



# TERMS & CONDITIONS

Effective Date: 22<sup>nd</sup> November 2022

## **Background**

**BIOPLUS** is a registered business name of **iTRAKassets Pty Ltd**, (a wholly owned subsidiary of FoodFibreTrace Pty Ltd) ("us", "we", or "our") and operates the <https://itrakassets.com/> website.

**FoodFibreTrace Pty Ltd** has licensed Food Fibre Trace Global Pty Ltd trading as **iTRAK®** to market the **BIOPLUS** application (App) (hereinafter referred to as the "Service").

## **Agreement**

This mobile application end user licence agreement ('Agreement' or 'Terms of Use') is entered into between

**FoodFibreTrace Pty. Ltd.** ACN 612 687 680 ('Licensor', 'We', 'Us' or 'Our') and the user of the App ('Licensee', 'You' or 'Your').

By downloading, installing, or using this mobile application, being **BIOPLUS** ('App'), the Licensee agrees to be bound by this Agreement in respect of such App. This Agreement commences on the date the App is downloaded, installed or used. If the Licensee does not accept these Terms of Use, the Licensee must not use the App and must immediately uninstall the App. If the Licensee uses the App on behalf of another person, the Licensee warrants that it has sought the authority of that person and that the Licensee agrees to these Terms of Use on behalf of that other person and also on its own behalf.

The Licensor recommends that the Licensee reads these Terms of Use and the Licensor's privacy policy in their entirety.

The following terms and conditions govern the Licensee's use of the App.

**1. GRANT.** Subject to the Licensee's continued compliance with this Agreement, the Licensor grants the Licensee a non-exclusive, non-sublicensable, non-transferable, revocable licence to use a single copy of the App on the mobile device on which it is downloaded and installed and access the content and information available from time to time through the App ('Content').

**2. ACCOUNT.** In order to access the Content, the Licensor will need to register an account ('Account') and will need to answer screening questions as part of using the App. You must provide all necessary information required by Us in connection with the registration of Your Account. By registering an Account, You warrant that any information You provide to Us in connection with Your Account is true and accurate. If You register an Account on behalf of another person, in addition to the foregoing, You also warrant that You have obtained all requisite authorities and consents from that person.

We reserve the right to reject, restrict, suspend or terminate access to Your Account if You do not abide by these Terms of Use or, if in Our sole discretion, We form the view that You have breached these Terms of Use. If any of Your details or other information which You provide during the registration process change, You must promptly update Your Account with Your up-to-date details and information or otherwise notify Us in writing.



You must take all reasonable actions to ensure the security of Your Account. You must not share Your Account username or password with any person. You agree and acknowledge that You shall be solely responsible for the confidentiality and security of Your username and password and any use of Your Account (*including unauthorised use*).

You take full responsibility for everything done through Your Account, including any information You make available to others. You must notify Us immediately if You suspect or become aware that another party has access to Your login credentials or that the security of Your Account has been compromised.

**3. TITLE.** As between the Licensor and the Licensee, all title, ownership rights and all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organisation 1967, and all rights to enforce any of the foregoing rights (*'Intellectual Property Rights'*) in and to the App (and all improvements) and any derived works remain the property of the Licensor.

Except to the extent permitted by this Agreement, the Licensee obtains no rights in relation to the App provided by the Licensor. The Licensee undertakes not to challenge the Licensor's Intellectual Property Rights in the App, nor procure or permit any other person to do so.

**4. ACCEPTABLE USE POLICY.** The Licensee must not: (i) use the App other than for its intended use or otherwise in any way which is in breach of any statute, regulation, law or legal right of any person, or in breach of any rules of professional conduct and practice; (ii) introduce any viruses, trojan horses, worms, bots or other malicious software which can cause any interference, loss or damage to the App; (iii) lease, sublicense or resell the App to third parties, or republish, mirror, rent, lend, lease, sell, redistribute, sublicense, copy or duplicate any information on the App; (iv) copy, alter, modify, adapt, reproduce, republish, frame, translate, reverse assemble, reverse engineer, reverse compile, transfer, sell, license, create derivative works from or enhance the App; or (v) do any act that would or might invalidate, infringe or be inconsistent with the Intellectual Property Rights of the Licensor (or any other person) in the App.

**5. AVAILABILITY OF THE APP.** The Licensor reserves the right to discontinue any part of, or any functionality in, the App, or make changes to the App, in its sole discretion without liability to the Licensee. The Licensor has no obligation provide patches, updates, bug fixes or to maintain or provide support services in respect of the App unless otherwise agreed between the parties. The Licensor may decide to charge for an App and/or services that integrate with an App, or otherwise change the fees associated with the App or services within it at any time without notifying you.

**6. INDEMNITY.** The Licensee releases and indemnifies the Licensor against any losses, claims, expenses or costs (*'Losses'*) incurred or suffered by the Licensor in connection with: (i) the Licensee's use of the App and/or any breach of this Agreement; and (ii) the transmission, storage, disclosure of or access to any data uploaded, inputted and transferred to the App and/or the Licensee that infringes the rights of any person or breaches any law, regulation, code or standard. The indemnities in this Agreement are continuing obligations, independent from the other



obligations of the parties under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

**7. DISCLAIMER.** To the maximum extent permitted by law, the App is provided on an “as is where is” basis and the Licensor disclaims all warranties of any kind whether express or implied in respect of the App, including but not limited to any warranties regarding: (i) the frequency, value, applicability or content of future updates or modifications to the App; (ii) the completeness, quality, accuracy, truthfulness, timeliness, security or reliability of the App; (iii) that the App will be free from errors, bugs, viruses, trojan horses and other security flaws and defects, or that the Licensor will fix such flaws and defects upon becoming aware of them; (iv) that the Licensor will not discontinue any part of the App; (v) that the App will always be available and that there will be no interruptions or disruptions to the App; (vi) that any of the Licensee’s data will not be lost or deleted; or (vii) that the App will be of merchantable quality or fit for purpose.

The Licensee acknowledges and agrees that it is responsible for the security of its own systems. Under no circumstances will the Licensor be liable for, and the Licensor expressly disclaims all losses incurred directly or indirectly (*whether actual or contingent*) by the Licensee or its affiliates as a result of, any data security or other breaches, whether or not the breach occurred as a result of the use of the App.

**8. APPLICATION OF AUSTRALIAN CONSUMER LAW.** Nothing in this Agreement operates to exclude, modify or restrict the application of any provision, the exercise of any remedy, or the imposition of any liability under the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (‘ACL’). If the consumer guarantees under the ACL apply to this Agreement, then the Licensor’s liability for any breach of the consumer guarantees will be limited to at the Licensor’s option, to one or more of the following: (i) if the breach relates to goods: (A) the replacement of the goods or the supply of equivalent goods; (B) the repair of such goods; (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (D) the payment of the cost of having the goods repaired; and (ii) if the breach relates to services: (A) the supplying of the services again; or (B) the payment of the cost of having the services supplied again.

**9. LIMITATION OF LIABILITY.** To the extent permitted by law, neither party to these Terms of Use is liable to the other party for any indirect, special or consequential Losses incurred by the other party, including liability for loss of profits, loss of business opportunity, loss of savings, or loss of data.

To the extent permitted by law, We will not have any liability to You for any Losses howsoever incurred in relation to Your use of or inability to use the App or the performance or non-performance of the App.

To the extent that Our liability is not otherwise excluded, and to the extent that the law allows Us to limit Our liability, Our liability to You is limited to the aggregate sum of A\$100.

**10. PROPRIETARY NOTICES.** The Licensee must maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the App in the same form and manner that such copyright and other proprietary notices are included on the App.



**11. TERMINATION/EXPIRY.** The Licensor may terminate this Agreement immediately by written notice to the Licensee: (i) if the Licensee breaches any provision of this Agreement; or (ii) at any time for convenience. This Agreement immediately ends if the Licensee removes the App. On termination or expiry of this Agreement, all rights granted to the Licensee in the App or Content under these Terms of Use shall cease, the Licensee must cease all use of the App and Content, and the Licensee must destroy all copies of the App in electronic or other form. Expiry or termination of this Agreement does not affect the accrued rights of a party. All obligations under this Agreement that are intended to survive expiry or termination shall survive.

**12. PRIVACY.** In order to operate and provide the App, the Licensor may collect information about You and Your use of the App, which may include Personal Information *(as defined under the Privacy Act 1988 (Cth) ('Privacy Act'))*. The types of Personal Information We may collect from or about You includes *(but may not be limited to)*:

- full name;
- passport number;
- driver licence number;
- mobile number;
- email address;
- Australian Business Number *(ABN)*;
- countries of origin *(being the countries you were last in prior to your arrival in Australia)*;
- location tracking data, collected while the App is open;
- information regarding your use of the App, including actions taken *(or not taken)* and the time and date of such action or inaction; and
- health information, such as any cold or flu-like symptoms you may be experiencing.

The types of uses We will make of the Personal Information collected include:

- to provide our App *(and its full functionality)* to you;
- to improve the service provided through the App and to provide additional functionality to the service;
- to administer your Account; and
- any other lawful purpose.

We may disclose Your Personal Information to third parties in accordance with Our privacy policy, including:

- to government agencies and regulatory authorities where there is an outbreak or suspected outbreak of a communicable disease, animal disease or a plant pest or disease. This information may be aggregated or otherwise anonymised;
- other users of the App (where that user is the owner or tenant or authorised by the owner or tenant of a property you have attended); and
- other relevant persons or organisations who invited You to use the App; and
- we may also disclose usage data to third party insurers or legal professionals in relation to legal claims.



We may also disclose Your personal information to third parties where You or another person authorised by You instruct us to do so or otherwise in accordance with Our privacy policy.

By using the App, You consent to the collection, use and disclosure of your information as described in this section 12 of these Terms of Use and otherwise detailed in Our privacy policy.

Further information regarding the collection and use of Personal Information can be found in Our privacy policy available at: [https://uploads-ssl.webflow.com/61554da1b085f3ef7f61ad02/615934515abd8e807c8203c4\\_WEB%20PRIVACY%20STATEMENT.pdf](https://uploads-ssl.webflow.com/61554da1b085f3ef7f61ad02/615934515abd8e807c8203c4_WEB%20PRIVACY%20STATEMENT.pdf).

**13. INTELLECTUAL PROPERTY RIGHTS.** You agree and acknowledge that these Terms of Use do not transfer or assign any Intellectual Property Rights to You.

We own all Intellectual Property Rights in the App. You have no rights in the App or in any part of it or in any modification or enhancement thereof, other than the rights temporarily granted to You pursuant to these Terms of Use.

You grant Us a non-exclusive, perpetual, irrevocable, assignable, royalty-free licence to use any Intellectual Property Rights in any content that You upload or otherwise provide to Us (*including comments that You may provide to Us in connection with the App or requests for new features*) ('User Content'). You warrant that Your User Content does not and will not infringe third party rights of any kind, including without limitation any Intellectual Property Rights. We reserve the right, to reject or remove any User Content that we believe, in our sole discretion, violates this provision.

You must not take any actions which may have the effect of invalidating or prejudicing Our Intellectual Property Rights in the App or otherwise take any action that would prevent Us operating Our services in the usual course.

**14. GENERAL.** The Licensor reserves the right to update the terms and conditions set out in this Agreement from time to time and such changes will be uploaded to its website and/or notified to the Licensee. It is the Licensee's responsibility to ensure that it is satisfied with the terms and conditions as updated from time to time. By continuing to use the App, the Licensee will be taken to accept any such changes to this Agreement.

The Licensee may not assign, encumber, declare a trust over or otherwise deal with its rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Licensor. The Licensor may assign, encumber, declare a trust over or otherwise deal with its rights or obligations under this Agreement at any time.

Each party must do all things necessary, including executing agreements and documents, to give full effect to this Agreement and the transactions contemplated by it.



Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

This Agreement is governed by the laws of Victoria, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of that place, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.

You and Us are independent contractors and these Terms of Use do not create any relationship of partnership, joint venture, or employer and employee or otherwise.

**15. THIRD PARTY TERMS.** To the extent that this App is installed through the iOS app store, the Licensor, and not Apple Inc. ('Apple'), is solely responsible for the App and the licence granted under this Agreement. Apple has no obligation to provide maintenance and support for the App. The Licensee's use of the App must comply with the usage rules set forth in the Apple App Store Terms of Use, which can be accessed and downloaded at: <https://www.apple.com/legal/internet-services/itunes/us/terms.html>. Apple is not responsible for addressing, investigating, defending, settling, or discharging any claim brought by the Licensee or any third party for allegations relating to the App, or the Licensee's possession and/or use of the App, including but not limited to: (i) product liability; (ii) any failure of the App to comply with applicable legal or regulatory requirements; (iii) consumer protection or similar legislation; or (v) infringement of third party Intellectual Property Rights. Notwithstanding anything to the contrary in the Agreement, Apple and its subsidiaries are third-party beneficiaries of this Agreement, and have the right (and shall be deemed to have accepted the right) to enforce this Agreement against the Licensee. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the App, and will not be liable for any claims, losses, liabilities, damages, costs, or expenses attributable to any failure of the App to conform to any warranty. Apple shall not be required to provide a refund to the Licensee under any circumstances. You represent and warrant that (i) You are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) You are not listed on any U.S. Government list of prohibited or restricted parties. 'Apple', and 'iOS' are trademarks of Apple. If You have a question or complain with respect to the App, please contact the Licensor at [info@itrakassets.com](mailto:info@itrakassets.com).

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product liability; (ii) any failure of the App to comply with applicable legal or regulatory requirements; (iii) consumer protection or similar legislation; or (v) infringement of third party Intellectual Property Rights. Notwithstanding anything to the contrary in this Agreement, Google and its subsidiaries are third-party beneficiaries of this Agreement, and have the right *(and shall be deemed to have accepted the right)* to enforce this Agreement against the Licensee. To the maximum extent permitted by applicable law, Google will have no warranty obligation whatsoever with respect to the App, and will not be liable for any claims, losses, liabilities, damages, costs, or expenses attributable to any failure of the App to conform to any warranty. Google shall not be required to provide a refund to the Licensee under any circumstances. 'Google' and 'Google Play' are trademarks of Google.