



## Recognised Agencies and Persons

7 March 2023

## TITLE

Organic Export Requirement: Recognised Agencies and Persons

## COMMENCEMENT

This Organic Export Requirement is effective from 7 March 2023

## REPLACEMENT

This Organic Export Requirement replaces Organic Export Requirement: Recognised Agencies and Persons issued on 28 November 2019.

## ISSUING BODY

This Organic Export Requirement is issued by the Ministry for Primary Industries.

Dated at Wellington, 7 March 2023

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## Introduction

This introduction is not part of the Organic Export Requirement, but is intended to indicate its general effect.

## Purpose

This Organic Export Requirement outlines the requirements for recognition of recognised agencies and recognised persons providing services on behalf of the Ministry for Primary Industries (MPI) for the Official Organic Assurance Programme (OOAP).

## Background

This Organic Export Requirement (OER) is an essential part of the MPI system for official assurances for organic products. It describes the responsibilities of recognised agencies and recognised persons providing services on behalf of MPI to organic operators participating in the OOAP.

MPI recognition is based on the recognised agency accreditation to the current version of ISO/IEC 17065 or ISO/IEC 17020 performed against this Organic Export Requirement: Recognised Agencies and Persons (OER: RAP). A person assigned by MPI participates in the accreditation process in the role of technical expert.

The accreditation body and the MPI technical expert work together in the initial assessment and ongoing performance measurement of recognised agencies and recognised persons.

Ongoing performance measurement is undertaken at a frequency assigned by the accreditation body and MPI technical expert.

This Organic Export Requirement is administered by MPI and brings together the previous OOAP Standards OP1 and OP2.

## Who should read this Organic Export Requirement?

This Organic Export Requirement applies to:

- organisations who apply for recognition, or agencies that are recognised by MPI to provide services on behalf of MPI for the OOAP; and
- persons who apply for recognition, or persons who are recognised by MPI to provide services on behalf of MPI for the OOAP, including reviewing, verifying or certifying organic operators' compliance with:
  - Registration and Performance Measurement Criteria for Operators – Organic Products (NZFSA Standard OP3);
  - Organic Export Requirement: Organic Production Rules (OER: OPR);
  - relevant organic overseas market access requirements (OMARs); and
- persons who apply for recognition or persons who are recognised by MPI to provide services verifying the eligibility of consignments for official organic assurances on behalf of MPI for the OOAP.

## Why is this important?

Recognised agencies and recognised persons must meet the requirements and follow the processes set out in this Organic Export Requirement. If the requirements set out in this Organic Export Requirement are not met, this may result in the refusal, suspension or withdrawal of MPI recognition. Failure to address the corrective actions required to resolve a suspension may result in the withdrawal of recognition.

MPI recognition of agencies is conditional on their agreement to the conditions set down in the Contract for Services as a Recognised Agency for the Official Organic Assurance Programme (Appendix 1 to this Organic Export Requirement).

## Document History

| Version Date     | Section Changed | Change(s) Description  |
|------------------|-----------------|--|
| 28 November 2019 | All             | Combines two documents, issued August 2005: <ul style="list-style-type: none"> <li>Organic Products Standard 1 (OP1) - Accreditation, Recognition, and Performance Measurement Criteria for Third Party Agencies and their Personnel;</li> <li>Organic Products Standard 2 (OP2) - Third Party Agency Responsibilities.</li> </ul> |
| 7 March 2023     | All             | <ul style="list-style-type: none"> <li>Changes to formatting and style</li> </ul>  |
|                  | 1.2 Definitions | <ul style="list-style-type: none"> <li>Update the definition for a recognised agency to address a historical typo</li> </ul>   |
|                  | Appendix 1      | <ul style="list-style-type: none"> <li>Update the Crown contracting party name to reference "THE SOVEREIGN";</li> <li>Update signature block: Business Unit.</li> </ul>  |

## Other information

### Guidance versus Requirements

The information contained within a border throughout this Organic Export Requirement (example below) is for guidance only and is not part of the requirements. Guidance is not mandatory.

#### Guidance

- This is an example of a guidance box.

Guidance may include:

- interpretative material or further explanation;
- help for where the reader can find more information (e.g. hyperlinks); or
- examples or indications of preferred ways of doing things.

Operators do not have to show that they have followed guidance; and recognised agencies do not need to check that guidance has been followed by operator.

Note that guidance in this document may present information that is a requirement but is a requirement for another standard (and so is out of scope for this OER to enforce).

Requirements of this OER are presented as numbered clauses and schedules. Requirements are mandatory. They present:

- requirements that must be met;
- prohibitions that must be met; or
- allowances/approval that may be approved, provided set conditions are met.

## Useful reference information

The following documents should be read along with this Organic Export Requirement:

- ISO/IEC 17065:2012 Conformity Assessment – Requirements for bodies certifying products, processes and services;
- ISO/IEC 17020:2012 Conformity Assessment – Requirements for the operation of various types of bodies performing inspection;
- Organic Export Requirement: Organic Production Rules ([OER: OPR](#));
- [Organic Overseas Market Access Requirements \(OMARs\)](#); and
- The Contract for Services as a Recognised Agency for the Official Organic Assurance Programme (Appendix 1 to this Organic Export Requirement).

## Key contacts

[Organics@mpi.govt.nz](mailto:Organics@mpi.govt.nz) for general enquiries about the OOAP.

[Organic.Certification@mpi.govt.nz](mailto:Organic.Certification@mpi.govt.nz) for enquiries about official organic assurances.

[MPI.Approvals@mpi.govt.nz](mailto:MPI.Approvals@mpi.govt.nz) for enquiries about registering as an organic exporter.

# Part 1: Requirements

## 1.1 Application

- (1) This OER applies to agencies and their persons recognised by MPI, or in the process of being recognised by MPI, as recognised agencies and recognised persons to provide services on behalf of MPI for the OOAP.

## 1.2 Definitions

- (1) In this OER:

**accreditation** means formal endorsement of competency of recognised agencies for specified categories, following assessment by an accreditation body against the requirements in this Organic Export Requirement, and the most recent version of:

- a) ISO/IEC 17065 (Conformity Assessment – Requirements for bodies certifying products, processes and services) (ISO/IEC 17065); or
- b) ISO/IEC 17020 (Conformity Assessment – Requirements for the operation of various types of bodies performing inspection) (ISO/IEC 17020).

**accreditation body** means an independent organisation which accredits recognised agencies to certain ISO standards as agreed with MPI, and:

- a) is peer reviewed against ISO/IEC 17011; and
- b) is a member of ILAC, APLAC, IAF or PAC; and
- c) which works with MPI under an MOU arrangement.

**adverse event** means an event declared as such by the Minister for Primary Industries. Adverse events may include, but are not limited to: storms, droughts, floods, snow storms, volcanic eruptions, earthquakes, or biosecurity incursions.

**algae production** involves active cultivation of algae, and collection of algae that is growing naturally in unmanaged areas.

**animal product business** has the same meaning as in the Animal Products Act 1999.

**apiary production** means to keep honey bees (*Apis mellifera*) for the purposes of producing bee products, in apiaries required to be notified under the American Foulbrood Pest Management Plan (AFBMP), but does not include the extraction of honey and other bee products.

**aquaculture production** means the production of aquaculture animals in a growing area or land-based aquaculture facility.

**assessment** means the systematic examination of an individual, organisation, plan, programme or system against a defined set of requirements.

**background contamination** means background levels of naturally occurring substances or persistent synthetic chemicals that are present in the soil at the beginning of the conversion period.

**buffer zone** means a clearly defined and identifiable boundary area bordering an organic production site that is established to limit impacts of the application of substance not permitted by this OER on adjacent areas.

**contractor** means a natural or legal person or business entity who provides services specified in a contract.

**contamination** means contact of organic crops, animals, land or products with any substance that would compromise the organic integrity.

**control file** means all the documentation relating to an operator participating in the OOAP, for the purposes of the certification activities.

**conventional** means any production or processing practice or system that does not comply to organic production practices and standards.

**conversion period** means the time between the start of organic management and the recognition of crops, pasture and animal products as organic.

**critical non-compliance** means non-compliance that is reasonably likely to jeopardise:

- a) public health; or
- b) animal welfare; or
- c) market access; or
- d) organic statements or claims; or
- e) official assurances; or
- f) credibility of the OOAP.

**dairy processor** has the same meaning as in the Animal Products Act 1999.

**dispensation** means an approval granted by a recognised agency, or an authorisation granted by MPI, exempting an operator from meeting a requirement where a dispensation is provided for.

**exporter** means an operator registered with MPI to export organic products under the OOAP.

**export certificate** has the same meaning as official assurance and official organic assurance.

**export certificate verifier** means a recognised person who verifies an operator request for an export certificate, and declares to MPI that a consignment is eligible for an export certificate under the OOAP.

**facilities** means machinery, equipment, premises, packaging and transport containers used during the production, harvesting, processing and handling of organic products.

**farm dairy** has the same meaning as in the Animal Products Act 1999.

**genetically modified organism (GMO)** has the same meaning as in the Hazardous Substances and New Organisms Act 1996.

**GMO derivative** means a substance that is produced by or from a GMO. This is traced one step back from the substance to its source. 'Produced from GMO' means that it consists in whole or in part of a GMO. 'Produced by GMO' means that it is a GMO metabolite.

**handling** includes transport, import and export of organic products, and as relevant for the product type, has the same meaning as:

- a) 'processing and handling' in the Food Act 2014, specifically section 11 (c), (d), (e) and (f);
- b) 'dairy processing' in the Animal Products Act 1999, but does not include the extraction of milk;
- c) 'process' in the Animal Products Act 1999;
- d) 'making' or 'made' in the Wine Act 2003.

**holding** means all of the production units operated under a single management for the purpose of producing and/or processing agricultural or aquaculture products. Each holding is a physically, financially and operationally independent entity.

**importer** means an operator who imports a consignment for use or supply to operators producing or processing organic products for later export under the OOAP.

**input** means agricultural compound, plant propagation material, and seeds for planting, ingredients, food additives, and processing aids as permitted in OER: OPR Schedules 1 to 4, and Schedule 6.

**key technical person** means a recognised person who has been assessed and formally recognised by MPI as being competent to accept responsibility for the assessment of the competence of recognised persons within a recognised agency.

**labelling** means any written, printed or graphic matter that is present on the label, accompanies the product, or is displayed near the product, including that for the purpose of promoting its sale or disposal.



**livestock production** means to farm, raise, grow, or keep animals for reward or for the purposes of trade in those animals or in animal material or products derived or taken from those animals, and includes the extraction and storing of raw milk from dairy animals.

**market access eligibility** means a product that has met the requirements of the importing country, as set in the relevant OMAR for that market.

**marketing** means holding or displaying for sale, offering for sale, selling, delivering or placing on the market in any other form.

**MPI** means Ministry for Primary Industries.

**MPI technical expert** means a person who has been assigned by MPI to assess the competence of recognised agencies and their persons in conjunction with the accreditation body as part of the accreditation process.

**non-compliance** means any failure to comply with the requirements of the OOAP.

**OOAP** means MPI's Official Organic Assurance Programme and includes OERs and relevant OMARs.

**official assurance** means a statement made by MPI to a foreign government, or an agent of a foreign government, attesting that, as appropriate, any one or more of the following conditions apply in respect of a product:

- a) any specified process has been completed with respect to the product concerned;
- b) the product concerned meets the standards set for the product;
- c) any market access requirements of the importing country, which New Zealand has agreed to meet, that are stated in the official assurance, have been met by the system under which the product was produced or processed;
- d) the situation in New Zealand, in relation to any matter concerning plant or animal product, is as stated in the official assurance.

**official organic assurance** means an official assurance attesting that the products concerned meet the requirements of the OOAP including any relevant overseas market access requirements for the importing country.

**operation** means the business unit within which organic products are produced, processed and handled. This includes holdings, production units, food businesses, wine businesses, farm dairies, dairy processor, animal product businesses and import and export businesses.

**operator** means the owner or person in control of the products for which certification is sought under the OOAP, has the day-to-day management or contractual control of an Organic Management Plan, and includes primary producers, processors, handlers, importers and exporters.

**organic certification** means the written endorsement from a recognised agency to an operator that specified products are being produced according to the OERs and relevant OMARs, following verification by the recognised agency.

**organic management plan (OMP)** means a plan for managing a certified organic operation that has been agreed to between the operator and the recognised agency. The OMP covers all aspects of organic production, processing or handling, and describes all measures taken to ensure compliance to the requirements of the relevant organic OMARs.

**organic product** means a product that has been produced, processed, or handled in compliance with the Organic Export Requirement: Organic Production Rules and the relevant organic OMARs.

**OMP certifier** means a recognised person who reviews the OMP verification report and determines operator's eligibility to participate in the OOAP.

**OMP evaluator** means a recognised person who evaluates the OMP against Organic Export Requirement: Organic Production Rules.

**OMP verifier** means a recognised person who verifies the operator's compliance with their OMP.

**Overseas Market Access Requirements (OMARs)** means the MPI issued requirements agreed between the New Zealand government and the government of the export destination.

**peer review** means a formal review of work by another staff member who performs the same work, to ensure consistency in decision-making.

**performance appraisal** means a formal assessment of a person's performance and achievements against a performance plan and development plan.

**plant production** means the growing and harvesting of plants and plant products including crops, wild crops, pasture and seeds. This includes any plant or part of a plant intended to be sold or used:

- a) as food for human consumption; or
- b) as livestock feed; or
- c) for plant propagation; or
- d) as a fertiliser or soil conditioner.

**point of export** means the time and place where the consignment is loaded onto a vessel or aircraft for export.

**processing** has the same meaning as relevant for product type as in:

- a) 'processing and handling' in the Food Act 2014, specifically section 11(a) and (b);
- b) 'dairy processing' in the Animal Products Act 1999, but does not include the extraction of milk;
- c) 'process' in the Animal Products Act 1999;
- d) 'making' or 'made' in the Wine Act 2003.

**production unit** means all assets to be used for the production of agriculture or aquaculture products including, but not limited to: production premises; land parcels; pasturages; open air areas; livestock buildings; ponds; structures, and containment systems for algae or aquaculture animals; land-based aquaculture facilities; premises for the storage of crops, crop products, algae products, animal products, aquaculture products, raw materials and any other inputs as relevant for the specific sector.

**recognised agency** means a person and a group of persons who are recognised by MPI to provide services under Part 2 of this OER.

**recognised person** means a person who have been formally recognised by MPI as being competent to undertake one or more roles defined in this OER.

**registration** means the formal confirmation and record of participation in the OOAP. For the purposes of this OER, all operators must be registered by the recognised agency and exporters must also be registered with MPI. Recognised agencies and registered organic exporters are listed on the MPI website.

**split production** means conventional, in-conversion and organic production, breeding or processing within the same holding.

**surveillance assessment** means an assessment performed by the accreditation body and MPI technical expert to determine recognised agency or recognised person compliance with selected requirements of the OOAP.

**traceability** means the ability to verify the history, location or application of a product through records or record keeping.

**verification** means the ongoing checks carried out:

- a) by recognised persons to determine whether:
  - i) the OMP meets the requirements of the OOAP; and
  - ii) the OMP is appropriate for the operation and the business; and
  - iii) the OMP is effective at ensuring the requirements of the OOAP are met; and
  - iv) the OMP is being complied with; and
  - v) organic products requiring an official assurance for export meet the relevant OMAR.

- b) by an MPI technical expert or accreditation body to determine whether a recognised agency or recognised person meets the requirements of this OER.

**witness assessment** means an assessment of the technical competency of a recognised person or person applying to become a recognised person performed by a technical expert acceptable to MPI as part of an accreditation body assessment.

**working day** means any day not being a Saturday or Sunday, a public holiday observed in Wellington, New Zealand or the period from 26 to 31 December each year.

## Part 2: Recognised agency

### 2.1 Role of a recognised agency

- (1) Recognised agencies review and verify that:
  - a) operators registered with the recognised agency to participate in the OOAP meet the requirements of:
    - i) Organic Export Requirement: Organic Production Rules (OER: OPR); and
    - ii) relevant Organic Export Requirement: Overseas Market Access Requirements (OER: OMARs; and
  - b) organic products produced for export under the OOAP meet the terms of the organic OMAR for the destination market.

### 2.2 Applying to be recognised as a recognised agency

- (1) Before granting an agency recognition under the OOAP, MPI must be satisfied that the applicant is fit and proper by considering:
  - a) the competencies and resources of the applicant to manage and carry out the functions and activities for which recognition is sought; and
  - b) any specified conviction entered against the applicant or any director or manager of the applicant; and
  - c) the applicant's character and reputation, including the character and reputation of the directors of the applicant or of those responsible for its management or control; and
  - d) the applicant's ability to maintain an appropriate degree of impartiality and independence in managing and carrying out the permissible functions and activities for which recognition is sought; and
  - e) any applicable requirements of the OOAP; and
  - f) any other matters MPI considers relevant.
- (2) Any organisation recognised as a recognised agency under the OOAP must enter the Contract for Services as a Recognised Agency for the Official Organic Assurance Programme in Appendix 1.

#### 2.2.1 Initial recognition

- (1) An organisation requesting initial recognition as a recognised agency under the OOAP must apply in writing in the approved form and manner, and include a copy of the organisations quality system documentation and technical procedures to:
  - a) the accreditation body for ISO/IEC 17065 or ISO/IEC 17020 accreditation for the MPI OOAP; and
  - b) MPI, and provide all of the following:
    - i) a list of the markets;
    - ii) the categories of recognition in clause 3.1.6;
    - iii) the relevant information required in clause 2.2.2, depending on which assessment system the organisation selects.
- (2) Following an initial assessment by the accreditation body and MPI technical expert, temporary recognition may be given to the recognised agency and its recognised persons until a full assessment of the agency and persons is undertaken.
- (3) A decision to grant an organisation full recognition as a recognised agency will be based on demonstrated compliance with this OER at a witness assessment by the accreditation body and MPI technical expert.

## 2.2.2 Assessment system for recognition of persons

- (1) Recognised agencies must select one of the following assessment systems for the recognition of recognised persons:
  - a) performance-based assessment system based on the accreditation body and MPI technical expert recommendation, in which case the following information must be supplied with the application in clause 2.2.1:
    - i) the roles and categories of recognition in clause 3.1.6 required for each person; and
    - ii) evidence of the persons competences for the role they are applying for;
  - b) key technical person assessment system based on a recommendation from the recognised agency's key technical person, in which case all of the following information must be supplied with the application in clause 2.2.1:
    - i) an organisational chart including the recognised agency management team, the key technical person and the recognised persons providing services for the OOAP;
    - ii) internal procedures for assessing recognised persons;
    - iii) internal procedures for making recommendations to MPI;
    - iv) evidence demonstrating key technical person competence including peer review and training;
    - v) a list of roles and categories of recognition in 3.1.6 required for each person;
    - vi) evidence of the persons competences for the role they are applying for.
- (2) At any time a recognised agency may apply to MPI in writing to change the assessment system used for the recognition of persons in clause 2.2.2(1).

## 2.2.3 Duration of recognition

- (1) Organisations may be recognised as a recognised agency for the duration of their accreditation by the accreditation body, and for no longer than 5 years.

## 2.2.4 Renewal of recognition as a recognised agency

- (1) To continue recognition, the recognised agency must apply to MPI in writing, five working days before the expiry of recognition of the recognised agency and the application must include a copy of the report from the most recent assessment by the accreditation body and MPI technical expert.

### Guidance

- Sufficient time for witness assessments and reporting to be completed should be allowed for to align with the five working day dead-line.

- (2) MPI's decision to renew recognition as a recognised agency will be based on:
  - a) a review of the report provided in clause 2.2.4(1); and
  - b) any other information considered by MPI to be relevant to the ability of the recognised agency to provide services on behalf of MPI.

## 2.2.5 Extending recognition to include additional markets and categories of recognition

- (1) Recognised agencies requesting the inclusion of additional markets or categories of recognition in clause 3.1.6 to their recognition must apply in writing in the approved form and manner to:
  - a) the accreditation body; and
  - b) MPI.
- (2) The application in 2.2.5(1) must include:
  - a) a copy of the quality system documentation and technical procedures relevant to the additional market or categories of recognition applied for; and

- b) evidence of sufficient numbers of appropriately trained recognised persons to undertake the roles in 3.1.1 to 3.1.4 to provide MPI with the confidence to provide official assurances covering the additional market or categories of recognition applied for.
- (3) Following an application by the recognised agency, temporary recognition may be given to the recognised agency and its recognised persons for the new market or categories of recognition until a full assessment is undertaken.
- (4) A decision to confirm the recognition extension of the recognised agency and its recognised persons to include the additional market or categories of recognition will be based on demonstrated compliance with this OER and the relevant organic OMAR at a witness assessment by the accreditation body and MPI technical expert.

## **2.2.6 Confirmation of recognition**

- (1) MPI will confirm recognition as a recognised agency or recognised person and respective continuation of recognition:
  - a) in a formal notification; and
  - b) on a public register on the MPI website.

## **2.3 Maintaining MPI recognition as a recognised agency**

- (1) To maintain MPI recognition, a recognised agency must demonstrate that all the requirements in 2.3.1 – 2.3.7 are met.

### **2.3.1 Accreditation, Resourcing and Systems**

- (1) The recognised agency must maintain accreditation to the most recent version of:
  - a) ISO/IEC 17065; or
  - b) ISO/IEC 17020.
- (2) The recognised agency must maintain compliance with this OER.
- (3) The recognised agency must ensure the agency is adequately resourced, including ensuring adequate numbers of recognised staff.
- (4) The recognised agency must maintain systems which ensure the agency is able to carry out the functions and activities for which it is recognised, and which document that:
  - a) only appropriately recognised persons, including contracted staff, perform services for which an MPI recognition is required; and
  - b) non-recognised persons do not perform tasks for which a recognition is required; and
  - c) the confidentiality of the information obtained or created while providing services on MPI's behalf is safeguarded; and
  - d) all work is completed without time constraints, intimidation or other factors that could influence the ability to comply with the requirements of recognition; and
  - e) operators under their control are registered; and
  - f) all operations, and all production and processing sites within operations, are verified within a reasonable timeframe, which is based on a risk assessment of the operation; and
  - g) where applications for dispensation to the OER: OPR are provided, the applications are appropriately assessed and granted; and
  - h) an up to date, publicly available list of the operators under its control is maintained, including at least the name of the operator, their address and scope of their certification; and
  - i) a management review of quality systems is undertaken at least annually; and
  - j) an internal audit is undertaken at least annually against the requirements of this OER and:
    - i) ISO/IEC 17020; or
    - ii) ISO/IEC 17065.

- (5) The recognised agency must participate in stakeholder standardisation sessions organised by MPI.

### 2.3.2 Manage recognised persons

- (1) The recognised agency must ensure all recognised persons that it manages or supplies:
- a) maintain competency in the scopes for which they are recognised; and
  - b) are not placed in a position or a situation that compromises their impartiality and independence in carrying out the functions and activities for which they are recognised; and
  - c) are assessed, at least annually, by performance appraisal; and
  - d) are assessed, at least annually, by internal peer review; and
  - e) do not provide verification services continuously to the same operator for more than 3 years, unless MPI has expressly allowed this; and
  - f) only certify OMPs that they have not verified in the last 2 years; and
  - g) do not verify OMPs that they will certify.
- (2) The recognised agency must manage recognised persons who are identified as not complying during the assessment in clause 2.5.1(1), or are not meeting the requirements of clause 3.3 to ensure that:
- a) they provide no further services on behalf of MPI for the OOAP until the non-compliance is resolved; and
  - b) a review is conducted of the work done by the non-complying recognised person before the non-compliance was identified, to determine any corrective actions required; and
  - c) affected operators are advised; and
  - d) where necessary the work undertaken by the non-complying recognised person is repeated by another recognised person at the recognised agency's expense.

### 2.3.3 Manage operator registration, performance, suspension and withdrawal

- (1) The recognised agency must manage operators participating in the OOAP by:
- a) providing registered operators who meet the requirements of the OOAP with documentary evidence, in a secure format, which at least allows the identification of the operator, the scope of their certification, the specific export eligibility and the period of validity; and
  - b) classifying operators into risk categories, based on the level of risk identified for their operation such as complexity of the operation and compliance history. These risk categories are used to determine:
    - i) the frequency of verification; and
    - ii) the frequency of additional OMP verification; and
    - iii) to select operations for sampling for residue testing; and
  - c) verifying operators OMPs against the requirements of the OER: OPR and relevant organic OMARs at least annually; and
  - d) entering and maintaining contractual arrangements with their operators which allow:
    - i) full access to the operator's records, staff and contractors, products, production site and facilities at any reasonable time, by the recognised agency, MPI representatives and importing country officials to enable assessment of the OOAP, and sampling for testing; and
    - ii) exchange of information including OMP verification reports between recognised agencies in cases where an operator is certified by more than one recognised agency, or where the operator changes their recognised agency; and
    - iii) reporting of relevant information to MPI; and
    - iv) storing control files by the recognised agency for a period of at least five years in cases where the operator withdraws from the OOAP; and
    - v) a statement clarifying ownership of the data supporting the provision of official organic assurances; and
    - vi) full access by the operators to all records concerning their registration to participate in the OOAP held by the recognised agency; and

- vii) management of operator's non-compliance.
- (2) The recognised agency must manage non-complying operators by:
  - a) documenting and establishing the degree of non-compliance by:
    - i) assessing the intent of the operator to deviate from the OMP; and
    - ii) determining the extent of the non-compliance; and
    - iii) ensuring the operator determines the root cause of the non-compliance or system breakdown; and
  - b) working with the operator to ensure that non-complying products are not exported with an official organic assurance; and
  - c) agreeing an appropriate corrective action plan with the operator, which includes:
    - i) what action is to be taken; and
    - ii) who is responsible for ensuring that the action is taken and is effective; and
    - iii) the time frame for implementation; and
    - iv) how the corrective actions will be verified as having been successfully implemented; and
  - d) assessing the effectiveness of the corrective action plan in clause 2.3.3(2)c); and
  - e) reassessing the OMP verification frequency where a critical non-compliance is identified within the operator system; and
  - f) increasing the OMP verification frequency where the operator has:
    - i) failed to complete the corrective action required by the OMP verifier; or
    - ii) failed to identify or manage a critical non-compliance; or
    - iii) shown regular or persistent non-compliance.
- (3) The recognised agency must manage suspension of operators by:
  - a) suspending operators' eligibility for the OOAP for a period agreed between the recognised agency and MPI if:
    - i) a critical non-compliance is identified within the operator's system; or
    - ii) the agreed corrective action plan in clause 2.3.3(2)c) is not implemented; or
    - iii) an operator formally requests their registration to participate in the OOAP to be suspended; and
  - b) issuing suspended operators with a notice of suspension which includes:
    - i) the reason for the suspension; and
    - ii) the scope of the suspension; and
    - iii) the terms and conditions for reinstatement; and
    - iv) the date and time from which the suspension takes place; and
    - v) the duration of the suspension; and
  - c) amending suspended operator's inclusion on the recognised agency's list of operators in clause 2.3.1(4)h) by including the date of suspension.
- (4) The recognised agency must reinstate suspended operator's by:
  - a) verifying that the conditions for reinstatement in the suspension notice issued under clause 2.3.3(3)b) have been satisfactorily met; and
  - b) reinstating suspended operator's eligibility for the OOAP, and advising them of this; and
  - c) amending reinstated operator's inclusion on the recognised agency's list of operators in clause 2.3.1(4)h).
- (5) The recognised agency must manage withdrawal of operators by:
  - a) withdrawing operators' eligibility for the OOAP if:
    - i) the conditions for reinstatement stated in a suspension notice issued under clause 2.3.3(3)b) are not met within the specified time frame; or



- ii) the operator formally requests their organic certification to be withdrawn.
- b) issuing operators whose eligibility for the OOAP has been withdrawn with a notice of withdrawal which includes:
  - i) the reasons for withdrawal; and
  - ii) the effective date and time of the withdrawal.
- c) amending withdrawn operator's inclusion on the recognised agency's list of operators in clause 2.3.1(4)h) by either:
  - i) removing them from the list; or
  - ii) include the date of withdrawal.

### 2.3.4 Verify consignment eligibility

- (1) The recognised agency must verify consignments are eligible for export under the OOAP by ensuring that:
  - a) consignment eligibility verification is only carried out by an export certificate verifier as in section 3.1.4; and
  - b) all products in consignments are correctly verified as meeting the requirements of the OOAP and the destination markets organic OMAR; and
  - c) the consignment information provided by the exporter is verified as being accurate; and
  - d) the outcome of the export certificate verification is declared to MPI.

### 2.3.5 Monitor operator compliance

- (1) The recognised agency must undertake additional OMP verification by ensuring that:
  - a) unannounced OMP verification is carried out annually on at least 10% of the recognised agency's registered operators. The selection of operations is based on a sampling regime that ensures a proportional representation of different types of operators in the sample. The sampling regime must take into consideration as many of the following criteria as practicable:
    - i) OOAP markets; and
    - ii) risk level category in clause 2.3.3(1)b); and
    - iii) scopes; and
    - iv) no single operator is selected two years in a row.
  - b) the recognised agency has a plan to undertake unannounced OMP verification on each registered operator over time.
- (2) The recognised agency must manage a residue sampling and testing programme which ensures that:
  - a) residue testing is carried out on at least 5% of the recognised agency's registered operations. The selection of operations is based on a sampling regime that ensures a proportional representation of different types of operators in the sample. The sampling regime must take into consideration as many of the following criteria as practicable:
    - i) all OOAP markets; and
    - ii) risk level category in clause 2.3.3(1)b); and
    - iii) all scopes; and
    - iv) no single operator is selected two years in a row; and
  - b) regular sampling and testing is undertaken to:
    - i) determine the base level of any prohibited substances that may be present in an operation's system at the time of entry into the programme; and
    - ii) detect the presence of substances not permitted under the OOAP; and
    - iii) detect production techniques not in compliance with the OOAP; and
  - c) sampling is undertaken by the recognised agency or an independent party following:

- i) the laboratory sampling procedure; and
  - ii) the recognised agency or independent parties documented procedures to ensure integrity of the sample is maintained and protected from substitution, contamination or tampering; and
- d) operators are provided with a receipt when samples are taken by the OMP verifier; and
- e) testing of samples is carried out by a laboratory recognised by MPI to perform the required tests; and
- f) test results which show the presence of substances not permitted under the OOAP, or suggest the use of production techniques not permitted under the OOAP:
  - i) are immediately notified to the operator; and
  - ii) are investigated to determine:
    - 1) why the residue is present; and
    - 2) the degree of operator compliance with the OOAP;
- g) products affected by the results in clause 2.3.5(2)f) are suspended from being eligible for official organic assurance pending the outcome of the investigation; and
- h) sampling is carried out whenever there is reasonable suspicion that products or practices not permitted under the OOAP have been used; and
- i) testing carried out as part of an investigation to confirm non-compliance with the OOAP is at the recognised agency's expense; and
- j) the recognised agency has a plan to undertake residue testing on each registered operation over time.

### 2.3.6 Information management

- (1) The recognised agency must manage information to ensure that:
  - a) operator records, including test results and control files, and including those from operators who withdraw from the OOAP, are kept for at least 5 years; and
  - b) records created by the certifying agent are maintained for at least 10 years.
- (2) The recognised agency must co-operate with other recognised agencies to ensure that:
  - a) all relevant information on the operations under their control is shared where operators have organic certification from more than one recognised agency; and
  - b) when an operator changes recognised agencies:
    - i) the new recognised agency is provided with a copy of the OMP verification reports and confirmation of closure of non-compliances within a reasonable timeframe; and
    - ii) any previously identified non-compliances have been or are being addressed following the agreed corrective action plan; and
  - c) all relevant information is shared when a registered operator's non-compliance affects operators registered with other recognised agencies.

### 2.3.7 Reporting

- (1) The recognised agency must report to MPI with all of the following:
  - a) notification of a non-complying recognised person by the following working day on discovery of the non-compliance;
  - b) notification of critical non-compliances by the following working day after becoming aware of them;
  - c) notification that a recognised person ceases to be employed or contracted by the recognised agency;
  - d) any change in directorship or management and control of the recognised agency;
  - e) a quarterly report for the quarters ending March, June, September and December, by the 23<sup>rd</sup> of the following month, which summarises all of the following:

- i) all non-compliances under the OOAP issued to operators, in the manner required by MPI;
  - ii) all events that have occurred in the quarter;
  - iii) updates on any on-going events;
  - iv) critical non-compliances identified following assessments of registered operators;
  - v) actual and proposed changes to the recognised agency's system that may impact on the agency's ability to meet this OER;
  - vi) disputes including background, outcomes, legal action and settlements; and
  - vii) recognised agency management and staff changes;
- f) an annual report for the year ending on 31 December, by 31 January the following year, which includes all of the following:
- i) operator information including: name, address and phone number; ID code; category of recognition and market eligibility;
  - ii) number of annual OMP verifications;
  - iii) number of unannounced OMP verifications;
  - iv) number of non-compliances issued;
  - v) number of non-compliances not closed out within the agreed time frame, and an explanation why;
  - vi) number of samples taken for residue testing of substances not permitted under the OOAP;
  - vii) number of tests showing residues of substances not permitted under the OOAP;
  - viii) number of event reports submitted to MPI;
- g) any other relevant report to MPI upon request.

## 2.4 Surrender of recognition

- (1) A recognised agency may surrender their recognition or the recognition of any recognised person under their management or control by writing to MPI specifying the date on which the surrender is to take effect.
- (2) Before the date on which the surrender takes effect, the recognised agency must notify:
  - a) all recognised persons covered by the recognised agency's recognition whose recognition is not being surrendered; and
  - b) each client of the recognised agency of the surrender and the date on which it will take effect.
- (3) Where a recognised agency surrenders recognition of the recognised agency or of a recognised person, MPI will remove the details of the agency or persons from the public register on the MPI website.

## 2.5 Performance management of recognised agencies

### 2.5.1 Conformity assessment

- (1) On-going compliance will be assessed at a surveillance assessment at a frequency determined by MPI and the accreditation body.
- (2) The recognised agency must allow MPI and the accreditation body access to premises, records and staff to enable assessment of compliance.
- (3) The criteria for assessing compliance includes:
  - a) the quality system documenting procedures which will enable the recognised agency to meet this OER; and
  - b) no deficiencies are noted in the recognised agency procedures; and
  - c) the recognised agency and recognised persons follow the agency's procedures; and

- d) the recognised agency meets all the relevant requirements of this OER, specifically the requirements in clause 2.3; and
- e) the recognised agency has paid its fees to MPI and the accreditation body.

### **2.5.2 Managing poor performance**

- (1) MPI may take action using any of the options, or combination of options, in clauses 2.5.3 to 2.5.6, 4.1 or 4.2, in any order, where MPI suspects, or has reason to suspect:
  - a) a recognised agency is not meeting its obligations as a recognised agency; or
  - b) a recognised agency is not meeting the requirements set in clause 2.3; or
  - c) a critical non-compliance has occurred or is occurring.
- (2) Before taking any action, MPI will notify the recognised agency in writing of:
  - a) the action it proposes to take; and
  - b) the reason for proposing action; and
  - c) the date and time the proposed action would start.
- (3) MPI will provide the recognised agency with a reasonable period of time to respond to these concerns and proposed actions.

### **2.5.3 Corrective action plan**

- (1) A corrective action plan may be agreed between MPI and the recognised agency which will include:
  - a) what action is to be taken and the date it commences; and
  - b) who is responsible for ensuring that the action is taken and is effective; and
  - c) the time frame for implementation; and
  - d) how the corrective actions will be confirmed as having been successfully implemented; and
  - e) how the effectiveness of the corrective action plan will be assessed.

### **2.5.4 Additional surveillance**

- (1) In addition to the reasons specified in clause 2.5.2(1), MPI may undertake an additional surveillance assessment at the expense of the recognised agency if:
  - a) a surveillance assessment indicates the recognised agency is not meeting any of the requirements in clause 2.3; or
  - b) a critical non-compliance is identified in the recognised agency's system.

### **2.5.5 Adjusting surveillance frequency**

- (1) MPI may increase the frequency of surveillance assessments in conjunction with the accreditation body.
- (2) MPI may reduce the surveillance assessment frequency in conjunction with the accreditation body if the accreditation body and MPI technical expert verify that:
  - a) the corrective action plan is fully implemented; or
  - b) any critical non-compliance is fully resolved.

### **2.5.6 Management plan**

- (1) In addition to the reasons in clause 2.5.2(1), MPI may put the recognised agency on a management plan if:
  - a) a critical non-compliance is not resolved to the satisfaction of MPI; or
  - b) the recognised agency requests assistance to implement the corrective action plan or to resolve a critical non-compliance.
- (2) The management plan will describe:

- a) the extent of the management plan; and
- b) what action is to be taken; and
- c) who is responsible for ensuring that the action is taken and is effective; and
- d) the time frame for implementation; and
- e) how the management plan will be confirmed as having been successfully implemented; and
- f) how the effectiveness of the management plan will be assessed.

## Part 3: Recognised persons

### 3.1 Roles and responsibilities

- (1) Persons may be recognised under the OOAP in one or more of the roles described in clauses 3.1.1 to 3.1.5.
- (2) Recognised persons must be employed by or contracted to a recognised agency.
- (3) Only recognised persons may undertake the roles described in clauses 3.1.1 to 3.1.5.
- (4) Tasks which form part of a recognised role may only be performed by persons recognised to perform that role.

#### 3.1.1 OMP evaluator

- (1) The OMP evaluator evaluates OMPs for compliance with the OER: OPR, including approval of:
  - a) recipes; and
  - b) labels; and
  - c) inputs.

#### 3.1.2 OMP verifier

- (1) The OMP verifier verifies that the operator is operating in compliance with their OMP.
- (2) OMP verification must only be undertaken if the OMP evaluation has determined that the OMP complies with the requirements of the Organic Export Requirement: Organic Production Rules (OER: OPR).
- (3) OMP verifiers must write a report after each verification.
- (4) The OMP verifier must be able to demonstrate that:
  - a) they have provided the operator or their representative with a summary of the draft report findings.
  - b) they have explained:
    - i) the draft report findings; and
    - ii) the process the recognised agency will complete to finalise the findings and make an organic certification decision; and
    - iii) the process for requesting a review of the findings or organic certification decision.
  - c) the operator or their representative has acknowledged receipt of the draft report findings.

#### 3.1.3 OMP certifier

- (1) The OMP certifier determines the operator's eligibility to participate in the OOAP based on the findings of the OMP evaluation and OMP verification.
- (2) The OMP certifier assesses the frequency of the operators OMP verification and ensures that non-complying operators are managed as required in clauses 2.3.2(2) e) and 2.3.2(2)f).

#### 3.1.4 Export certificate verifier

- (1) The export certificate verifier verifies the eligibility of consignments for official organic assurance by:
  - a) verifying that the products in the consignment meet the requirements of the OOAP; and
  - b) verifying that the products in the consignment meet the requirements of the organic OMAR for the destination market; and
  - c) verifying that the information provided by the exporter is accurate; and
  - d) declaring the outcome of the export certificate verification to MPI.

### 3.1.5 Key technical person

- (1) The key technical person assesses the competence of persons within a recognised agency including:
  - a) initial assessment; and
  - b) on-going assessment and maintenance of recognition.
- (2) The key technical person makes a recommendation to MPI for the recognition of persons in a particular role in clauses 3.1.1 to 3.1.4 and category of recognition in clause 3.1.6.

### 3.1.6 Categories of recognition

- (1) OMP evaluators, OMP verifiers and OMP certifiers must be recognised to provide services on behalf of MPI for the OOAP in one or more of the following categories of recognition:
  - a) apiary production;
  - b) aquaculture and algae production;
  - c) processing and handling;
  - d) livestock production;
  - e) plant production.
- (2) Recognition of OMP evaluators, OMP verifiers and OMP certifiers may cover requirements for one or more of the markets covered by the OOAP, as provided in the organic OMARs.
- (3) MPI may place limits on the scope of recognition of OMP evaluators, OMP verifiers and OMP certifiers in any of the categories of recognition in 3.1.6(1).

### 3.1.7 Contractors

- (1) Recognised persons who contract their services to recognised agencies must comply with the requirements stated in clause 3.3.
- (2) Contracted persons may be recognised to more than one recognised agency.
- (3) Contracted persons may not be recognised as a key technical person.

## 3.2 Apply for recognition for persons

- (1) Before granting a person recognition under the OOAP, MPI must be satisfied that the applicant is a fit and proper person by considering:
  - a) the applicant's competency to carry out the role and activities for which recognition is sought; and
  - b) any specified conviction entered against the applicant; and
  - c) the applicant's character and reputation; and
  - d) the applicant's ability to maintain an appropriate degree of impartiality and independence in carrying out the role and activities for which recognition is sought; and
  - e) any applicable requirements of the OOAP; and
  - f) any other matters that MPI considers relevant.

### 3.2.1 Initial recognition

- (1) For recognised agencies using performance-based assessment in clause 2.2.2(1)a):
  - a) before applying for recognition in one of the roles in clauses 3.1.1 to 3.1.4, the person must have had a successful witness assessment by the accreditation body and MPI technical expert in the role and category of recognition that is to be applied for;
  - b) a recognised agency requesting initial recognition of a person under the OOAP for one or more roles in clauses 3.1.1 to 3.1.4, must apply on the applicant's behalf, in writing to MPI;
  - c) the application in clause 3.2.1(1)b) must include:
    - i) a copy of the most recent witness assessment report required by clause 3.2.1(1)a); and

- ii) where the application is for recognition as an OMP evaluator, OMP verifier or OMP certifier, the categories of recognition in clause 3.1.6 to be covered by the recognition;
  - iii) information on any requested recognition scope limitations.
- d) the decision to recognise a person as an OMP evaluator, OMP verifier, OMP certifier or export certificate verifier under the OOAP will be based on:
  - i) the outcome of the assessment in clause 3.2.1(1)a); and
  - ii) any other information considered by MPI to be relevant to the ability of the recognised person to perform the roles for which they are to be recognised.
- (2) For recognised agencies using the key technical person assessment in clause 2.2.2(1)b):
  - a) before applying for recognition as a key technical person, the person must have had a successful witness assessment by the accreditation body and MPI technical expert which includes:
    - i) an appraisal of their competence; and
    - ii) an assessment of a sample of recognised persons that have been under their supervision;
  - b) recognition as an OMP evaluator, OMP verifier, OMP certifier or export certificate verifier will be based on a recommendation from the key technical person.
- (3) Candidates for recognition as an OMP evaluator, OMP verifier or OMP certifier must have carried out at least 2 relevant tasks in the previous 12 months under the supervision of a recognised person in each of the categories for which recognition is sought.
- (4) Candidates for recognition as a key technical person must have at least 2 years relevant experience, evidence of which must be included with the application for recognition.

### 3.2.2 Duration of recognition

- (1) The initial recognition in clause 3.2.1 of persons in the roles in clauses 3.1.1 to 3.1.5 will be 1 year.
- (2) The renewed recognition in clause 3.2.4 of persons in the roles in clauses 3.1.1 to 3.1.5 will be 3 years.

### 3.2.3 Inclusion of additional categories of recognition

- (1) For recognised agencies using performance-based assessment in clause 2.2.2(1)a), a recognised person's recognition may include additional categories of recognition in clause 3.1.6 by:
  - a) ensuring the recognised person has had a successful witness assessment by the accreditation body and MPI technical expert in the role and category of recognition that recognition is being applied for, before making the application; and
  - b) requesting changes to the categories in clause 3.1.6 of a person's recognition as an OMP evaluator, OMP verifier or OMP certifier under the OOAP by applying in writing, on behalf of the recognised person, to MPI, including a copy of the most recent assessment report in clause 3.2.3(1)a) in the application.
  - c) a decision to change the categories of a person's recognition under the OOAP will be based on:
    - i) the outcome of a witness assessment by the accreditation body and MPI technical expert; and
    - ii) any other information considered by MPI to be relevant to the ability of the person to perform the role for which they are recognised.
- (2) For recognised agencies using key technical person assessment in clause 2.2.2(1)b), the key technical person may include additional categories of recognition in clause 3.1.6 in a recognised person's recognition by:
  - a) making a recommendation to MPI to change the categories in clause 3.1.6 of a person's recognition as an OMP evaluator, OMP verifier or OMP certifier under the OOAP in writing, on behalf of the recognised person, to MPI; and



- b) ensuring that the person they are recommending has undergone a suitable period of training in the requested category which includes:
  - i) accompanying a person recognised in the requested role and category of recognition as that person performs that activity; and
  - ii) performing the activity in the requested category under the supervision of a person recognised for that role and category of recognition.

### 3.2.4 Renewal of recognition

- (1) For recognised agencies using performance-based assessment in clause 2.2.2(1)a):
  - a) the agency applies to MPI in writing to renew recognition of a recognised person:
    - i) ensuring the person has had a successful witness assessment by the accreditation body and MPI technical expert in the role, and at least one category of recognition for roles in clauses 3.1.1 to 3.1.4, that renewal of recognition is to be applied for, before making the application;
    - ii) allowing sufficient time for review and reporting to be undertaken, before the expiry of recognition of the person. The application must include:
      - 1) the roles, and categories of recognition for roles in clauses 3.1.1 to 3.1.4, for the person; and
      - 2) a copy of the report from the person's most recent witness assessment in clause 3.2.4(1)a); and
      - 3) payment of any applicable fee.
  - b) MPI's decision to renew a person's recognition will be based on:
    - i) a review of the report provided in clause 3.2.4(1)a)i); and
    - ii) any other information considered by MPI to be relevant to the ability of the person to perform the role for which they are recognised.
- (2) For recognised agencies using key technical person assessment in clause 2.2.2(1)b):
  - a) a person's recognition may be submitted for renewal by MPI by the key technical person:
    - i) making a recommendation to MPI to renew a person's recognition in writing, on behalf of the person, to MPI in sufficient time for review and reporting to be undertaken, before the expiry of recognition of the person; and
    - ii) payment of any applicable fee.
  - b) MPI's decision to renew a person's recognition will be based on:
    - i) a review of the recommendation provided in clause 3.2.4 (2)a)i); and
    - ii) any other information considered by MPI to be relevant to the ability of the person to perform the role for which they are recognised.

### 3.2.5 Withdrawal of recognition

- (1) Recognised agencies using performance-based assessment in clause 2.2.2(1)a) may request withdrawal of a role or category of recognition from a person's recognition by writing to MPI.
- (2) The key technical person of recognised agencies using key technical person assessment in clause 2.2.2(1)b) may notify the withdrawal of a role or category from a person's recognition by writing to MPI.

### 3.2.6 Confirmation of recognition

- (1) MPI will confirm recognition of a person as in clause 2.2.6.

### 3.3 Maintaining MPI recognition as a recognised person

- (1) Recognised persons providing services on behalf of MPI for the OOAP must:
  - a) be competent in the skills relevant to their role; and
  - b) have a satisfactory understanding of the technical aspects of the categories for which they are to be recognised; and
  - c) have had formal technical training or practical experience in the field for which recognition is sought; and
  - d) have an understanding of the organic industry appropriate to the categories of their recognition; and
  - e) demonstrate an understanding of this OER, OER: OPR and relevant organic OMARs; and
  - f) effectively apply the quality systems and procedures of the recognised agency to which they are recognised; and
  - g) regularly undertake the tasks required by the role they are recognised for; and
  - h) complete any MPI e-learning modules, where applicable.
- (2) OMP verifiers must:
  - a) comply with the requirements in 3.3(1); and
  - b) have completed an appropriate Lead Assessor course (or equivalent); and
  - c) be able to demonstrate active involvement in verification activities since completing the formal training.

### 3.4 Performance management of recognised persons

#### 3.4.1 Conformity assessment

- (1) For recognised agencies using performance-based assessment in clause 2.2.2(1)a):
  - a) on-going compliance of OMP evaluator, OMP verifiers, OMP certifiers and export certificate verifiers will be checked as part of the surveillance assessment of the recognised agency in clause 2.5.1;
  - b) the assessment of compliance will be based on:
    - i) a review of files related to tasks performed as part of the persons recognition; and
    - ii) an examination of performance appraisals in clause 2.3.2(1)c); and
    - iii) an examination of peer reviews in clause 2.3.2(1)d); and
    - iv) any other information considered necessary by MPI.
- (2) For recognised agencies using key technical person assessment in clause 2.2.2(1)b):
  - a) on-going compliance of the key technical person will be based on an interview and on-site assessment of a sample of recognised persons supervised by the key technical person by the accreditation body and MPI technical expert; and
  - b) on-going compliance of OMP evaluators, OMP verifiers, OMP certifiers and export certificate verifiers will be checked as part of the surveillance assessment of the recognised agency in clause 2.5.1 and assessment of the key technical person in clause 3.4.1(2)a).

#### 3.4.2 Managing poor performance

- (1) MPI may take action using any of the options in clauses 3.4.3, 3.4.4, 4.1 or 4.2, in any order where MPI suspects, or has reason to suspect:
  - a) a recognised person is not meeting their obligations as a recognised person; or
  - b) a recognised person is not meeting the requirements set in clause 3.3; or
  - c) a critical non-compliance has occurred.

- (2) Before taking any action, MPI will notify the recognised agency responsible for the recognised person in writing of:
  - a) the action it proposes to take; and
  - b) the reason for proposing action, and
  - c) the date and time the proposed action would start.
- (3) MPI will provide the recognised agency responsible for the recognised person with a reasonable period of time to respond to these concerns and proposed actions.

### **3.4.3 Corrective action plan**

- (1) A corrective action plan may be required by MPI for the recognised agency responsible for the recognised person which will include:
  - a) what action is to be taken; and
  - b) who is responsible for ensuring that the action is taken and is effective; and
  - c) the time frame for implementation; and
  - d) how the corrective actions will be confirmed as having been successfully implemented; and
  - e) how the effectiveness of the corrective action plan will be assessed.
- (2) At the conclusion of a corrective action plan, MPI may undertake further action as in clause 3.4.2.

### **3.4.4 Additional witness assessment**

- (1) In addition to the reasons in clause 3.4.2(1), MPI may undertake an additional witness assessment at the expense of the recognised agency if:
  - a) a surveillance assessment under clause 2.5.1 indicates the recognised person is not meeting any of the requirements in clause 3.3; or
  - b) a critical non-compliance is identified in the recognised agency's system; or
  - c) for any other reason MPI has concerns regarding the person's ability to perform their role as a recognised person.
- (2) Following an additional witness assessment, MPI may undertake further action as in clause 3.4.2.

## Part 4: Suspension, withdrawal and reviews

### 4.1 Suspension

- (1) MPI may suspend the recognition of a recognised agency or a recognised person, in whole or part, in accordance with the provisions in the Contract for Services as a Recognised Agency for the Official Organic Assurance Programme in Appendix 1, if:
  - a) the recognised agency loses ISO/IEC 17065 or ISO/IEC 17020 accreditation; or
  - b) the recognised agency has insufficient resources to provide services to their clients; or
  - c) actions taken in clauses 2.5.3 to 2.5.6, 3.4.3 or 3.4.4 have been ineffective; or
  - d) a critical non-compliance in the recognised agency's system is identified or unresolved; or
  - e) MPI has evidence regarding the recognised agency's or recognised person's ability to meet its obligations as a recognised agency or recognised person for any other reason.
- (2) In order to remedy the deficiency or failure that resulted in the suspension, MPI may:
  - a) impose conditions which must be satisfied before the suspension is lifted; or
  - b) require the recognised agency to take appropriate corrective action.
- (3) Where a suspension is in part, the recognised agency must continue to provide the services unaffected by the suspension to existing clients and may not take on new clients or extend the categories of recognition.
- (4) The maximum period of suspension is 3 months.

#### 4.1.1 Notification of suspension

- (1) As soon as practicable after deciding to suspend a recognised agency or recognised person, MPI will issue a written notice of suspension to:
  - a) the recognised agency or recognised person of the suspension of the recognised agency or recognised person; and
  - b) the recognised agency of the suspension of a recognised person it is responsible for; and
  - c) all recognised persons covered by the recognised agency's recognition that is being suspended.
- (2) The written notice of suspension in clause 4.1.1(1) will include:
  - a) the reason for the suspension; and
  - b) the date and time the suspension starts; and
  - c) the period of the suspension; and
  - d) the specified services the suspension relates to; and
  - e) any conditions or corrective actions imposed in clause 4.1(2); and
  - f) sets out the right of the recognised agency to seek a review of the decision.
- (3) MPI will update the public register on the MPI website to add a reference to the suspension of recognition.

#### 4.1.2 Extension of suspension

- (1) MPI may extend the period of suspension, for a maximum of a further 3 months if, in the suspension period:
  - a) any conditions imposed in clause 4.1(2)a) have not been satisfied; or
  - b) any corrective actions imposed in clause 4.1(2)b) have not been fulfilled.
- (2) MPI will notify the recognised agency of the extended period in writing as in clause 4.1.1 and may:
  - a) impose additional conditions that must be satisfied before the extended period of suspension is lifted; or

- b) require the recognised agency to take additional appropriate corrective action to remedy the deficiency or failure that resulted in the suspension.

#### **4.1.3 Reinstatement of recognition**

- (1) The recognised agency or recognised persons suspended services may be reinstated when:
  - a) MPI has verified that the conditions or corrective actions in clause 4.1(2) have been met; and
  - b) MPI is confident that the reason for suspension will not recur; and
  - c) MPI and the accreditation body have agreed on an ongoing surveillance frequency.
- (2) MPI will notify the recognised agency and recognised persons in writing that suspended services have been reinstated.
- (3) MPI will update the public register on the MPI website to remove reference to the suspension of recognition.

## **4.2 Withdrawal of recognition**

- (1) MPI may withdraw all or part of the recognition of a recognised agency or of a recognised person in accordance with the provisions in the Contract for Services as a Recognised Agency for the Official Organic Assurance Programme in Appendix 1, if:
  - a) the conditions for reinstatement in a suspension notice are not met within the specified timeframe; or
  - b) the recognised agency or recognised person is no longer fit and proper to provide services on behalf of MPI for the OOAP; or
  - c) the recognised agency or recognised person has ceased to operate as a recognised agency or recognised person; or
  - d) the recognised agency or recognised person has failed to comply with criteria that led to its recognition to provide services on behalf of MPI for the OOAP; or
  - e) for any other reason MPI has evidence regarding the recognised agency's or recognised person's ability to meet its obligations as a recognised agency or recognised person; or
  - f) the recognised agency or recognised person has failed to pay any applicable fees.
- (2) Before withdrawing recognition, MPI will consult the recognised agency or recognised person about the proposed withdrawal of recognition by:
  - a) notifying the recognised agency or recognised person in writing; and
  - b) providing a reasonable opportunity to make a written submission on the proposed withdrawal; and
  - c) consider any submissions received on the proposed withdrawal.
- (3) If MPI decides to proceed with withdrawal of all or part of a recognised agency or recognised person recognition, as soon as practicable after making this decision, MPI will notify:
  - a) the recognised agency or recognised person of the withdrawal of recognition of the recognised agency or recognised person; and
  - b) the recognised agency of the withdrawal of recognition of a recognised person it is responsible for; and
  - c) a recognised person of the withdrawal of recognition of the recognised agency that is responsible for its recognition.
- (4) If MPI proceeds with withdrawal of recognition of a recognised agency or recognised person, MPI will issue the recognised agency or recognised person with a notice of withdrawal which will:
  - a) specify the reason for the withdrawal; and
  - b) specify the effective date and time of withdrawal; and
  - c) specify the specified services the withdrawal relates to; and
  - d) sets out the rights of the recognised agency to seek a review of the decision.

- (5) If MPI withdraws recognition of a recognised agency or recognised person:
  - a) details of the recognised agency or recognised person will be removed from the public register on the MPI website; and
  - b) the recognised agency must return the notification of recognition of the recognised agency or recognised person as soon as practicable after the withdrawal has taken effect; and
  - c) the recognised agency must notify each client of the withdrawal as soon as practicable after the withdrawal takes effect.

### **4.3 Reviews**

- (1) A recognised agency may seek a review of a decision made by MPI by writing and stating the grounds of the review to MPI within 20 working days of the notification of the decision.
- (2) MPI will convene an independent review panel to consider the review.
- (3) The recognised agency will be notified in writing of
  - a) the outcome of the review; and
  - b) the reasons for the decision on the review.
- (4) The original decision remains valid until the review panel modifies or reverses it.
- (5) If the review panel modifies or reverses some of the original decision, the parts that are not modified or reversed remain valid.

# Appendix 1: Contract for services as a recognised agency for the OOAP

## CONTRACT FOR SERVICES AS A RECOGNISED AGENCY FOR THE OFFICIAL ORGANIC ASSURANCE PROGRAMME

Made this                      day of                      20

### BETWEEN

**THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Ministry for Primary Industries (“MPI”)

AND

[INSERT FULL LEGAL ENTITY NAME], having NZBN [insert number] (the “Recognised Agency”)

### BACKGROUND

- (1) MPI administers the official organic assurance programme (“OOAP”) as a non-regulated programme providing certain export markets with assurances that New Zealand organic operators operate to the standards agreed with those markets.
- (2) Recognised agencies are able to apply to be recognised by MPI as organisations of sufficient quality to provide services (including evaluation and verification) to the OOAP on the terms of this Agreement.

## 1. DEFINITIONS

“**Agreement**” means the agreement between the parties, comprised of:

- a) this ‘Contract for Services’;
- b) the then-current OOAP Requirements; and
- c) any relevant OMAR.

“**Conflict of Interest**” in relation to the recognised agency means any conflict of the recognised agency’s interests or obligations with its rights or obligations under this Agreement and the Services such that the recognised agency’s independence, objectivity or impartiality can be called into question, whether the conflict of interest is actual (where the conflict currently exists), potential (where the conflict is about to happen or could happen), perceived (where other people may reasonably think that a person is compromised), or otherwise.

### Health and safety definitions:

“**Control measures**” has the same meaning as in Regulation 3 of the HSWA (GRWM) Regulations;

“**HSWA**” means the Health and Safety at Work Act 2015;

“**HSWA Legislation**” means the Health and Safety at Work Act 2015 and includes all regulations made under that Act (including but not limited to the Health and Safety at Work (General Risk and Workplace Management Regulations 2016), and any other health and safety-related legislation relevant to the Contractor’s supply of services to MPI;

“**HSWA (GRWM) Regulations 2016**” means the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;

“**Worker**” has the same meaning as in section 19 of the HSWA;

“**Serious health and safety incident**” means a notifiable event within the meaning of HSWA that is:

- a) The death of a person; or

- b) A notifiable injury or illness

“**Loss**” includes liability, damage, cost, loss, expense, and harm, each however caused, and whether arising directly or indirectly.

“**Overseas Market Access Requirements (OMARs)**” means the MPI issued requirements agreed between the New Zealand government and the government of the export destination

“**OOAP**” means MPI’s official organic assurance programme includes Organic Export Requirements and relevant OMARs.

“**OOAP Requirements**” means current MPI issued Organic Export Requirements relating to the OOAP, and “**Requirement**” refers to the organic export requirements the context requires.

“**Operator**” means the owner or person in control of the products for which certification is sought under the OOAP, has the day to day management or contractual control of an Organic Management Plan, and includes primary producers, processors, handlers, importers and exporters

“**Recognised Agency**” means a person or a group of persons who are recognised by MPI to provide services under Part 2 of the Organic Export Requirement: Recognised Agencies and Persons [OER: RAP].

“**Recognised Agencies System**” refers to the recognised agency’s systems, processes and procedures put in place to meet the requirements of this agreement and to implement the OOAP Requirements and any relevant OMAR.

“**Recognised Person**” means a person who have been formally recognised by MPI as being competent to undertake one or more roles defined in the Organic Export Requirement: Recognised Agencies and Persons (OER: RAP).

“**Services**” means providing services on behalf of MPI for the OOAP as a recognised agency - services including registration, assessment, review, verification, risk analysis, certification and management of non-compliance as further detailed in, and as set out in the OOAP Requirements in accordance with this Agreement.

“**Working Day**” means any day not being a Saturday or Sunday, a public holiday observed in Wellington, or the period from 26 to 31 December in each year.

## 2. INTERPRETATION

2.1 In this Agreement, unless the context requires otherwise:

- a) to the extent that there is any conflict or ambiguity between the various parts of this Agreement, the following descending order of priority shall apply:
  - i) this Contract for Services;
  - ii) the OOAP Requirements; and
  - iii) the relevant OMARs (if applicable).
- b) headings are for guidance only and do not affect interpretation;
- c) subject to clause 16, anything that this Agreement requires to be done in writing, may be done by email;
- d) a reference to any statute, regulation, or expression of government policy includes any amendments, re-enactments or replacements of that statute, regulation, or expression of government policy from time to time.

## 3. TERM

3.1 This Agreement commences on the date it is signed by the authorised representatives of both parties and will continue indefinitely, subject however to any right of termination or suspension set out in this



Agreement or where the recognised agency surrenders its recognition or withdraws its services under clause 11.

## **4. RECOGNITION OF THE RECOGNISED AGENCY AND ITS PERSONS AND PROVISION OF SERVICES**

4.1 Entry into this Agreement is conditional on the recognised agency being accredited through the accreditation process set out in the OOAP Requirements including payment of required fees and assessment by:

- a) a relevant accreditation body; and
- b) MPI appointed technical expert.

4.2 Subject to the fulfilment of the condition in clause 4.1, MPI hereby authorises the recognised agency for the term of this Agreement to perform the Services.

4.3 Throughout the term of this Agreement, the recognised agency must:

- a) renew its recognition as a recognised agency for the OOAP by submitting to MPI's renewal assessment process, and paying any fees required for that process and renewal; and
- b) retain its accreditation with the relevant accreditation body including paying any renewal fees associated with that accreditation, including paying MPI fees where MPI provides the technical expert to the accreditation body and those fees are not charged by the accreditation body.

4.4 Failure to renew either its annual recognition or its accreditation may result in immediate suspension or termination of this Agreement (at MPI's discretion).

4.5 Recognised agency personnel must be recognised by MPI as recognised persons in accordance with the OOAP Requirements before carrying out any of the roles in the OOAP. Failure to use recognised persons for the provision of the Services may result in immediate suspension or termination of this Agreement (at MPI's discretion).

4.6 Obligations of the recognised agency, recognised persons or MPI set out in the OOAP Requirements are requirements of this Agreement.

## **5. CONTRACT WITH OPERATOR**

5.1 In addition to the contents required by the OOAP Requirements for contractual arrangements between the recognised agency and an Operator, the contractual arrangements must include an acknowledgment that the Operator accepts that nothing in its arrangement or in any dealings of any kind between the Operator, Recognised Agency and/or MPI, Crown officers, or agents of or other persons associated with MPI or Crown officers, represents to the Operator or otherwise creates any kind of expectation on the Operator's part that:

- a) any authorisation or any certification of any kind will be granted by MPI or the recognised agency, or will be granted within a certain time period; or
- b) any products or other things that are accompanied by or otherwise reliant on any service for export certification provided by the recognised agency or MPI will be accepted by an importing country's official control authorities, or will be accepted within a certain time period.

5.2 The contractual arrangements must also include acknowledgment by the Operator that MPI may have access to and use the data and information contributed by that Operator for administration, development and reporting on the OOAP.

## 6. WARRANTIES

6.1. The recognised agency warrants that all information (including written and oral information) supplied by the recognised agency to MPI is correct and adequate in all respects, including:

- a) all information supplied in or in connection with the application forms submitted to MPI and relevant to this Agreement;
- b) all other information supplied in connection with the recognition of the recognised agency under this Agreement; and
- c) all information required to be supplied under the OOAP Requirements (including any information required for conformity assessment).

6.2. The recognised agency warrants that throughout the term of this Agreement the recognised agency will maintain its recognised agency System and all other relevant practices to substantially correspond with all the information referred to in clause 6, except to the extent that any changes made are authorised by MPI or the accreditation body in accordance with the OOAP Requirements.

6.3. The recognised agency will notify MPI of any change to the recognised agency's name.

6.4. The recognised agency warrants that where it is an unlisted company, it will notify MPI as soon as reasonably practicable of any change of control, including:

- a) change in the legal or beneficial ownership of any of its shares; or
- b) issue of new capital; or
- c) change to the rights and powers attaching to any of its shares; or
- d) change to the composition of its board of directors (as this term is defined in section 127 of the Companies Act 1993).

6.5. The recognised agency warrants that it will fully comply with all the requirements and other specifications set out in the OOAP Requirements.

6.6. The recognised agency warrants that it will take all reasonable steps to enable and facilitate MPI, and any persons acting for or otherwise associated with MPI, to perform their tasks and functions as envisaged in, or otherwise in connection with, the OOAP.

6.7. The recognised agency acknowledges that it is authorised to perform Services pursuant to this Agreement, but that its status under this Agreement does not authorise it to perform any other action, and therefore warrants that:

- a) it will not hold itself out as being associated with or endorsed by MPI in any other respect;
- b) in making reference to its recognised status in all publicity and media forums it will use only the following phrase or an equivalent phrase approved by MPI:  
"Recognised by MPI to provide verification and/or evaluation services to support the MPI Official Organic Assurance Programme".
- c) it will not use the MPI logo, crest, coat of arms, or any other device, other than as may be permitted by the Flags, Emblems, and Names Protection Act 1981.

## 7. CONFLICT OF INTEREST

7.1. The recognised agency:

- a) warrants that as at the commencement of this Agreement, it has no conflict of interest; and
- b) must do its best to avoid situations that may lead to any new conflict of interest arising during the term of this Agreement.

7.2. The recognised agency must immediately notify MPI in writing of any matter, event or circumstance that gives rise to any conflict of interest. If a conflict of interest does arise the parties must discuss, and then, without prejudice to MPI's rights under this Agreement, endeavour to agree and record in writing, how it will be managed.

7.3. The recognised agency will use all reasonable endeavours to minimise the impact on MPI of any conflict of interest. Each party must pay their own costs in relation to managing a conflict of interest.

## 8. HEALTH AND SAFETY REQUIREMENTS

8.1 During the Term the recognised agency will:

- a) Consult, cooperate and coordinate with MPI to ensure that the Parties each comply with their respective obligations under HSWA Legislation as they relate to this Agreement;
- b) Perform its, and ensure that its Workers perform their, obligations under this Agreement in compliance with the HSWA Legislation, including but not limited to:
  - i) Duties of a Person Conducting Business and Undertaking (PCBU) under ss36–43 of HSWA
  - ii) Duties relating to the identification of hazards and implementation of control measures under the HSWA (GRWM) Regulations;
  - iii) Duties relating to the keeping of records under s57 of HSWA
- c) Comply with all reasonable directions of MPI relating to health and safety, as notified to the recognised agency from time to time, that are reasonably necessary to allow MPI to manage its duties as a PCBU;
- d) Maintain a general health and safety policy and practices that are appropriate to the nature of the services provided to MPI;
- e) Comply with its own health and safety policy and practices, and ensure its Operators (in accordance with clause 5) and workers so comply.

8.2 During the Term the recognised agency will notify all notifiable events (to clarify including all serious health & safety incidents) occurring during delivery of the services to MPI to WorkSafe NZ within the timeframe and in accordance with the requirements under section 56 of the HSWA and to MPI within one Business Day of becoming aware of the event.

8.3 Where a notifiable event has been notified to WorkSafe NZ, under clause 8.2, the recognised agency will ensure it provides a written summary of that notifiable event at the request of MPI.

8.4 If MPI becomes aware of a breach of HSWA Legislation or the requirements of this clause 8 by the recognised agency or its Operator, and their workers, or where an audit or inspection conducted under clause 8.8 identifies any breach, MPI may, while acting reasonably require the recognised agency to undertake one or more of the following actions:

- a) Remedy any breach of the HSWA legislation or this Agreement;
- b) Suspend or terminate all or part of the Services under this Agreement, until such time as the breach has been remedied and/or the health and safety risk eliminated or managed (and during any such period of suspension
- c) Refer the matter to dispute under clause 13

8.5 In the event that the recognised agency fails to remedy a breach or take any other action required by MPI under clause 8.4, MPI may terminate this Agreement under clause 11 of this agreement.

8.6 During the Term the recognised agency will comply with any health and safety reporting requirements outlined in the OOAP Requirements.

8.7 The recognised agency will, within one Business Day of becoming aware of the occurrence of a serious health and safety incident arising from the supply of the services to MPI, report details of that incident to MPI in writing (including the name and position of any Worker involved, the nature and location of the incident, and the type and extent of the health and safety risk raised by the incident).

8.8 MPI may, at any time during the Term:

- a) Require information or documentation from the Recognised Agency in relation to any matter concerning the recognised agency's health and safety performance or compliance in relation to the Services, or relating to a health and safety incident or risk; or
- b) Carry out a paper-based audit of the health and safety system as it relates to the services;

8.9 At any reasonable time during Business Hours, MPI may carry out a physical inspection of any place of work (including where the notifiable event occurred) that the Recognised Agency is using or intends to use in connection with the supply of services to MPI.

## 9. INSURANCE

9.1 The recognised agency must effect and maintain insurance with a reputable insurer sufficient to cover its obligations under this Agreement, including but not limited to its liabilities and indemnities under this Agreement. The recognised agency must, on request, provide MPI with sufficient evidence of its insurance cover in relation to this Agreement.

## 10. LIABILITY

10.1 Under no circumstances will MPI be liable to the recognised agency for any Loss as defined in this Agreement.

10.2 The recognised agency hereby indemnifies MPI, Crown officers, and agents of (or other persons associated with) the same from and against any Loss arising from or connected with this Agreement, including Loss arising from or connected with (directly or indirectly):

- a) the performance, or as the case may be, non-performance or partial performance, of the recognised agency (or any of its contractors, sub contractors, agents, or employees that are not a party to this Agreement) of the Services or any of its other rights or obligations in this Agreement;
- b) negligent acts or omissions on the part of the recognised agency (or any of its contractors, sub contractors, agents, or employees that are not a party to this Agreement);
- c) suspension or termination in accordance with this Agreement.

## 11. SUSPENSION AND TERMINATION BY MPI

### Termination

11.1 MPI may terminate this Agreement, immediately on written notice to the recognised agency, where the recognised agency commits a material breach of this Agreement that:

- a) is not capable of being remedied (in the reasonable opinion of MPI, in accordance with the requirements set out in the OOAP Requirement); or
- b) is capable of being remedied:
  - i) but has not been remedied to MPI's reasonable satisfaction within 10 Working Days (or such longer period as MPI may allow in writing) of MPI giving the recognised agency written notice stating the nature of the breach, what is required to remedy it and the time and date by which it must be remedied; or

- ii) and the recognised agency's recognition has been suspended by MPI, but the suspension conditions prescribed by MPI are not met by the recognised agency.

11.2. For the avoidance of doubt, it will be a material breach of this Agreement if:

- a) MPI reasonably believes that the recognised agency has breached the OOAP Requirement and is not:
  - i) delivering output(s) in accordance with its recognised agency System;
  - ii) operating in accordance with its authorised procedures;
  - iii) meeting the requirements of this Agreement, and any other export certification system requirements associated with the scope of its recognition from MPI;
  - iv) following the process for (or achieving the relevant corrective actions for) critical non-compliances, as provided for in the relevant OOAP Requirement;
- b) the recognised agency fails to make full payment of fees to MPI;
- c) the recognised agency fails to retain its accreditation with the accreditation body.
- d) MPI suspends or withdraws the recognition of a recognised agency, in whole or part, under the current OOAP Requirement

11.3. MPI may terminate this Agreement immediately on written notice to the recognised agency, if the recognised agency:

- a) becomes insolvent or bankrupt; has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; becomes subject to any form of external administration; or becomes unable to pay its debts as they become due or is presumed to be unable to pay its debts under section 287 of the Companies Act 1993;
- b) is unable to perform its obligations for more than one month due to a Force Majeure event;
- c) if the recognised agency fails to renew its recognition as a recognised agency as required by the OOAP Requirements or MPI is not satisfied that the recognised agency's business, or any aspect of it, remains compatible with the performance of the Services;
- d) MPI suspends or withdraws the recognition of a recognised agency, in whole or part under the current OOAP Requirement
- e) fails or is unable to rectify any deficiency uncovered by MPI as a result of an audit conducted under clause 12;
- f) does something, or fails to do something, that, in MPI's opinion, results in damage to MPI's reputation or business, or the reputation or business of the New Zealand government;
- g) has any Conflict of Interest that:
  - i) in MPI's opinion is so material as to impact adversely on the delivery of the Services, MPI or the New Zealand government;
  - ii) the recognised agency failed to notify MPI of; or
  - iii) in MPI's opinion, the recognised agency is unable or unwilling to resolve or deal with as required by MPI acting reasonably;
- h) any of the events in clause 6.4 occur; or
- i) provides information to MPI that is misleading or inaccurate in any material respect.
- j) recognised agency surrenders or withdraws its services

11.4. MPI may terminate this Agreement:

- a) on the giving of one month's notice in writing to the recognised agency in the event that MPI undergoes a merger, amalgamation, restructuring, or other form of organisational change which results in the Services no longer being reasonably required or no longer being within the strategic mandate of MPI; or
- b) immediately by giving notice to the recognised agency if there has been a change in relevant government policy.

11.5. MPI may terminate this Agreement by giving two month's written notice to the recognised agency.

11.6. Where MPI has a right to terminate this Agreement, that right shall be deemed to include the right to terminate any severable part of this Agreement.

## **Suspension**

11.7. If either:

- a) MPI has a right to terminate this Agreement (including any material breach under clause 11.2 and clause 11.3); or
- b) This Agreement contemplates a right of suspension; or
- c) the recognised agency has not paid its renewal fee; or
- d) the recognised agency provides MPI with at least 30 days' notice requesting suspension,

then MPI may temporarily suspend (in whole or in part) the operation of this Agreement and the recognised agency's authorisation to perform Services for such period of time, and subject to such conditions, as MPI sees fit in its absolute discretion (in accordance with the requirements set out in the OOAP Requirement and clause 4.6 obligations).

11.8. MPI's right of suspension is without prejudice to its right to later terminate this Agreement in its entirety, or to take any action available to it at law.

11.9. During the period of the suspension, the recognised agency must not offer or perform any Services or hold itself out as being authorised by MPI for the relevant purposes.

## **Consequences of suspension or termination**

11.10. In the event of a suspension or termination pursuant to this clause 11 and subject to MPI's notification obligations under the OOAP Requirement the recognised agency must immediately:

- a) acknowledge in writing its receipt from MPI of the suspension or termination;
- b) notify organisations to which they are providing recognised agency service options of the suspension or termination;
- c) not offer to perform, or perform, any Services;
- d) provide to MPI all records requested by MPI related to the recognised agency's Services.

## **12. AUDIT**

12.1. At any time during the term of this Agreement, or following it if the parties are in dispute, MPI may conduct an audit of the recognised agency, including for the purpose of determining compliance (including clause 8 requirements) and whether there has been a breach of this Agreement.

12.2. During an audit conducted under this clause, MPI may, at the recognised agency's cost:

- a) enter any premises of the recognised agency or its subcontractors at any reasonable time during business hours;
- b) inspect any records held by the recognised agency in relation to the provision of the Services, or any matter in dispute between the parties;
- c) meet with and/or contact and speak to any or all the recognised agency's or its subcontractors' personnel involved with provision of the Services.

## **13. DISPUTES**

13.1. The parties agree to use their best efforts to resolve any dispute which may arise under this Agreement (including under clause 8) through good faith negotiations. Except as provided in clause 13.4, no party shall commence any arbitration or litigation in relation to this Agreement unless it has first invited the

chief executive or delegated representative of the other party to meet with its own chief executive or delegated representative for the purpose of endeavouring to resolve the dispute on mutually acceptable terms.

13.2. Should resolution of the dispute not be achieved at chief executive level, the dispute will be submitted to mediation before any litigation is commenced. Any party may initiate mediation by giving written notice to the other party of their intent to do so. Should the parties be unable to agree on a mediator within two (2) Working Days of receipt of notice of intent to seek mediation, then the mediator will be selected by the head for the time being of the Resolution Institute (NZ) or its successor.

13.3. Any dispute arising under this Agreement which cannot be settled by negotiation or mediation between the parties or their respective representatives shall be submitted to arbitration in accordance with the Arbitration Act 1996.

13.4. In the absence of agreement concerning the appointment of an arbitrator, either party may request the President of the New Zealand Law Society to appoint a suitably qualified independent arbitrator to hear and determine the dispute.

13.5. Nothing in this clause shall preclude either party from taking immediate steps to seek urgent equitable relief before a New Zealand Court.

## 14. ASSIGNMENT AND SUBCONTRACTING

14.1. The recognised agency may not subcontract any of its obligations under this Agreement except where it has MPI's prior written approval.

14.2. The recognised agency will not be relieved of any of its liabilities or obligations under this Agreement by entering into any subcontract.

14.3. If a subcontractor has failed to deliver any aspect of the Services being subcontracted as approved under this Agreement and the failure cannot be remedied, MPI may, by notice to the recognised agency, require the recognised agency to terminate that subcontract immediately. MPI will not be liable for any losses or costs of the recognised agency associated with such termination.

14.4. Neither party shall assign all or any of its rights, obligations, or liabilities under this Agreement. In the event of a purported assignment in breach of this clause, this Agreement shall be deemed to have automatically terminated without further action required by either party.

## 15. FORCE MAJEURE

15.1. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any act or omission, or any failure to comply with this Agreement, where such, act, omission, or failure is caused by fire, flood, storm, earthquake, civil disturbance, war, act of God, or any other event or circumstances reasonably beyond its control ("Force Majeure"), provided that the party alleging Force Majeure has taken all reasonable precautions to avoid or mitigate the consequences of such occurrence.

15.2. The party unable to fulfil its obligations due to Force Majeure will immediately:

- a) notify the other in writing of the reasons for its failure to comply with the warranty or to perform the obligation, and the effect of such failure; and
- b) use all responsible endeavours to avoid or remove the cause and comply with the warranty or perform the obligation.

15.3. Upon receiving notice pursuant to clause 15.2, or upon otherwise being made aware of any Force Majeure circumstances affecting the recognised agency, MPI may at its absolute discretion suspend the

recognised agency until such time as the circumstances have been avoided, removed or abated sufficiently to enable the recognised agency to comply with this Agreement.

## 16. NOTICES

16.1. Any notice or other communication under this Agreement will be deemed to be validly given if in writing and delivered by hand, registered mail, post, facsimile, or email (subject to the remainder of this clause 16) to the address specified below, as updated on written notice from that party.

### For MPI:

Physical address:

Official Organic Assurance Programme  
Ministry for Primary Industries  
PO Box 2526  
WELLINGTON

Email address: [organics@mpi.govt.nz](mailto:organics@mpi.govt.nz)

### For recognised agency:

Physical address: [ ]

Email address: [ ]

16.2. Unless the contrary is shown, any notice will be deemed to have been given on the date when actually delivered personally or by registered mail, on the third Working day following posting to a national address, on the seventh Working day following international posting, on the date sent by facsimile transmission if transmitted before 5:00 pm or on the next Working day if transmitted after 5:00 pm, and on the date that receipt of an emailed notice is acknowledged by the recipient personally (that is, not by any automatically generated system email).

16.3. The parties agree that no notice required or permitted to be given pursuant to clause 13 (Disputes) or clause 11 (Termination) may be given by email.

## 17. GENERAL

17.1. No amendments to this Agreement are effective unless they are in writing and signed by both parties, except in relation to the OOAP Requirements, which MPI may amend from time to time in its sole discretion.

17.2. Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship between MPI and the Recognised Agency. Neither party has authority to bind or represent the other party in any way or for any purpose.

17.3. This Agreement is not an exclusive arrangement and each may enter into contracts with third parties in respect of the same or similar subject matters.

17.4. No waiver of any rights or benefits arising under this Agreement is effective unless it is in writing and signed by the party waiving. A waiver of a breach does not prejudice the waiving party's rights in respect of any other breach. No delay, failure or forbearance by the parties to exercise (in whole or in part) any right, power or remedy under this Agreement will operate as a waiver.

17.5. This Agreement sets out the entire agreement between the parties.



**EXECUTION**

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|---|--|
| <b>SIGNED</b> for and on behalf of MPI by the person named below, being a person duly authorised to enter obligations on behalf of MPI: | <b>SIGNED</b> for and on behalf of the <b>recognised agency</b> by the person named below, being a person duly authorised to enter obligations on behalf of the <b>recognised agency</b> : |
| Name:   | Name:  |
| Title:  | Title:   |
| Business Unit:  |  |
| Date:   | Date:  |
| in the presence of:   | in the presence of:  |
| Witness Signature   | Witness Signature  |
| Name:<br>Occupation:  | Name:<br>Occupation:   |
| City of residence:  | City of residence:   |