

# **CERTIFICATION AGREEMENT**

## **DATE OF THIS AGREEMENT:**

## **PARTIES**

ACO Certification Ltd ACN 099 884 983 of Level 9, 215 Adelaide Street, Brisbane in the State of Queensland 4000 (“ACO”)

\_\_\_\_\_  
(Name – Sole Trader, Company, Trust, Partnership)

\_\_\_\_\_  
(Trading as / Trading Name)

\_\_\_\_\_  
(ABN)

\_\_\_\_\_  
of (address)

\_\_\_\_\_  
 (“the Certified Party”)

## **BACKGROUND**

- A. ACO has agreed to provide the Certification Service to the Certified Party and grant to the Certified Party a non-exclusive licence to access and use the Licensed Material.
- B. The Parties wish to enter into this Agreement to govern the granting and terms of such an agreement.
- C. This Agreement cancels and replaces any agreement that may have been reached by the Parties in relation to any certification services or the licensing of the Licensed Material.

## **IT IS AGREED THAT:**

### **1. Definitions and Interpretation**

- 1.1 In this Agreement, the definitions provided for in Part 1 of Schedule 1 apply, except where the context otherwise requires.
- 1.2 In this Agreement, the interpretations provided for in Part 2 of Schedule 1 shall be deemed to apply, unless the contrary intention appears.

### **2. Certification**

- 2.1 Subject to the Certified Party’s compliance with the terms of this Agreement, ACO agrees to provide the Certified Party with the Certification Service.
- 2.2 The particulars of the Certification Service apply except where the context otherwise requires.
- 2.3 Subject to its continued compliance with the Certification Process, the Standards, and the terms of this Agreement, ACO will provide the Certified Party with a Certificate annually, or as specified in the Standards.
- 2.4 ACO will inform the Certified Party about any change in the Certification Process and/or the Standards, whether within ACO’s control or not, which will adversely affect the Certification.
- 2.5 The Certified Party must do all things necessary to maintain full compliance with the Certification Process and/or the Standards which may be in place from time to time, including those which have changed pursuant to clause 2.4 above.
- 2.6 At all times, a certified operator has the right to appeal certification decisions by ACO Certification Ltd.
- 2.7 Certified operators do not have the right to choose nor to recommend auditors to ACO for the conduct of their audit/s.

### **3. Licence**

#### *Grant of Licence*

- 3.1 Subject to the Certified Party’s compliance with the terms of this Agreement, ACO grants to the Certified Party a non-exclusive licence to

- access use the Licensed Material to market and promote the Specified Production (“the Licence”).
- 3.2 The particulars of the Licence are set out in Schedule 2, and throughout this Agreement, apply except where the context otherwise requires.
- 3.3 The Licence commences on the Commencement Date and concludes whenever this Agreement is terminated in accordance with this Agreement.
- 3.4 Except for any provisions which are expressed to survive the termination or expiry of this Agreement, this Agreement will endure until it is terminated in accordance with this Agreement.

## **4. General restrictions on the use, copying and reproduction of Licensed Material.**

- 4.1 This Agreement does not allow the Certified Party to use the Licensed Material or to do any other act comprised in the Intellectual Property Rights in the Licensed Material or any part of the Licensed Material, except as expressly stated in this Agreement.
- 4.2 Any provision of this Agreement which grants a licence or permission to use or disclose the Licensed Material (or any part of it) is to be read subject to any clause which restricts the use or disclosure of the Licensed Material (or part of it).
- 4.3 Without limiting clause 4.2 above, any provision of this Agreement which grants permission to use or do any act in relation to this Agreement is to be read as granting permission to use the Licensed Material or do the act only between the Commencement Date and until this Agreement is terminated, unless expressly stated to the contrary in this Agreement.
- 4.4 Unless expressly authorised by another provision of this Agreement: if the Certified Party is an individual, subject to this Agreement the Certified Party shall only use the Licensed Material himself or herself, and not authorise any other person to use the Licensed Material without the consent of ACO; and if the Certified Party is not an individual, subject to this Agreement the Certified Party shall not allow the Licensed Material to come into the possession or control of any other person.
- 4.5 The Certified Party must not: copy the Licensed Material or any part of the Licensed Material; make the Licensed Material or any part of the Licensed Material available online; electronically transmit the Licensed Material or any part of the Licensed Material in any way; or do any other act comprised in the Intellectual Property Rights in the Licensed Material or any part of the Licensed Material, except as permitted by this Agreement or with the consent of ACO.
- 4.6 This clause 4 survives termination or expiry of this Agreement.

## **5. Payment of fees, costs, and charges**

- 5.1 The Certified Party will pay the Certification Fee within thirty (30) days of being invoiced for the Certification Fee or at such other interval as required by ACO in the manner and by the date directed by ACO from time to time.
- 5.2 If the Certified Party does not make payment in accordance with clause 5.1 above: The Certified Party must pay ACO the Late Payment Fee in addition to the Certification Fee within thirty (30) days of being invoiced for the Late Payment Fee; and ACO may suspend the Certified Party’s rights and privileges granted by this Agreement until both the Certification Fee and the Late Payment Fee have been paid in full.
- 5.3 The Certified Party will pay to ACO any costs and charges associated with additional auditing required by ACO incurred as a result of its non-compliance with the Standards at any time.
- 5.4 The Certified Party will pay all monies owing to ACO under this clause 5 to ACO as directed by ACO from time to time.
- 5.5 The Certified Party acknowledges and agrees that if any amount due under this Agreement remains outstanding after the relevant due date, the Certified Party must pay to ACO in addition to the overdue amount:
  - (a) interest calculated at the rate of 8% per annum on daily balances from the date of the default until the date the amount (together with accrued interest) is paid in full; and
  - (b) all costs and expenses on a full indemnity basis, including any legal costs or debt collector costs, incurred by ACO in collecting the overdue amounts (including interest) as a liquidated sum due and owing.
- 5.6 This clause 5 survives termination or expiry of this Agreement.

## 6. ACOs' Obligations

6.1 ACO will use its best endeavours: in the performance of the Certification Service, which involves implementing its procedures and demonstrating that it has done everything within its power, based on the information and documents provided by the Certified Party pursuant to this Agreement; and to comply with this Agreement.

6.2 Based on the information provided by the Certified Party and/or obtained by ACO during any audit or other investigations, ACO undertakes to use the appropriate means to perform the Certification Service, in line with its procedures, and to do everything within its power, in particular: keeping to reasonable deadlines for performing its services; wherever possible and as long as the reliability of its service is not compromised, liaising with the Certified Party to implement the Certification Process; requesting from the Certified Party all information and documents deemed necessary for the provision of the Certification Service (including those subject to clause 11 below); and liaise with, as required, any committees responsible for compliance with the Standards and/or any other relevant technical committees.

6.3 ACO has no obligation, under the terms of this Agreement: to check that the Specified Production meets requirements other than those contained in the scope of Certification, such as legal or regulatory requirements for the products in general and their labelling (the Certified Party is entirely responsible for ensuring that the Specified Production can be sold in a particular market with a reference to the Standards); to check the findings recorded in the certificates of experts, suppliers or inspection bodies presented to it by the Certified Party; to issue a certificate for compliance with any public rules or private standards other than the Standards; or to ensure a supply outlet or source for the Specified Production.

## 7. Certified Party's Obligations

The Certified Party:

7.1 must use the Certification Number granted in conjunction with the use of the Licensed material.

7.2 must use the Licensed Material only as allowed by the scope of Certification and in accordance with this Agreement.

7.3 acknowledges that incorrect references to the Certification Process, or misleading use of Licensed Material, Certificate, Certification, marks, or any other mechanism for indicating a product is or has been certified by ACO, found in any form, can result in action by ACO including but not limited to: the issuing of corrective actions against the Certified Party; withdrawal of the Certificate.

publication of the Certified Party's transgression; and legal action.

7.4 must comply with all legislation, regulations and industry requirements, policies, by-laws, conditions, or any other instrument binding on the Certified Party from the Commencement Date until this Agreement is terminated.

7.5 must comply with any relevant Certification Process or ACO requirements when using the Licensed Material in communication media such as documents, brochures, or advertising.

7.6 must comply fully with the Standards and adhere strictly to any requests and requirements issued by ACO between audits which apply to the Certification.

7.7 must notify ACO in writing if it changes its postal address, email address, telephone number, or contact person.

7.8 must make all necessary arrangements for the conduct of any audits required by ACO, including but not limited to: the provision for examining and copying any of its documentation and records in relation to the Certification, the Licence and/or this Agreement; complete and uninterrupted access to conduct an inspection of any premises on which the Certification Service or Certification Process takes place; complete and uninterrupted access to inspect any additional or related external facilities or locations under the management of the Certified Party; allowing for the collection of samples of the Specified Production for laboratory analysis; and making available for review all systems of production, marketing, promotion and financial information;

7.9 must at all times allow ACO's auditors, reviewers, contracted laboratories, certification officers, accreditation personnel, relevant competent authorities, or government bodies to assess any facilities or locations under the Certified Party's management and lend all reasonable assistance and resources for purposes related to

Certification and investigation of any complaints which may have been made against the Certified Party.

7.10 must provide ACO, within thirty (30) days of such request, with a written statement of Turnover using the Certification Marks and/or ACO's name and/or ACO's label, as may be required by ACO, in respect of each Quarter the subject of the request.

7.11 must give notification of any change, circumstance or occurrence which may affect the Certified Party's ability to conform with the Certificate or the Certification without delay and must await written confirmation from ACO that these significant changes have been approved prior to the release of Specified Production following such changes.

7.12 must reproduce copies of the Certificate and any other document relating to Certification in their entirety or as specified by ACO in the Certification Process or at any other time.

7.13 must notify ACO immediately and in writing if there is any form of product contamination or product recall in relation to the Specified Production.

7.14 must keep a record of all complaints made known to it relating to compliance with Certification and make these records available to ACO when requested and takes appropriate action with respect to such complaints and any deficiencies found in the Specified Production that affects compliance with the Certificate or Certification; and documents any such actions taken.

7.15 must keep in the English language and maintain within their Certified Party's custody and control current records which accurately reflect the Turnover using the Certification Marks and/or ACO's name and/or ACO's label and outline full financial details pertaining to their operation.

7.16 must keep for at least twelve (12) months after the expiration of each Quarter the records referred to in clause 7.15 above in respect of that Quarter.

7.17 agrees to adhere to any sanctions imposed by ACO under this Agreement.

7.18 where the Certified Party decides to change its certifier from ACO to another body and accordingly terminate this Agreement (for the avoidance of doubt, the other body may in parts be referred to variously as a "Control Authority" or "Control Body"), the Certified Party acknowledges that ACO may transfer or transmit files held by ACO in relation to the Certified Party to the subsequent Control Authority or Control Body; and

7.19 accepts that there may be an exchange of information with other certification bodies as required if a) the certified operation or associated sublicenses are inspected by another certifier, b) certification is transferred to another certifier, including but not limited to the circumstances described in clause 7.18 above.

7.20 accepts that ACO will keep all records pertaining to certification for five (5) years, including on withdrawal of certification.

7.21 accepts that all correspondence, documentation, and records relating to the Certification, the Licence and/or this Agreement must be undertaken in the English language.

## 8. Relationship between the Parties

8.1 Nothing in this Agreement will be construed to mean that one Party is the partner, agent, employee, or representative of the other Party and neither Party has the power to incur obligations on behalf of or pledge the credit of the other Party.

8.2 The Certified Party acknowledges that its access to and use of the Licensed Material may suggest to third parties that the Certified Party is related to or part of the operational system of ACO, and the Certified Party will use its best endeavours to correct any misleading implications which become apparent to it as a result of the access and use to the Licensed Material granted under this Agreement.

8.3 This clause 8 survives termination or expiry of this Agreement.

## 9. Dispute Resolution

9.1 If any dispute arises in relation to this Agreement, either Party may give written notice to the other Party that it has a complaint about the performance of the other Party ("**the Complaint**") and setting out the nature of the Complaint ("**the Dispute Notice**").

9.2 Upon service of the Dispute Notice, the Parties are to arrange a meeting and thereafter are to meet and endeavour to expeditiously resolve the Complaint.

9.3 If the Parties agree, the Complaint may be referred to a jointly appointed expert ("**Expert**") for determination.

9.4 The determination of an Expert is final and binding on the Parties.

9.5 Each Party will bear its own costs of endeavouring to resolve the Complaint pursuant to this clause 9 and, if an Expert is appointed, will share equally the costs of the Expert.

9.6 Nothing in this clause 9 prevents a Party from instituting proceedings for the purpose of obtaining injunctive relief or specific performance to restrain any breach or prevent or compel performance under, or declaratory relief in relation to, this Agreement.

9.7 This clause 9 survives termination or expiry of this Agreement.

## 10. Intellectual Property Warranty

10.1 ACO warrants that it owns the Australian Intellectual Property Rights in the Licensed Material or has the right to licence the Licensed Material in Australia and the Australian Intellectual Property Rights in the Licensed Material under this Agreement.

10.2 The Certified Party acknowledges that except as provided in clause 10.1 above, ACO does not warrant that it owns any Intellectual Property Rights in the Licensed Material or has any right to licence the Licensed Material or the Intellectual Property Rights in the Licensed Material.

10.3 If this Agreement licenses or otherwise allows the Certified Party to use or do any other act in relation to the Licensed Material outside Australia, then: the Certified Party acknowledges that it may be necessary for the Certified Party to obtain further licences, from third parties, in relation to such use or other act outside Australia; and the Certified Party agrees to obtain any such necessary third-party licences.

## 11. Confidential Information and Privacy

### *Confidential Information*

11.1 Each Party will ensure that Confidential Information of the other Party is treated as confidential and will not, without the consent of the other Party, disclose or permit it to be disclosed to any other person, unless authorised or required by law.

11.2 Clause 11.1 above does not prevent a Party from disclosing Confidential Information of the other Party, on a confidential basis, to an employee of the disclosing Party who needs to know the Confidential Information (as part of the employee's employment with the first mentioned Party) in order for the disclosing Party to be able to use the Confidential Information in accordance with this Agreement or to exercise any right of the first mentioned Party arising under this Agreement.

11.3 The Certified Party will immediately notify ACO upon becoming aware of any breach of this clause 11.

11.4 Clauses 11.1, 11.2 and 11.3 above survive termination or expiry of this Agreement.

### *Privacy and Disclosure of Personal Information*

11.5 The Certified Party acknowledges that: it consents to ACO collecting Personal Information to enable ACO to carry out its functions pursuant to this Agreement; all Personal Information obtained or created during the performance of the Certification Process or any activities in relation to Certification is considered proprietary information and will be regarded as confidential; Personal Information obtained from sources other than the Certified Party (for example, from a complainant or from regulators) will be treated as confidential; ACO will use its best endeavors to ensure that none of the employees, contractors or auditors involved in the implementation of this Agreement who may have any occasion to view, handle or obtain any Personal Information concerning the Certified Party, shall disclose any Personal Information received, nor use it for its own or any person's benefit; there shall be no obligation of confidentiality with respect to Personal Information that the Certified Party has made or makes available in the public domain, or has become publicly known through no wrongful act of ACO under this Agreement; the Certified Party consents to ACO making available to third parties, regardless of the medium used, the Certified Party's name, contact details and details of the Specified Production and, where applicable, Personal Information relating to the suspension or withdrawal of the Certificate; when ACO is required by law or bound or authorised by contractual arrangement to release any or all of the Personal

Information, the Certified Party shall, unless prohibited by law, be notified of the Personal Information to be provided; and the Certified Party consents to ACO sharing limited relevant information with other certification bodies, competent authorities, accreditation bodies and scheme owners, may be necessary where verification of compliance and the integrity of certified produce is at stake.

11.6 A Party becoming aware of any breach of clause 11.5 above will immediately notify the other Party upon becoming aware of such breach.

11.7 ACO will investigate and make any necessary reports to government agencies or other external bodies who are required to be advised in the event where ACO believes or has reason to believe that the security of the Confidential Information (insofar as it relates to the Certified Party) has been accessed in a way such that is likely to cause serious harm to the person or persons to whom the information relates.

11.8 Clause 11.5 above survives termination or expiry of this Agreement.

11.9 For COSMOS Certification, ACO will enable raw material suppliers to request that their certification information is not made publicly available on the COSMOS databases when required for confidentiality reasons.

11.10 For Freshcare certification, the Certified Party acknowledges and agrees that the certification status of the business will be available through FreshcareOnline (authorised users only) and publicly available through the business search function on the Freshcare website. The Certified Party acknowledges and agrees that the audit reports and related data will be shared with Freshcare, the Accreditation Body and Global Food Safety Initiative (GFSI) in accordance with the Freshcare Rules. The audit report will only be shared with other parties with the approval of the Certified Party.

### *Moral Rights*

11.10 The Certified Party agrees to not infringe any of ACO's Moral Rights in the Licensed Material.

11.11 Clause 11.9 above survives termination or expiry of this Agreement.

## 12. Raw Material Approval

12.1 ACO confirms that it is authorised by COSMOS for the approval of raw materials.

12.2 The Certified Party acknowledges and agrees that ACO and COSMOS may refer to the approved raw material on their respective websites. To this end, the Certified Party allows ACO to transfer to COSMOS for publication purposes, its contact details along with the trade name, the chemical name or INCI name (as the case may be), and the purpose and status of the approved raw material; and

12.3 The Certified Party permits ACO to exchange information related to approvals with other authorised certification bodies, particularly to verify the status or the conformity of the raw materials with the COSMOS standard. Should these exchanges concern confidential information, ACO and the Certified Party shall jointly and previously identify the information that can be transmitted in this framework.

## 13. Costs and charges

13.1 Subject to clause 5 above, the Parties will pay their own costs and charges of and incidental to this Agreement.

13.2 Notwithstanding clause 13.1 above, any duty payable (including but not limited to stamp or transfer duty) in relation to this Agreement or otherwise in relation to the Licence will be the responsibility of the Certified Party.

## 14. Goods and Services Tax

14.1 Except where provision is made to the contrary in this Agreement, the consideration payable by any Party under this Agreement represents the value of any taxable supply for which payment is made.

14.2 If a Party makes a taxable supply in connection with this licence agreement for a consideration which under clause 14.1 or clause 14.3 represents its value, then the Party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the taxable supply.

14.3 If this Agreement requires the Certified Party to pay, reimburse or contribute to an amount paid or payable by ACO in respect of an acquisition from a third party for which ACO is entitled to claim an input tax credit, the amount required to be paid reimbursed or contributed by the Certified Party will be the value of the acquisition by ACO plus, if ACO's recovery from the Certified Party is a taxable supply, any GST payable under clause 14.2 above.

## 15. Termination

15.1 Without prejudice to any other rights ACO may have under this agreement or at law, ACO may terminate this Agreement immediately by notice in writing in any of the following circumstances, if: the Certified Party is in breach of any clause of this Agreement and such breach is not remedied within fourteen (14) days of written notice by ACO; in the reasonable opinion of ACO, the Certified Party becomes or threatens to become or is in jeopardy of becoming subject to any form of insolvency administration; any amount due to ACO under this Agreement is not paid within fourteen (14) days of the date on which the amount became due and payable; the Certified Party at any time fails to hold Certification that is current; the Certified Party fails to comply with or apply the Standards and any other requirements in place from time to time for the Specified Use of the Specified Production; or the Certified Party participates in illegal activities.

15.2 Either Party may terminate this Agreement without reason upon the provision of three (3) months' notice of their intention given to the other Party, and any such termination does not affect any rights accrued or accruing to either Party under this Agreement until the termination takes effect.

15.3 Immediately upon termination of this Agreement, the Certified Party must: stop using the Licensed Material; destroy or deliver up and surrender to ACO, at their own cost, all labels, packaging and other materials showing the Licensed Material, and acknowledges that in the event the Certified Party does not comply promptly with this directive, ACO will employ any means necessary to carry out the required tasks and recoup costs incurred from the Certified Party; and not claim, advertise or warrant that the Certified Party is or was licensed, certified or approved by ACO.

## 16. Indemnity

16.1 The Certified Party agrees to continually indemnify ACO and its officers and employees against any loss, cost, expense, damage and liability of any kind (including consequential damage and liability in negligence and reasonable legal costs and expenses) incurred by any of those indemnified where the loss, cost, expense, damage or liability arises directly or indirectly from or is related to any claim, demand, suit, action or proceeding by any person (including the Certified Party) against any of those indemnified, and such claim, demand, suit, action or proceeding is in relation to, or arising out of, in connection with, or in respect of the Licensed Material (or any information contained in the Licensed Material), or any other product made using the Licensed Material; against any loss, cost, expense, damage and liability of any kind (including consequential damage and liability in negligence and reasonable legal costs and expenses) incurred by ACO in relation to any actual or potential compromise of the security of certain Confidential Information as described in clause 11.7 above; or any breach by the Certified Party of this Agreement, ("**the Indemnity**").

16.2 The Indemnity will be granted irrespective of whether legal proceedings are instituted and the means, manner or nature of any settlement, compromise, or determination.

16.3 A person or other legal entity which is indemnified by the Certified Party under this clause 16 may recover a payment from the Certified Party under the Indemnity before it makes the payment in respect of which the Indemnity is given.

16.4 This clause 16 survives the termination or expiry of this Agreement.

## 17. Limitation of Liability

17.1 To the full extent permitted by applicable law, in no event will ACO be liable to the Certified Party on any legal basis (including, without limitation, negligence) for any loss or damage whatsoever, including (without limitation) loss of production or operation time; loss, damage or corruption of data or records; or loss of anticipated savings, opportunity,

revenue, profit or goodwill, or other economic loss; or any special, incidental, consequential, punitive or exemplary damages arising out of or in connection with this Agreement, provision of the Certification Service or the use of the Licensed Material, even if ACO has been advised of the possibility of such damages.

17.2 If applicable legislation implies warranties or conditions on the part of ACO, or imposes obligations or liability on ACO in respect of this Agreement that cannot be wholly or partly excluded, restricted or modified, ACO's liability is limited to: in the case of goods, any one or more of the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or in the case of services: the supplying of the services again; or the payment of the cost of having the services supplied again.

17.3 The Certified Party undertakes to do all that is necessary in order to mitigate and/or limit as far as possible any loss that may be sustained on account of a fault committed by ACO.

17.4 ACO will, at all times under this Agreement, have in place an insurance policy which covers damage for which it may be held liable in the performance of its obligations under this Agreement.

17.5 This clause 17 survives termination or expiry of this Agreement.

## 18. General

### *Warranty*

18.1 The Certified Party warrants that in entering this Agreement and performing their obligations under this Agreement, they will not be in breach of an obligation owed to, or infringe the rights of, any person.

### *Reading down*

18.2 If any provision of this Agreement is void, voidable, unenforceable, or illegal in its terms but would not be void, voidable, unenforceable, or illegal if it were read down and it is capable of being read down, then that provision will be read down accordingly.

### *Severance of provisions*

18.3 If, notwithstanding clause 18.2 above, a provision of this Agreement is or, but for this clause 18.3, would be void, voidable, unenforceable, or illegal: if the provision would not be void, voidable, unenforceable, or illegal if a word or words were omitted, then that word or those words are severed; or in any other case, the whole provision is severed, and the remainder of this Agreement will be of full force and effect.

### *Entire agreement*

18.4 This Agreement constitutes the sole and entire agreement between the Parties relating in any way to the subject matter of this Agreement and no oral or written warranties, representations, guarantees or other terms or conditions of any nature not contained in this Agreement shall be of any force provided that any terms or conditions implied by law shall continue to be implied except to the extent that they are inconsistent with any express term of this Agreement.

### *No merger*

18.5 The covenants, conditions, provisions, and warranties in this Agreement do not merge or terminate on completion.

### *Further Assurances*

18.6 Each Party must, at its own expense, do everything reasonably necessary to give full effect to this Agreement.

### *Waiver*

18.7 The failure, delay, or omission by a Party to exercise a power or right conferred on that Party by this Agreement will not operate as a waiver of that power or right, and any single exercise of a power or right will not preclude another exercise of that power or right, or the exercise of another power or right under this Agreement.

18.8 A waiver of a provision of this Agreement, or consent by one Party to a departure by the other Party from a provision of the Agreement, must be in writing and signed by both parties.

### *Variation*

18.9 This Agreement may only be varied by a document signed by or on behalf of each of the Parties.

### *Assignment*

18.10 The Certified Party must not assign this Agreement in whole or in part and must not grant any sub-licence in respect of the Licensed Material or any part of the Licensed Material, without the prior written consent of ACO, which consent may be given or withheld in the absolute discretion of ACO.

*Governing law and jurisdiction*

18.11 This Agreement shall be governed by and construed with reference to the laws in force in the State of Queensland and each Party hereby submits unconditionally to the jurisdiction of the appropriate courts of the State of Queensland and any courts competent to hear appeals from those courts.

*Force Majeure*

18.12 If a Party is prevented from or delayed in performing an obligation by Force Majeure, and promptly acts to mitigate or remove the Force Majeure and its effect, then the obligation is suspended during, but for no longer than, the period the Force Majeure continues and any further period that is reasonable in the circumstances.

18.13 If either Party is unable to perform its obligations under this Agreement due to Force Majeure and the inability continues for a period of thirty (30) days, either Party may terminate this Agreement immediately on providing notice to the other Party.

*Electronic Version and Counterparts*

18.14 This Agreement may be executed in any number of counterparts, and all the counterparts together shall make one instrument/agreement.

18.15 This Agreement may be validly created by counterparts sent by facsimile and/or email. The parties agree to be bound by copies of this agreement which have been signed and/or facsimiled or emailed.

18.16 The Parties further agree that they will be bound by, have complied with, and will comply with the Electronic Transactions Act 2001 (Qld) in relation to the execution of this Agreement.

**19. Notices**

*Service of notice*

19.1 Any notice, approval, consent, or other communication under this Agreement must be in writing, and delivered personally or given by prepaid registered post, email, or facsimile to a Party at the address of that Party indicated in this Agreement, or to another address as that Party may from time to time notify to the other for the purposes of this clause.

*Proof of service*

19.2 Proof of posting by prepaid registered post or of dispatch of facsimile will be proof of receipt, in the case of a letter, on the third day after posting; in the case of facsimile, on the day immediately following dispatch, provided that the sender's facsimile machine produces a simultaneous report of successful transmission; in the case of email, upon the non-receipt by the sender of an unsuccessful transmission notification within 48 hours of dispatch.

## SCHEDULE 1

### Part 1: Definitions

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| <b>Australian Intellectual Property Rights</b> | means copyright, trademark, design, patent, semiconductor or circuit layout rights, trade, or other proprietary rights, or any rights to registration of such rights existing in Australia or protected by statute in Australia from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights.   |
| <b>Certification Marks</b>                     | means any mark, logo, insignia, design, or other indicator which ACO may from time to time allow the Certified Party to use in order to indicate Certification.  |
| <b>Certificate</b>                             | means the document of Certification of the Certified Party.  |
| <b>Certification</b>                           | means approval by ACO that the Certified Party satisfies the Standards, and any additional standards and/or requirements of ACO in respect of the Specified Use of the Specified Production.   |
| <b>Certification Number</b>                    | means the number assigned by ACO when issuing the Certificate.   |
| <b>Certification Process</b>                   | means ACO's process investigating the Certified Party in order to provide the Certified Party with Certification and a Certification Number.   |
| <b>Certification Service</b>                   | means that service undertaken by ACO in it carrying out the Certification Process, and any related activities.   |
| <b>Confidential Information</b>                | <p>means all information of either Party that is confidential by nature or circumstance, and includes all information passing from one Party to the other Party relating to the business or operations of the first mentioned Party (including, but not limited to, trade secrets, drawings, know-how, technical and financial information, source and object code, business and marketing plans, projections, and other information of whatever description and in whatever form),</p> <p><i>except that:</i></p> <p>"Confidential Information" does not include information which a recipient Party (that is, a Party who would be bound by a duty of confidentiality under this Agreement in relation to the information if it were "Confidential Information") can reasonably demonstrate:</p> <ul style="list-style-type: none"> <li>• is already in the public domain, or after the date of this Agreement becomes part of the public domain, other than as a result of an unauthorised disclosure by the recipient Party; or</li> <li>• is, or becomes, available to the recipient Party from a third party lawfully in possession of that information and who has the lawful power to disclose such information to the recipient Party; or</li> <li>• was known to the recipient Party before its disclosure under this Agreement or is independently developed by the recipient Party during the term of this Agreement.</li> </ul> |
| <b>Force Majeure</b>                           | <p>means a circumstance beyond the reasonable control of a Party, which results in that Party being unable to perform an obligation on time, and is limited to:</p> <ul style="list-style-type: none"> <li>• natural events such as fire, flood, or earthquake.</li> <li>• national emergency.</li> <li>• terrorist act; or</li> <li>• war.</li> </ul>   |
| <b>GST</b>                                     | means GST as that term is defined in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).  |
| <b>Intellectual Property Rights</b>            | means includes copyright, trademark, design, patent, trade, or other proprietary rights, or any rights to registration of such rights protected by statute from time to time, whether created before, on or after the Commencement Date, but excludes Moral Rights.  |
| <b>Moral Rights</b>                            | means the right of integrity of authorship, the right of attribution of authorship and the right to not have authorship falsely attributed, more particularly as conferred by the <i>Copyright Act 1968</i> (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the Commencement Date.  |
| <b>Personal Information</b>                    | means any other information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.   |
| <b>Quarter</b>                                 | means each three-month period ending on the last days of March, June, September, and December, respectively.   |

### Part 2: Interpretation

In this agreement, unless the contrary intention appears:

- A reference to a clause, subclause, paragraph, or schedule is a reference to a clause, subclause, paragraph, or schedule in this Agreement.
- A reference to a subclause is a reference to the relevant subclause in the clause where the reference is made, and a reference to a paragraph is a reference to the relevant paragraph of the subclause in which the reference is made.
- A cross-reference to a clause number is a reference to all of that clause's subclauses.
- Headings are for convenience only and do not affect the interpretation of this Agreement, nor do they have any effect in limiting or extending the language of the provisions to which they refer.
- The singular includes the plural and vice versa.
- The word "including" means "including but not limited to" and the word "includes" means "includes without limitation."
- Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- A reference to this Agreement or any other instrument includes any variation of, supplement to, replacement of or novation of this Agreement or that other instrument, as the case may be.

- The word “person” includes an individual, company, partnership, joint venture, association, corporation, or other body corporate or governmental agency.
- A reference to a person includes that person’s executors, administrators, successors, substitutes (including, but not limited to, by novation) and permitted assigns.
- A reference to any legislation or to any provision of any legislation includes any amendments to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it.
- A reference to monetary value is a reference to Australian dollars.
- Derivatives of any term to which a meaning is assigned in this licence agreement have the corresponding meaning.
- Words and phrases in clause 13 have the meaning attributed to them by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## SCHEDULE 2

|                                      |   |
|--------------------------------------|---|
| <b>Commencement Date</b>             | means the date of this Agreement.   |
| <b>Late Payment Fee</b>              | means the term, and associated fees, included in the definition of the term “Late Payment Administration Charge” in the Fee Schedule.   |
| <b>Certification Fee</b>             | means, together, the Certification Application Fee, Annual Fees, Industry Development Levy and Other Fees.  |
| <b>Certification Application Fee</b> | means the fees listed in the Fee Schedule under the heading “Certification Application” as applicable to the certification of the Certified Party.  |
| <b>Annual Fee</b>                    | means the fees listed in the Fee Schedule under the heading “Annual Fees” as applicable to the certification of the Certified Party.  |
| <b>Industry Development Levy</b>     | means the fees listed in the Fee Schedule under the heading “Industrial Development Levy (IDL)” as applicable to the certification of the Certified Party.  |
| <b>Other Fees</b>                    | means the fees listed in the Fee Schedule under the heading “Other” as applicable to the certification of the Certified Party.  |
| <b>Fee Schedule</b>                  | means a schedule of fees in relation to certain fees to be paid by the Certified Party, which will be maintained by ACO, and which may be updated from time to time, notice of such an update to be given by ACO to the Certified Party as soon as reasonably practicable after the implementation of any such update.  |
| <b>Labelling Guide</b>               | means a guide containing labels to be used by the Certified Party in accordance with the terms of this Agreement, which will be maintained by ACO, and which may be updated from time to time, notice of such an update to be given by ACO to the Certified Party as soon as reasonably practicable after the implementation of any such update.  |
| <b>Licensed Material</b>             | means the terms, logos and registered trademark licensed for use by ACO and which are contained in the Labelling Guide.   |
| <b>Minimum Fee</b>                   | means that term as it is defined in the Fee Schedule.   |
| <b>Specified Production</b>          | means the produce or products shown on the Certificate’s annex.   |
| <b>Specified Use</b>                 | means the labelling of produce or products shown on the Certificate’s annex.  |
| <b>(the) Standards</b>               | <p>means any of the following which are agreed by the Parties from time to time to be the relevant Certification for the purposes of this Agreement:</p> <ul style="list-style-type: none"> <li>• Australian Certified Organic Standard</li> <li>• National Standard for Organic and Biodynamic Produce</li> <li>• European Organic Regulations</li> <li>• COSMOS</li> <li>• Japanese Agricultural Standard</li> <li>• Korean Organic Standard</li> <li>• USDA National Organic Program</li> <li>• Australian Organic Registered Products</li> <li>• Australian Certified Non-GMO Standard (Australian Organic)</li> <li>• Freshcare Food Safety and Quality – FSQ</li> <li>• Freshcare Food Safety and Quality – Supply Chain</li> <li>• Freshcare – ENV</li> <li>• Freshcare Australian Wine Industry Standard of Sustainable Practice – Viticulture (AWISSP-VIT)</li> <li>• Freshcare Australian Wine Industry Standard of Sustainable Practice – Winery (AWISSP-WIN)</li> <li>• Harmonised Australian Retailer Produce Scheme (HARPS)</li> <li>• Regenerative Organic Certified (ROC)</li> <li>• Leading Harvest Farmland Management Program</li> <li>• Certified Sustainable Standard</li> </ul> |
| <b>Turnover</b>                      | means the amount received as the Certified Party’s sale price (which excludes GST) of all the Specified Production less any refunds given. A sale or a charge on credit or terms is treated as if the full amount was received on the invoice date irrespective of when the Certified Party receives payment of the price (if at all).  |

**EXECUTED as an agreement:**

Please ensure you sign in the correct location, which you can determine by reading the following notes. You will only need to sign one of the sections below.

**IF YOUR ORGANISATION IS A COMPANY:**

- Write the company name after the words "EXECUTED by" immediately below.
- Write the company ACN.
- For companies with a sole director and secretary, sign once on the first line indicated "Director".
- For Companies with two or more directors, two directors or a director and the secretary (cannot be the same person) sign using the two signing panels below.
- A director's signature does not need to be witnessed.

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| <p><b>EXECUTED</b> by _____ Pty Ltd</p> <p>ACN _____ pursuant to section 126 and/or 127 of the <i>Corporations Act 2001</i>.</p><br><br><p>_____</p> <p>Date</p> | <p>_____</p> <p>Director</p><br><br><p>_____</p> <p>Director/Secretary</p> |
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**IF YOU ARE AN INDIVIDUAL (SOLE TRADER):**

- Write your name after the words "SIGNED by" immediately below.
- The witness's name and signature must also be completed.

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|---|---|
| <p>SIGNED by</p> <p>_____</p><br><br><p>_____</p> <p>Date</p> | <p>In the presence of:</p> <p>_____</p> <p>Signature of witness</p><br><br><p>_____</p> <p>Full name of witness</p> |
|---|---|

**IF YOU ARE A PARTNERSHIP:**

- Write the partnership name (not the business name) after the words "SIGNED for and on behalf of".

|   |   |
|---|---|
| <p>SIGNED for and on behalf of</p> <p>_____</p> <p>Signature of partner</p><br><br><p>_____</p> <p>Full name of partner</p><br><br><p>_____</p> <p>Date</p> | <p>In the presence of:</p> <p>_____</p> <p>Signature of witness</p><br><br><p>_____</p> <p>Full name of witness</p> |
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**IF YOUR TRUST HAS A CORPORATE TRUSTEE**

- Write the company name after the words “EXECUTED by”.
- Write the company ACN.
- Write the name of the trust after the words “as trustee for”.
- For companies with a sole director and secretary, sign once on the first line indicated “Director”.
- For companies with two or more directors, two directors or a director and the secretary (cannot be the same person) sign using the two signing panels below.
- A director’s signature does not need to be witnessed.

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|--|---|
| <p><b>EXECUTED</b> by _____ Pty Ltd<br/> ACN _____ as<br/> trustee for _____ pursuant<br/> to section 126 and/or 127 of the <i>Corporations Act 2001</i>.</p> <p>_____</p> <p>Date _____</p> | <p>_____</p> <p>Director</p> <p>_____</p> <p>Director/Secretary</p> |
|--|---|

**IF YOUR TRUST HAS AN INDIVIDUAL TRUSTEE**

- Write your name after the words “SIGNED by” immediately below.
- Write the name of the trust after the words “as trustee of”.
- The witness’s name and signature must also be completed.

|   |  |
|---|--|
| <p>SIGNED by<br/> as trustee of</p> <p>_____</p> <p>_____</p> <p>Date _____</p> | <p>In the presence of:</p> <p>_____</p> <p>Signature of witness</p> <p>_____</p> <p>Full name of witness</p> |
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|---|---|
| <p>EXECUTED for and on behalf of <b>ACO Certification Ltd</b><br/> <b>ACN 099 884 983</b> by its authorised representative:</p> | <p>_____</p> <p>Signature of authorised representative</p> <p>_____</p> <p>Position Held</p> <p>_____</p> <p>Date</p> |
|---|---|