of equivalence of the Applicant's Standard and/or Certification Scheme with the applicable **EUREPGAP** General Regulations and/or Protocol e.g. General Regulations and Protocol for Fresh Fruit and Vegetable, General Regulations and Protocol for Flowers etc.
- B The Applicant has fully informed itself about the **EUREPGAP** Benchmarking Procedure and has agreed to pay the fees specified in Attachment 1.

### OPERATIVE PROVISIONS

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In consideration of the mutual promises contained in this contract, the parties to this contract agree as follows:

#### 1 INTERPRETATION

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##### 1.1. Interpretation

1. In this contract, unless the contrary intention appears:
  - a. the attachments form part of this contract;
  - b. where any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the attachments, the terms and conditions of the clauses prevail;
  - c. reference to an attachment is a reference to an attachment to this contract, including as amended or replaced from time to time by agreement in writing between the parties.

##### 1.2. Guidance on construction of this contract

1. This contract records the entire agreement between the parties in relation to its subject matter.

2. No variation of this contract is binding unless it is agreed in writing and signed by the parties.
3. Any reading down or severance of a particular provision does not affect the other provisions of this contract.
4. This contract is to be construed in accordance with the laws in the Australian Capital Territory.
5. This contract is formed and is dated as at the date it has been executed by both parties.

## **2 OBLIGATIONS OF FOODPLUS GMBH**

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### **2.1. Assessment of Applicant's standard and/or certification scheme**

- a. FoodPLUS GmbH agrees to assess the Applicant's Standard and/or Certification Scheme, in accordance with the **EUREPGAP** Benchmarking Procedure, for equivalence with **^Insert applicable EUREPGAP General Requirements and/or Protocol^**.
- b. FoodPLUS GmbH agrees to treat all information gathered throughout the assessment process, which is not in the public domain or required to be public due to the EUREPGAP Benchmarking Procedures, as strictly confidential.

## **3 OBLIGATIONS OF CERTIFICATION BODY**

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### **3.1. Obligations of the Applicant**

1. The Applicant agrees to:
  - a. Provide FoodPLUS GmbH with all relevant documentation that supports the Applicant's claims regarding equivalence;
  - b. To read, keep itself informed of and comply with up to date versions of the FoodPLUS GmbH requirements; and
  - c. Pay all fees specified in Attachment 1, whether or not recognition is granted.

## **4 DISPUTE RESOLUTION**

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### **4.1. The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:**

1. In the event of a complaint being lodged in relation to the service provided by JAS-ANZ, FoodPLUS GmbH will assure itself that JAS-ANZ has been given the opportunity to resolve the issues in accordance with JAS-ANZ Procedure 12 - *'Complaints and Disputes'*;

2. The most up to date versions of JAS-ANZ Procedure 12 may be located on the publicly available JAS-ANZ website [www.jas-anz.com.au](http://www.jas-anz.com.au).
3. Once FoodPLUS has assured that JAS-ANZ has received an opportunity to resolve the complaint, and on all other occasions, the following process shall be followed:
  - a. first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
  - b. secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
  - c. thirdly, the parties shall follow the arbitration rules as attachment 2.

## **5. TERMINATION OF THE CONTRACT**

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### **5.1 Termination for default**

1. Where the Applicant fails to satisfy any of its obligations under this contract, FoodPLUS GmbH, if it considers that the failure is:
  - a. not capable of remedy, may, by notice, terminate this contract immediately;
  - b. capable of remedy, may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this contract immediately by giving a second notice.

## **6. GENERAL PROVISIONS**

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### **6.1 Application for recognition of equivalence**

1. The Applicant warrants that the information contained in the Application for recognition of equivalence submitted to FoodPLUS GmbH is correct.

### **6.2 Execution Warranty**

1. The Applicant warrants that it has full corporate power and authority to enter into, perform and observe its obligations under the contract and that the execution, delivery and performance of the contract has been duly and validly authorised by all necessary corporate action.

**SIGNED** as a Contract.

SIGNED on behalf of )  
**FoodPLUS GmbH** )  
**Cologne, Germany** )  
 )  
by \_\_\_\_\_ )  
[name signatory] )  
 )  
\_\_\_\_\_ ) \_\_\_\_\_  
[name signatory's position] )  
 )  
in the presence of )  
 )  
\_\_\_\_\_ ) \_\_\_\_\_  
[name witness]

SIGNED on behalf of )  
[insert name of the Applicant] )  
 )  
 )  
 )  
 )  
by \_\_\_\_\_ )  
[name signatory] )  
 )  
\_\_\_\_\_ ) \_\_\_\_\_  
[name signatory's position] )  
 )  
 )  
in the presence of )  
 )  
\_\_\_\_\_ ) \_\_\_\_\_  
[name witness]



*JOINT ACCREDITATION SYSTEM OF AUSTRALIA AND NEW ZEALAND*

**FEE STRUCTURE – EUREPGAP BENCHMARKING PROCEDURE**

<b>Process step</b>	<b>Fee* AUD</b>	<b>Notes</b>
Standard Owner application fee	6400.00	The application fee includes all associated administration costs, preliminary technical review, peer review facilitation, and independent technical review and report.  The peer review component includes consultation with EUREPGAP members and Council, and the Independent Technical Review of the outcomes of the consultation and resulting report.  Based on 8 days ·
Scheme owner witnessing fee	2400.00	Includes witness auditing (physical benchmarking) preparation and reporting.  Based on 3 days ·
Travel time	500.00	For travel in excess of 12 hours travel time a flat fee will be charged each way.

All fees are subject to 10% GST within Australia, and where applicable shall be included in the JAS-ANZ Tax Invoice.

\* Where auditors are sourced from other accreditation bodies, and other sources, the per day rate may vary.

Any additional time required for processing applications, as a result of:

- an incomplete application, or
- a standard that is not comparable to the EUREPGAP standard, or
- where the maximum allocated days are exceeded,

then additional time will be charged at pro rata \$800.00 per day.

Travel, accommodation and associated expenses are invoiced at cost.

A M Craven  
Chief Executive  
With the authority of the Governing Board

**1. ARBITRATION**

1.1 Any future legal dispute arising out of or in connection with this Agreement and its Annexes, shall be definitively decided, at the exclusion of the applicable courts, by arbitration in accordance with the arbitration rules as set out in this Agreement. The arbitral tribunal shall also be responsible for disputes concerning the effect and interpretation of this arbitration Agreement.

1.2 The arbitral tribunal shall have the right to impose a contractual penalty on a party in breach of this Agreement or its Annexes. The arbitral tribunal may at its discretion determine the amount of the contractual penalty. The amount shall be determined in accordance with the gravity of the infringement.

1.3 The arbitral tribunal shall only decide on claims by way of set-off, if the claim also arises from this Agreement or its Annexes.

1.4 The arbitral tribunal shall be composed of two arbitrators and the presiding arbitrator. The two arbitrators shall be members of the same profession as the disputing parties, respectively.

The presiding arbitrator shall act as president of the arbitration tribunal. He shall possess the qualifications for serving as a judge in the German courts.

1.5 The claimant shall inform the respondent, by registered post, of the appointed arbitrator, specifying the exact nature of the claim and the reason for the claim, including detailed reasoning and the evidence to be adduced and the relief or remedy sought. The claimant shall request the respondent to appoint the second arbitrator within a period of three weeks. The time limit begins on the day the registered mail is posted.

If the respondent does not comply within the time limit, the regional court (Landgericht) in whose district the arbitral tribunal is situated shall at the request of the claimant appoint an arbitrator for the defaulting party.

1.6 The two arbitrators shall appoint the presiding arbitrator within two weeks time of the appointment of the second arbitrator. If they do not reach agreement within this time limit, the president of the higher regional court (Oberlandesgericht) in whose district the arbitral tribunal is situated, shall appoint the presiding arbitrator.

1.7 The presiding arbitrator shall inform both parties that the arbitral tribunal has been set up and shall summon the claimant to submit its claim within two weeks time. The claim shall be submitted in duplicate to the presiding arbitrator and one copy shall be submitted for each of the two arbitrator.

The presiding arbitrator shall forward the claim by registered post to the respondent setting a time limit of not less than one week within which to communicate a statement of defence. The arbitral tribunal may make an award or issue a decision as soon as the statement of defence has been submitted.

1.8 If an arbitrator no longer acts for whatever reason, then the party who appointed him shall within three weeks appoint a substitute arbitrator. If the aforementioned party does not comply within the time limit then at the request of the other party, the regional court (Oberlandesgericht) in whose district the arbitral tribunal is situated, shall appoint a new arbitrator.

If the presiding arbitrator no longer acts for whatever reason and the arbitrators cannot reach agreement within two weeks on a new presiding arbitrator, then the president of the

higher regional court (Oberlandesgericht) in whose district the arbitral tribunal is situated, shall at the request of either a party or an arbitrator appoint a new presiding arbitrator.

- 1.9 The award shall be made in writing and be duly reasoned. It shall be signed by all the arbitrators and the presiding arbitrator and shall contain the date on which and the place where the award was made. Copies of the award shall be communicated by the arbitral tribunal (Zivilprozessordnung) to the parties by mail or fax. Postal delivery shall be sufficient.
- 1.10 The arbitral tribunal shall fix the costs of arbitration in its award according to sections 91 et seq. of the Zivilprozessordnung (German civil procedural law).
- 1.11 For any additional proceedings according to sections 1025 et seq., the competent court shall be the regional court having jurisdiction in the place where the arbitral tribunal is situated.
- 1.12 Apart from rules set out in this agreement, the rules of the tenth book of the Zivilprozessordnung (German civil procedural law) apply.
- 1.13 The place of the arbitral tribunal shall be at the place of EUREPGAP's registered office.