



Department
for Environment
Food & Rural Affairs

Terms and Conditions

Movement Assistance Scheme (MAS)

Contents

1.	Interpretation.....	3
2.	Basis of Agreement.....	6
3.	Certifications	6
4.	Charges, Payment and Recovery of Sums Due.....	7
5.	Assignment and sub-contracting.....	9
6.	Intellectual Property Rights	9
7.	Governance and Records	9
8.	Confidentiality, Transparency and Publicity	10
9.	Freedom of Information.....	11
10.	Protection of Personal Data and Security of Data.....	12
11.	Liability.....	13
12.	Force Majeure.....	14
13.	Compliance.....	14
14.	Prevention of Fraud and Corruption	15
15.	State Aid	15
16.	General	16
17.	Notices.....	17
18.	Governing Law and Jurisdiction	18

1. Interpretation

1.1 In these terms and conditions:

Term	Description
“Authority”	means The Secretary Of State For Environment, Food And Rural Affairs of 2 Marsham Street, Westminster London SW1P 4DF;
“Agreement”	means the contract between (i) the Authority acting as part of the Crown and (ii) the Practitioner constituted by the Practitioner’s submission of a valid invoice for Charges;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: Government Department; Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); Non-Ministerial Department; or Executive Agency;
Certification	means the provision of Certificate of Inspection (COI) certification from and including 1 February 2021 by the Practitioner to a Trader in respect of the movement by that Trader of organic products from Great Britain to Northern Ireland;
“Certification Requirement”	means the requirement for Certification on behalf of a Trader as communicated to the Practitioner via TRACES NT;
“Charges”	means the charges for Certifications invoiced by the Practitioner to the Authority in accordance with clause 4 of this Agreement;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

“Data Protection Legislation”	means (i) the UK GDPR, as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the Data Protection Legislation;
“DPA 2018”	means the Data Protection Act 2018;
“TRACES NT”	means the European Commission’s digital online application service used to process the requirements of Traders for Certification through: <ul style="list-style-type: none"> • the completion by a Trader of an online application; • provision of the application to a suitable Practitioner; and • the endorsement of a Certification by the Practitioner, or such other platform as may supersede TRACES NT from time to time;
“FOIA”	means the Freedom of Information Act 2000;
“GDPR”	means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Information”	has the meaning given under section 84 of the FOIA;
“Law”	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the relevant Party is bound to comply;
“MAS Scheme”	means the charging remuneration scheme implemented by the Authority (and governed by these terms and conditions) to cover the direct costs Traders would otherwise have incurred from 1 February 2021 in respect of Certifications;
“Organic Control Body”	means a body approved as an ‘Organic Control Body’ by the Authority;
“Party”	the Practitioner or the Authority (as appropriate) and “Parties” shall mean both of them;

“Personal Data”	has the meaning given in the Data Protection Legislation;
“Personal Data Breach”	has the meaning given in the Data Protection Legislation;
“Practitioner”	means the Organic Control Body submitting an invoice for Charges in respect of one or more Certifications carried out pursuant to a Certification Requirement;
“Processor”	has the meaning given in the Data Protection Legislation;
“Purchase Order Number”	means the Authority’s unique number relating to any claims for Charges to be made by the Practitioner in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Practitioner and/or of any sub-contractor of the Practitioner engaged in the performance of Certifications and/or the Practitioner’s obligations under the Agreement;
“State Aid Rules” (“State Aid” shall be construed accordingly)	means those rules embodied in Articles 107-109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2008/C 115/01) (“EC Rules”) and any laws substantially amending, replacing or superseding the EC Rules following the United Kingdom’s exit from the European Union;
“Trader”	means an individual, a partnership, a corporation, a limited or unlimited liability company, a trust or an unincorporated organisation that requires Certification in respect of its commercial activities;
“UK GDPR”	means the GDPR as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day”

means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

- 1.2 In these terms and conditions, unless the context otherwise requires:
 - 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
 - 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2. Basis of Agreement

- 2.1 These terms and conditions apply to the payment of the Charges under the MAS Scheme in respect of Certifications carried out by the Practitioner; the Practitioner’s use of TRACES NT is governed by such other separate terms and conditions as may apply between the Practitioner and the provider of TRACES NT.
- 2.2 The terms and conditions of this Agreement shall be deemed to be accepted by the Practitioner on the occurrence of the Practitioner submitting its invoice for payment of Charges in respect of one or more Certifications, at which point and on which date the Agreement shall come into existence. These terms and conditions shall be deemed repeated each time the Practitioner submits an invoice for payment of Charges under the MAS Scheme.
- 2.3 The Authority reserves the absolute right, at its sole discretion, to vary these terms and conditions in any way and at any time, and the amended terms and conditions will be communicated to the Practitioner and/or made available as set out in the Authority’s Purchase Order Number document. By continuing to submit invoices for payment of Charges under the MAS Scheme, the Practitioner specifically accepts these terms and conditions as varied.

3. Certifications

- 3.1 In respect of the Certifications for which the Practitioner is seeking payment by the Authority, the Practitioner warrants and represents that:
- 3.1.1 it has used Staff who are suitably skilled and experienced to perform the tasks assigned to them, and that such Staff hold all professional qualifications required in order to properly fulfil the relevant Certification Requirement and provide the relevant Certification;
 - 3.1.2 each and every Certification has been performed and issued in accordance with the requirements set out in the relevant Certification Requirement; and
 - 3.1.3 it has complied with all applicable laws, regulations and requirements of the relevant Certification.
- 3.2 The Practitioner shall indemnify the Authority against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with any claim made against the Authority by a third party arising out of, or in connection with, the performance or non-performance of the Certifications by the Practitioner or its Staff.

4. Charges, Payment and Recovery of Sums Due

- 4.1 Subject to clause 4.2, the Practitioner shall be entitled to invoice the Authority in respect of its Charges for the Certifications up to a maximum amount of £25 per Certification.
- 4.2 The Charges stated in clause 4.1 above:
- 4.2.1 represent the maximum value payable to the Practitioner in respect of each Certification, and the Practitioner shall, in all circumstances, invoice the Authority at its then-current prevailing rate for the relevant Certification (such rate to be notified and kept updated by the Practitioner to the Authority in writing or otherwise made available at all times), which the Practitioner acknowledges may be lower than the maximum amount claimable as stated in clause 4.1 above; and
 - 4.2.2 shall be the full and exclusive remuneration of the Practitioner in respect of the provision of the Certifications. Unless otherwise agreed in writing by the Authority, the Charges shall include every cost and expense of the Practitioner directly or indirectly incurred in connection with the provision of the Certifications, and the Practitioner shall, in no circumstances, issue the Trader with any invoice, bill or demand of any kind in respect of the Certifications which it has charged to the Authority.
- 4.3 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Practitioner a sum equal to the VAT chargeable in respect of the Certifications.

- 4.4 The Practitioner shall invoice the Authority in accordance with the Authority's instructions provided with the relevant Purchase Order Number and no more frequently than once per month in respect of all Certifications carried out by the Practitioner during that invoice period. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Certifications carried out in the invoice period including all relevant certificate numbers. The Authority reserves the right to request further supporting information as it may require from the Practitioner in order to verify the validity of any invoice.
- 4.5 The Authority shall pay the Practitioner the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. For the avoidance of doubt the Authority shall not be required to make payment in respect of any invoice which is found to be invalid. The Authority may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 4.6 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount.
- 4.7 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Practitioner interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.8 Where the Practitioner enters into a sub-contract, the Practitioner shall include in that sub-contract:
- 4.8.1 provisions having the same effects as clauses 4.4 to 4.7 of this Agreement; and
- 4.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses 4.4 to 4.8 of this Agreement.
- 4.9 In this clause 4, "sub-contract" means a contract between two or more Practitioners, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 4.10 If any sum of money is recoverable from or payable by the Practitioner under the Agreement (including any sum which the Practitioner is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Practitioner under the Agreement or under any other agreement or contract with the Authority. The Practitioner shall not be entitled to assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any

such amount in whole or in part.

5. Assignment and sub-contracting

- 5.1 The Practitioner shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Practitioner shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 5.2 Where the Authority has consented to the placing of sub-contracts, the Practitioner shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 5.3 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Practitioner provided that such assignment, novation or disposal shall not increase the burden of the Practitioner's obligations under the Agreement.

6. Intellectual Property Rights

- 6.1 All intellectual property rights in any materials provided by the Authority to the Practitioner for the purposes of this Agreement shall remain the property of the Authority but the Authority hereby grants the Practitioner a royalty-free, non- exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Practitioner to perform its obligations under the Agreement.
- 6.2 All intellectual property rights in any materials created or developed by the Practitioner pursuant to the Agreement shall vest in the Practitioner. If, and to the extent, that any intellectual property rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Practitioner by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

7. Governance and Records

- 7.1 The Practitioner shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Certifications it has claimed

Charges for under it and all payments made by the Authority ("**Records**"). The Practitioner shall on request afford the Authority or the Authority's representatives such access to those Records as may be reasonably requested by the Authority in connection with the Agreement.

- 7.2 The Authority reserves the right to seek to verify that the Practitioner is complying with this Agreement, including the right to conduct such verification by comparing the invoices submitted by the Practitioner under clause 4 with the Practitioner's records provided to HMRC.
- 7.3 If any such verification demonstrates any breach of this Agreement or fraud by the Practitioner, then without prejudice to any other rights and remedies of the Authority, the Practitioner shall remedy (or procure the remedy of) the issue as soon as reasonably practicable, and the Practitioner shall promptly refund to the Authority any excess Charges paid by the Authority.

8. Confidentiality, Transparency and Publicity

- 8.1 Subject to clause 8.2, each Party shall:
- 8.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 8.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 8.2 Notwithstanding clause 8.1, a Party may disclose Confidential Information which it receives from the other Party:
- 8.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
 - 8.2.2 to its auditors or for the purposes of regulatory requirements;
 - 8.2.3 on a confidential basis, to its professional advisers;
 - 8.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - 8.2.5 where the receiving Party is the Practitioner, to the Staff on a need to know basis to enable performance of the Practitioner's obligations under the Agreement provided that the Practitioner shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 8.2.5 shall observe the

Practitioner's confidentiality obligations under the Agreement; and

8.2.6 where the receiving Party is the Authority:

- a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
- b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
- c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d) in accordance with clause 9.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 8.

8.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Practitioner hereby gives its consent for the Authority to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult with the Practitioner to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

8.4 The Practitioner shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.

9. Freedom of Information

9.1 The Practitioner acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

9.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

9.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of

receipt;

- 9.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- 9.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 9.2 The Practitioner acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Practitioner or the Agreement (including commercially sensitive information) without consulting or obtaining consent from the Practitioner. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Practitioner advance notice, or failing that, to draw the disclosure to the Practitioner's attention after any such disclosure.
- 9.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Practitioner or the Agreement is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

10. Protection of Personal Data and Security of Data

- 10.1 It is the intention and understanding of the Parties that (i) no Personal Data shall be processed in the performance of this Agreement, and (ii) that each Party shall be a separate and independent data controller in respect of the processing of its own Personal Data. In carrying out such processing each Party shall comply with the obligations applicable to it under the Data Protection Legislation, including without limitation:
 - 10.1.1 ensuring that it has identified appropriate legal bases for its processing under Article 6, and if required, Article 9, of the UK GDPR (or as otherwise required by the Data Protection Legislation);
 - 10.1.2 providing appropriate information to Data Subjects about the processing of their Personal Data that complies with the requirements of Articles 12-14 (as applicable) of the UK GDPR (or as otherwise required by the Data Protection Legislation); and

- 10.1.3 taking all measures required pursuant to Article 32 of the UK GDPR (or as otherwise required by the Data Protection Legislation) to ensure the security of processing of the Personal Data.
- 10.2 Each Party shall only process the Personal Data received from the other for the purposes of performing this Agreement.
- 10.3 If either Party becomes aware of a Personal Data Breach affecting the Personal Data it shall notify the other Party without undue delay and provide such information and assistance as the other Party may reasonably require.
- 10.4 Each Party shall provide reasonable assistance as may be requested by the other Party in connection with the requesting Party's obligation to: i) respond to any Data Subject rights laid down in the UK GDPR (or as otherwise required by the Data Protection Legislation); and ii) comply with any assessment, enquiry, notice or investigation under any Data Protection Legislation in respect of the Personal Data or this clause 10.
- 10.5 In the event that the Practitioner is to act as a Processor on behalf of the Authority the Parties shall, as soon as practicable, enter into a data processing agreement in the form reasonably required by the Authority and which is compliant with the requirements of article 28 of the UK GDPR or as otherwise required in accordance with the Data Protection Legislation.

11. Liability

- 11.1 The Practitioner shall not be responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.
- 11.2 Subject always to clauses 11.3 and 11.4:
- 11.2.1 the aggregate liability of the Practitioner in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Practitioner; and
- 11.2.2 except in the case of claims arising under clauses 3.2, 7.3, 14.3 and 15.3, in no event shall the Practitioner be liable to the Authority for any:
- a) loss of profits;
 - b) loss of business;
 - c) loss of revenue;

- d) loss of or damage to goodwill;
 - e) loss of savings (whether anticipated or otherwise); and/or
 - f) any indirect, special or consequential loss or damage.
- 11.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 11.3.1 death or personal injury caused by its negligence or that of its Staff;
 - 11.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 11.3.3 any other matter which, by law, may not be excluded or limited.
- 11.4 The Practitioner's liability under each of clauses 3.2, 7.3, 14.3 and 15.3 shall be unlimited.
- 11.5 Subject to clause 11.3, neither the Authority nor any other Central Government Body accepts any responsibility of any kind in respect of the performance or non-performance of any Certifications (which for the avoidance of doubt are strictly a matter between the Practitioner and the relevant Trader).

12. Force Majeure

- 12.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

13. Compliance

- 13.1 The Practitioner shall:
- 13.1.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Authority's equality and diversity policy as provided to the Practitioner from time to time; and
 - 13.1.2 take all reasonable steps to secure the observance of clause 13.1.1 by all Staff.
- 13.2 The Practitioner shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

13.2.1 the Official Secrets Acts 1911 to 1989; and

13.2.2 section 182 of the Finance Act 1989.

14. Prevention of Fraud and Corruption

14.1 The Practitioner shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

14.2 The Practitioner shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Practitioner (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

14.3 If the Practitioner or the Staff engages in conduct prohibited by clause 14.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Authority) the Authority may:

14.3.1 terminate the Agreement and recover from the Practitioner the amount of any loss suffered by the Authority resulting from the termination; or

14.3.2 recover in full from the Practitioner any other loss sustained by the Authority in consequence of any breach of this clause.

15. State Aid

15.1 The Parties acknowledge that it is the Authority's responsibility to comply with the State Aid Rules and that the Authority shall not be required to fund or deliver anything pursuant to this Agreement which would be in breach of such requirements.

15.2 The Practitioner shall provide such assistance, information and/or support as the Authority may reasonably require from time to time in connection with the Authority's responsibilities pursuant to the State Aid Rules as may, in the Authority's view, be reasonably necessary and relevant, but for the avoidance of doubt shall not require the Practitioner to provide legal advice subject to privilege to the Authority, and the Practitioner shall be given adequate time to provide the information.

15.3 If the Practitioner is deemed by a court of competent jurisdiction to be a beneficiary of unlawful State Aid, then, unless an earlier date has been

specified by that court, the Practitioner shall within two (2) months of a written notice from the Authority at any time (where such notice shall include a copy of the relevant court judgment) repay an amount equivalent to the unlawful and incompatible aid of which the Practitioner is beneficiary (plus interest, as applicable) which the court requires to be repaid pursuant to its decision to the Authority, provided that where the court's decision does not specify the precise amount of unlawful State Aid to be recovered, the Parties shall (acting reasonably) calculate and agree upon the precise amount to be repaid.

- 15.4 If a court of competent jurisdiction finds the Practitioner to be the beneficiary in breach of State Aid Rules in connection with this Agreement, the Practitioner acknowledges that Clause 15.3 shall apply regardless of whether:
- 15.4.1 the Practitioner is in default and irrespective of the Practitioner's financial circumstances; and
- 15.4.2 in the Authority's view, the State Aid granted in connection with this Agreement complies with the State Aid Rules.

16. General

- 16.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement.
- 16.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 16.3 The Authority reserves the right to modify or discontinue, temporarily or permanently, the MAS Scheme (or any part or feature thereof) at any time after giving prior notification where practicable, or otherwise, without any prior notification if such notification is not practicable.
- 16.4 Without prejudice to the generality of clause 16.3 above, the Authority may terminate the MAS Scheme and thereby this Agreement at any time with immediate effect in the event that, in the Authority's reasonable opinion, the continued performance of the MAS Scheme and/or this Agreement ceases to be compliant with applicable Law.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause 16.5 and any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 The Agreement contains the whole agreement between the Parties and

supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 16.7 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 16.8 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 16.9 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 16.10 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

17. Notices

- 17.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 17.3, e-mail to the address of the relevant Party set out below, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 17:
- 17.1.1 For the Authority: Animal Plant and Health Agency, Finance & Business Support, Lutra House, Bamber Bridge, Preston PR5 8BX – Email: ServiceDeliveryVetandExportInvoices@apha.gov.uk
- 17.1.2 For the Practitioner: to the address and/or email address provided by the Practitioner when submitting its invoice for payment under the Agreement.
- 17.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered

when sent unless an error message is received.

- 17.3 Notices under clause 12 (Force Majeure) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 17.1.

18. Governing Law and Jurisdiction

- 18.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.