



# MPI Certification Standard: Organisation Requirements

28 June 2016

## **TITLE**

Plant Export Requirement: MPI Certification Standard: Organisation Requirements

## **COMMENCEMENT**

This Plant Export Requirement is effective from the date of issue.

## **ISSUING BODY**

This Plant Export Requirement is issued by the Ministry for Primary Industries

Dated at Wellington this 13th day of June 2016

[signed]

Peter Thomson  
Director, Plants, Food and Environment  
Ministry for Primary Industries  
(acting under delegated authority of the Director-General)

Contact for further information  
Ministry for Primary Industries (MPI)  
Regulation & Assurance Branch  
Plant Exports  
PO Box 2526,  
Wellington 6140  
Email: [plantexports@mpi.govt.nz](mailto:plantexports@mpi.govt.nz)

<b>Contents</b>	<b>Page</b>
<b>Introduction</b>	<b>3</b>
<b>Part 1: MPI Approval of an Organisation</b>	<b>5</b>
1.1 General requirements	5
1.2 Roles and responsibilities of an MAO	5
1.3 MAO service delivery options	5
1.4 Process for MPI approval of Organisations	6
1.5 Communication of MPI approval status	7
1.6 Request for dispensation and recognition for equivalency	7
<b>Part 2: MAO System Requirements</b>	<b>8</b>
2.1 Organisation system overview	8
2.2 Document control	10
2.3 Service delivery procedures	10
2.4 Maintaining phytosanitary security	11
2.5 Staff competency	11
2.6 Trace-backs and investigations	12
2.7 Maintenance of records	13
2.8 Reporting	13
2.9 Sub-contracting	14
<b>Part 3: MAO System Amendments</b>	<b>15</b>
3.1 Amendments to existing MAO systems	15
3.2 Organisation transfer to another IVA	16
<b>Part 4: Non-compliance</b>	<b>17</b>
4.1 Classification of non-compliance findings	17
4.2 Critical non-compliance findings	17
4.3 'Other non-compliance' findings	18
4.4 Managing non-compliance findings	18
<b>Part 5: Suspension and Termination of MPI Approval</b>	<b>20</b>
5.1 Reinstatement of an organisation following suspension by MPI	20
5.2 Termination of MPI approval	20
<b>Appendix 1: Application for Approval as an MAO</b>	<b>21</b>
<b>Appendix 2: Template Contract for Approval of an Organisation</b>	<b>23</b>

## Introduction

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

## Purpose

To specify the requirements, an applicant organisation must meet in order for the Ministry for Primary Industries (MPI) to consider contracting with an organisation to undertake pre-export services on behalf of the Ministry for Primary Industries (MPI) for the receipt of official assurances for plants and plant products.

## Background

The MPI has developed a series of operating standards to manage the export certification of plants and plant products. This series can be found on the MPI website.

The MPI Regulatory model for plant exports operates through authorised Independent Verification Agencies (IVAs) and MPI approved organisations (MAOs) undertaking services on MPI's behalf.

## Who should read this?

This standard applies to all plant and plant products organisations seeking MPI approval to undertake service delivery options (refer to Part 2).

## Why is this important?

Operating other than in accordance with this standard will result in the MAO losing their approval to provide services on behalf of MPI Plant Exports.

## Document history

Previous Version Date	Current Version Date	Section Changed	Change(s) Description
23 June 2015	10 June 2016	Purpose and Part 1: General Requirements 1.1 (2) a) and e) and addition of clause 1.1(3).  Appendix 2.	Clarification that there is not an automatic contract upon meeting the standard and application of 'fit and proper person'  Added MPI address details for returning completed and signed contracts.  Warranties – amended clause 5.4 to clarify when MPI needs to know changes for ownership and directorship for unlisted companies; added clause 5.8 for notification to MPI when an organisation ceases or intends to cease to be an MAO.  Intellectual Property – amended clause 7.2 to clarify ownership of new IP and deleted clause 7.4

			Clause 16, added address for service table (including MPI address details)
8 April 2015	23 June 2015	Appendix 2: Template Contract for Approval of an Organisation	Clause 10.1 of the contract amended to read 'Under no circumstances will MPI be liable to the organisation for any loss'.
12 March 2014	8 April 2015	Whole document	Full review and reissue of this standard.

## Other information

MPI Plant Exports Certification Standard: Assurance System Framework: including:

- Appendix 1: References
- Appendix 2: Definitions

## Part 1: MPI Approval of an Organisation

### 1.1 General requirements

- (1) An organisation must be formally recognised and approved by Ministry for Primary Industries (MPI) to undertake services on behalf of MPI.
- (2) An applicant seeking to become an MPI approved organisation (MAO) must:
  - a) satisfy MPI that it, and its key personnel are fit and proper persons to hold MPI approval status conferred by the contract; this enquiry shall be made at MPI's sole discretion;
  - b) meet the conditions contained in Appendix 1: Application for Approval as an MAO;
  - c) document and gain MPI approval of their system that addresses the requirements of this standard and other applicable MPI technical standards;
  - d) comply with importing country requirements;
  - e) meet any other requirements that MPI considers may be relevant to your application.
- (3) Meeting the requirements as set out under this standard does not guarantee that MPI will enter into an approval contract with the applicant.

### 1.2 Roles and responsibilities of an MAO

- (1) An MAO's role is to provide services on behalf of MPI that produce outputs that comply with importing countries requirements.
- (2) MAOs are responsible for:
  - a) accurately documenting their organisation system to fully describe actual activities undertaken;
  - b) gaining MPI approval to undertake one or more service delivery options (refer to Part 2.3);
  - c) operating in compliance with their MAO system (refer to Part 3);
  - d) maintaining their organisation system to meet the requirements of this standard and the MPI technical standards applicable to the scope of their MPI approval (refer to Part 4);
  - e) ensuring their outputs comply with the applicable importing country requirements;
  - f) the impartiality of their decisions.

### 1.3 MAO service delivery options

- (1) An organisation may gain MPI approval to undertake one or more of the following services:

**Table 1: MAO Service Delivery Options and the Applicable MPI Technical Standard**

Option	Service	Reference MPI Standard
1	Phytosanitary inspection*.	Technical Standard: Phytosanitary Inspection.
2	(2) Phytosanitary treatment*.	Treatment Supplier Programme: Requirements for the supplier of official treatments. Note: MAOs incorporating treatments within their scope of activities only need to have documented procedures for the following Parts – 2.6, 2.7, 4.1.1, 4.1.3, 4.2, 4.3, 4.6, 4.7, 4.8, and Appendix 3 1.0 of the MPI Standard: Requirements for the Supplier of Official Treatments.
3a	Managing supporting documentation for phytosanitary certificates.	Technical Standard: Phytosanitary Certificates.
3b	Printing phytosanitary certificates.	Technical Standard: Phytosanitary Certificates.
4	Pest survey*.	Technical Standard: Pest Freedom Surveys.

5	Activities associated with the use of the certification mark for wood packaging.	Technical Standard: Certification Mark for Wood Packaging.
6	Seed varietal activities.	Technical Standard: Seed Varietal Certification.
7	Audits of their suppliers of phytosanitary services.	Technical Standard: Audit.

Note: \* These options include a phytosanitary security component.

#### Guidance

- Applicant Organisations seeking to only deliver phytosanitary security services to plant material and considered eligible for certification (as per the phytosanitary inspection, phytosanitary treatment or pest freedom survey standards) may do so providing they also meet the requirements of this standard.

## 1.4 Process for MPI approval of Organisations

- (1) The process for an organisation to gain MPI approval is described in Table 2:
  - a) Organisations must engage the services of an IVA to facilitate an effective approval process.
- (2) The formal MPI approval record consists of:
  - a) a copy of the MPI counter signed contract of approval;
  - b) the MPI approved copy of the applicants system.

**Table 2: Pathway for MPI approval of an applicant organisation**

Step	Applicant organisation action	IVA action	MPI action
1	Contact your nominated IVA (refer to MPI website for a list of authorised IVAs).	Clarify any queries from the applicant.	
2	Complete the application form (Appendix 1) & forward this with the application fee to MPI.		Process application and copy to nominated IVA.
3	Document your organisation system to comply with this standard and the applicable technical requirements (refer to Part 3).		
4	Mutually agree on a time frame for evaluating your documented system.		
5	Submit the system to your IVA and attach two copies of the completed Contract of Approval (Appendix 2).	Evaluate (desk audit) the documented system against MPI plant exports standards and request any additional information if required.	
6	Provide your IVA with any requested additional information.	Undertake an on-site system audit to validate that the actual operations correspond to the applicants documented procedures at each location where MPI services will be undertaken.	

Step	Applicant organisation action	IVA action	MPI action
7		Notify the applicant of any non-compliance(s) and request corrective action(s).  Advance to Step 9 if there are no non-compliance findings.	
8	Identify, implement and request IVA verification of the corrective action(s).	Verify the agreed corrective actions have been implemented.	
9		Write a recommendation to MPI stating whether the applicant's system is compliant and fit for approval.  Attach a copy of the applicant's system.	Considers the IVA recommendation and where criteria are met approve the applicant by signing the contract of approval.  Notify the IVA of the approval by e-mail.
10		Notify applicant of MPI's approval and confirm the date the organisation will start operating as an MAO.	Forward the organisation a copy of the counter signed contract of approval and MPI Approval letter.
11	Operate services on behalf of MPI as per scope of the MPI approval.		Update the MAO register on the MPI website.

## 1.5 Communication of MPI approval status

- (1) In making reference to its approval status in all media forums, an MAO must only use the following phrase or an equivalent phrase approved by MPI:
  - a) "approved by Ministry for Primary Industries to provide "[state the service options]".
- (2) The MPI logo or acronym is not to be used (in any form), unless authorised by MPI.

## 1.6 Request for dispensation and recognition for equivalency

- (1) An MAO seeking a dispensation from any specification within the plant export requirement standards must make a formal request to MPI Plant Exports.
  - a) when an MPI dispensation has been granted the MAO must supply a copy of the MPI dispensation and the MAO's amended procedures to their IVA.
- (2) An MAO seeking a phytosanitary risk management process to be recognised as equivalent to phytosanitary inspection must submit a formal request to MPI Plant Exports.
  - a) when an MAO has received MPI recognition for equivalence the MAO must supply a copy of the MPI equivalence notification and their amended procedures to their IVA.



## Part 2: MAO System Requirements

- (1) The MAO system must include as a minimum:
- a) an organisation system overview (refer to Part 2.1);
  - b) documented procedures describing how the following requirements are met:
    - i) the applicable MPI Technical Standards (refer to Part 2.3.2);
    - ii) maintaining phytosanitary security (refer to Part 2.4);
    - iii) staff competency (refer to Part 2.5);
    - iv) the applicable Official Assurance Programmes (OAPs) and Preclearance programmes.
- (2) Organisations must meet the following minimum requirements in operating their system:
- a) document control (refer to Part 2.2);
  - b) maintenance of records (refer to Part 2.7);
  - c) MPI reporting (refer to Part 2.8);
  - d) trace-backs and investigations (refer to Part 2.6).

### Guidance

- Although MPI does not require documented procedures for the requirements specified in Part 2 (2), MAOs should consider the value of having documented procedures for these areas for their own internal use.
- If the MAO decides not to document these as procedures it may be beneficial to copy and paste the minimum requirements into the Organisation system so operating requirements are not overlooked.

## 2.1 Organisation system overview

- (1) Organisations must provide full contact details as described in the following tables:

<b>Organisation name</b>	<i>Legal entity</i>		
<b>Head Office</b>	<i>Street address</i>	<i>Town/City</i>	<i>Area/Province</i>
<b>Postal address</b>	<i>Street/Box no./RD no.</i>	<i>Town/city</i>	<i>Area/Province</i>
<b>Office</b>	<i>Office phone no.</i>	<i>Alternate phone no.</i>	<i>Fax no.</i>
<b>Contact for the owner of the MAO</b>	<i>Name Position</i>	<i>Mobile DDI</i>	<i>E-mail:</i>

<b>MAO contact details</b>	<b>Contact person</b>	<b>Phone</b>	<b>E-mail address</b>
Manager of organisation system	<i>Name Position</i>	<i>Mobile DDI</i>	<i>E-mail</i>
Alternative contact of organisation system	<i>Name Position</i>	<i>Mobile DDI</i>	<i>E-mail</i>
Contact person for IVA liaison	<i>Name Position</i>	<i>Mobile DDI</i>	<i>E-mail</i>

<b>Site/facility name</b> <i>Repeat for each site</i>	<i>Name</i>		
<b>Facility type (e.g. sawmill, packhouse, cool store)</b>			
<b>GPS coordinates (main entrance of each facility)</b>			

<b>Physical address</b>	<i>Street address</i>	<i>Town/City</i>	<i>Area/Province</i>
<b>Postal address</b>	<i>Street/Box no./RD no.</i>	<i>Town/City</i>	<i>Area/Province</i>
<b>Office contacts</b>	<i>Office phone no.</i>	<i>Alternate</i>	<i>Fax no.</i>
<b>Site contact person</b>	<i>Name</i> <i>Position</i>	<i>Mobile</i> <i>DDI</i>	<i>E-mail</i>
<b>Scope of Services</b>	(refer to Table 1.)	(refer to Table 1.)	(refer to Table 1.)
<b>Commodity type(s) handled (Refer guidance below)</b>	<i>Name</i>	<i>Name</i>	<i>Name</i>
	<i>Name</i>	<i>Name</i>	<i>Name</i>
	<i>Name</i>	<i>Name</i>	<i>Name</i>

**Guidance**

- Examples of commodity types include but are not limited to: fresh pipfruit, fresh kiwifruit, fresh stone fruit, processed fruits/vegetables, fresh onions, timber products.
- Organisations should consider including a list of special programmes (e.g. official assurance programmes) that they are considering participating in which may need additional procedures.

- (2) Organisations must include an organisational structure/chart showing line control (including all MPI recognised staff):
  - a) the titles in the organisation chart must align with those listed in procedures and staff competency registers.
- (3) The Organisation must define and document their product pathway applicable to the scope of the Organisation's services.

**Guidance**

- The product pathway may include, but not be limited to the following stages:
  - production site (e.g. forest, farm or orchard);
  - place of handling initial harvested plant products (e.g. packhouse, seed cleaning plant, log yard, saw mill);
  - storage;
  - treatment;
  - application of registered certification marks;
  - processing;
  - dispatch and inventory control;
  - transport;
  - export documentation to obtain MPI certification.

**2.1.1 Multiple Operational sites**

- (1) Organisations must clearly document in their system overview (refer to Part 2.1) how multiple operational sites are to be managed from an IVA audit perspective.

**Guidance**

- Organisations may treat each operating site (or groups of sites) as independent entities and request a separate audit regime for each or they may request multiple sites be included in one audit regime.
- Where the Organisation chooses to include each operating site under the one system, any non-compliance found at one site may be equally applied to all other sites in the operation.
- Where the Organisation chooses to run each operating site as a separate entity, a system may be either:
  - documented for each site, or;
  - included in the overarching organisation system, but clarifying that the IVA audit regime is to be independently implemented.

## 2.2 Document control

- (1) The organisation must ensure each page of their organisation system (including their operating procedures) has a unique version number and/or the date which identifies the most recent version of the system, procedure or individual page released.
- (2) Changes made to an organisation system must be highlighted or tracked to assist with efficient evaluation of the changes.
- (3) Handwritten amendments to the organisation system are permitted to correct spelling mistakes provided the original wording is crossed out and not covered up using correction fluid or tape. Handwritten amendments must be initialled and dated.
- (4) Up to date procedures must be readily accessible to the person responsible for completing the activity.
- (5) All amendments made to an organisation system must be evaluated by the IVA and approved by MPI prior to implementation.

## 2.3 Service delivery procedures

- (1) The organisation must document procedures relevant to the scope of service(s) for which they are seeking MPI approval (refer to Part 1.3, Table 1).

### 2.3.1 Procedures for services

- (1) The organisation's documented procedures must describe:
  - a) what activities are undertaken;
  - b) how activities are undertaken;
  - c) where activities are undertaken;
  - d) when activities are undertaken;
  - e) who is responsible for completing the activities.
- (2) Documented procedures must be descriptive in nature. Specification statements using terms such as 'must', 'shall' or 'will' must not be used when documenting procedures.

#### Guidance

- Procedures should be concise and list descriptive actions, examples include:
  - check pack labelling and record the relevant pack details and sample size onto the Inspection record sheet.
  - open each package & remove all wrapping from the produce.

### 2.3.2 Technical requirements

- (1) The organisation's documented procedures must describe how they meet the requirements contained in:
  - a) the relevant technical standards (refer to Table 1, Part 1.3);
  - b) MPI recognised importing country's requirements e.g. phytosanitary, grade, residue/food safety;
  - c) import permits;
  - d) work plans for pre-clearance programmes;
  - e) official assurance programmes (OAPs);
  - f) MPI import standards (where applicable, e.g. treatment of import risk goods).

### 2.3.3 MPI pre-approved procedures

- (1) MPI pre-approved procedures (e.g. those associated with OAPS) are available from MPI for the MAO to incorporate into their documented system.
- (2) Where these procedures are included in the organisation system without changes, IVA/MPI shall not re-evaluate the content except to check the content has not changed.
- (3) Where an organisation changes MPI pre-approved procedures (e.g. tailors these to reflect their method of operating), modified procedures must be submitted for IVA evaluation and MPI approval.

## 2.4 Maintaining phytosanitary security

- (1) The organisation's documented procedures must describe:
  - a) how they ensure product eligible for certification is protected from becoming infested, contaminated or substituted (mixed) with product that is not eligible for MPI certification;
  - b) the actions taken to minimise the risk or monitor the occurrence of infestation, contamination and deterioration occurring to the point it leaves the organisation's responsibility;
  - c) the actions taken to prevent substitution or mixing and in particular, when plant products require rework, how the eligibility for certification is maintained;
  - d) the actions undertaken when the certification status is compromised or suspended;
  - e) corrective actions to bring any non-complying plant product and/or operational process back into compliance with specification;
  - f) how they manage product identification and traceability (i.e. inventory records) from the place of production to the point of export;
  - g) how they communicate the certification eligibility status of product destined for export to another MAO or IVA;
  - h) how they manage the transfer of responsibility to another MAO or IVA to ensure the product maintains its certification status:
    - i) MPI certification will be lost if responsibility is transferred to a non-MAO unless this transfer is under the control of the MAO (i.e. responsibility is retained by the MAO);
    - ii) where an MAO elects to transfer their product to a non-MAO the MAO must provide the entity with documented procedures to follow that are monitored by the MAO.

## 2.5 Staff competency

### 2.5.1 Competency assessment

- (1) The organisation's documented procedures for staff competency assessment must describe:
  - a) how trainee staff are supervised (i.e. within line of sight) by a competent staff member, where the outcome impacts the MPI certification decision;
    - i) one supervisor (i.e. competent staff member) to three trainees is considered to be the maximum for supervisory purposes.
  - b) the method used to assess staff competency to undertake specified MPI activities;
  - c) how the assessor of staff competency is involved in the observation of the trainees completing practical implementation tests;
  - d) how competencies are confirmed annually unless otherwise agreed by MPI on a case by case basis;
  - e) actions undertaken as a result of receiving a report on competency assessments undertaken.

#### Guidance

- One supervisor (i.e. competent staff member) to three trainees is considered to be adequate for supervisory purposes.

## 2.5.2 Phytosanitary decision making staff competency

- (1) Staff involved in phytosanitary decision making must be competent in:
- a) management and control of all information to make phytosanitary decisions;
  - b) ability to access, interpret and apply importing country requirements (ICPRs, Import permits and associated additional declarations);
  - c) knowledge of required documents to facilitate phytosanitary decision making;
  - d) understanding of and following their MPI approved procedures;
  - e) reconciling plant products eligibility with the phytosanitary decisions made;
  - f) exercising impartiality when making phytosanitary decisions.

### Guidance

- Consider staff reporting lines and methods of separating remuneration from the decision outcomes (e.g. not paying MPI recognised staff based on the number of decisions made or on the results of the decisions).
- In cases where it is impossible to separate remuneration from the decision outcomes (e.g. in very small MAOs approved for inspection), other means, such as recording the duration of inspections and digital photographic evidence, could be used to demonstrate that decisions are not compromised by financial considerations.
- Conflicts of interest registers can be used for staff as a part of how any conflicts or perceived conflicts are managed on an ongoing basis.

## 2.6 Trace-backs and investigations

### 2.6.1 Trace-backs

- (1) The MAO must fully cooperate with their IVA in providing trace-back information in relation to export consignment(s) where an importing country has notified a pest interception.
- (2) An IVA may request the MAO's cooperation to gather and summarise the pertinent information from documents including:
- a) phytosanitary inspection records;
  - b) declaration of intent (DOI) or declaration of conformity (DOC) number (if applicable);
  - c) phytosanitary certificate;
  - d) other documentation with pertinent information (e.g. load out reports or treatment certificates).

### Guidance

- Examples of when a trace-back is implemented includes: pest interceptions, phytosanitary certificates that contain incorrect information, ISPM stamps illegible or incorrectly applied etc.
- The IVA costs associated with the trace-back will be recovered from the MAO that provided the phytosanitary services to gain MPI certification.

### 2.6.2 Investigations

- (1) The MAO must fully cooperate with MPI and/or the IVA in providing information for the investigation.
- (2) MPI shall determine who will be involved in the cost recovery of an investigation as it may involve one or more MAO's.

## Guidance

- MPI may initiate an investigation when an incident or a number of interceptions have occurred which compromises the MPI certification system.

## 2.7 Maintenance of records

- (1) All records pertaining to MPI service delivery activities must be complete, accurate, legible, and readily accessible:
  - a) handwritten amendments are permitted to correct records provided the original finding is crossed out and not covered up using correction fluid or tape. Handwritten amendments must be initialled and dated.
- (2) The MAO must maintain and, at the request of MPI or its agents, make available the records listed in Table 3, in hard copy or electronic format.

**Table 3: Records to be maintained**

Organisation record type	Duration to be held (year)
Complete copy of their documented organisation system approved by MPI.	Current.
Register of competent staff including: <ul style="list-style-type: none"> <li>• the name of competent staff employed by the MAO</li> <li>• scope of activity undertaken by the specific person.</li> </ul>	2
Individual staff competency assessments.	2
Records associated with the delivery of MPI services (i.e. records specified in the applicable technical standards).	2 (7 years for seed & propagatable material).
Other records impacting on or leading to or influencing decisions to gain MPI certification.	2
Interceptions associated with MPI certified products as notified by importing countries of which the MAO has been made aware.	2
New importing country requirements, from sources other than MPI, including phytosanitary import permits.	2

## 2.8 Reporting

- (1) The organisation must provide reports to their IVA and/or MPI to meet requirements listed in Table 4.

**Table 4: Reporting Requirements**

Reports and content	Time frame
Notification of changes to: <ul style="list-style-type: none"> <li>• MAO ownership</li> <li>• MAO name.</li> </ul>	Within 5 working days prior to change.
Notification of changes to key personnel listed in Part 2.1.	Within one working day of event
Notification of commencement and completion of operating periods.	Prior to operating.
Changes to their register of competent staff which must be sent directly to <a href="mailto:plantexports@mpi.govt.nz">plantexports@mpi.govt.nz</a> and copy the IVA.	Within 5 working days of change.
Notification and reporting of self-identified critical non-compliances.	Notify the IVA within 90 minutes of event awareness:

<p>Note: MPI will not impose a critical non-compliance against the MAO in these instances.</p> <p>Report content to include:</p> <ul style="list-style-type: none"> <li>• Name of person preparing the event report</li> <li>• Date of non-compliance finding</li> <li>• Description of event</li> <li>• MAO corrective and preventative action taken.</li> </ul>	<p>Report within 7 working days of the initial MAO notification being confirmed by the MAO.</p>
<p>Interceptions of MPI phytosanitary certified produce by importing countries including a copy of any official communications.</p>	<p>Within 5 working days of interception.</p>
<p>Issues raised by importers or other off shore Organisations identifying risks relating to MPI export phytosanitary certification.</p>	<p>Within 5 working days of receipt of issue.</p>
<p>Importing countries requirements obtained from sources other than MPI.</p>	<p>Prior to requesting certification.</p>

## 2.9 Sub-contracting

- (1) Where any part of an MAO service is sub-contracted, the MAO must ensure their sub-contractor's of phytosanitary activities are in receipt of and are implementing the MAOs operating procedures.

## Part 3: MAO System Amendments

### 3.1 Amendments to existing MAO systems

- (1) The process for the approval of amendments to an existing MAO system must be undertaken as described in Table 5.

Table 5: Process for Approval of MAO System Amendments

Step	MAO action	IVA action	MPI action
1	<p>Submit the amendment(s) to your system and gain agreement on an acceptable time frame for evaluation of amendment(s) from your IVA.</p> <p>Highlight or use track changes to assist with efficient evaluation of the changes.</p> <p>Correct spelling mistakes or formatting changes in accordance with Part 2.2 (3) and forward a copy to your IVA. These changes can be implemented immediately.</p>	<p>Review and evaluate amendment(s) and forward a copy to MPI with recommendation for approval.</p> <p>Where amendment(s) are correction of spelling mistakes or formatting changes, forward a copy to MPI. These changes can be implemented immediately.</p>	Refer and action as per step 5 where appropriate.
2		Where the amendment(s) are procedural changes or change of scope, evaluate the amendment(s) against the appropriate MPI standard(s) and request for any additional information if required.	
3	Provide the IVA any additional information if requested.	Where the evaluation/risk assessment is not able to determine if the requirements are being met or risks are managed - contact MPI to determine if an onsite visit is required.	Respond to IVA queries on MAO system amendments.
5		Make a written recommendation to MPI, attaching a copy of the amendment(s).	MPI considers the IVA recommendation and where appropriate approves the amendment and notifies the IVA by email. The standard response time is 5 working days unless there is an agreement for urgency.
6		Notify organisation of the approval of the amendment.	
7	Organisation implements the approved amendment.		



## 3.2 Organisation transfer to another IVA

- (1) An MAO may elect to transfer to another IVA, subject to the MAO:
  - a) gaining agreement with the new IVA to transfer and notifying the existing IVA of their decision to transfer to the new IVA;
  - b) continuing with the existing IVA until the new IVA has formalised the transfer;
  - c) agreeing that the newly selected IVA will undertake a systems audit within one month of accepting the transfer and this system audit is to be regarded as the annual system audit.

### 3.2.1 Eligibility for transfer

- (1) MAOs shall not be eligible for transfer until all non-compliance findings have been closed out with the existing IVA.

#### Guidance

- Transfer of Organisations with non-compliance findings which are not closed out is at the sole discretion of MPI and on a case-by-case basis.

## Part 4: Non-compliance

### 4.1 Classification of non-compliance findings

- (1) Any non-compliance found during an audit must be classified as either critical non-compliance or 'other non-compliance' depending on its effect on the MAOs and/or IVAs confidence in the auditee.

### 4.2 Critical non-compliance findings

- (1) A critical non-compliance must be applied when an audit finding results in a significant loss of MPI confidence in the organisation's ability to meet the requirements specified in the applicable MPI standards, ICPRs or OAP;
- (2) Where an organisation is found to be knowingly operating in non-compliance with the requirements of the MPI export certification standards, clause 11 of the Contract of approval of this standard will come into effect immediately.
- (3) Critical non-compliance findings not listed in the following examples may be identified and must be agreed with the IVA and MPI prior to being confirmed:

Examples of critical non-compliance findings during audit:

- a) no official treatment undertaken or incorrect treatment applied when required;
- b) no inspection or insufficient inspection undertaken;
- c) export (e.g. phytosanitary) status not identified correctly;
- d) certification requested for ineligible product already exported or intended for export;
- e) incorrect or incomplete information on export certificate requests (or supporting documentation) affecting export status;
- f) maximum limits exceeded during inspection/audit and not actioned correctly;
- g) required inspection facilities and/or equipment not used;
- h) equipment calibration not carried out where this is required for the activity;
- i) amendments to auditee procedures not approved by MPI prior to implementation;
- j) export (e.g. ICPRs or other phytosanitary requirements) decision criteria not available or not applied by appropriate staff;
- k) approved procedures not applied by appropriate staff;
- l) absence or loss of product traceability;
- m) non-competent staff operating without supervision where the results of their activities lead to certification/assurance of products;
- n) registered competent staff not meeting the competency criteria;
- o) failure to rectify an 'other non-compliance' finding already identified in a previous audit within the agreed timeframe;
- p) any re-occurrence of an 'other non-compliance' finding detected in the two previous consecutive audits;
- q) failure to implement agreed corrective actions for a previously identified critical non-compliance finding within agreed timeframes.

#### Guidance

- Auditors are encouraged to discuss their audit findings with MPI as a means of defining agreed categorisation of non-compliance findings.

#### 4.2.1 Internal critical non-compliance

- (1) Critical non-compliance findings identified by the MAO within their own MPI approved system are referred to as an internal critical.

- (2) An internal critical includes critical non-compliances found during an MAO audit of their suppliers.
- (3) When an internal critical non-compliance has been identified and reported to the IVA (refer to Part 2.8), the non-compliance finding will not have an impact on the IVA audit frequency provided corrective actions have been implemented and verified as effective.

### 4.3 'Other non-compliance' findings

- (1) The auditor must apply an 'other non-compliance' finding where the auditee is not delivering the pre-planned output(s).
- (2) 'Other non-compliance' findings include incidences that create doubt and decrease confidence that an auditee is capable of producing an output that meets the importing countries requirements.

Examples of 'other non-compliance' findings:

- a) significant difference between the auditor and auditee findings;
- b) failure to notify commencement and finish of operating period (where applicable);
- c) staff competency records incorrectly documented;
- d) failure to meet recording and/or reporting requirements;
- e) incomplete inspection/treatment records where it can be validated that the product complies with the stated certification status;
- f) where any approved procedure is found to be deficient and not fully reflecting activities of the auditee. This is only in cases where there is evidence of no direct impact on the export status of the outputs;
- g) procedures not readily available to appropriate staff;
- h) incorrect or incomplete information on export certificate (or supporting documentation) requests not affecting export status.

### 4.4 Managing non-compliance findings

- (1) All non-compliance findings must be managed as described in Table 6.

**Table 6: Managing Non-compliance Findings.**

Step	Auditor (IVA or MAO) actions	Auditee (MAO or MAO's subcontractor) actions
1	Categorise non-compliance findings as either critical or 'other'. <ul style="list-style-type: none"> <li>• IVAs are to contact MPI where any doubt exists.</li> <li>• MAO auditors of their subcontractors are to contact their IVA where any doubt exists.</li> </ul>	Agree on categorisation of non-compliance findings.  Identify corrective and preventative actions.
2	Agree corrective and preventative actions.	Identify an implementation plan for the agreed corrective and preventative actions.
3	Agree on a time frame for implementing the corrective and preventative action(s) and schedule a date to conduct the follow up audit to verify the effectiveness of corrective and preventative actions undertaken: <ul style="list-style-type: none"> <li>• For <b>critical non-compliance findings</b>:               <ul style="list-style-type: none"> <li>– The auditee must revert to either daily surveillance audits, supervision or end point inspection (e.g. where the auditee is providing an inspection service) for a maximum 3 days in which time the follow up audit must successfully verify the effectiveness of corrective and preventative actions undertaken.</li> </ul> </li> </ul>	
4	Notify and report as per the reporting requirements of the applicable standard (i.e. Part 2.8 Organisation standard, self-identified critical non-compliance; Part 2.10 IVA standard, event reports).	Implement the agreed corrective and preventative actions and monitor for effectiveness prior to the follow up audit.

5	<p>Complete the follow up audit:</p> <ul style="list-style-type: none"> <li>• Corrective and preventative action effectively implemented? <ul style="list-style-type: none"> <li>– Go to step 6.</li> </ul> </li> <li>• Corrective and preventative action not effectively implemented? <ul style="list-style-type: none"> <li>– If this is a third critical within 12 months go to step 6; otherwise, return to step 2.</li> </ul> </li> </ul>	<p>Confirm and agree to follow up audit findings.</p> <p>Agree to any additional non-compliances and their categorisation.</p>
6	<p>Check the number of critical non-compliances in last 12 months. If <b>two or less</b>, reinstate the auditee at the entry level audit frequency. If <b>more than two</b>:</p> <ul style="list-style-type: none"> <li>– The auditor must ensure MPI (in the case of IVA audits of MAOs) or your IVA (in the case of MAO audits of their subcontractors), are advised the auditee has been reverted to end point inspection until further notice.</li> <li>– Convene a meeting with the auditee and work through the issues, requirements and timeframe for reinstatement.</li> </ul>	
7	<ul style="list-style-type: none"> <li>• Provide MPI a written report within 7 working days of initial notification containing: <ul style="list-style-type: none"> <li>• Heading (event report: IVA reference)</li> <li>• Report prepared by</li> <li>• Date of event finding</li> <li>• Name of organisation</li> <li>• Description of event</li> <li>• Background</li> <li>• Implications of the event</li> <li>• IVA actions taken</li> <li>• Status of Organisations corrective actions</li> <li>• IVA recommendations to MPI</li> <li>• Previous critical non compliances</li> </ul> </li> </ul>	

#### Guidance

- More than two (2) critical non-compliances would likely result in an organisations approval being reviewed under Part 5: Suspension and Termination of MPI Approval.

## Part 5: Suspension and Termination of MPI Approval

- (1) An MAO's approval may be suspended or terminated in accordance with the suspension and termination provisions in the Contract of Approval (refer to Appendix 2).

### Guidance

- MPI, in consultation with the IVA, will formally advise the MAO of their suspension or termination.
- Certification of product that was produced since the last successful IVA audit and the date of suspension or termination is at the sole discretion of MPI.

### 5.1 Reinstatement of an organisation following suspension by MPI

- (1) Reinstatement of an organisation's approval by MPI to perform export service delivery activities shall occur only when all conditions prescribed by MPI and or its representatives have been met.

### Guidance

- MPI, in consultation with the IVA, will formally advise the organisation of the date from which their approval will be reinstated.

### 5.2 Termination of MPI approval

- (1) Where an MAO's approval by MPI is terminated the MAO must return to MPI (or through their contracted IVA) the MPI New Zealand contract of approval within five working days of the approval being terminated. In addition any equipment for the application of certification marks or material advertising MPI approval status must be disposed of and verified by an IVA to MPI.

### Guidance

- MPI, in consultation with the IVA, will formally advise the MAO of the reasons for the termination of the approval and the effective date of the termination.

## Appendix 1: Application for Approval as an MAO

Applicant's Name	
Business Address	
Scope	
Phone/Fax	
E-mail	
Contact Name	
Name and title of person responsible for applicant's system	

### Applicant's Statement

I wish to apply for approval to operate as an MPI approved organisation (MAO) under the requirements set down in means the document entitled MPI Certification Standard: Organisation Requirements (the "Organisation Standard") and for the following technical options:

Service Delivery Options		Please select
<b>Option 1</b>	Phytosanitary inspection.	Technical Standard: Phytosanitary Inspection.
<b>Option 2</b>	Phytosanitary treatment.	Treatment Supplier Programme - Requirements for the supplier of official treatments.
<b>Option 3a</b>	Managing supporting documentation for phytosanitary certificates.	Technical Standard: Phytosanitary Certificates.
<b>Option 3b</b>	Printing phytosanitary certificates	Technical Standard: Phytosanitary Certificates.
<b>Option 4</b>	Design and/or undertaking Pest Freedom surveys.	Technical Standard: Pest Freedom Survey.
<b>Option 5</b>	Activities associated with the use of the certification mark for wood packaging.	Technical Standard: Certification Mark for Wood Packaging.
<b>Option 6</b>	Seed varietal activities.	Technical Standard: Seed Varietal Certification.
<b>Option 7</b>	Audits of their subcontractors providing phytosanitary services.	Technical Standard: Audit.

- (1) I agree to meet the requirements of the MPI Certification Standard: Assurance System Framework, MPI Certification Standard: Organisation Requirements and the requirements of the above standards as appropriate to my chosen service options.
- (2) I agree to document my organisation system meeting the requirements specified by the MPI Certification Standard: Organisation Requirements.
- (3) I agree to operate to the above documented system and procedures approved by MPI.

- (4) I agree to MPI making enquiries and using the information supplied by me, in connection with this application or any contract entered into as a result of this application, for the following purposes:
  - a) To ensure that I, the organisation and key personnel are fit and proper to hold the MPI approval status conferred by the contract;
  - b) To ensure that I have appropriate consents, permits, licences and authorities in respect of my business operations and my business premises that are required;
  - c) To notify the public of my MPI approval status.
- (5) I consent to such enquiries being made to or by the Ministry of Justice, Police, Customs Department, New Zealand Horticultural Export Authority and any statutory board involved in import and export of products. I consent to publication of my MPI approval status in any publication available to the public.
- (6) I agree to afford MPI or MPI's representatives reasonable co-operation and access necessary to carry out audits.
- (7) Included with this application is a non-refundable application fee of \$480.00 (+ GST) for processing the application.
- (8) I understand that if I fail to provide all or any of the information requested in connection with this application, I may be denied MPI approval.
- (9) I understand that under the information privacy principles of the Privacy Act 1993, I have rights of access to, and correction of, personal information held in connection with this application.

Guidance

- This application does not in itself entitle the applicant to provide any service delivery options (as per the table above) for MPI. This application will be considered by MPI, and whether or not approval is granted by MPI is in MPI's absolute discretion.

State here the Independent Verification Agency (IVA) you are contracting to undertaken pre approval evaluation and initial audits of your organisation's system.

(IVA).....

(signature of organisation)

(Date)

(name – please print)

(Title)

Post this application to:  
 Team Support Officer  
 Plant Exports  
 Plants, Food and Environment  
 Ministry for Primary Industries  
 PO Box 2526  
 Wellington 6140

## Appendix 2: Template Contract for Approval of an Organisation

Insert your details and sign this contract, then return it to MPI marked "Attention: Plant Exports Team".

Made this        day of                                20

### BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND acting by and through the Minister for Primary Industries ("MPI")

AND

[INSERT FULL LEGAL ENTITY NAME], a company having company number [insert company number] (the "Organisation")

### WHEREAS

MPI is responsible for ensuring that forestry, plants and their products certified for export are properly and competently inspected and documented.

MPI is responsible for ensuring that treatments required for import risk goods provide the best practicable level of control, and that only competent Organisations and individuals are involved with the delivery of treatment activities.

The Organisation has demonstrated procedural ability and proficiency in the provision of service delivery for export phytosanitary and seed certification programmes and treatment supplier programmes for import risk goods.

Under this Contract, MPI approves the Organisation to provide specific service delivery for export phytosanitary and seed certification programmes and treatment supplier programmes for import risk goods for and on behalf of MPI.

### (1) DEFINITIONS

"Certificate" means an officially recognised original MPI document, designed in accordance with international specifications, and used to provide assurances to control authorities in importing countries that produce meets their requirements. Certificates currently in use are:

- Phytosanitary Certificate (Ag.G81 Reg.4)
- Phytosanitary Certificate for Re-Export
- OECD Seed Scheme Varietal Certificate
- Grade Certificate

"Certification" means all those activities leading to, and including, the issuance of an official assurance.



**“Confidential Information”:**

- (a) means all information:
  - (i) provided by either party to the other in connection with this Agreement; or
  - (ii) relating to either party which becomes known to the other in connection with this Agreement, whether that information was provided to or became known by receiving party of the information before, on, or after the date of this Agreement.

**“Conflict of Interest”** in relation to the Organisation means any conflict of the Organisation’s interests or obligations with its rights or obligations under this Contract and the Service Delivery such that the Organisation’s 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.

**“Contract”** means this contract, including:

- this “Contract for Approval of an Organisation”;
- the Organisation Standard; and
- the Organisation’s System;

in each case, as may be updated by MPI (or with MPI’s approval) from time to time.

**“Organisation System”** refers to the Organisation’s System which meets the Organisation Standard.

**“Organisation Standard”** means the document entitled “MPI Certification Standard: Organisation Requirements.”

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

**“Service Delivery”** means providing specific services for and on behalf of MPI for export phytosanitary and seed certification programmes and treatment supplier programmes for import risk goods. Scope of approval may include product inspection, phytosanitary treatment services, auditing of sub-contractors, completing pest surveys, use of the certification mark for wood packaging, undertaking seed varietal activities, and preparation of Certificates for an official signature and stamp of authorisation relating to Certification that are specified in the attached document entitled “Organisation System”.

## (2) INTERPRETATION

2.1 In this Contract, unless the context requires otherwise:

- a) to the extent that there is any conflict or ambiguity between the various parts of this Contract, the following descending order of priority shall prevail:
  - this “Contract for Approval of an Organisation”;
  - the Organisation Standard;
  - the Organisation System
- b) headings are for guidance only and do not affect interpretation;
- c) subject to clause 17, anything that this Contract 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 Contract 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 Contract.

### **(4) APPROVAL OF THE ORGANISATION**

4.1 MPI hereby approves the Organisation for the term of this Contract to perform the Service Delivery as per the scope of the organisation's system.

4.2 The Organisation accepts that nothing in this Contract or in any dealings of any kind between the Organisation and MPI, or MPI's agent, represents to the Organisation or otherwise creates any kind of expectation on the Organisation's part that:

- a) any other approval or any Certification of any kind will be granted by MPI or will be granted within a certain time period; or
- b) any forestry, plants, their products, or other things that are accompanied by or otherwise reliant on any service for MPI export Certification provided by the Organisation on behalf of MPI will be accepted by an importing country's official control authorities, or will be accepted within a certain time period.

### **(5) WARRANTIES**

5.1 The Organisation warrants that all information (including written and oral information) supplied by the Organisation to MPI (or its agents) 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 Contract;
- b) all other information supplied in connection with the approval of the Organisation under this Contract; and
- c) all information required to be supplied under the Organisation Standard.

5.2 The Organisation warrants that throughout the term of this Contract the Organisation will maintain its Organisation System and all other relevant practices to substantially correspond with all the information referred to in clause (5), except to the extent that any changes made are approved by MPI in accordance with the Organisation Standard.

5.3 The Organisation will notify MPI of any change to the organisation's name.

5.4 The Organisation warrants that where it is an unlisted company, it will notify MPI as soon as reasonably practicable of any:

- a) material change in the legal or beneficial ownership of any of its shares; or
- b) change to the composition of the board of directors (as this term is defined in section 127 of the Companies Act 1993).

5.5 The Organisation warrants that it will fully comply with all the requirements and other specifications set out in the Organisation Standard.

5.6 The Organisation 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 Organisation Standard.

5.7 The Organisation acknowledges that it is approved to perform Service Delivery pursuant to this Contract, but that its status under this Contract does not approve 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 approval status in all publicity and media forums it will use only the following phrase or an equivalent phrase approved by MPI: "Approved by the Ministry for Primary Industries to provide "[service delivery options]".
- 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.

5.8 The Organisation will notify MPI if it ceases or intends to cease to operate as an MAO, pursuant to this Agreement, for a period of at least twelve calendar months.

## **(6) CONFIDENTIALITY**

6.1 Each party will keep confidential and secure and not use or disclose to any third party any of the other party's Confidential Information except:

- a) to its professional advisers or Personnel directly concerned with the implementation or operation of this Contract and to the extent necessary for performing its obligations under this Contract;
- b) as required by law, court order, other legal obligation, or Ministerial request, or parliamentary rules or convention;
- c) under the Official Information Act 1982 or Privacy Act 1993;
- d) to the extent necessary to subcontract to parties as approved by MPI in accordance with this Contract;
- e) by MPI in accordance with its other contractual arrangements;
- f) where the information subsequently becomes part of the public domain through no fault of the party receiving the information.

6.2 Each party acknowledges that a breach of any obligation of confidence under this Contract may cause the other party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to any claim for damages and any other remedies available at law or equity, the non-breaching party may seek specific performance or injunctive relief against any breach or threatened breach by the other party, its Personnel, agents or contractors of this clause (6). Each party undertakes to provide the other party with any assistance possible in any such action against any of that first party's Personnel, agents or contractors.

## **(7) INTELLECTUAL PROPERTY**

7.1 Notwithstanding any other provision of this Contract, all means all intellectual property in existence at the commencement of this Contract or created outside the scope of this Contract ("**Pre-Existing IP**") will remain the property of its owner.

7.2 The ownership of all intellectual property developed or discovered by either party related to this Contract ("**New IP**") will remain the property of its creator.

7.3 The Organisation grants MPI a non-exclusive, worldwide, royalty free, perpetual, irrevocable and sub-licensable licence to use, copy, distribute, sub-licence, reproduce, modify, adapt, publish, transmit, translate, create derivative works from, display and perform, whether publicly or otherwise any and all Pre-Existing IP provided by the Organisation under this Contract.

## **(8) CONFLICT OF INTEREST**

### 8.1 The Organisation:

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

8.2 The Organisation must notify MPI, within a reasonable period and 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 Contract, endeavour to agree and record in writing, how it will be managed.

8.3 The Organisation 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.

## **(9) INSURANCE**

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

## **(10) LIABILITY**

10.1 Under no circumstances will MPI be liable to the Organisation for any loss.

10.2 The Organisation hereby indemnifies MPI, or MPI's agent the same from and against any Loss arising from or connected with this Contract, 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 Organisation (or any of its contractors, sub-contractors, agents, or employees that are not a party to this Contract) of the Service Delivery or any of its other rights or obligations in this Contract;
- b) negligent acts or omissions on the part of the Organisation (or any of its contractors, sub-contractors, agents, or employees that are not a party to this Contract);
- c) suspension or termination in accordance with this Contract.

## **(11) SUSPENSION AND TERMINATION BY MPI**

### **Termination**

11.1 MPI may terminate this Contract, immediately on written notice to the organisation, where the Organisation commits a breach of this Contract that:

- a) is not capable of being remedied (in the reasonable opinion of MPI); or
- b) is capable of being remedied:
  - but has not been remedied to MPI's reasonable satisfaction within 10 business days (or such longer period as MPI may allow in writing) of MPI giving the Organisation 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
  - in respect of which the Organisation's approval has been suspended by MPI in accordance with this Contract, but the suspension conditions prescribed by MPI are not met by the Organisation.

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

- a) MPI reasonably believes that the Organisation is not:
  - delivering output(s) in accordance with its Organisation System;
  - operating in accordance with its approved procedures;
  - meeting the requirements of this Contract, and any other export certification system standards associated with the scope of the organisation's approval from MPI;
  - following the process for (or achieving the relevant corrective actions for) critical non-compliances, as provided for in section 4 of the Organisation Standard.
- b) the Organisation fails to make full payment of fees to MPI.

11.3 MPI may terminate this Contract immediately on written notice to the organisation, if the organisation:

- 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 MPI is not satisfied that the organisation's business, or any aspect of it, remains compatible with the performance of the Service Delivery;
- d) fails or is unable to rectify any deficiency uncovered by MPI, or its agents as a result of an audit conducted under clause 12;
- e) 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;
- f) has any conflict of interest that:
  - in MPI's opinion is so material as to impact adversely on the delivery of the Service Delivery, MPI or the New Zealand government;
  - the Organisation failed to notify MPI of; or
  - in MPI's opinion, the Organisation is unable or unwilling to resolve or deal with as required by MPI acting reasonably;
- g) any of the events in clause 5.4 occur; or
- h) provides information to MPI that is misleading or inaccurate in any material respect.

11.4 MPI may terminate this Contract:

- a) on the giving of two months' notice in writing to the Organisation in the event that MPI undergoes a merger, amalgamation, restructuring, or other form of organisational change which results in the Service Delivery no longer being reasonably required or no longer being within the strategic mandate of MPI; or
- b) immediately by giving notice to the Organisation that there has been a change in government policy.

11.5 MPI may terminate this Contract by giving two month's written notice to the organisation.

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

### **Suspension**

11.7 If either:

- a) MPI has a right to terminate this Contract; or
- b) the Organisation Standard contemplates a right of suspension; or

- c) the Organisation provides MPI with at least 30 days' notice requesting suspension

11.8 then MPI may temporarily suspend (in whole or in part) the operation of this Contract and the organisation's approval to perform Service Delivery for such period of time, and subject to such conditions, as MPI sees fit in its absolute discretion.

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

11.10 During the period of the suspension, the Organisation must not offer or perform any Service Delivery or hold itself out as being authorised by MPI for the relevant purposes.

### **Consequences of suspension or termination**

11.11 In the event of a suspension or termination pursuant to this clause<sup>11</sup>, the Organisation must:

- a) acknowledge in writing its receipt from MPI of the suspension or termination;
- b) not offer to perform, or perform, any Service Delivery;
- c) provide to MPI all records requested by MPI related to the organisation's Service Delivery.

## **(12) AUDIT**

12.1 At any time during the term of this Contract, or following it if the parties are in dispute, MPI, or its agents, may conduct an audit of the organisation, including for the purpose of determining whether there has been a breach of this Contract.

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

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

## **(13) DISPUTES**

13.1 The parties agree to use their best efforts to resolve any dispute which may arise under the Contract through good faith negotiations. Except as provided in clause 13.4, no party shall commence any arbitration or litigation in relation to this Contract unless it has first invited the chief executive of the other party to meet with its own chief executive 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 president for the time being of the Lawyers Engaged in Alternative Dispute Resolution (LEADR) or its successor.

13.3 Any dispute arising under this Contract 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 Organisation may not subcontract any of its obligations under this Contract except where it has MPI's prior written approval or MPI has approved the sub-contractors and/or particular services to be subcontracted as specified in or in accordance with the Organisation Standard.

14.2 The Organisation must ensure that:

- a) each sub-contractor is fully aware of the organisation's obligations under this Contract to the extent necessary in order for the sub-contractor to properly perform its obligations;
- b) each subcontract it enters into is either approved by MPI in writing or is on terms that are consistent with this Contract, to the extent relevant and material for the performance of the sub-contractor's obligations; and
- c) each subcontract restricts the ability of the sub-contractor to further subcontract its obligations without first obtaining MPI's consent;
- d) its sub-contractor's documented procedures are a part of the organisation's own Organisation system/procedures.

14.3 The Organisation will not be relieved of any of its liabilities or obligations under this Contract by entering into any subcontract.

14.4 If a sub-contractor has failed to deliver any aspect of the Service Delivery being subcontracted as approved under this Contract and the failure cannot be remedied, MPI may, by notice to the organisation, require the Organisation to terminate that subcontract immediately. MPI will not be liable for any losses or costs of the Organisation associated with such termination.

14.5 Neither party shall assign all or any of its rights, obligations, or liabilities under this Contract. In the event of a purported assignment in breach of this clause, this Contract 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 Contract, neither party shall be liable to the other for any act or omission, or any failure to comply with this Contract, 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 organisation, MPI may at its absolute discretion suspend approval of the Organisation until such time as the circumstances have been avoided, removed or abated sufficiently to enable the Organisation to comply with the warranty or perform the obligation.

**(16) NOTICES**

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

MPI Address for Service:	Organisation Address for Service:
Attention: Plant Exports Plants, Food and Environment Ministry for Primary Industries Pastoral House 25 The Terrace P.O. Box 2526 Wellington 6140	

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 second business day following posting to a national address, on the seventh business day following international posting, on the date sent by facsimile transmission if transmitted before 5:00 pm or on the next business 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 Contract are effective unless they are in writing and signed by both parties, except in relation to the Organisation Standard, which MPI may amend from time to time in its sole discretion.

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

17.3 This Contract is not an exclusive arrangement between the parties 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 Contract 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 Contract will operate as a waiver.

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



**EXECUTION**

**SIGNED** for and on behalf of **MPI** by the person named below, being a person duly authorised to enter obligations on behalf of MPI:

**SIGNED** for and on behalf of the **Organisation** by the person named below, being a person duly authorised to enter obligations on behalf of the **Organisation**:

Signature

Signature

Name:

Name:

Title:

Title:

Date:

Date:

in the presence of:

in the presence of:

Witness Signature

Witness Signature

Name:

Name:

Occupation:

Occupation:

Address:

Address:

<b>This section to be completed by MPI</b>	
Date of approval:	