



Operational Agreement Guidance

DISCUSSION DRAFT

Date: March 2014

Document control

Authors: OA Working Group

Version: DISCUSSION DRAFT Version 1.0

Status: March 2014

Permissions: General Release

Important note to authors

- This guidance document has been drafted to assist the development of Operational Agreements (OAs) under the GIA Deed. The **black text** is standard text that should be used in all OAs, as relevant. It provides a starting point for OA discussions and can be amended by agreement of the contracting Parties. For example, where any clauses in this OA template are not relevant to the specific OA, they can be removed. The **black text** has been consolidated into a standard contract.
- The red text prompts you to think about/discuss the provisions to be included in the OA and reflects both the intent and provisions of the Deed.
- *Italicised green text* within the boxes cites text from the Deed. It provides useful context for commitments that the Parties make in an OA. When OA provisions from the Deed are not relevant to a specific OA, by agreement of the OA Signatories, they need not apply.

The parties negotiating an OA may also refer to commentary by the Deed Joint Working Group for guidance on the intent of provisions in the final Deed (refer to www.gia.org.nz/working (The Deed)).

OA Language

While an OA is a legally binding document, it should use plain English, reflect the spirit of partnership and provide clear and concise direction for all Parties.

References

1. [GIA Deed](#), Version 1.0 dated June 2013.
2. *Consolidated comments from consultation on the draft GIA Deed: Including a summary of Joint Working Group (JWG) decisions on their handling in the final Deed.* Joint Working Group. 30 May 2013 www.gia.org.nz/Working (The Deed).
3. GIA Handbook. www.gia.org.nz/Handbook.
4. Draft Operational Agreement Standard Contract. Version 1.0. March 2014. www.gia.org.nz/Handbook.

This document is a draft for discussion. Please provide feedback on it to the GIA Secretariat (secretariat@gia.org.nz) by 13 June 2014.

An Operational Agreement

Between

The Ministry for Primary Industries

And

[Insert industry organisation(s)]

Contract reference number: GIA
[Apply unique identifier from MPI]

Ministry for Primary Industries
Manatū Ahu Matua



*[Insert industry
organisation logo here]*

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*[Insert name, address and contact details of
signing industry organisation here]*

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1. The Parties signing the agreement

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

[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].

The industry organisation(s) to which the Operational Agreement will apply. The name of the organisation must be the same as that gazetted as an 'industry organisation' for the purposes of signing the Deed.

2. Lodgement

A copy of this Operational Agreement (OA) and its Schedules will be promptly provided to the GIA Secretariat by the OA Parties once signed.

3. Introduction

3.2.1(f) Establishing or accessing the necessary capacity and capability to engage in processes to implement this Deed, and any Operational Agreements developed.

6.1.3(a) Scope.

6.1.3(f) Specific commitments for each Signatory.

This section describes the scope and outcomes of the OA.

The purpose of the OA is to commit government and industry to work together in partnership to achieve the best possible outcomes from readiness or response activities by:

- . Making joint decisions on the activities
- . Jointly funding the costs of the activities in shares that take into account the public benefits and industry benefits that the activities deliver.

OAs document:

- . Any specific expectations and commitments of signatories to deliver agreed biosecurity outcomes.

They also record:

- . Any specific rights and obligations around joint decision making, and cost sharing relevant to biosecurity readiness and response activities
- . Any variations to Deed provisions that partners agree.

This OA records the agreement between the Parties with respect to specific readiness and response activities.

3.1 Purpose

6.1.2 Operational Agreements will describe arrangements to achieve outcomes related to:

- a. Specific unwanted organisms;*
- b. Groups of unwanted organisms, or;*
- c. Activities that improve overall biosecurity readiness and/or response.*

Provide a short description of the purpose of the OA.

3.2 Specific organisms of concern

6.1.3(b) Statement of potential impacts of the unwanted organism.

Describe the unwanted organism(s) and/or biosecurity activities that are the focus of the agreed activities in the OA. This should include a brief statement of potential impacts of the target organism(s).

This section can be amended to reference more generic biosecurity readiness and/or response activities.

Specific organisms of concern are listed here or included in Schedule A:

- Organism X
- Organism Y

3.3 Outcomes for readiness and response

Describe the outcomes that the OA will deliver and how they will enhance readiness and/or response.

3.4 Outcomes relating to the wider biosecurity system

6.1.3(n) Specific issues relating to the broader biosecurity system.

Describe the outcomes that the OA will deliver to enhance the broader biosecurity system, if relevant. This may include commentary on how any enhancements will be integrated into the biosecurity system.

3.5 In the event of inconsistency with the Deed

The Deed establishes the legal partnership framework for biosecurity readiness and response and enables the development of OAs. The Deed and OAs have equal status but are distinct and linked. They are enabled by the Biosecurity Act 1993 and are both binding on signatories. An OA cannot exist without the Deed so both must be read together where an OA has been agreed by Signatories.

The Deed confers a number of commitments to Signatories including:

- Participation in Deed governance through the Deed Governance Group
- Joint decision-making during response activities impacting their sector from the time they sign the Deed
- A commitment to cost-share readiness activities agreed in an OA, and the future commitment to cost-share response activities
- Minimum commitments

Minimum commitments are not included in an OA unless specifically agreed by the Parties.

In the event there is a difference in interpretation between the Deed and this OA, the Deed is applied in preference to this OA except where otherwise agreed and documented by the Parties.

In the event of any inconsistency between this OA and the Deed, the terms of the Deed prevail. The only exception is if a clause in the OA specifically states that it prevails over the Deed.

3.6 Replacement of previous agreements on this matter

This clause may be used to establish the authority of this OA and its relationship with other previous arrangements, negotiations, commitments or writings for biosecurity readiness and response.

This OA replaces and revokes any previous OAs relating to the unwanted organisms listed in clause 3.2 or Schedule A.

4. Governance

6.1.3(c) Governance.

The Parties to this OA can establish their own governance and operational arrangements, including specific governance applying to making decisions under this OA. This might include appointing representatives and/or fora to ensure their respective and collective interests are met and the provisions of the OA are implemented appropriately.

Governance arrangements should identify:

- . Roles and responsibilities
- . Define expectations and outcomes of governance actions by the Parties.

While this section covers governance for OA implementation, it is noted that the Parties will need to establish an agreed governance group to negotiate the OA.

Any recourse to the GIA Secretariat or Deed Governance Group to assist or support implementation of this OA should first be discussed and agreed with those entities.

The role of the GIA Secretariat in the development and management of OAs is defined in the Secretariat Operating Model (refer to www.gia.org.nz).

4.1 OA Governance Group

An OA Governance Group will be established. The purpose of the OA Governance Group is to ensure that the implementation of the OA meets the outcomes described in section 3 of this OA.

The OA Governance Group will be made up of one representative from each Party, unless agreed otherwise. The contact details of those representatives and the terms of reference of the OA Governance Group as agreed by the Parties are recorded in Schedule B of this OA.

4.2 Decision-making

6.1.3(d) Decision-making.

This clause allows Parties to vary decision-making processes from the consensus principles outlined in the Deed or in relation to decisions relevant to the implementation of this OA. It should describe the circumstances in which variations are applied. Variations may be documented here, or it may be more appropriate to document them in Schedules. Schedules may be more appropriately used when alternative decision-making processes are agreed in the interests of ensuring biosecurity outcomes are delivered.

Decisions of each decision-making body set out in Schedule C to this OA, will be made:

- (a) By consensus, meaning that no representative is opposed to the decision even if some who are entitled to be present may be absent, or if some who are present have reservations; or
- (b) By alternative processes that are defined in Schedule C.

4.3 Disputes

6.1.3(g) Dispute settlement.

Dispute settlement processes should be outlined and reflect a willingness to resolve disputes through good faith negotiations. These may include processes for bilateral or multilateral discussion, with escalation to more formal mediation processes should these fail. These may also include reference to performing obligations under the OA as far as possible, as if no dispute had arisen, pending its final resolution.

If settlement is not possible then the aggrieved Party may be allowed to withdraw from this OA subject to the agreed withdrawal conditions and respecting obligations or liabilities that may have been agreed before giving notice to withdraw.

This dispute resolution process is intended to be used to resolve issues between the Parties in respect to interpretation of clauses in this OA. It is not intended to be a means to resolve operational disputes during a biosecurity response. The Parties to this OA may include dispute resolution processes for application in a response where they agree. Dispute resolution provisions within the national response model will apply if no alternatives are agreed.

4.3.1 Dispute Notice

In the event of a contractual dispute concerning this OA including any disputes over performance, interpretation, breach or termination, the Party(s) involved in the dispute will document the nature of the dispute, and provide evidence to each of the other Parties to the OA as a Dispute Notice.

4.3.2 Initial meeting

Within 10 business days after the giving of the Dispute Notice, all Parties to this OA will meet to negotiate a resolution to the dispute.

4.3.3 Mediation

If the Parties to this OA have not resolved the dispute within one month of the giving of the Dispute Notice or an alternative agreed time then any affected Party may refer the dispute to mediation by

way of a Mediation Notice to all OA Parties. The mediation will be conducted as soon as possible by a sole mediator and otherwise in accordance with the LEADR New Zealand Incorporated (LEADR) Standard Mediation Agreement. The mediator and his/her fee may be agreed by the Parties but failing such agreement within 10 business days of the giving of the Mediation Notice, the mediator will be selected, and the mediator's fee determined, by the chair of LEADR or his/her nominee. The mediation will be discontinued if any affected Party gives an Arbitration Notice.

4.3.4 Arbitration

If the Parties have been unable to resolve the dispute within two months of the giving of the Dispute Notice, or such later time as they agree, then any affected Party may refer the dispute to arbitration by way of an Arbitration Notice to other Parties. The arbitration will be determined by a sole arbitrator as soon as possible. If the Parties cannot agree on an arbitrator within 10 business days of the giving of the Arbitration Notice, the arbitrator will be appointed by the President of the Law Society of New Zealand or his/her nominee. The arbitration will be conducted in accordance with the Arbitration Act 1996, excluding clauses 4 and 5 of the Second Schedule to that Act. The award in the arbitration will be final and binding.

4.3.5 Costs

Any costs or expenses of any mediator or arbitrator appointed under this clause (Disputes) will be paid by the Parties in equal shares unless recommended otherwise by the mediator or arbitrator and, if so recommended, will be paid in accordance with that recommendation.

4.3.6 Continuation

In the event of a dispute, the Parties will continue to meet their obligations under the GIA to the extent reasonably practicable. No dispute will prejudice any Party's rights under clause 4.5 of this OA (withdrawal and removal).

4.4 New Parties to this OA

OAs may include one or many industry organisations. From time to time new Parties may wish to enter this OA to access its general provisions or those in organism-specific Schedules. This clause outlines the process that existing Parties agree for the entry of new Parties. This may require the unanimous agreement of all the existing Parties. This clause describes the requirements for reviewing and adjusting generic and specific provisions, including responsibilities, in the OA to accommodate the changes.

The addition of new Parties to this OA will be by agreement of existing Parties and the provisions of this OA will be amended accordingly, and recorded in a written variation to this OA.

4.5 Withdrawal and removal

- 4.4.2 *A decision to withdraw from this Deed also denotes an intention to withdraw from any Operational Agreement(s) in force to which the Signatory is a partner.*
- 6.1.3(i) *Withdrawal processes and procedures, and obligations on withdrawing Signatories.*
- 6.2.1 *Each Operational Agreement will set out the criteria and/or processes and conditions that enable Signatories to withdraw from the entire Operational Agreement, or from certain readiness and response activities covered by that Agreement.*
- 6.2.2 *Signatories that withdraw from an Operational Agreement or a particular activity undertaken as part of an Operational Agreement will remain liable for:*
- a. *Liabilities incurred by other Signatories to that Operational Agreement up to the date on which the notice of withdrawal takes effect*
 - b. *Any obligations entered into under an Operational Agreement(s), which have been committed to, prior to the Signatory giving notice.*

This clause outlines the agreed criteria and processes by which Parties may withdraw from this OA or from some or all of the readiness or response activities covered by this OA. This may include an agreed period of written notice, an expectation that Parties will continue to meet their obligations for the period of notice as if it had not been given, analysis of the consequences of the withdrawal and contingency arrangements to mitigate the impact of the withdrawal on biosecurity outcomes. The agreed process will occur when a Deed signatory gives notice of its intention to withdraw from the Deed and it is a Party to one or more OAs.

The Deed is clear that withdrawing Parties remain liable for the liabilities they have incurred.

This clause may also be used to recognise successors to the organisations that are Parties to this OA, to reduce administration costs. This might be applied when signatories change names or structures. Significant changes to industry organisations may require Ministerial approval and re-gazettal under section 100ZA of the Biosecurity Act 1993.

4.5.1 Withdrawal by a Party

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

Withdrawal from the Deed under clause 4.4 of the Deed has the effect of withdrawal by that Party from all OAs.

4.5.2 Removal of Industry Party

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

- (a) No longer meets the eligibility criteria to be an industry organisation under clause 100ZA of the Biosecurity Act 1993; or
- (b) Has materially breached its commitment under this OA and:
 - i. The breach cannot be remedied; or

- ii. If the breach can be remedied, has failed to remedy the breach within two months of receiving Formal Notice requiring it to do so.

4.5.3 Effect of withdrawal and removal

If any Party withdraws or is removed from this OA:

- (a) That Party will remain liable up to and including the date of withdrawal or removal, for any cost-sharing obligations and liabilities arising from this OA;
- (b) 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
- (c) 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.

4.6 Liability

This clause describes the conditions for bearing any loss, damage, expense or cost incurred by any Party as a result of any negligent act or omission. It may allow Parties to enter into insurance arrangements against such eventualities at no cost to the other Parties. Parties may seek to document these arrangements in the interests of full disclosure and awareness of any risk mitigation conditions that may be attached to the insurance arrangements.

No Party will be liable to any 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, except for such liability 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 4.12 (Confidentiality);
- (c) Acts or omissions causing liability that are not protected from liability under clause 163 of the Biosecurity Act 1993.

4.7 Cessation of this OA

This clause may be used to define a mandatory review, cessation, sunset provision, dissolution or lapsing arrangements for the OA.

The Parties may terminate this OA by written agreement of all Parties.

4.8 Performance measurements

The Parties may agree on performance indicators and/or project milestones for agreed readiness and response activities to ensure outcomes are achieved on budget and within agreed timeframes.

Performance measurements for responding to an unwanted organism incursion will be undertaken in accordance with National Biosecurity Response System processes and procedures, and is not subject to OA performance measurements.

Performance indicators and/or project milestones for this OA are in Schedule D. The Parties have an expectation that these milestones will be met and will monitor progress accordingly.

4.9 Activity audits and recordkeeping

These clauses describe expectations for recordkeeping and reporting, how any audit, verification, monitoring or review processes will be applied to each Party to the OA, the processes by which this activity will be initiated and agreed, and the responsibility for meeting associated costs. Guidance on planning and conducting audits will be developed for the GIA Handbook.

The Parties will need to agree expectations over the administration of the OA to ensure that administrative costs are kept to a minimum. The Parties may need to include administration support as a shareable cost in OAs with a significant work programme.

4.9.1 Recordkeeping

The Parties will keep and maintain full, accurate and up-to-date records, including financial records, in relation to their performance under this OA and all monies paid and payable under or in relation to this OA. Records will be retained by the relevant Party for seven years.

4.9.2 Audit purpose

At any time during the performance of this OA, and for up to seven years thereafter, the Party(s) may upon written notice to the other Party(s), at their own cost seek to obtain assurance by:

- (a) Auditing any aspect of either Party's compliance with the clauses of any funding agreement for this OA and/or any elements of either Party's financial administration of such funding agreement.
- (b) Evaluating any agreed elements of the process steps and activities which contribute to the delivery of the agreed outputs for the specific activities for an operational agreement (those activities directed and agreed under relevant schedules including Schedule I: Readiness work and work plans; Schedule J: Training and education; Schedule L: Market access recovery); Schedule M: Response strategy and related plans.

4.9.3 Audit arrangements

The audit and Terms of Reference will be agreed in writing between the Parties and attached as Schedule E to this OA.

4.10 Review and reporting

This section can be used for clauses relevant to reporting on this OA, and actions to improve the effective and efficient delivery of OA outcomes.

Response reporting of an unwanted organism incursion and performance of the response will be undertaken in accordance with National Biosecurity Response System processes and procedures and are not subject to OA

review and reporting activities.

4.10.1 Reports

Parties to this OA will review activities at least annually and produce an annual report, which will include any recommendations relevant to the effective and efficient delivery of OA outcomes. A summary of this report will be provided to stakeholders. Activity reporting under this OA is detailed in Schedule F.

4.10.2 Continual improvements

Amendments to this OA that improve its efficacy and efficiency will be made by variation once agreed by the Parties.

4.11 Communications

Deed clauses 3.1.2(g) and 3.1.3(f).

These clauses in the Deed provide for annual meetings between MPI and industry Signatories to discuss a range of biosecurity matters relating to readiness and response activities. This may be an appropriate forum for consideration of OAs or alternative arrangements may be agreed.

A communication strategy may be developed as a schedule to the OA. This should outline processes and principles that the Parties agree.

The strategy may describe arrangements for sharing information within the organisation, between the Parties and to stakeholders and communities beyond the Parties. It may apply to the identification of new and emerging biosecurity risks and threats and response operations, or other information as agreed by the Parties. It may outline roles and responsibilities for information storage, analysis, management and dissemination, and may create formal or informal networks or systems for the generation and sharing of information to facilitate better biosecurity outcomes. The processes may be established within or external to existing systems and networks and may integrate processes for engagement in the wider biosecurity system.

The Parties will share agreed OA information and define roles and responsibilities for storage, analysis, management and dissemination of that information.

The Parties have together developed and approved a communications and information sharing strategy to cover a range of media and communications contingencies. This strategy is attached as Schedule G to this OA.

4.12 Confidentiality

This clause can be used to outline any confidentiality and privacy considerations relevant to the OA and its implementation, as they apply to any Party. It may also describe roles and responsibilities for compliance with and funding the associated costs of any Official Information requests and Ombudsman enquiry in relation to this OA. It is anticipated that:

- (1) Participants (i.e. each individual) involved in OA discussions and negotiations will have signed an individual confidentiality agreement before commencement.
- (2) The Parties will be bound by the confidentiality clause of the OA standard contract (clause 4.13) due to likely exchange of sensitive information by the Parties during OA negotiations.
- (3) Participants in a response will be required to separately sign a response-specific confidentiality agreement under the National Biosecurity Response System.
- (4) This section applies to confidentiality with respect to the OA only noting that the Parties will need to agree what information can be released into the public domain, for example, what can be communicated to their respective stakeholders (clause 4.12 of this OA).

Each Party will keep confidential and secure other Party's confidential information relating to this OA. Confidential information may be used or disclosed to third parties only:

- (a) To its professional advisers or personnel directly concerned with the implementation or operation of this OA and to the extent necessary for performing its obligations under this OA and are bound by equivalent confidentiality agreements;
- (b) As required by law, court order, other legal obligation, or parliamentary rules or convention;
- (c) Under the Official Information Act 1982;
- (d) To the extent necessary to subcontract to third parties, as approved by the OA Parties, in accordance with this OA;
- (e) Where the information subsequently becomes part of the public domain through no fault of the Party receiving the information; or
- (f) With the prior written consent of the other Parties.

Except as expressly agreed by the Parties in writing, the Parties must retain all confidential information in New Zealand.

4.13 Privacy

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.

4.14 Conflicts of interest

A declaration, using the Conflicts of Interest form in the GIA Handbook, must be completed by all participants involved in the development and/or performance of this OA to identify any conflicts of interest relevant the performance of this OA. This declaration should be completed and approved as soon as the representative is elected by the relevant Party. It should be attached as a schedule to the OA.

Conflict of Interest declarations of all Party representatives involved in this OA are attached in Schedule H. These will be reviewed periodically.

All Parties must be notified immediately in writing of any matter, event or circumstance that gives rise to any conflict of interest (real, perceived or potential). If a conflict of interest does arise, the Parties will endeavour to

agree on how it will be managed and record in writing the steps that will be taken to manage the conflict.

Parties will use reasonable endeavours to minimise the impact of any conflict of interest. Each Party will pay their own costs in relation to managing a conflict of interest.

4.15 Variations

6.1.3(h) Review and variation.

This clause describes agreed processes for periodic review and variation of this OA, including clarity around any role that the GIA Secretariat will play in this process as outlined in the Deed and the Secretariat's Terms of Reference.

The conditions under which the OA and any Schedules may be amended are outlined in this clause. The arrangements for storing and handling the amended OA should also be described to ensure that the integrity of the OA is maintained and version control is appropriately managed.

Before varying an OA, all Parties must have given their express approval to effect such changes. The OA Parties will promptly provide the Secretariat with a copy of the variation. Any variation must clearly state the date on which it took effect.

This OA can only be varied by written agreement of all the Parties.

5. Readiness activities

5.1 Readiness

The framework in Schedule I should help Parties develop joint readiness activities, reflecting agreed biosecurity outcomes. It can be used to both negotiate and then record those activities.

The Parties have developed an agreed plan for readiness of work, attached as Schedule I to this OA. The readiness work will be reviewed annually to ensure it is meeting agreed outcomes.

The work has taken into account:

- (a) Biosecurity risk being addressed;
- (b) The biosecurity outcome sought;
- (c) Benefits;
- (d) Strategic fit (with Parties strategic goals);
- (e) Feasibility and likelihood of success;
- (f) Dependencies;
- (g) Cost-effectiveness; and
- (h) Resource availability.

5.1.1 Stopping readiness activities

Readiness activities in this work will cease when agreed by the OA Parties.

5.1.2 Training and education

Define any training and education needs and/or expectations of Parties to the OA including expectations of delivery, cost allocation and/or funding, roles and responsibilities and outcomes.

Training and education strategies and roles and responsibilities, agreed under this OA, are recorded in Schedule J to this OA.

5.1.3 Research and development

Identify any arrangements for undertaking research, development and any extension/adoption activities, including any intellectual property rights and other conditions of use that will apply.

This could include research to improve understanding of pests not currently in New Zealand, research to improve surveillance or research into approaches and technologies to support eradication and/or preparation for pest management.

Parties will need a common understanding of the coverage of existing research and operational developments and available funding mechanisms beyond GIA that maybe more suitable for R&D projects.

A proposed operationally focused GIA R&D initiative would need to be consistent with any relevant R&D Strategies, should they exist. E.g. Biosecurity Science Strategy for New Zealand 2007, <http://www.biosecurity.govt.nz/files/biosec/sys/strategy/2007-biosecurity-science-strategy.pdf> and subsequent updates.

The Parties agree to cost-share research and development that is relevant to the delivery of the outcomes agreed in the OA, and as recorded in Schedule K to this OA.

5.1.5 Negotiating market access recovery

6.1.3(m) Arrangements for negotiating market access.

This clause will document agreed arrangements for re-negotiating market access should this be disrupted as a result of the confirmed presence of an unwanted organism. This may agree the cost sharing/cost recovery boundaries and will pay due regard to international and national obligations and legal requirements. Schedules for specific unwanted organisms may pre-agree market recovery or negotiation strategies between government and industry.

Costs associated with market access activities (e.g. to keep markets open or expedite opening of markets) during a response are part of the Response Cost and should be documented in the incursion response plan.

The agreed market access strategies, roles and responsibilities, actions, funding and cost sharing relating to market access are recorded in Schedule L to this OA.

6 Response activities

3.2.2(c) [Minimum MPI commitments include:] Urgently establishing preliminary response arrangements consistent with Deed requirements and any Operational Agreements that may be in place, including initiating decision-making, cost sharing and impact/risk analysis processes.

6.3.2 *All relevant Signatories will meet as soon as possible to determine whether a response will be initiated under the GIA. If Signatories agree that a response should be initiated, an Operational Agreement for the newly detected unwanted organism should be agreed as soon as possible. Cost sharing commences when the relevant Signatories agree that a response should be initiated.*

6.1 National Biosecurity Response System

New Zealand has an existing system for managing biosecurity responses which is administered by MPI. It is robust, effective, well practiced and based on the New Zealand Coordinated Incident Management System (CIMS). CIMS underpins and enables the effective management of responses to an incident involving multiple responding agencies – ensuring the flexibility to respond to all hazards using the same framework.

A GIA Response Guide is being developed to adapt existing response arrangements to accommodate Signatory commitments in the Deed. This will be an iterative process and, as such, the system will evolve over time.

The Parties agree that any response to an unwanted organism impacting Industry Parties to this OA will be delivered under the National Biosecurity Response System and in accordance with any pre-agreed response strategies or plans.

6.2 Pre-agreed response strategies or plans

Pre-agreed response strategies or plans for specific unwanted organisms are identified in Schedule M of this OA and will be utilised during a response to inform the development of the response brief.

When there is no pre-agreed response strategy/plan for an unwanted organism, a response brief will be developed and approved by the response decision makers in accordance with the National Biosecurity Response System processes and procedures and Deed provisions. The brief will include OA elements necessary to initiate a rapid response consistent with Deed obligations, including as relevant; cost-shares, fiscal cap(s), compensation provisions and other relevant matters for that specific response. Note that cost shares will not be applied to responses until 1 July 2017, when cost-sharing commences.

A modified version of the OA standard contract (hereafter referred to as the Rapid Response OA) will be used for such situations and included as part of the GIA Response Guide in the Handbook.

For this Rapid Response OA, the minimum content is likely to include:

- (a) The organism
- (b) Its legal states (as an unwanted organism)
- (c) Its known hosts (as per scientific literature search)
- (d) Affected industries
- (e) Whether the affected industries are a Signatory or not
- (f) Default cost shares
- (g) Agreement to finalise a cost share within a defined period
- (h) Industry Signatory role holders for the response
- (i) Rapid dispute process during a response

- (j) Who will manage the procurement of services if a third party supplier is required
- (k) Who will manage the contract for services (e.g. signing off milestone payments, monitoring performance and general supplier management)
- (l) Other provisions agreed by signatories in order to facilitate a rapid response.

6.3 Contact details for response role holders

A number of key roles are required to operate in a biosecurity incident response and the Parties will be expected to make the necessary personnel available to undertake these roles. Representatives who will undertake specific response roles will be expected to fill that role for as long as needed and have the appropriate skill set to effectively undertake the required duties. Their name and contact details should be provided to the GIA Secretariat when the Deed is signed and any changes in response role holders notified to the Secretariat as soon as possible after the change is made.

Contact point

The person or position that will be contacted when an unwanted organism is detected or there is a strong suspicion that an unwanted organism has been detected.

Decision maker

The person or position that is nominated to represent the industry organisation in making decisions during the incident investigation, response and recovery.

This person will sit at the response decision table and must have the ability and authority to make immediate decisions that are binding on organisation members including decisions with both financial and operational impacts and implications. They should be available for the length of the response to ensure continuity, or ensure that processes are in place to enable transition to an alternate.

Two alternate decision makers should be nominated by industry to prevent any delays in response should the primary nominee not be available. The alternates may also be called on to replace the decision-maker if they are rested during an extended response.

Communications coordinator

The person or position that is nominated by the industry organisation to be its contact for communications relevant to the incident, and who will assist in the development and delivery of communications during investigation response and recovery. This person will also play a key role in facilitating communication with industry organisation members either directly or by way of an incident communications network.

The Parties will be responsible for keeping updated contact details for nominated role holders and ensuring competencies of those representatives are appropriate.

6.4 Investigations to determine biosecurity risk

MPI may initiate an investigation in accordance with standard investigation practices in the National Biosecurity Response System, consistent with its minimum commitments, to the point where MPI determines whether or not a biosecurity risk exists.

MPI may ask for industry assistance with the investigation and expects that Industry Parties to this OA will cooperate with MPI's investigation as MPI may reasonably request of those Parties.

6.5 Containing biosecurity risks pending response decisions

On a case-by-case basis, the Parties may agree that in the interest of managing the immediate biosecurity risk, the Parties will take steps (i.e. urgent measures) to limit the spread of the unwanted organism at their own cost, until a decision has been made to initiate a response. Actions taken should be coordinated between the Parties and not compromise future options to eradicate the unwanted organism.

6.6 Deciding whether to respond

MPI will coordinate a meeting of affected Parties to discuss the incident and actions underway or completed.

These processes will be documented in the GIA Response Guide.

The Parties will decide whether to respond considering the:

- (a) Importance of the unwanted organism, including impacts on public and industry good;
- (b) Complexity of the response, including feasibility;
- (c) Barriers to success and opportunities for managing the risks; and
- (d) The cost benefit ratio of achieving the best biosecurity outcome.

6.7 Decision-making during response

The Parties will agree and endorse, by way of the written minutes of the decision-makers forum, the:

- (a) Biosecurity outcome to the response;
- (b) Development and resourcing of the response plan;
- (c) Implementation of the response plan; and
- (d) Triggers for closing the response.

In making these decisions Parties will take into account any pre-agreed response strategies or plans.

6.8 Absent decision-makers

If the designated decision-maker or delegate of an affected Party is not present at the response meeting they will be advised by the other Parties of any decisions made at that meeting, and they will:

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

6.9 Delegation of statutory powers

Statutory powers may be delegated to members of Industry Parties to enable the effective and efficient delivery of response outcomes, provided such delegation is allowable under the Biosecurity Act 1993.

6.10 Effect of fiscal caps

The Parties will need to reach agreement on how industry organisations that have reached their fiscal caps will be managed. They may allow the industry organisation to continue to be party to discussions and decisions but without the right to vote on financial decisions, or they may be excluded from this process. The Parties will also need to determine whether this decision will be taken by majority or consensus taking into account the Deed principles of equity, transparency and fairness.

An industry organisation reaching its fiscal cap, as recorded in clause 7.4 of this OA, will review the cap. It may continue to be present at response meetings but will lose its decision rights if it is unable to take on further funding commitments.

6.11 Withdrawal from a response

An industry organisation may withdraw from a response where the Parties agree. This may be based on technical evidence that the withdrawing industry is not significantly impacted by the unwanted organism, as a result of reaching a fiscal cap, or other reasons. The terms under which the withdrawing organisation remains engaged in the response, or not, should be defined and documented.

6.12 Whole-of-Government responses

The detection of an unwanted organism that will have a significant national impact, such as foot and mouth disease (FMD) or a serious zoonotic disease, may trigger a Whole-of-Government response. This clause can be included in an OA to allow industry Parties to participate in a whole of government response to such an organism. A co-ordinated response would be escalated to a Whole-of-Government response by the activation of Cabinet's Domestic and External Security Coordination system.

Whether or not MPI is the Government lead agency, in the event of a Whole-of-Government response:

- (a) Parties to this OA may agree and perform response activities only where they are consistent with the Whole-of-Government response;
- (b) The industry Parties to this OA may make recommendations to MPI for inclusion in MPI's consultation in the Whole-of-Government response process; and
- (c) Where the Parties agree that the Whole-of-Government response is not serving the Parties response outcomes, they can agree whether or not to share costs.

7. Finance

- 2.2.6 *Joint decision-making and cost sharing for readiness will commence as recorded in an Operational Agreement(s).*
- 5.1.9 *Costs may include cash expenditure or 'in-kind' contribution for readiness or response activities. Operational Agreements will specify who pays for costs in the first instance and how in-kind contributions will be valued. These contributions will be accounted for in the reconciliation of costs either at the end, or at intervals during the activity*
- 5.2.1 *For readiness activities, costs will be budgeted prior to being incurred and allocated to Signatories as agreed in an Operational Agreement*
- 6.1.3(e) *Financial commitments, including cost-share, in-kind contributions, fiscal caps and/or budget as necessary*

This section of the OA describes the agreed funding arrangements and processes that the Parties will undertake to determine cost-shares and mobilise funds, and describe funding and accounting arrangements. Generic principles and practices may be agreed in the absence of organism specific schedules or readiness activities as default arrangements.

7.1 Non-Signatory beneficiaries

- 2.2.8 *MPI will contribute costs attributable to non-Signatory beneficiaries and exacerbators and is responsible for recovering those costs where practicable, equitable and consistent with international obligations.*
- 5.1.12 *Where a non-Signatory to this Deed has been identified by the Operational Agreement Signatories as a beneficiary, MPI will meet that non-Signatory's share of shareable costs, but will seek to recover costs from that beneficiary non-Signatory pursuant to clause 137 of the Biosecurity Act 1993 if it is considered equitable and efficient to do so. The Crown will retain all costs recovered from non-Signatories.*
- 6.1.3(l) *Non-Signatory beneficiaries, including how to engage/consult and cost-recover from them.*

Parties to an OA may describe the processes and criteria for determining beneficiaries and quantifying benefit, and how identified non-Signatory beneficiaries will be managed.

The cost recovery provisions contained in clause 2.2.8 of the Deed will be applied to non-Signatories that benefit from the outcomes of this OA. MPI will be responsible for recovering costs where practicable, equitable, and consistent with international and national obligations.

7.2 Deed Signatory beneficiaries not party to this OA

- 5.1.13 *Signatories to the Deed agree that where there is an Operational Agreement to which they are not a signatory but they agree they are a beneficiary, that they will act in good faith to become a Signatory to that Operational Agreement.*

Parties to an OA may describe the processes and criteria for determining beneficiaries and quantifying benefit, and how identified Signatory beneficiaries of an OA that are not a party to this OA will be managed.

Deed Signatories that benefit from this OA will be treated in accordance with clause 5.1.13 of the Deed.

7.3 Cost-shares

- 3.3.1 *MPI has agreed to pay 20 percent of readiness and response activity costs under an Operational Agreement, as the cost attributed to exacerbators. The beneficiary cost-share is applied to the remaining 80 percent of the activity costs.*
- 5.1.1 *Any cost-shares for readiness and response activities will be agreed by Signatories and recorded in Operational Agreements.*
- 5.1.5 *The agreed cost-shares for readiness and response activities under an Operational Agreement will be based on the categories set out in Schedule 2, unless otherwise agreed.*
- 5.1.6 *Industry will pay a maximum of 50 percent of the total cost of the readiness and/or response activity, as detailed in Schedule 2.*
- 5.1.7 *Each cost-share represents the proportion of public to industry benefit that is likely to accrue in avoiding the impacts of the unwanted organism, as well as a fixed proportion to cover exacerbator costs. The proportion of public to industry benefit is determined by Signatories to the Operational Agreement who will:*
- a. *Agree impacts of the unwanted organism on the public and industry (including non-Signatory industry beneficiaries)*
- 5.1.10 *Where there are multiple industry Signatories to an Operational Agreement, the industry cost-share will be determined based on the proportional benefits of each industry (including any non-Signatory beneficiaries) in avoiding the impact of the unwanted organism.*

OAs will record cost-shares for specific readiness and response activities and are based on the ten broad categories set out in Schedule 2 of the Deed. These will generally be documented in organism-specific schedules.

Cost-shares should be determined using the cost sharing guidance in the GIA Handbook. This is currently under development.

The analysis underpinning the cost-share should be documented together with a brief summary of the analysis that supports the agreed cost-share against criteria for public and industry benefit.

This clause may also document triggers for review of the cost-shares that are agreed by the Parties.

7.3.1 Agreed cost-shares

The agreed cost-shares for this OA are:

MPI:

[Name Industry Party 1]:

[Name Industry Party 2]:

[Name Industry Party 3]:

[Name Industry Non-Signatory 1]

[Name Industry Non-Signatory 2]

7.3.2 Renegotiating cost-shares

Cost-shares in this OA will be modified only where new information becomes available that materially changes the previous cost-share determination. Any changes to cost-shares are by agreement of the Parties to this OA.

Cost-shares will not be adjusted based on actual response events.

7.4 Fiscal cap

5.1.11 ...The amount proposed for a Signatory's cost-share may not exceed the fiscal cap of that Signatory, as identified in the Operational Agreement, unless agreed in writing by the Operational Agreement Signatories.

A fiscal cap sets a limit on the funding liabilities of an industry organisation for cost-shared activities consistent with the Deed and any principles for setting a fiscal cap that may be included in the Handbook.

The Parties may document criteria or considerations that may be applied in a review of a fiscal cap for readiness or response in this OA.

The Parties agree that **[INSERT INDUSTRY PARTY NAME]**'s fiscal cap for cost-shared activities under this OA at **[insert date]** is **[\$[insert amount]]**.

7.5 In-kind contributions

This clause describes the mechanisms that the Parties agree for recognising in-kind contributions to readiness and response activities relevant to this OA. It may identify the nature of in-kind contributions including personnel and resources on a national or regional basis, and processes for their mobilisation and recording for later reconciliation in progressive or final allocation of costs and payments. It may document agreement of the Parties to certain benchmark values for in-kind provision of goods and services. It may also outline the collective commitment that the Parties make to contribute to and make use of the National Biosecurity Capability Network. This may, of itself, be considered an in-kind contribution towards biosecurity readiness and response.

7.6 Compensation

6.1.3(j) Compensation, including any commitments under clause 100Z(4)(e) of the Biosecurity Act 1993 that vary the compensation provisions in clause 162A of that Act.

In some circumstances the compensation provisions in clause 162A of the Biosecurity Act 1993 will be varied. This is subject to agreement by the Director-General of MPI, who must be satisfied that the alternative provisions are unlikely to discourage early reporting of unwanted organisms or reduce the level of co-operation with readiness or response activities.

Parties should use this clause to record variations to compensation provisions for the activities in this OA, or relevant to readiness and response arrangements for a specific unwanted organism in a Schedule. This clause may also describe how the Parties propose to negotiate and agree any variations to compensation.

7.7 Funding administration

This clause should be used to define how Parties will fund the OA work programme. A funding agreement may be separately signed by the Parties involved to bring effect to this OA where the delivery of activities is dependent on this funding. It should be attached to the agreement as Schedule N. The example provided is a funding contract between government and an industry organisation. This level of formality may not be needed and the means of recording funding arrangements should be agreed by the parties to the OA.

The funding agreement includes, where relevant:

- a. The purposes for which funding may only be used
- b. The instruments for procuring third-party services (contracts etc)
- c. How funds will be managed (e.g. held in a dedicated bank account)
- d. The term of the funding agreement
- e. Maximum total payment and payment schedules
- f. Funding governance arrangements
- g. Funding reporting requirements
- h. Grounds for terminating the funding agreement and the effect of termination
- i. Records and auditing of the funding agreement
- j. Warranties made by each Party to the other(s)
- k. The process for making variations to the funding agreement
- l. Administrative details (addresses)
- m. Any definitions needed to clarify the funding agreement
- n. For loans, the repayment schedule and interest rate that will apply
- o. Other matters required by legal teams

A funding agreement recording the Parties arrangements to meet their financial commitments under this OA is attached as Schedule N to this OA.

7.8 Payments and reconciliation

5.2.2 Following the completion of response activities, each Operational Agreement Signatory will provide information to the Secretariat on the costs incurred by that Signatory. The Secretariat will calculate the total cost of the activity and any amounts due from one Signatory to another.

This clause describes how the Parties will consistently and transparently account for costs incurred during readiness and response activities and how this information will be provided to the GIA Secretariat. It will describe how contributions will be made and their movement between Parties in accordance with payment arrangements where one Party may require reimbursement after paying costs up front. It will outline the financial arrangements that are agreed between the Parties and include clear instructions on the role that the GIA Secretariat will have in financial processes. The GIA Secretariat should be consulted on its role before the OA is agreed by the Parties.

Considerations including end of financial year and tax liabilities should be addressed.

Readiness activities and costs can typically be planned/budgeted for in advance, with a high degree of predictability.

Guidance for the consolidation and allocation of response costs will be developed for the Handbook. However, parties to this OA may agree on core functions and

activities that are subject to cost sharing during a response and record them in this clause.

For readiness activities, the Parties will each prepare an activities and expenditure report at agreed intervals, including a financial statement with any verifying documentation. A copy will be provided to each of the Parties and to the GIA Secretariat.

7.9 Transitional discounts

Define any interim or transitional financial arrangements agreed by the Parties and the conditions under which they are implemented, monitored and reviewed.

Transitional discounts relevant to the delivery of this OA are recorded in Schedule Q to this OA.

7.10 Exacerbators

6.1.3(k) Exacerbators, including identifying who they are and how their behaviours can change to mitigate risks.

Parties may use this clause to identify risk creators and the behaviours that increase the risk of entry of unwanted organisms into New Zealand, and any actions of the Parties to change these behaviours and/or mitigate biosecurity risks to reduce their risk exposure. The Parties may identify actions to work collaboratively to secure evidence of illegal actions in support of prosecutions or assist cost recovery by MPI as outlined in clause 3.3 of the Deed.

8. Other provisions

Other provisions may be added where Parties agree to their inclusion.

9. Glossary

- | | |
|------------------------------|--|
| 9.1 Confidential information | Confidential information of a Party means any information of a confidential nature in respect of the functions, business, property, employees, contractors, members, clients and agents of that Party (Disclosing Party) which is obtained by, disclosed to or otherwise made available to another Party (Receiving Party) in connection with the GIA. |
| 9.2 Decision-making body | Means, as the case requires, the:
a) OA Governance Group;
b) The readiness governance team; and
c) The response decision-makers. |

9.3	Deed	The Government Industry Agreement for Biosecurity Readiness and Response. Version 1.0. June 2013.
9.4	Organism Type	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.
9.5	Parties	The Parties to this OA as recorded in clause 1 of this OA.

10. Contact details

Contact details of the nominated representatives responsible for drafting and amending this Operational Agreement.

11. Execution

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

* **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 the last section for additional industry signatories]

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Schedules

Schedule A Specific organisms of concern in this OA

This Schedule describes the unwanted organism(s) and/or biosecurity processes that are the focus of the agreed activities in this OA.

Schedule B OA Governance Group and Terms of Reference

This Schedule sets out the agreed Terms of Reference for the OA Governance Group. It describes how representatives are appointed, and lists the representatives and their nominated delegates, their contact details and responsibilities.

Schedule C Governance and decision-making

This Schedule contains the terms of reference for any groups established by the OA including summaries of their purpose, responsibilities, membership, meeting procedures and processes (including minimum meeting frequency). It also records any variations to consensus decision-making by these groups and the circumstances under which they are used.

Schedule D Performance indicators and milestones

This Schedule describes the performance indicators and/or project milestones for this OA. It may include monitoring and reporting requirements.

Schedule E Audit

This Schedule describes the audit programme and Terms of Reference agreed by the Parties to this OA.

Schedule F Annual report template

This Schedule describes the activity reporting under this OA.

Schedule G Communications strategy

This Schedule outlines a communications strategy agreed by the Parties. Guidance is provided that may assist its development.

The strategy may cover information exchange as well as response communications requirements.

It should, at a minimum:

- (a) Identify a representative of each of the Parties who will be the contact person for all communications related queries;
- (b) Identify the conditions for making public reference to any matters about the terms or performance of this OA;
- (c) Define processes for referring any enquiries from the media or any other person about the terms or performance of this OA to the Party representatives identified in (a) as the contact person; and
- (d) Establish rules in relation to the dissemination of information obtained by representatives involved in joint decision-making outside the decision-making body.

Response communication planning: What you need before the response

- Step-by-step Organism response plans accessible on web
- Lists of contacts, MPI, industry, contractors, experts
- List of external contacts, e.g., media, vendors, government agencies
- Special forms, such as call logs to track inquiries from the media and others, an emergency contact directory, an incident description report, a bomb threat report, etc.
- Pre-written documents such as press releases, initial announcements and follow-up statements
- Location for media to convene, with provided power, network access, television monitors, briefing area and work area
- Trained emergency communications team
- Trained company spokesperson
- Technology for rapidly disseminating, receiving and recording emergency information between employees, stakeholders, suppliers, clients, other government agencies, and other external entities
- Agreed policy with regard to all aspects of emergency communications

What you need during the response

1. Confirmed basic status report
2. Updated status reports on the incident
3. List of internal people contacted
4. List of external organisations contacted
5. List of resources needed, obtained and returned
6. Actions taken during the incident
7. Updated emergency communications plan
8. Problems encountered and how they were resolved

9. Persistent problems that require additional help
10. Narrative of the incident: what happened, what was done, the results and the outcomes

What you need after the response

1. Final status reports on the incident
2. Complete list of internal people contacted
3. Complete list of external organizations contacted
4. Complete list of resources needed, obtained and returned
5. Actions taken to end the incident
6. Documented and annotated emergency communications plan
7. Complete list of problems encountered and how they were resolved
8. Completed narrative of the incident: what happened, what was done, the results and the outcomes

Communications Strategy

- A. Response communication planning: Pre- response
- B. Communications requirements: During response
- C. Communications needs: Post response
- D. Information exchange

Schedule H Conflict of interest declarations

Conflict of Interest forms completed by representatives involved in the development and/or performance of the OA must be attached here and periodically reviewed.

The Conflict of Interest form and guidance can be found in the GIA Handbook at www.gia.org.nz/Handbook. A copy of the form is in this Schedule.

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Conflict Of Interest Declaration

SECTION 1: CONFLICT OF INTEREST DECLARATION

(✓) I declare that, to the best of my knowledge, there is no actual, perceived or potential current conflict of interest that will or may arise as a result of my involvement in GIA activities.

or

(✓) I declare that I do have an actual, perceived or potential current conflict of interest.

The following conflict(s) exist:

(✓) Should I become aware of an actual, perceived or potential conflict during the period in which I am involved in GIA activities, I will make a further declaration and inform my organisation and relevant Deed partners.

SIGNED:

Name	Organisation	Signature	Date

IF A CONFLICT OF INTEREST IS DECLARED SECTION 2 MUST BE COMPLETED BY YOUR ORGANISATION

SECTION 2: ASSESSMENT AND MANAGEMENT OF ANY CONFLICT OF INTERESTS DECLARED
*Consider whether the declared conflict is remote, significant, manageable or unmanageable.
 Refer to the GIA Handbook – Conflicts of Interest - for guidance*

The following steps have been agreed to avoid/mitigate the conflict(s):

APPROVED ON BEHALF OF [INSERT ORGANISATION] BY:

Name	Position	Signature	Date

The completed form should be retained by the signatory's organisation and a summary provided in a Conflict of Interest Return to the GIA Secretariat.

A copy of this completed form must be provided to the GIA Secretariat on request.

Schedule I Readiness work and work plans

This Schedule contains the work and work plans for operational activities e.g. training, readiness (including resourcing and costing).

Readiness activity framework

This framework can be used to develop a shared readiness activity proposal as a Schedule to an OA. Activities may be related to a specific unwanted organism or group of organisms, or may improve overall biosecurity readiness and/or response.

Title of the activity

Executive summary

Who, what, when, where, how, why [300 words]

Activity sponsor

Industry (name, position, contact details)

Government (name, position, contact details)

Activity lead(s) (if different to sponsors)

This person/s will be responsible and accountable for delivery of the activity and its outcomes and will deliver progress updates and reports to the sponsor

Context

What is the reason for the activity – what led you to think that an initiative may be needed? What are the circumstances and background?

Aim: A few sentences that describes the business situation and business drivers.

Purpose

What do I actually have to do? What is the fundamental reason for the initiative? What value is the task going to add to the organisation if completed? What priority is given to this activity by government and industry? What are the consequences of not doing it?

Aim: Describe the business need and the objective(s) that any initiative must address.

Outcomes

What is the biosecurity outcome from this activity? What are the major goals and key system drivers? How will the system improve or change as a result? What are benefits that will be achieved through the proposed activity? How will this be captured in the system for residual benefit? Who are the beneficiaries?

Aim: Describe the future state desired/required and how we will know we are there.

Outputs

What will be developed as a result of the activity, for example, a report, guidelines, data, information etc. How will these be applied to improve the biosecurity system, deliver biosecurity outcome?

Aim: Describe the outputs planned and the process steps, activities and milestones involved in developing/delivering them.

Method

Describe in detail the method or approach that will be used to deliver the outcome.

Resources

What are the resources needed to complete the initiative? List all personnel such as project leader, team members, collaborators and administrator with their nominated roles and where they come from. Identify activity needs information management/ technology, time, consumables etc.

Aim: Describe what resource is needed for the initiative, where these will be sourced, the type and nature of funding (in-kind, cash)

Budget

Provide a comprehensive budget including staffing costs (as FTE), travel, consumables, technology costs, legal, finance etc.

Aim: Deliver transparency of resources and their costs, identify and accommodate in-kind contributions, identify funding sources

Cost-shares

Determine equitable cost-shares for the activity based on analysis of private vs public benefit.

Aim: Document agreed cost-shares

Time and milestones

Milestone dates and their associated reports are used to provide timely reporting on how the project is progressing and if on budget. Milestones can be used as decision points for project leaders to indicate potential improvements to a programme/project or areas of concern that may require the programme/project objectives to be reviewed. What are the due dates for goals to be achieved and outcomes delivered? What is the overall deadline? What are key milestones and dependencies? What are the due dates for goals to be achieved and outcomes delivered?

Aim: Estimate how long the activity might take, identify milestones to delivery, review points, delivery targets

Risks and their management

Are there any risks that may impact on the ability of the activity to deliver proposed outputs and outcomes? Are there triggers for activity review and/or revision? Are there commercial or confidentiality issues that need to be considered?

Aim: Identify critical risks and mitigate the likelihood of them occurring and impacting on the activity outcomes

Readiness Activity [framework]

Title

Executive summary

1. **Activity sponsor**
 - 1.1 Industry
 - 1.2 Government
2. **Activity lead(s)**
3. **Context**
4. **Purpose**
5. **Outcomes**
6. **Outputs**
7. **Method**
8. **Resources**
9. **Budget**
10. **Cost-shares**
11. **Time and milestones**
12. **Risks and their management**

Schedule J Training and education

This Schedule outlines training and education strategies and any roles and responsibilities.

Schedule K Research and development plan

This schedule provides an overview of R&D required to maintain and enhance readiness and response activities of mutual benefit to the Parties. The R&D builds on the current state, referred to in a previous annex. New R&D should be directed by an up-to-date strategy that has been agreed to by both the sector(s) and MPI. This strategy, along with specific s of work, sits separately from the OA as these will require constant updating. Where there are direct linkages to MPI systems, or to systems in place in other sectors, these will be indicated.

Readiness research

This includes research and technology development that will enhance the capability of the Parties to prepare for or prevent possible new incursions. It could include post-border surveillance approaches and technologies, research to improve specific response capability and capacity, and research into solutions to potential market issues.

Response research

This is research undertaken during a response and could cover critical knowledge gaps in pest biology, and development and enhancement of response approaches and tools.

Schedule L Market access recovery

This Schedule outlines the agreed market recovery strategies, roles and responsibilities, actions, their funding and agreed cost sharing under this OA.

Schedule M Response strategy and related plans

This Schedule describes and documents readiness and response activities, and arrangements for a specific unwanted organism or group of unwanted organisms. It may be specific to one or a number of industries.

Pest specific response arrangements

Operational details for delivery of biosecurity outcomes for the unwanted organism(s) are referenced in this Schedule.

1. Species the subject of this Schedule to the Multi-Industry Biosecurity OA

This clause describes the species that are covered by this Annex.

2. Statement of potential impacts of the harmful organism (pest/disease)

This clause describes the potential impacts of the species covered by this Schedule.

3. Biosecurity outcomes to be achieved through this Schedule

This clause describes the biosecurity outcomes to be achieved through the implementation of this Schedule.

4. Response responsibility and operations

This clause describes response roles, responsibilities and operations where they differ from those in the default response arrangements

Roles and responsibility

Response operations

Any differences to generic elements of the OA in terms of industry representation, technical advice, communications etc.

5. Governance

Decision making

Response review triggers

6. Financial arrangements

Cost-share

Compensation

Fiscal cap

Administration

Response strategy

Schedule N Funding agreement

A funding agreement will include the following clauses, where relevant:

- a. The purposes for which funding is to be used
- b. The instruments for procuring third-party services (contracts etc)
- c. How funds will be managed (e.g. held in a dedicated bank account)
- d. Reporting requirements
- e. For loans, the repayment schedule and interest rate that will apply

The following example may provide useful guidance.

Example

Ministry for Primary Industries
Manatū Ahu Matua



[INSERT INDUSTRY
ORGANISATION LOGO]

FUNDING AGREEMENT

Number:

*For funding an Operational Agreement under the Government
Industry Agreement (GIA) Deed.*

between

MINISTRY FOR PRIMARY INDUSTRIES

and

[INDUSTRY ORGANISATION NAME]

Agreement dated

XYZ

PARTIES

HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Minister for Biosecurity and his authorised delegates at the Ministry for Primary Industries.

AND

[INDUSTRY ORGANISATION NAME] an incorporated society having its primary place of business at [address].

BACKGROUND

(related to specific operational agreement)

1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Funding Agreement, including its Attachments.
- (b) **Budget** means the annual budget agreed in writing between the Parties for the performance of the Funded Activities and prepared in accordance with clause 4.2.
- (c) **Business Day** means any day not being a Saturday, Sunday, public holiday (within the meaning of clause 44 of the Holidays Act 2003) observed in Wellington, or the period from 26 to 31 December each year.
- (d) **Confidential Information** means any information that is disclosed by any Party in connection with this Agreement and that the Party makes known is confidential or that would reasonably be expected to be confidential.
- (e) **Funded Activities** means the activities of the Parties set out in clause 6.2 (General Activities).
- (f) **Parties** means MPI and [INDUSTRY ORGANISATION NAME] and **Party** means any one of them.
- (g) **Payment** means the amount being made available by that Party under clause XX
- (h) **Service Provider** means an entity contracted by the Parties for goods or services provided as part of a Funded Activity.
- (i) **Service Provider Contract** means a contract between the Parties and a Service Provider entered into in accordance with clause 6.2. or 6.3.

1.2 **Construction**

In this Agreement, unless the context requires otherwise:

- (a) Headings are for convenience only and have no legal effect.
- (b) The singular includes the plural and vice versa.
- (c) “Including” and similar words do not imply any limitation.
- (d) References to clauses and Attachments are to clauses and Attachments of this Agreement.
- (e) References to persons include bodies corporate, unincorporated associations or partnerships.
- (f) References to a statute include references to that statute as amended or replaced from time to time.
- (g) If there is any conflict of meaning between an Attachment and the rest of this Agreement, the rest of this Agreement will prevail.

2 **TERM**

2.1 This Agreement will commence on the date of signing this Agreement and, unless terminated in accordance with this Agreement, will expire when:

- (a) XXXX

3 **GOVERNANCE**

3.1 **Governance structure**

(describe)

3.2 **Objectives**

The Objectives of this Agreement are:

(describe)

3.3 **Governance documents**

The following documents will inform the governance of this Agreement, and in the event of any conflict they will apply in the following descending order of priority:

- (a) Deed.
- (b) Operational Plan for XYZ.
- (c) Budget.

3.4 **Strategy meetings**

The Parties will meet annually, or earlier if reasonably requested by any Party, to consider:

- (a) progress towards the objectives of the Operational Agreement;
- (b) changes to this Agreement; and
- (c) consider any other strategy matter raised by any Party.

3.5 Operational Plan meetings

The Parties will meet regularly, and otherwise as reasonably requested by any Party, to:

- (a) consider reports provided by the Parties under this Agreement;
- (b) agree changes to the operational plan activities that reflect the operational plan; and
- (c) discuss and agree the budget for the following year, along with any changes within the financial year;
- (d) consider any other operational matter raised by any Party.

3.6 Good faith

Each Party must act in good faith in all matters relating to this Agreement including, without abandoning its own interests, acting fairly, honestly, reasonably, faithfully and consistently with the objectives of this Agreement.

4 FUNDING

(a) *(amounts and caps)*

4.2 Budget

XXXX

4.3 Taxes. Payments are expressed on a “plus GST, if any” basis. Where GST is payable on any Payment, the Parties will provide a tax invoice in a form valid for GST purposes. The Parties will be responsible for all taxes, duties and charges, including income tax payments, and penalties thereon, arising out of this Agreement.

5 FUND MANAGEMENT

5.1 Good practice

The Parties will manage the operational plan funds in accordance with good financial management practices, including NZGAAP.

5.2 Specific controls

The Parties will:

- (a) maintain an appropriate financial management system to ensure that the funds are separately identified and managed within the accounts;
- (b) following each of its financial years, appoint a reputable firm of chartered accountants as auditors to audit its financial statements.

6 FUNDED ACTIVITIES

6.1 Use of funding

The Parties may only use the funds for the Funded Activities and as set out in the Budget. The Parties must not enter into binding commitments for any Funded Activity where to do so would exceed the total value of the funds such that the Parties would have a shortfall in funding required to meet such commitments.

6.2 General Activities

XYZ

6.3 Service Provider Contracts: The Parties may contract with Service Providers for the provision of goods and/or services directly associated with and/or necessary in order for the Parties to perform the activities listed in clauses **XX and XX**, provided that any such Service Provider Contract must be on reasonable commercial terms and make appropriate provision

for termination in the event that the funds are exhausted and/or this Agreement is otherwise terminated.

6.4 Compliance

The Parties must carry out the Funded Activities in accordance with the following (in descending order of priority);

- (a) all applicable laws and regulations;
- (b) this Agreement;
- (c) all rules and codes of conduct or practice relevant to the Parties including without limitation the Society's rules; and

6.5 Conflicts of interest

The Parties will use all reasonable endeavours to ensure that the interests of it and its members do not conflict with the obligations of the Parties under this Agreement. When such conflicts of interest cannot reasonably be avoided, the Parties must use all reasonable endeavours to manage the conflict to avoid any adverse effect on the objectives of this Agreement.

6.6 Payments to members

For the purpose of avoiding pecuniary gain under the Incorporated Societies Act 1908, if the Party makes any payment under this Agreement to a member of its Society, the Party must ensure that the member would equally be entitled to its payment if it were not a member of the Society.

7 REPORTING

7.1 Standard reporting

7.2 Financial reporting

7.3 Other reporting

8 TERMINATION

8.1 Termination for fault

8.2 Termination in special circumstances

8.2.1 Effect of termination

If this Agreement is terminated: **XXXX**

9 RECORDS AND AUDIT

9.1 The Parties must:

- (a) maintain true and accurate records in connection with the use of the funds and the carrying out of the Funded Activities and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit either Party, at their own expense, to inspect or audit all records relevant to this Agreement (using an auditor nominated by the inspecting or auditing Party), from time to time until 7 years after termination or expiry of this Agreement; and

- (c) allow Parties reasonable access to the premises or other premises where the Funded Activities are being carried out.

10 **WARRANTIES**

10.1 **Mutual warranties**

Each Party warrants to the others that:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms; and
- (b) no right or interest of any third party will be infringed by the exercise of any rights it grants another Party under this Agreement.

10.2 **Party warranties**

The Parties warrants that to the best of its knowledge:

- (a) all information provided in connection with this Agreement (including in any report) will be, at the time provided, true, complete and accurate in all material respects;
- (b) no right or interest of any third party will be infringed by the performance of any Funded Activity;
- (c) it will discharge its duties and obligations under this Agreement with all due care and skill;
- (d) it will use reasonable endeavours to ensure that as new information becomes available, the operational management plan is reviewed periodically to ensure that the maximum benefit is obtained from the funds; and
- (e) it will use reasonable endeavours to ensure that any prioritisation of activities and resources is done on the basis of the most up-to-date information available at the time, and in consultation with relevant scientific experts.

11 **CONFIDENTIALITY**

11.1 **Confidentiality**

Each Party must:

- (a) use the Confidential Information only for the purposes of this Agreement;
- (b) not disclose any Confidential Information to any person other than its employees, contractors or advisors to whom disclosure is necessary for purposes of the Funded Activities or this Agreement; and
- (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons.

11.2 **Exceptions**

The obligations of confidentiality in clause 11.1 (Confidentiality) do not apply to any use or disclosure of Confidential Information:

- (a) to the extent approved in writing by the Party whose Confidential Information is proposed to be used;

- (b) to the extent that such disclosure is necessary for the purposes of the Funded Activities or this Agreement;
- (c) required by law or made under the Official Information Act 1982; or
- (d) where the information has become public other than through a breach of clause 11.1 (Confidentiality).

11.3 Publicity

The Parties must obtain each other prior written agreement to the form and content of any public statement made by either of them relating to this Agreement.

12 LIABILITY

12.1 Exclusion

No Party will be liable to another Party in contract, tort (including negligence) or otherwise for any loss of profit, revenue or savings, or for any indirect damage, arising under or in connection with this Agreement.

12.2 Limitation

Subject to clause 12.1 (Exclusion), the aggregate liability of each Party to another Party under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited at any point in time as follows:

- (a) To **\$1,000,000**.

13 DISPUTE RESOLUTION

13.1 Any dispute arising under, or in connection with, this Agreement which cannot be resolved by the Parties within a reasonable period may be submitted to arbitration under the Arbitration Act 1996 before a sole arbitrator in Wellington who will decide the dispute. The decision of the arbitrator will be final.

13.2 If the Parties to the dispute cannot agree on an arbitrator, any Party to the dispute may request the President of the New Zealand Law Society to appoint a suitably qualified independent arbitrator to hear and determine the dispute.

13.3 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter referred to arbitration.

13.4 Nothing in this clause shall preclude any Party from taking immediate steps to seek urgent relief before a New Zealand Court.

14 FORCE MAJEURE

14.1 No Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement (**Force Majeure Event**). The Party affected must:

- (a) notify the other Parties as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

- 14.2 If by reason of a Force Majeure Event a Party has been unable to perform any material obligation under this Agreement for a period of one month, any other Party may give the other Parties one month's notice terminating this Agreement.

15 GENERAL

15.1 Counterparts

This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

15.2 Responsibility for personnel

Each Party will be responsible for the acts and omissions of its employees, contract staff, officers, agents and subcontractors as fully as if they were the acts and omissions of that Party.

15.3 Address for Notices

Any notice to be given under this Agreement will be validly given if in writing and hand delivered or sent by facsimile or post to the Parties' respective addresses, email addresses or facsimile numbers below, as modified by the Party concerned by notice in accordance with this clause:

MPI:

Address

XYZ

Email address:

Fax number:

Telephone number:

Attention:

[Industry Organisation]:

Address:

Email address:

Fax number:

Telephone number:

Attention:

15.4 Receipt of Notices

A notice under this Agreement is deemed to be received:

- (a) if personally delivered when delivered;
- (b) if posted, three Business Days after posting;
- (c) if emailed, one Business Day following dispatch of the email provided the sender does not receive any indication of the failure of, or delay in, delivery within that period; or.

- (d) if sent by facsimile, at the time of transmission specified in a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the Party,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

15.5 Entire Agreement

This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

15.6 Variations

This Agreement may only be varied by agreement in writing signed by the Parties.

15.7 Assignment and Subcontracting

- (a) The rights and obligations under this Agreement are personal to each Party and may only be assigned, delegated or subcontracted with the prior written approval of the other Parties (not to be unreasonably withheld). For the avoidance of doubt, the entry by the Parties into Recipient Contracts and Service Provider Contracts shall not constitute a breach of this clause 15.7(a).
- (b) Each Party remains liable for performance of its obligations under this Agreement despite any approved assignment, subcontracting or delegation.
- (c) Any change in the effective control of a Party is deemed to be an assignment subject to this clause.

15.8 Waivers

No failure or delay on the part of a Party in the exercise of any right or remedy in this Agreement will operate as a waiver. A waiver of any right or remedy under this Agreement will only be valid if given in writing. A waiver of any right arising from the breach of this Agreement will not be a continuing waiver of any other rights arising from any other breach of the same or other part of this Agreement. No single or partial exercise of any right or remedy under this Agreement will preclude any other or further exercise of that or any other right or remedy.

15.9 Severability

If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the replaced part or provision. The remainder of the Agreement will be binding on the Parties.

15.10 Governing Law

This Agreement will be governed by and construed in accordance with the laws of New Zealand and each Party submits to the non-exclusive jurisdiction of the New Zealand courts.

EXECUTION

SIGNED for and on behalf of MPI by its authorised representative:

SIGNED for and on behalf of [Industry Organisation] by its authorised representative:

Signature:

Signature

Name:

Name:

Title:

Title:

Date:

Date:

In the presence of:

In the presence of:

Witness Signature

Witness Signature

Name:

Name:

Occupation:

Occupation:

Address:

Address:

Schedule O Application of transitional discounts

The Government has agreed transitional discounts to assist industry transition into cost-sharing arrangements for readiness and response. Readiness cost-sharing commences immediately, with funding transition applying until July 2020. Response cost-sharing commences from 1 July 2017, with funding transition applying until June 2023. Use this clause to describe the application of any transitional discounts to cost-shared activities undertaken in this OA.

Years	Percentage discount of industry Parties cost-share	
	Readiness	Responses
2014/15	60%	100%
2015/16	60%	100%
2016/17	40%	100%
2017/18	40%	60%
2018/19	20%	60%
2019/20	20%	40%
2020/21	0%	40%
2021/22	0%	20%
2022/23	0%	20%
2023/24	0%	0%