



**“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 11, 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.

<b>MPI Address for Service:</b>	<b>Organisation Address for Service:</b>
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:	