



## Foot and Mouth Disease Operational Agreement

**MPI Contract No**

**DRAFT**

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# 1. Definitions and Interpretation

In this OA, unless the context requires otherwise:

## 1.1 Definitions

Administrator	means the person approved and funded by the LSC to administer the OA and related documents.
Business Days	means any day not being a Saturday or Sunday, a public holiday observed in New Zealand, or the period from 26 to 31 December each year.
Chair	means, as the case requires, the: a) Chair of the LSC; b) Chair of Response Governance for FMD responses (refer to the GIA Response Guide for terms of reference).
Chief Technical Officer (CTO)	has the same meaning as defined in the Biosecurity Act 1993.
Commencement Date	has the meaning given in clause 3.
Conflict of Interest	means any conflict of the Party's interests or obligations with its responsibilities under this OA, such that the Party's independence, objectivity or impartiality can be called into question. A conflict of interest may be actual (where the conflict currently exists), potential (where the conflict is about to happen, or could happen), or perceived (where other people may reasonably think that a person or the Party is compromised).
Consensus	Means that no representative who is Present is opposed to a decision even if some who are entitled to Present may be absent (it is assumed those who are absent are not opposed), or if some who are Present have reservations but are not opposed.
Decision-making body	means, as the case requires, the: a) LSC acting as the OA Governance Group; b) Response Governance for FMD responses.
Deemed Consensus	means a decision reached under clause 8.4 of this OA.
Designated decision maker	means the individual who has the authority and delegations to make decisions on behalf of a Party at Response Governance under this OA. This also includes an alternate individual of a Party. Note that this individual may also be the LSC member for a Party

Designated proxy	means a person with written and current authorisation to act for another.
Designated representative	means the individual who has the authority and delegations on behalf of a Party to manage that Party's obligations under this OA. This also includes an alternate individual of the Party.
FMD	has the meaning given in clause 5.2.
GIA Deed or Deed	means the latest version of the Government Industry Agreement for Biosecurity Readiness and Response made pursuant to the Biosecurity Act 1993.
GIA Response Guide	means the document of that name (on the GIA Secretariat website <a href="http://www.gia.org.nz">www.gia.org.nz</a> ) for how joint decision making for biosecurity responses works in practice between the Parties, which may be updated from time to time.
GIA Secretariat	means the GIA Secretariat established under the GIA Deed and with the functions described in clause 4.2 of the GIA Deed.
Industry Party	means an Industry Signatory who has signed this OA.
Industry Signatory	means a party to the GIA Deed other than MPI.
In-kind contribution	means consideration in the form of goods or services for readiness and response activities in placement of cash.
LSC	means the OA governance group of the executed FMD OA with roles and responsibilities as defined in the terms of reference (LSC Terms of Reference (draft at 14/07/16)). <i>Note: the WG have proposed the LSC as the governance body but this needs to be agreed and confirmed at the structural/DGG level within GIA.</i>
MPI	means the Ministry for Primary Industries
Non-Signatory beneficiary(ies)	means a group of businesses comprising of a sector under section 100Y(1) of the Biosecurity Act 1993 that: <ul style="list-style-type: none"> <li>• is not represented by an industry organisation stated by the Minister, by Gazette notice under section 100ZA of the Act, as representing a sector for the purposes of joining GIA; and has signed the GIA Deed; and</li> <li>• has been identified by the Parties to a GIA Operational Agreement for readiness or response activities as knowingly or unknowingly gaining, but not paying for, biosecurity benefits generated by the activities.</li> </ul>

OA	means this document.
Organism Type	means organisms of a similar biology, likely to be members of the same Order, which can be treated generically for the purposes of achieving particular biosecurity outcomes.
Parties	means the Parties to this OA as defined in clause 2 and recorded in clause 17 of this OA.
Present	Party members will be considered Present when, having the right to participate in the decision, they are in attendance in person, on the phone or other electronic means or through a Designated Proxy until they are recorded as having ceased to be available for two way communication.
Readiness	means as defined in the Biosecurity Act 1993.
Readiness work plan (RWP)	means the co-invested FMD readiness activities and budget agreed to be undertaken by the Parties.
Response	means as defined in the Biosecurity Act 1993.
Response Governance	means the group of designated decision makers from the Parties for response decision making.
Signatory	means a Signatory to the GIA Deed, specifically the Ministry for Primary Industries and any Industry Signatory.

Note: several items are defined in the Schedules

## 1.2 Interpretation

In this OA, unless the context requires otherwise:

- (a) The singular includes the plural and vice versa;
- (b) References to persons include all other entities and associations and vice versa;
- (c) Money is New Zealand dollars.

## 2. The Parties signing this Operational Agreement

The Parties (MPI and Industry Parties) to this OA are those identified in Clause 17 or those who have become parties to this OA by letter of accession as described below, who together will be referred to as “**the Parties**” throughout this OA.

A non-Signatory beneficiary identified in Schedule B – Cost Shares after they have signed the GIA Deed and the GIA Confidentiality Deed may become Party to this OA by signing the letter of accession which is attached as Schedule A – Letter of Accession Template.

A copy of the letter of accession must be lodged with the GIA Secretariat by the new Party upon signing. The letter of accession will be countersigned by MPI and any Industry Party to acknowledge the new Party’s accession.

## 3. Term

The initial term of this OA is 5 years, and it will come into effect on **Date Month 20yy** (the “**Commencement Date**”).

The LSC may decide to amend the term of the OA at any time.

The LSC may decide to initiate a formal review of this OA at any time on such terms as it sees fit.

## 4. Lodgement

Each party will provide the GIA Secretariat with its executed signature page or signed letter of accession.

## 5. Introduction

### 5.1 Operational Agreement

This is an Operational Agreement for the purposes of the GIA Deed.

### 5.2 Foot and Mouth Disease

The specific unwanted organisms covered by this OA are the following organisms of concern:

- All serotypes of the aphthovirus of the family Picornaviridae that cause Foot and Mouth Disease.

collectively referred to as “**FMD**” in this OA.

### 5.3 Purpose

This OA specifies how the Parties will work in partnership to enhance FMD biosecurity risk management across the biosecurity system and meet the GIA Deed commitments for joint decision-making and cost-sharing for readiness and response activities.

### 5.4 Outcomes

Focused on better biosecurity outcomes, the Signatories will work together to reduce impacts from FMD to the livestock sector and New Zealand by:



1. Ensuring the capability to detect an FMD incursion as rapidly as possible within 7 days of initiation of the outbreak.
2. Maintaining readiness policies, plans, and the operational capabilities to eradicate a medium\* scenario outbreak.
3. Minimising economic impacts to the livestock sector of the incursion and response, while complying with statutory environmental obligations, and with mechanisms to manage social impacts.

\* defined as an outbreak of 52 infected places; of 50 days duration.

The medium scenario is described in MPI Technical Paper No: 2014/18. Foot-and-Mouth Disease Economic Impact Assessment: What it means for New Zealand.  
<http://www.mpi.govt.nz/document-vault/4406>

## **6. Governance**

### **6.1 Governance of the OA**

The LSC is to be the Governance Group for this OA. Only the Parties to this OA have decision making rights and authority with respect to matters in this OA. The Parties to the OA will meet as a sub-group of the LSC in accordance with the LSC Terms of Reference, attached for information as clause 18.10 to this OA.

For greater clarity, decisions on matters relating to this OA will be as follows:

- (i.) For readiness activities, in accordance with 7.2 (Readiness Decision-making).
- (ii.) For response activities, in accordance with 8.4 (Response Decision-making).
- (iii.) For all other matters, in accordance with the LSC decision making process.

### **6.2 OA Administration**

As required, the LSC will appoint and fund an Administrator who is responsible for the administration of this OA.

### **6.3 Contract Management**

Each Party will nominate a Designated Representative to provide contract management oversight of this OA

### **6.4 Reporting**

The LSC will, unless otherwise agreed, prepare an annual report of OA readiness and response activities for release to the Parties to use as they see fit for reporting to their constituents and the Parties shall maintain a 'no surprises' policy.

### **6.5 Inconsistency with the Deed**

In the event of any inconsistency between this OA and the GIA Deed, the terms of the GIA Deed prevail except where a clause in the OA specifically states that it takes precedence and the GIA Deed does not prevent this.

## **7. FMD readiness arrangements**

### **7.1 Readiness Work Plan**

The Parties will monitor readiness activities via a Readiness Work Plan (RWP).

The Parties may agree a Readiness Work Plan (RWP), which could include reviews of existing FMD readiness arrangements. The RWP will include the activities to be undertaken during the period of the work plan, setting out amongst other things, the objective, targets, expected outcomes, milestones, budget and resources required.

A project brief for each readiness activity will be attached to Schedule C – FMD readiness activities.

Agreement to undertake the RWP will be managed by the Administrator.

## **7.2 Readiness Decision-making**

Readiness decisions made by the LSC relating to this OA will be by Consensus.

If Consensus cannot be reached then the Chair will set the timeline for the following steps. At each step the Parties will seek to reach Consensus before the next step is undertaken:

- (i) The Parties should decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolve the points identified.
- (ii) In the spirit of partnership, in the event of non-Consensus, the Parties will each nominate an alternate senior decision-maker from their organisation to engage in meaningful dialogue to attempt to reach Consensus.

LSC decisions will be noted in the LSC minutes.

Nothing in this OA shall prevent Parties agreeing separate activities outside this OA.

Readiness arrangements will be reviewed annually for performance.

## **7.3 Withdrawal from readiness activities**

A Party is entitled under the GIA Deed (clause 6.2) to withdraw from readiness activities.

If a Party wishes to withdraw, then:

1. That party must give reasonable notice in writing to the Chair of the LSC of its intention to withdraw as soon as practicable.
2. The withdrawing party must provide the Chair with information demonstrating their reasons for its decision to withdraw.
3. Within 14 days the LSC will meet and discuss the impact and implications of the withdrawing party to the readiness activities and the remaining Parties.
4. All decisions regarding a withdrawal and the impact will be recorded in the minutes of the LSC meetings.

Withdrawal from a readiness activity or activities does not result in withdrawal from the OA.

*Note it is NOT obvious what we are trying to achieve.*

The Party that has withdrawn from a readiness activity or activities will lose its decision making rights in relation to those activities.

The cost sharing for the remaining Parties of the readiness activities will be treated in accordance with Industry Cost Shares.

## 8. FMD response activities

### 8.1 MPI Response Frameworks

The Parties agree that any response to FMD impacting Industry Parties to this OA will be delivered under MPI Response Frameworks (detailed in **Schedule D – Pre-agreed response strategies or plans for FMD**) and in accordance with any pre-agreed response strategies or plans as detailed in clause 8.2.

### 8.2 Pre-agreed strategies or plans for response

Pre-agreed response strategies or plans for FMD (listed in **Schedule D – Pre-agreed response strategies or plans for FMD**) will be utilised during a biosecurity response to inform the development of response documentation as required.

### 8.3 Response Governance

Each Party will nominate a Designated Decision Maker to join Response Governance. Each Designated Decision Maker may be accompanied by one advisor at the Response Governance table. Other advisors (e.g. technical advisors) may also attend at the discretion of the Chair of Response Governance and in consultation with Response Governance members. The Chair of Response Governance will be a senior MPI official.

### 8.4 Response Decision-making

Response decisions made under this OA will be:

- (a) By Consensus, or
- (b) If Consensus cannot be reached during a Response Governance meeting then the Chair will set the timeline for the following two steps. At each step the Parties will seek to reach Consensus before the next step is undertaken:
  - (i) The parties should decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolve the points identified.
  - (ii) If the Parties cannot reach consensus within the timeline set by the Chair, the Chair will call for vote, and Consensus will be deemed to have been achieved (**Deemed Consensus**) if all of the following occur:
    - 50% of the Signatories casting a vote are in favour; and
    - Of the industry Signatories who are Present, those who contribute 75% of the industry cost-share, and MPI, are all in favour.

*Note: the voting procedure will be discussed after cost shares are agreed.*

- (c) Response Governance decisions will be noted in the Response Governance minutes.

### 8.5 Contact details for designated decision makers for responses

The Parties will provide the GIA Secretariat with up to date contact details of the designated decision maker and alternates for responses where possible.

At the commencement of a response each Party will confirm their Designated Decision Maker for that response and this will be noted by Response Governance.

### 8.6 Absent decision-makers during a response

If a Designated Decision-Maker is unable to attend a Response Governance meeting, the Party may appoint a Designated Proxy.

If neither the Designated Decision Maker nor Designated Proxy of a Party is Present at a Response Governance meeting, they will be advised by the Chair of Response Governance of any decisions made at that meeting, and they will:

- (a) Be responsible for performing (or arranging the performance of) any responsibilities allocated to them arising from implementation of the strategy decided at that meeting; and
- (b) Have an obligation to pay agreed shares of response costs in relation to those response activities.

## **8.7 Withdrawal from a response**

A Party is entitled under the GIA Deed (clause 6.2) to withdraw from a response.

If a Party wishes to withdraw, then:

1. That party must give reasonable notice in writing to the Chair of Response Governance of its intention to withdraw as soon as practicable.
2. The withdrawing party must provide the Chair with information demonstrating their reasons for its decision to withdraw.
3. Within 14 days the Response Governance group will meet and discuss the impact and implications of the withdrawing party to the readiness activities and the remaining Parties.
4. All decisions regarding a withdrawal and the impact will be recorded in the minutes of Response Governance meetings.

The Party that has withdrawn from a response activity or activities will lose its decision making rights in relation to those activities.

The cost sharing for the remaining Parties of the response activities will be treated in accordance with Industry Cost Shares.

## **9. Finance**

### **9.1 Beneficiaries of readiness and response activities**

The Parties have agreed the sectors that benefit from readiness and response activities and they are listed in Schedule B – Cost Shares.

Signatories that benefit from but are not party to this OA will be treated in accordance with clause 5.1.13 of the Deed.

MPI is responsible for appropriate consultation with and cost recovery from non-Signatory beneficiaries.

### **9.2 Cost shares**

The Parties have agreed the share of costs of readiness and response activities and these are set out in Schedule B – Cost Shares. All Parties must ensure they can meet their cost sharing obligations.

Cost-shares in this OA may be renegotiated when new information becomes available that materially changes the previous cost-share determination. Cost shares will be determined using the procedure set out in Schedule B – Cost Shares.

### **9.3 Cost Shareable Activities**

The Parties have agreed the type of activities that are cost shareable activities and these are noted in Schedule E – Agreed cost shareable activities.

### **9.4 Fiscal cap**

The Parties agree to set a fiscal cap to identify limits on financial liability for responses. The fiscal cap is for responses only. This is documented in Schedule F – Response fiscal cap.

### **9.5 Reaching fiscal caps**

During a response, as the Industry Parties' portion of the response expenditure (including forecast liabilities from clause 9.8) approaches the fiscal cap, Response Governance will review the response objectives. If Response Governance decides to continue the response and forecasts that expenditure will exceed the fiscal cap, then Response Governance will agree a new fiscal cap. Each industry Party will review and confirm its contribution to the new fiscal cap.

If a Party is unable to take on further funding commitments it may withdraw from the response but it may continue to attend Response Governance meetings as an observer only with Response Governance's approval but will lose its decision making rights. The remaining Parties may renegotiate the fiscal cap.

If the fiscal cap needs to be reviewed between responses, the Parties will meet to review and agree a new fiscal cap. Each Industry Party will review and confirm its contribution to the new fiscal cap.

### **9.6 In-kind contributions**

Contributions can also be made to readiness and response activities in the form of in-kind contributions that meet appropriate levels of quality and performance as required by each specific readiness or response activity. These contributions would take the form of goods or services in placement of cash.

For readiness activities, acceptance of in-kind contributions will be recorded in each project brief.

For responses, in-kind contributions will be treated as normal contracted goods and services which will be managed by response operations staff.

Contributions will be valued at cost of supply of those goods or services based on the standard hourly rates and charges for undertaking readiness and response activities as detailed in Schedule F – Response fiscal cap

The Parties agree that the industry Parties' fiscal cap for the cost-share response activities *describe basis and fiscal cap*

Schedule G – Standard hourly rates and charges for undertaking readiness and response activities, and will form part of the financial reconciliation at the end of every year and/or as part of readiness and response cost quarterly reconciliations.

In-kind contributions to a response can be included in the total calculation of the fiscal cap and are subject to the audit provisions in clause 12 of this OA.

## 9.7 Compensation

Section 162A of the Biosecurity Act 1993 (“section 162A”) applies for the assessment of compensation liability under this OA.

Compensation claims will be administered, assessed and paid by MPI in accordance with its compensation procedures for responses.

The Parties agree that compensation payments made by MPI under section 162A are a cost shareable response activity under this OA (refer to Schedule E – Agreed cost shareable activities).

In no circumstances will any Industry Party be directly or indirectly liable to any person in respect of any loss within the ambit of section 162A other than to pay its cost share to MPI as set out in clause 9.8.

## 9.8 Cost shares and recovery for compensation costs

The Parties to this OA will endeavour to minimise compensation liability without compromising the effectiveness of the response.

Response Governance will oversee the actual and forecast compensation liability throughout a response, the contribution of that liability to total response costs (both actual and forecast) and the fiscal cap. MPI will consult with and provide regular and timely reports to Response Governance on MPI’s administration, assessment and payment of compensation claims.

The Industry Parties’ aggregate cost share of all compensation payments shall be limited to **proportion** of the fiscal cap. Each Industry Party’s cost share of compensation payments shall be limited to **proportion** of that Party’s proportion of that fiscal cap.

An Industry Party will only be liable to pay its cost share for compensation which is incurred during the response, or which is forecast during the response as a potential liability, and is subsequently paid by MPI.

Where an Industry Party withdraws from a response, it will only be liable to pay cost share for compensation (up to its share of the fiscal cap) which is incurred prior to the date of withdrawal, or which is forecast as a potential liability prior to the date of withdrawal, and is subsequently paid by MPI.

***Note levels of cap etc will be discussed as part of the cost share discussions***

## 9.9 Funding administration

### 9.9.1 Payment for readiness activities

Based on the agreed cost shares (Schedule B – Cost Shares), the Administrator will invoice or credit other Parties on a quarterly basis 1/4<sup>th</sup> of their estimated

share for the first 3 quarters of the year with the final quarter (April – June) being the wash-up of the difference between actual and annual expenditure forecast. Should actual costs incurred differ markedly from the forecast, the expenditure should be re-forecast and agreed by the Parties.

#### 9.9.2 Payment for response activities

MPI will pay for response costs and apportion the industry share of the response costs as per clause 9.2. The Industry Parties will pay their share of response costs, quarterly in arrears.

#### 9.9.3 Parties will provide proof of expenditure and in-kind contributions

For readiness and response activities the Parties will provide proof of expenditure and reconciliations to support the costs incurred.

- (1) Where goods and services are provided directly by a Party under this OA, that Party must provide the other Parties (via the Administrator) details of:
  - (a) the good or service in question;
  - (b) the period during which they were provided;
  - (c) the readiness or response activity title;
  - (d) where provided by MPI, the MPI activity/cost centre codes and;
  - (e) the equivalent monetary values.
- (2) Where any Party procures goods or services from a third party, that Party must provide the other Parties, via the Administrator:
  - (a) details specified in subclause (1) (a) to (c); and
  - (b) proof of expenditure and reconciliations to support the costs incurred.

#### 9.9.4 GST Invoices

Each GST Invoice between any Party (whether submitted monthly or otherwise) will contain sufficient details to enable each Party to identify:

- (a) the MPI activity/cost centre codes and/or the readiness or response activity title;
- (b) the particular services which are the subject of the invoice and the period during which those services were provided;
- (c) the relevant charges;
- (d) in respect of any charges calculated on the basis of time spent, the basis (including relevant hours worked, and rates) upon which the charge is based; and
- (e) full details of any expenses.

#### 9.9.5 Payment

Subject to clause 9.9.6, the Parties will pay by the 20th day of the month following the date of any GST Invoice. Payment may not be evidence that the services to which the invoice relates have been provided. Any payment not received will be subject to annual interest at the current Capital Charge rate published by The Treasury Kaitohutuhu Kaupapa Rawa from two (2) months of payment due date unless subject to Payment Dispute clause 9.9.6.

#### 9.9.6 Payment Dispute

If a Party has a bona fide dispute the disputes process in clause 16.9 will apply.

#### 9.9.7 Complete applicable services

Where the invoiced amount is based on the time spent providing the goods or services, the Parties will complete the applicable services in the minimum possible time consistent with its other obligations under this OA. Each party will provide the other parties with all information required to check the time spent, the rate charged and the overall computation of the time based charges. A Party will not be required to make payment of any time based charges when another Party is unable to provide appropriate timesheets, third party invoices or any other reasonable supporting documentation to the Administrator.

#### 9.10 Transitional discounts

Transitional discounts relevant to the delivery of this OA are recorded in Schedule B – Cost Shares

### 10. Withdrawal and removal from this OA

#### 10.1 Withdrawal by a Party

Any Party may, by not less than 6 months' notice in writing to each other Party and the GIA Secretariat, withdraw from this OA.

#### 10.2 Removal of an Industry Party

A Party to this OA is deemed removed immediately from this OA, where that Party:

- (a) Is determined by the Minister for Primary Industries to no longer meet the eligibility criteria to be an industry organisation under clause 100ZA of the Biosecurity Act 1993; or
- (b) Has become:
  - i. insolvent or bankrupt, or has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or
  - ii. subject to any form of external administration; or
  - iii. 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; or

The LSC resolve that a Party:

- (c) Has breached an obligation under this OA and:
  - i. the breach cannot be remedied; or
  - ii. if the breach can be remedied, the Party has failed to remedy the breach within two months of receiving notice requiring it to do so; or
  - iii. where the other LSC members agree that the Party should be removed; or
- (d) Has any Conflict of Interest that:
  - i. in the other Parties' opinion is so material as to impact adversely on the Parties to this OA; or
  - ii. the Party failed to notify the other Parties' of; or
  - iii. in the other Parties' opinion, the Party is unable or unwilling to resolve or deal with as required by the Parties acting reasonably.

***This needs to be reviewed after the LSC ToR are complete to decide if this is a LSC role or a Parties role***



### **10.3 Effect of withdrawal and removal**

If any Party withdraws or is removed from this OA:

- (a) Notwithstanding clause 11 of this OA Clause 6.2.2 of the GIA Deed applies;
- (b) During the withdrawal notice period that Party will have no representation in any decision making body unless the relevant decision relates to matters in relation to which that Party remains liable under clause 6.2.2 of the GIA Deed;
- (c) The remaining Parties will not be liable for any loss caused to or suffered by the withdrawing Party as a result of its withdrawal or removal; and
- (d) The remaining Parties will continue to be bound by the OA, as long as the performance of their obligations is not rendered impossible by the withdrawal of the Party from the OA.
- (e) The LSC will meet as soon as practicable to assess the potential impact of the withdrawal of the Party.

### **11. Limitation of Liability**

No Party will be liable to any person, including the other Party, under the law of contract, tort, equity or otherwise, for any damages, whether direct or indirect, arising out of or in connection with this OA or omission under or in respect of this OA (including any readiness or response decision or activity), except for such liability (if any) arising due to:

- (a) Non-payment of any amount due under this OA (up to the amount owed);
- (b) Any wilful default, gross negligence, fraud or breach of clause 13 (Confidentiality).

This provision applies despite the Deed.

### **12. Activity audits and recordkeeping**

#### **12.1 Recordkeeping**

The Parties will keep and maintain accurate and up-to-date records, including financial records, in relation to their performance under this OA of all monies paid and payable under or in relation to this OA.

#### **12.2 Audit purpose**

At any time during the performance of a specific readiness and response activity under this OA, and up to 12 months from the completion of the specific activity thereafter, any Party may upon written notice to any other Party, at its own cost seek to obtain assurance by requesting that it:

- (a) Audit or obtain an audit of any aspect of the other Party's compliance with this OA, or with the clauses of any funding agreement for this OA and/or any elements of the other Party's financial administration of such funding agreement.
- (b) Evaluate any agreed elements of the process steps and activities which contribute to the delivery of the agreed outputs for the specific activities for an OA (those activities directed and agreed under relevant schedules including

### 12.3 Audit arrangements

The audit scope and timing will be agreed in writing between the Parties.

## 13. Confidentiality and Privacy

The Parties to this OA acknowledge that they have signed and are bound by the GIA Confidentiality Agreement.

The Parties will comply with the Privacy Act 1993 when performing activities under this OA, and will not disclose any personal information acquired in the course of performing activities under this OA in contravention of that Act.

## 14. Conflicts of interest

All parties:

- (a) warrant that as at the Commencement Date, they have no Conflict of Interest other than any Conflict of Interest declared and lodged with the Administrator;
- (b) will promptly declare any Conflict of Interest they become aware of during the term of this OA,
- (c) must follow the Conflict Protocol in Schedule H – Conflict Protocol

The Administrator will maintain a register of Conflicts of Interest. On an ongoing basis, the Parties must identify any Conflicts of Interest they have or may develop.

Each Party must notify all the other Parties and the Administrator immediately of any matter, event or circumstance that gives rise to any Conflict of Interest. If a Conflict of Interest does arise, the Parties will follow the protocol in Schedule H – Conflict Protocol.

Parties will use reasonable endeavours to minimise the impact of any Conflict of Interest. Each Party will pay its own costs in relation to managing a Conflict of Interest.

The parties acknowledge that a Conflict of Interest may give rise to termination rights pursuant to clause 10.2 (d).

## 15. Intellectual Property

### 15.1 Pre-existing IP

Notwithstanding any other provision of this OA, all intellectual property that is relevant to the OA in existence prior to the Commencement Date (“**Pre-Existing IP**”) will remain the property of its owner. The owner may decide whether and on what terms to make any of that IP available.

### 15.2 Developed IP

The ownership of all intellectual property created after the Commencement Date by any of the Parties in relation to this OA (“**New IP**”) will be the property of the Party that created the New IP, subject to the terms of any relevant contract.

### **15.3 Licencing**

The Parties grant each other a non-exclusive, royalty free, 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 New IP for the strictly limited purpose of enabling the other Parties to use that IP to, in good faith, perform readiness and response activities, and otherwise to perform their obligations under this OA but for no other purpose.

## **16. Other**

### **16.1 Counterparts**

This OA may be executed in counterparts, meaning that execution will be complete when each Party holds a copy (which can be an emailed copy) of this OA signed by all the other Parties, even though the signatures of any of the Parties do not appear on the same copy.

### **16.2 Entire Agreement**

The Deed and this OA constitutes the entire agreement and understanding between the Parties in relation to the subject matter of the same, and in each case supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties.

### **16.3 Relationship of the parties**

Nothing in this OA creates a fiduciary, partnership, agency or joint venture relationship between the Parties. No Party has authority to bind or represent any other Party in any way or for any purpose.

### **16.4 Waivers**

No waiver of any rights or benefits 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 will operate as a waiver.

### **16.5 Assignment**

No Party to this OA may assign any of its rights under this OA without the prior written approval of the other Parties.

### **16.6 Change of Control**

Each Party will notify the others as soon as reasonably practicable of any expected change of in its control, and notify promptly of any actual change of control.

### **16.7 Severability**

If any provision of an Agreement or this OA is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of the Agreement or this OA (as applicable) will remain in full force and effect.

## 16.8 Variation

The fiscal cap of any Party can be changed during a response by the process described in clause 9.5.

Otherwise this OA can only be varied by agreement of all Parties.

## 16.9 Disputes

### 16.9.1 Definitions for this process

**Dispute** means complaint that a Party has not fully or appropriately performed an obligation owed to the complainant Party under this OA that has not been resolved by dialogue between them within a reasonable period.

**Dispute Notice** means written notification of the Dispute containing the following information:

- a. Identification of each Recipient;
- b. summary of the Dispute;
- c. suggestion for resolving the Dispute; and
- d. representative authorised to resolve the Dispute.

**Initiator** means Party or Parties issuing a Dispute Notice.

**Involved Parties** means Initiator and all Parties issuing a Reply

**Recipient** means Party or Parties alleged to be in breach in a Dispute and

**Reply** means written notification by the Recipient and any other Party containing the following information:

- a. additional or different facts of the Dispute to those stated in the Dispute Notice;
- b. suggestion for resolving the Dispute; and
- c. representative authorised to resolve the Dispute.

### 16.9.2 Dispute process

- 1) In the event of a Dispute the **Initiator** must issue a Dispute Notice to the Recipient and provide a copy to all other Parties.
- 2) No Dispute Notice may be lodged under this clause in respect of decisions to be made under clause 7.2 or 8.4. For the avoidance of doubt, once a decision has been made under clause 7.2 or 8.4, a Dispute Notice may be issued in respect of that decision
- 3) The Recipient must, and other Parties may, issue a Reply to all other Parties within ten Business Days of receiving the Dispute Notice.
- 4) If a Party other than a Recipient opts not to issue a Reply it may not raise the same issue as a Dispute in the future.
- 5) The Involved Parties must enter into negotiations to resolve the Dispute within five Business Days of the due date for receipt responses.
- 6) Where the Involved Parties are unable to resolve the Dispute within 10 Business Days of negotiations commencing, they will appoint a mediator and agree a fee for that mediator.
- 7) If, within five Business Days, those matters are-
  - a. agreed, the procedure for the mediation will be determined by that mediator.

- b. not agreed, they will be determined by the Chair of the organisation known as LEADR New Zealand Inc. (or his/her nominee) and the mediation will be conducted in accordance with the LEADR New Zealand Inc. standard mediation agreement.
- 8) In all cases, the Involved Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 9) The Involved Parties must each bear its own costs of presenting its views during the Dispute process.
- 10) Any costs or expenses of any mediator appointed under this clause (Disputes) will be paid by the Involved Parties in equal shares unless recommended otherwise by the mediator and, if so recommended, will be paid in accordance with that recommendation. The Parties expect that when considering and making such a recommendation, the mediator will take into account the principle that it is usually appropriate for cost and expenses to follow the outcome, and in particular that a Party initiating and pursuing a failed and unmeritorious Dispute should usually bear most or all the costs and expenses of all Involved Parties.
- 11) The Involved Parties must notify all Parties when mediation has concluded as soon as reasonably practicable. If the outcome of mediation affects or potentially affects the performance of activities under this OA by other Parties, the Involved Parties must notify them of the outcome as soon as reasonably practicable.
- 12) No Party may commence litigation on a Dispute prior to the process in this clause having been concluded.
- 13) In the event of a Dispute, the Parties will continue to meet their obligations under the Deed to the extent reasonably practicable.

## **16.10 Operational health and safety policy**

### **16.10.1 General Obligations**

The Parties formally adopt the Health and Safety policy agreed by the GIA Deed Governance Group.

The Parties believe that the health and safety of persons involved in or affected by work commissioned or approved by the Parties is among its highest priorities. The Parties are committed to ensuring so far as is reasonably practicable that risks to health and safety are eliminated or, where this is not reasonably practicable, minimised so far as is reasonably practicable. Accordingly the Parties will:

- (a) Demonstrate excellent health and safety practice with legal compliance as a minimum.
- (b) Ensure that its health and safety policy and its expectations are clearly communicated to all workers within its influence and control.
- (c) Consult and co-operate with and co-ordinate, on an ongoing basis and as regularly as changing circumstances necessitate, with other duty holders and develop a culture of mutual accountability.

- (d) Review the health and safety policies of other duty holders and parties within its influence and control to ensure that these are appropriate and where appropriate reflect the Parties' health and safety policy;
- (e) Put in place mechanisms to continuously improve health and safety performance and learn from incidents by requiring reporting of accidents as required by the Health & Safety At Work Act 2015 (including ill-health), incidents (including near misses) and non-conformity including annual reports from duty holders and other parties and immediate reporting of any serious incident;
- (f) Regularly review its health and safety policies and update them where necessary to ensure that so far as is reasonably practicable risks are eliminated or where this is not reasonably practicable, minimised so far as is reasonably practicable .
- (g) Take reasonably practicable steps to ensure and otherwise obtain appropriate commitments that all workers involved in readiness or response activities will be appropriately trained

#### 16.10.2 Response Governance Obligations

When making any decision the Parties will actively consider the potential health and safety implications of that decision on any workers within its influence or control or any other persons who may be affected and will ensure that so far as is reasonably practicable risks are eliminated or where this is not reasonably practicable, minimised so far as is reasonably practicable.

#### 16.10.3 Parties policies adopted by Response Governance

Where a Response Governance group is convened the Parties health and safety policy statement and the Parties health and safety policy will, to the extent that they are applicable and reasonably practicable in the circumstances of the response, be deemed to be the policies of the Response Governance group;

- (a) At the beginning of any response, Response Governance will appoint an H&S Officer.
- (b) When making any decision Response Governance will actively consider the potential health and safety implications of that decision on any workers within its influence or control or any other persons who may be affected and will ensure that so far as is reasonably practicable risks are eliminated or where this is not reasonably practicable, minimised so far as is reasonably practicable.

## 17. Execution

HER MAJESTY THE QUEEN IN RIGHT OF  
NEW ZEALAND acting by and through the  
Director-General of the Ministry for Primary  
Industries (MPI).

**Signed** by and on behalf of the **Ministry for  
Primary Industries** by its Director-General,  
*name*, on *insert date*

\_\_\_\_\_  
Signature

in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness name (printed)

\_\_\_\_\_  
Location

INSERT INDUSTRY ORGANISATION  
NAME(S), representing the INSERT  
SECTOR REPRESENTED sector, gazetted  
for GIA purposes on the dd/mm/yy and  
becoming a Deed Signatory on dd/mm/yy.

**Signed** by and on behalf of *name of  
industry Signatory organisation* by its title  
of person signing, *name*, on *insert date*

\_\_\_\_\_  
Signature

in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness name (printed)

\_\_\_\_\_  
Location



**Copy page for additional industry signatories**

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## 18. Schedules

### 18.1 Schedule A – Letter of Accession Template

*Date*

*Insert name of Industry Signatory*

*Insert address of Industry Signatory*

**RE: FMD Operational Agreement MPI Contract No**

MPI and Industry Parties have agreed the above Operational Agreement in relation to specific biosecurity readiness and response activities relating to FMD.

The Operational Agreement allows new Parties to become Parties to the Operational Agreement. In accordance with clause 2 of the Operational Agreement, such new Parties must accept and agree to be bound by the Operational Agreement (which is not negotiable).

By signing this letter, your organisation agrees to become a Party to, and be bound by the terms of, the Operational Agreement. If your organisation is willing to become a Party to and be bound by the Operational Agreement, please complete and sign this letter and return that signed copy to the address indicated below.

*Insert contact details of the Administrator*

Please retain a copy of the signed letter and the enclosed Agreement for your records.

The identity and contact details of the representative of your organisation for this Agreement must be included below:

Representative

Name: *insert details here*

Physical address: *insert details here*

Telephone number: *insert details here*

Email address: *insert details here*

If you have any questions, please contact **the Administrator**.

Yours sincerely,

Signed for and on behalf of MPI

\_\_\_\_\_

Name and title of signatory\_\_\_\_\_

Date\_\_\_\_\_

Signed for and on behalf of *Industry Party*

\_\_\_\_\_

Name and title of signatory\_\_\_\_\_

Date\_\_\_\_\_

*Insert full legal entity name of new Party* accepts and agrees to comply with the terms of the Operational Agreement.

\_\_\_\_\_

Signed for and on behalf of *Insert full legal entity name of new Party*

\_\_\_\_\_

Name and title of Signatory\_\_\_\_\_

Date\_\_\_\_\_

## 18.2 Schedule B – Cost Shares

### 18.2.1 Public – Industry Cost Shares

#### A. Readiness cost-shares

The estimated benefit shares for readiness activities are:

MPI: x%

Livestock Sector: x%

Therefore, the cost shares (as shown in Schedule 2 of the Deed) between MPI and the Animal Sector as agreed are:

MPI: x%

Livestock Sector: x% with the apportionment for each individual industry sector (Industry Parties and Non-Signatory beneficiaries) is as detailed in Table 3.

The readiness cost shares are subject to the transitional discounts as detailed in Table 1

Table 1 Readiness transitional readiness discounts

Year	Readiness Discount
2016/17	40%
2017/18	40%
2018/19	20%
2019/20	20%
2020/21 and following years	0%

Notes:

(a) Transitional discounts are applied after:

- (i) The exacerbator contribution Deed clause 3.3.1 has been applied
- (ii) The agreed industry beneficiary cost-share has been applied

(b) Transitional discounts only apply for costs incurred in the applicable year that the transitional readiness discounts apply.

#### B. Response cost-shares

The estimated benefit shares for response activities are:

MPI: x%

Livestock Sector: x%

Therefore, the cost shares (as shown in Schedule 2 of the Deed) between MPI and the Animal Sector as agreed are:

MPI: x%

Livestock Sector: x% with the apportionment for each individual industry sector (Industry Parties and Non-Signatory beneficiaries) is as detailed in Table 3.

Table 2 Response Transitional response discounts

Year	Readiness Discount
2016/17	100%
2017/18	60%
2018/19	60%
2019/20	40%
2020/21	40%
2021/22	20%
2022/23	20%
2023/24 and following years	0%
Notes:	
<p>(c) Transitional discounts are applied after:</p> <ul style="list-style-type: none"> <li>(i) The exacerbator contribution Deed clause 3.3.1 has been applied</li> <li>(ii) The agreed industry beneficiary cost-share has been applied</li> </ul> <p>(d) Transitional discounts only apply for costs incurred in the applicable year that the transitional response discounts apply.</p>	

#### 18.2.2 Industry Cost Shares

##### **Beneficiaries of readiness and response activities for this OA**

FMD is an infectious disease of cloven hooved mammals. The Parties agree that the farmed animals listed in Table 3 below are beneficiaries from readiness and response activities for this OA.

##### **Basis to determine industry sector costs-shares for readiness and response**

The apportionment of individual industry sector cost-shares of the industry cost-share of readiness and response activities for this OA will be calculated and agreed annually and will be based on **describe valuation measure**. Each industry Party to this OA, will determine its own industry sector value and will provide the methodology and rationale used for calculating their sector value to the LSC to agree.

The Parties to the OA will jointly develop and agree estimates of the **value** of each Non-Signatory beneficiaries to determine cost shares for the Non-Signatory beneficiaries.

The Parties will review annually the list of identified non-Signatory beneficiaries listed in Table 3.

Industry sector values will be calculated and provided annually by 30 April and agreed by 1 July and will be based on the latest available annual data. The values as at 1 July will be used to determine the industry cost shares for the readiness and response activities for the next 12 months. If the Parties cannot agree the industry sector value calculations, then the most recent **valuation measure** will remain in effect until the Parties reach agreement in accordance with clause 6.2(b).

Table 3 Determining industry sector value and Industry sector proportion of readiness and response cost-shares

Industry sector	Livestock Sector value	Industry Party to the OA or Non-Signatory beneficiary to GIA	Industry sector proportion of readiness and response cost-shares
Pigs		NZ Pork	Sector value proportion
Dairy Cattle		Non-Signatory beneficiary	
Beef Cattle		Non-Signatory beneficiary	
Sheep		Non-Signatory beneficiary	
Deer		Non-Signatory beneficiary	
Goats		Non-Signatory beneficiary	
Total Animal Sector value impacted by FMD			

#### Process for apportionment of individual industry sector cost-shares

1. Each year 3 months prior to 1 July the Parties will agree whether to recalculate the individual industry sector cost-shares cost shares or not agreement must be by consensus to not to recalculate industry cost shares and as part of that decision, MPI will engage with the non-Signatory beneficiaries to seek their feedback.. If yes, then the following will apply.
2. Party representative will submit their sector's more recent annual **value** to the Administrator.
3. MPI will seek advice from Non-Signatory beneficiaries of their sector's most recent annual **value** and submit to the Administrator.
4. The Administrator may request supporting information to justify the submitted **value**.
5. Cost shares will be calculated and circulated to LSC members by the Administrator. The parties will endeavour to approve the cost shares in the next FMDC meeting. MPI will inform non-Signatory beneficiaries.
6. If agreement cannot be made in the LSC meeting all parties will make best efforts to agree by 1 July each year in accordance with clause 6.2 (b). If agreement cannot be made by 1 July each year, then the existing shares will remain in effect until the following year (3 months prior to 1 July),
7. Cost shares will not be recalculated during a response (irrespective of whether the response has commenced before or during the 3 months prior to 1 July), and the existing shares will remain in effect and will not be recalculated until the following year (3 months prior to 1 July).
8. Should a Party withdraw from a response or readiness activity then the remaining Parties will apportion individual industry sector cost shares for the remaining Industry Parties and non-Signatory beneficiaries.

**18.3 Schedule C – FMD readiness activities**

Add agreed RWPs and any project briefs developed and agreed for the RWP

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## 18.4 Schedule D – Pre-agreed response strategies or plans for FMD

### Context

The following paragraphs explain the current systems and arrangements that are in place to respond effectively to UOs.

### MPI Response Frameworks

Policy framework: The Biosecurity Response Policy sets out how the ministry manages biosecurity responses to risk organisms that could harm people, the environment, and/or the economy. <http://www.biosecurity.govt.nz/biosec/pol/statements/response-policy>.

Process framework: New Zealand's generic response arrangements are documented in the Biosecurity Response Knowledge Base: <http://brkb.biosecurity.govt.nz/>.

Organisational response framework: The MPI single scalable response model (SSRM) is the framework used across all the areas of its business for incidents or issues requiring a response, including biosecurity, food and trade responses, and adverse events. Joint decision making in an FMD response under this OA will occur at the level of Response Governance as defined by the SSRM. Under SSRM Response Governance Board Terms of Reference and in the context of a response, Response Governance is responsible for the strategic direction of the response, setting strategic response objectives and outcomes, and ensuring these are appropriate.

The GIA Response Guide provides guidance on how response decisions will be made in the event of a response which impacts on GIA partners. Refer to [www.gia.org.nz](http://www.gia.org.nz) to review the GIA Response Guide.

Response operations will be managed through the MPI National Biosecurity Capability Network (NBCN) to ensure personnel and resources are available to undertake field response operations.

### Pre-agreed response strategies or plans for FMD

The Foot and Mouth Disease Threat Plan is maintained in MPI's Threat Planning Repository, an internal system. The FMD Threat Plan consists of the following readiness documents relevant to this OA:

<insert readiness documents that would be subject to OA discussions - document title and date>



## 18.5 Schedule E – Agreed cost shareable activities

The readiness and response activities that are cost shareable under the FMD OA are in Table 4 and Table 5 below.

Table 4 Biosecurity Readiness Activities

Description	Shareable		Comment
All costs to deliver and maintain a national notification mechanism and report the detection of any unwanted organisms (i.e. 0800 number).		No	MPI minimum commitment to deliver a national notification mechanism or equivalent – Deed clause 3.2.2(a).
Policy and regulatory advice to the Government (including briefing senior leaders and Ministers).		No	Policy advice (including briefing senior leaders and boards).
Investigating suspected interceptions/finds/incursions.		No	Outside scope of GIA.
All costs related to the facilitation and management of post-border targeted surveillance activities for early detection to inform readiness. Including improvement projects including the cost of all specialists working on surveillance enhancements which includes technical advisory groups (TAGs), contract management, field operations, diagnostician time processing samples (excluding investigation), operational reporting / audits / reviews.	Yes		Procurement cost of outsourced surveillance activities based on actual and reasonable cost. B3 and other research projects activities that are funded via other sources excluded – but MPI and Industry Parties time involved in such projects is cost shareable, if involvement is agreed by FMDC.
OA project coordination and administration of specific deliverables/activities.	Yes		Assume 20% overhead for project coordination/management for each OA activity, excluding surveillance as management and administration part of surveillance cost/SME personnel cost.
All costs related to the development and maintenance of CIMS contingency (readiness) plans under an OA.	Yes		Contingency planning for management of business continuity risks in the event of an incursion.
Maintaining government to government bilateral and multilateral trade relations for market access, including meeting responsibilities and obligations under international treaties and agreements (WTO/SPS, IPPC, FTAs etc.).		No	Industry minimum commitment is maintaining business relations with importers at a commercial level to enhance market access.

Description	Shareable		Comment
All costs related to developing and running an agreed response simulation exercise. MPI will maintain the capability and capacity to work with Industry Parties to coordinate and facilitate mutually agreed biosecurity incursion simulation exercises.	Yes		Induction training for the response guide is an MPI minimum commitment.
Contributing to international standard development for organism / pests and consequential alignment of New Zealand standards and plans with the relevant international standards and agreements.		No	Routine government-industry engagement through the Plant Market Access Council (PMAC), including steps to achieve pre-negotiated market access arrangements for FMD sits outside the scope of GIA cost-sharing and operates under existing cost-recovery arrangements (from plant exports).
Internal communications, stakeholder liaison and communications and media management for agreed readiness activities.		No	However, cost shareable when marketing and communication activities relating to a specific agreed readiness activity are undertaken.
MPI to maintain systems and capability to respond to new incursions (including the SSRM response system maintaining generic management and technical capability to respond, and IM systems).		No	Industry minimum commitment to maintain technical and operational biosecurity capability and capacity.
MPI will maintain the process, capacity and capability to manage the development and maintenance of a National Biosecurity Capability Network (NBCN) including provision of NRT base training.		No	Industry minimum commitment to identify appropriate industry resources for readiness and responses activities, along with utilising agreed deployment approaches e.g. NBCN.
Short-term targeted applied research.	Yes		E.g. trial of a new surveillance technique or development of a new diagnostic tool, pre-registering an insecticide.
<p>Yes = An OA cost shareable readiness activity  No = Not an OA cost shareable readiness activity</p>			

Table 5 Biosecurity Response activities

Description	Shareable		Comment
All diagnostic facility, personnel and consumable costs. This excludes investigations.	Yes		When used for response work. A unit charge per diagnostic activity or per day cost per person likely to best way to capture cost. Only other cost would be transport of the PC2 container lab or use of an on-site facility.
All response personnel costs (including backfill and contract costs). Via the NBCN for operational capability and staff seconded to the response structure.	Yes		Apply to both Industry Parties and MPI personnel used during a response MPI minimum commitment includes Incident Controller labour costs. The FMD Resource Management Inventory will describe the roles and functions required.
All response consumable related costs.	Yes		
All response facilities related costs (when outside of Pastoral house or non MPI facilities).	Yes		When used for a response.
Maintaining government to government bilateral and multilateral trade relations to protect market access, including notifications and providing information on the response.		No	Continues under existing arrangements.
Negotiation of measures to address any changes in risk that importing countries may require.		No	Industry Parties would maintain business relations with importers at a commercial level to protect market access, including providing information on the response and negotiating measures to address any commercial requirements.
The costs relating to personnel used from the National Biosecurity Capability Network (NBCN).	Yes		All NBCN personnel utilised during a response including training (excluding NRT, which is peacetime training).
Internal communications and media management.		No	Applies to MPI and Industry Parties.

Description	Shareable		Comment
Specific marketing and communications activities to support achievement of response objectives.	Yes		e.g. production and circulation of response collateral such as fact sheets, flyers, bill boards to increase passive surveillance during the response to support response objective.
Response Governance meetings.		No	Applies for industry Parties and MPI representatives involved in response governance.
Policy and regulatory advice to the Government (including briefing senior leaders and Ministers).		No	Same applies Industry Parties for policy advice (including briefing their senior leaders and boards).
Any exercise of powers by MPI statutory role holders (e.g., CTO, Inspectors and any technical, legal or other advice to those role holders).		No	Exception. Cost shareable when a role could be carried out by others (e.g., an MPI appointed authorised person).
Administering activities (i.e. (Policy and Processing) associated with compensation.		No	
Compensation payments as a result of a result of damage to property or controls over the movement of goods, caused by the exercise of powers under the Biosecurity Act 1993 (excluding the cost of administering compensation), including legal costs as a result of compensation claim challenges.	Yes		<i>Discuss in conjunction with Compensation clause</i>
Response management and all response activities associated with the biosecurity response work streams; including but not limited to: <ul style="list-style-type: none"> <li>• Response operations (including deployment of capability through the National Response Capability Network);</li> <li>• Logistics;</li> <li>• Planning and intelligence (except for preparations of policies and briefings).</li> </ul>	Yes		
Response debrief. <i>Needs more detail and clarity</i>	Yes		Participation during debriefs is at Parties' own costs
Specialist technical advice (e.g., Technical Advisory Groups) requested by response governance.	Yes		

Description	Shareable	Comment
Short-term targeted applied research during a response. New knowledge research must be agreed by Response Governance	Yes	E.g. research an unwanted organism that is subject to a response, e.g. literature review to inform technical advice to answer a specific trading partner enquiry to assist with regaining market access.
Yes = An OA cost shareable response activity No = Not an OA cost shareable response activity		

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## 18.6 Schedule F – Response fiscal cap

The Parties agree that the industry Parties' fiscal cap for the cost-share response activities *describe basis and fiscal cap*

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### 18.7 Schedule G – Standard hourly rates and charges for undertaking readiness and response activities

The hourly rates for the Parties' contributions (in kind or payable) to readiness and response costs to specific roles are detailed in Table 6 below, unless activities equate to published MPI hourly rates and unit charges as these published rates and charges will apply, for example MPI market access hourly rates and laboratory diagnostic testing charges.

For Readiness activities, the cost to outsource services to third party suppliers to undertake a specific readiness activity will be agreed to by the LSC and detailed in the annual readiness work plan for each project.

For Response activities undertaken via the National Biosecurity Capability Network (NBCN) will be at hourly and/or daily rates as per NBCN estimate pricing, or as agreed with AsureQuality Ltd on an actual and reasonable costs basis. This applies for all in kind and payable contributions.

In all other instances, actual and reasonable costs would apply for the specific activity.

For the avoidance of doubt, contributions by Industry Party representatives shall be costed at the equivalent hourly rates according to seniority, experience, and skillset.

Table 6 Hourly rates for specific roles

Range	Role	Hourly Rate (\$) Excluding GST
Range A & B	Manager to tier 4	150
Range C	Principal Adviser - Adviser Analyst - Technical Specialist	120
Range D & E	Senior / Specialist - Adviser Analyst - Technical Specialist	95
Range F	Adviser / analyst - Adviser Analyst - Technical Specialist	70
Range H, I and J	Support	50
Notes:		
(1) The hourly rates are based on MPI median salaries and include direct and indirect costs, the productive hours of an FTE is 1392 hours per year, and have been compared against cost recovery mechanisms for consistency.		

[(2)These hourly rates would be subject to regular review and approval by the LSC]

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## 18.8 Schedule H – Conflict Protocol

The Parties acknowledge that Conflicts of Interest are inevitable for some or all of them in relation to readiness and response decisions and actions. For example MPI will rarely be in a position where it could not be expected to be concerned to minimise expenditure of its budget. The scheme recognises that Parties with a Conflict of Interest (“Conflicted Parties”) may be those best equipped with knowledge and resources required to deal with readiness and response decisions and actions. They have the greatest incentives and are in the best position to know of practical opportunities and impacts. Accordingly the Parties agree that avoiding Conflicts of Interest altogether could be more costly than it is worth. They wish to ensure that:

1. All Parties preserve access to the knowledge of Conflicted Parties and their participation in at least enough discussion to secure the benefit of their knowledge and opinions;
2. The Parties without comparable conflicts in a matter are given a reasonable opportunity to discuss and consider issues without the potentially chilling effect of the presence of such Conflicted Parties; and
3. So far as is reasonably practicable decisions made on matters where there are Conflicted Industry Parties are made without the vote or conclusive influence of those Conflicted Industry Parties.
4. To that end, where any Industry Party has a Conflict of Interest, that Industry Party:
  - (a) must promptly remind other Parties of that conflict in any situation where the other Parties might overlook it whether or not it has been previously disclosed in writing to the Administrator;
  - (b) must offer the other Parties reasonable opportunities without that Party being present to discuss the matter with fair knowledge of the nature and implications of the Conflict;
  - (c) must only vote on any decision where the Conflict is a material factor if invited, by consensus of Parties without that kind of Conflict, to vote;
  - (d) if requested by the Chair, or decided by the other Parties, will withdraw from particular discussion or action where the Conflict is likely to be a materially problematic factor; and
  - (e) will otherwise follow the reasonable directions of the Chair in managing the Conflict.

Where a Party considers another Party may have a Conflict of Interest, they should ask the potentially Conflicted Party. If not satisfied by the response they may raise the matter with the Chair or the Parties (other than that Party) for decision.

Where the majority of the Parties have a Conflict of Interest, or the Parties whose contributions are likely to be key to effectively managing a readiness or response situation have Conflicts of Interest, the Parties may vary this protocol to achieve an effective, pragmatic solution in the circumstances.

Note: For the avoidance of doubt, having a Conflict of Interest will not preclude MPI from participating or voting on any issue.

## 18.9 Minimum Commitments

The Parties have agreed that the Minimum Commitments in the GIA Deed are too broad in definition and for clarity have agreed that the following activities are the capabilities required for an effective FMD response.

Each Party agrees that they will be accountable to the other Parties for their performance in managing the capabilities that are their responsibility. This means that the Parties are answerable to each other and have an expectation of account giving. It does not confer instructional authority on the Parties to whom account is being given.

The Parties expect that the LSC will be the forum for the Parties to provide updates on their respective Minimum Commitments including performance.

**All parties** will work in collaboration with each other and other stakeholders to improve readiness and response to incursion of unwanted organisms. Parties will:

- (a) Maintain a generic response strategy, covering disease management, welfare, recovery, and trade for high impact livestock incursions
- (b) Maintain an agreed plan for how the first 72-hours of a response at the operational level will be initiated and resourced.
- (c) Maintain an agreed plan and procedures describing how the first 72-hours of a response at the governance level will be initiated and resourced.
- (d) Ensure that operational response plans are reviewed and approved by parties at regular, pre-agreed intervals.
- (e) Maintain access to fit for purpose data about places where livestock are and records of where they have been. This includes NAIT, FarmsOnline, and information from Animal Status Declarations (ASDs). Parties will support full compliance and uptake of these and ensure proportionate realisation of the biosecurity benefits offered by these systems
- (f) Share information of changing risk profiles and emerging risks garnered from organisational contacts and stakeholders and provide a trigger for industry to request reassessment of emerging risk.
- (g) Agree to a strategy detailing the actions and approaches the parties (with a mandate and resources to do so) will pursue for improving New Zealand's trade position.
- (h) A joint exercise plan with a 5-year horizon is developed and signed off by the parties.
- (i) Ensure that response role holders are adequately trained in designated key response roles and attend National Response Team (NRT) training as and when required.
- (j) Maintain a policy on the deployment of vaccination for FMD.
- (k) Maintain the Resource Map and Inventory which describes roles and functions required to manage a FMD incursion under the Single Scalable Response Model and all parties are clear where their capability is likely to be required.

MPI will manage the response systems and will maintain or establish mechanisms for parties to become actively involved in the management of biosecurity risk across the biosecurity system. MPI will:

- (a) Maintain a Whole of Government plan to ensure other Government agencies (both central and local) understand their roles in a response.

- (b) Maintain a plan for how government, NGO's and industry will deliver welfare services in an outbreak including implementation of whole-of-government emergency management welfare functions and recovery.
- (c) Maintain system to review operational response plans, procedures and technical information to allow immediate implementation in a high impact livestock biosecurity response to manage disease in accordance with OIE requirements where specified;
  - Vaccination – describing how vaccine will be acquired, stored, handled and administered during a response.
  - Destruction - to enable well managed destruction of livestock.
  - Disposal - for carcass disposal that could be immediately implemented in any region of the country, including roles for local government, landfill operators, and transport operators.
  - Disinfection – to enable disinfection of infected properties during a response.
  - Movement control – to enable urgent movement controls (including a national standstill) to prevent spread of pathogen in accordance with OIE standards, and any other international agreements and relevant regulatory standards
  - Surveillance - for disease surveillance during an incursion.
- (d) Provide technical assistance for RORPs and on-farm biosecurity plan guidelines
- (e) Maintain biosecurity regulations (in draft on contingency) to provide a response regulatory framework to deal with the outbreak, not only domestically but to align with international requirements so that international trade may be resumed as quickly as possible.
- (f) Maintain an easily accessible system that contains processes, standards, and other resources for leading and managing biosecurity responses in New Zealand.
- (g) Maintain a compensation policy setting out scope of entitlements, together with planning for how it will be implemented.
- (h) Maintain appropriate plans, procedures, and technical documentation to implement a Freedom Surveillance Plan during a response for the purposes of showing freedom from infection to OIE and trading party requirements.
- (i) Maintain the Biosecurity Services Contract, and that NBCN is populated with the necessary people and other assets calculated to be necessary for an effective FMD response.
- (j) Maintain a free of charge reporting service for public notification of suspected unwanted pests and diseases 24/7/365.
- (k) Maintain the surveillance function that oversees passive and active surveillance system, provides reports on New Zealand's animal health status, builds networks with veterinary practices and educators, and acts as source of expertise in disease detection and analysis of animal population information.
- (l) Purchase reports and laboratory data to allow MPI to meet the international requirements incumbent on a Competent Authority. These include but are not limited to monitoring the presence or absence of animal disease including the early detection of exotic, new or emerging diseases, approving and supervising veterinary diagnostic laboratories, demonstrating veterinary infrastructure and capability. MPI contracts are of a minimum standard in order to ensure the appropriate level of physical containment is maintained and the validity of test results can be assured.
- (m) Maintain a trained team of veterinarians skilled in incursion investigation and capable of the operational, intelligence and technical planning steps required for the investigation and response start-up phase.

- (n) Maintain a contract for appropriately trained Initial Investigating Veterinarians across NZ who can get to animals, make initial diagnosis, report back to MPI within 5 hours and assist with investigation.
- (o) Maintain a Coordinated Incident Management System (CIMS) based approach to biosecurity responses called the Single Scalable Response Model (SSRM). MPI staff are proficient in using it and can assist industry staff in up skilling in the SSRM.
- (p) Maintain the Threat Planning Repository (TPR) which contains all the documentation required to manage an Incursion. Information can be accessed easily (and added to) and simultaneously by multiple users. Access is available to industry parties.
- (q) Develop and implement an IT system to manage a response. It must be capable of exchanging data with other necessary information systems and withstand the high volume and prolonged use anticipated during a response.
- (r) Maintain financial systems that will support financial management of a response.
- (s) Maintain a database to provide a decision support tool as to the unsuitability or suitability of sites for different methods of disposal of animal carcasses.
- (t) Maintain a PC3+ laboratory that has the capability, expertise and diagnostic tools to detect livestock disease in keeping with its design specifications, business case and OIE requirements. The laboratory will make the most of opportunities to participate in the inter-laboratory proficiency testing programme and international reference panels. Maintain international agreements for confirmation of diseases outside suite for diagnostic skills.
- (u) Maintain a contingency plan for how the Diagnostics Laboratory will upscale to meet the demands of a response that can no longer be met by the existing laboratory capability.
- (v) Provide visibility and outcome performance reporting on activities and resource allocation across the wider biosecurity system to demonstrate the appropriate and effective management of pre-border, border and surveillance activities to provide confidence in the preventative measures employed to lessen the risk of incursion to industry parties.
- (w) Maintain processes to review and revise risk profiles and associated mitigations.
- (x) Develop and maintain a strategic plan for relationships with overseas regulators and the OIE to support a rapid "return to normal".
- (y) Negotiate trade pre-agreements to allow for continued exports of animal products in an incursion and allow for rapid "return to normal".
- (z) Maintain awareness with the public on importance of biosecurity preparedness and the public's role in preventing biosecurity risks, including understanding of early reporting.
- (aa) Ensure compliance activities targeted at risk pathways are appropriate to risk assessment and performing to achieve specified risk management levels.
- (bb) Maintain a communications plan and ready template coms for first 24-hours
- (cc) Notify to industry parties on confirmation of FMD in accordance with pre-agreed notification agreements.

Each **Industry Party** will actively engage with its members, and MPI, to manage the biosecurity risks from an incursion of unwanted organisms and to mitigate the potential impacts of those risks. Industry Parties will:

- (a) Maintain organisational plans for an incursion and how business continuity issues will be managed. This will link into the broader response strategy. This would include a plan for the first 72 hours of a response, integrated with SSRM.
- (b) Provide technical assistance for operational response plans and procedures.
- (c) Maintain Risk Organism Response Plan guidelines for dairy and meat processors.
- (d) Maintain guidelines and templates for on-farm biosecurity plans.
- (e) Maintain membership of NBCN where desirable.
- (f) Key personnel understand roles within the CIMS based SSRM.
- (g) Maintain awareness with members on importance of biosecurity preparedness and industry role in preventing biosecurity risks, including understanding of early reporting.
- (h) Maintain plan and ready template communications for communications with their memberships.

DRAFT - 27 Oct 16

## 18.10 LSC Terms of Reference (draft at 14/07/16)

*Note this is included for reference only. The LSC will act with a wider remit than just FMD and the ToR will be recorded in a separate document.*

### Definitions

Consensus	meaning that no representative is opposed to the decision even if some who are entitled to be Present may be absent (it is assumed those who are absent are not opposed), or if some who are Present have reservations but are not opposed
Designated Proxy	means a person with written and current authorisation to act for another.
GIA Deed or Deed	means the latest version of the Government Industry Agreement for Biosecurity Readiness and Response made pursuant to s 100Z(2) of the Biosecurity Act 1993.
Operational Agreement (OA)	means an agreement signed by MPI and one or more Signatories to carry out biosecurity readiness and/or response activities.
Parties	means any Signatories that have jointly signed an OA
Present	Members will be considered Present when, having the right to participate in the decision, they are in attendance in person, on the phone or other electronic means or through a Designated Proxy until they are recorded as having ceased to be available for two way communication.
Readiness activities	means as defined in the Biosecurity Act 1993.
Response activities	means as defined in the Biosecurity Act 1993.
Signatory(ies)	means MPI and/or any livestock industry sector that has signed the GIA Deed

### A. Background

MPI and livestock sector industry organisations have established a Livestock Sector Council (LSC) through shared commitment to the Government Industry Agreement (GIA).

The Members recognise that to effectively manage biosecurity risks to New Zealand and the livestock sector, all parts of the biosecurity system need to be effective, including pre-border and border measures.

### B. Members

The Members of the LSC are Signatories and any other entity invited to join by those Signatories.

Proposals to invite new Members must be agreed by the Signatory Members. Signatory Members may also agree to remove invited Members.

Members are expected to act in good faith and on a “no surprises” basis.

### **C. Role**

The role of the LSC is to work within the GIA to provide strategic leadership of biosecurity issues directly affecting New Zealand’s livestock sector and the management and prioritisation of risks to it.

The LSC is the primary forum for collective engagement on biosecurity system issues and for engagement between Members on biosecurity issues of common concern.

The LSC will coordinate and oversee the performance of all livestock sector Operational Agreements (OA). The Parties to those OAs will have decision making and financial authority over matters in those OAs, and nothing in these Terms of Reference can countermand decisions under an OA.

The LSC will be a forum for all Members to share information about their biosecurity related activities.

The LSC will oversee the transparency and performance of minimum commitments among the Signatories in Livestock Sector OAs and across the biosecurity system.

### **D. Responsibilities**

The LSC will:

1. Discuss the collective biosecurity interests of all Members;
2. Record its decisions and circulate minutes to Members;
3. Ensure that Members have visibility of each other’s engagement with third parties as it relates to livestock biosecurity risks;
4. Share and review intelligence and risk assessments of biosecurity threats to the livestock sector and discuss possible mitigation options;
5. Recommend livestock biosecurity annual priorities across the biosecurity system;
6. Make annual recommendations on testing and exercise programmes;
7. Coordinate and facilitate efficiency of livestock sector readiness strategies agreed under any livestock sector OA;
8. Produce a summary of LSC activities that can be used for annual reporting or reporting to constituents as necessary;
9. Set up technical advisory groups as required.
10. As appropriate, the LSC may also develop and communicate common positions, but cannot form a common position that is contrary to the view of any individual Signatory Member.
11. Maintain a register of all decisions taken by the LSC.

### **E. Modus operandi**

The LSC will be established on **DD MMM 201Y**.

Signatory members will appoint a Chair.

The LSC will meet at least twice annually with one of these meetings deemed the ‘Annual meeting’.

The GIA Secretariat will provide administrative support to the LSC as part of its role to facilitate the partnership.

### **F. Attendance**

Meetings will be attended by:

- One representative of each Member; and
- An adviser to each Member at that Member’s discretion.

The LSC may, at its discretion, invite other participants. For example:

- Additional representatives from Members;
- Broader sector representation; and
- Individuals with specific expertise.

The Chair will approve the list of invited participants.

**G. Decision-making**

Decisions will be:

- (a) Made by Consensus; or
- (b) If Consensus cannot be reached during a LSC meeting then the Chair will set the timeline for the Signatory Members to decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolve the points identified.
- (c) LSC decisions will be noted in the LSC minutes

**H. Resources and budget**

Each Member's costs associated with participation on the LSC will be met by that Member. To reduce costs, wherever possible, Members will provide in-kind contributions (e.g. staff time) to complete any work assigned by the LSC.

Any other costs of performing LSC business will be:

- (a) shared equally between the Members where the activity in question is forecast to cost up to a maximum of \$20,000; and
- (b) Otherwise agreed on a case-by case basis.

For the avoidance of doubt, costs for readiness and response activities will be shared in accordance with the agreed cost shares as stated in the relevant OA or in accordance with any other cost share arrangements agreed by the Parties to that OA.