

1 INTRODUCTION

These are the Standard Terms for Operational Agreements between MPI and Industry Signatories to the GIA Deed. Every OA entered into after the version date above consists of an Agreement Section executed by the Parties and these Standard Terms, except to the extent the Agreement Section specifies otherwise.

2 TERM

The OA commences on the Commencement Date and continues for the term and any renewal as specified in the Agreement Section. Any specified renewal will be automatic unless a Party notifies all other Parties not later than 10 working days before the renewal date that they do not wish to renew, in which case the OA will terminate on the renewal date. The term of the OA is subject to provisions relating to termination or early withdrawal.

3 CONTEXT REGARDING AGREEMENT

The Parties recognise the involvement of Industry Parties in OA Activities will provide significant advantages including contributions in the form of industry enthusiasm, knowledge, guidance, resources, and cost sharing. GIA provides a framework within which Industry may gain decision rights in relation to OA Activities and, in return, may become contractually obliged to share in the financial burden. Accordingly the fundamental purpose of an OA is to arrange for and foster Industry Parties' involvement in OA Activities for mutual benefit in return for sharing in certain costs of these activities, including a reimbursement for compensation payments made by MPI. It is not the intention of GIA that an Industry Party, by entering into and performing the OA, will also assume general liability risk in respect of decisions or activities made or undertaken under or in connection with the OA.

4 CONTEXT REGARDING LIABILITY

The OA contains provisions limiting, allocating and negating the potential liability of Parties and the individuals representing them against allegations of negligent or inadvertent acts or omissions. That risk allocation and limitation is an intentional trade-off the Parties have made in uncertainty about the future to encourage fast and effective decision making. This is particularly so for Parties to a Response. The Parties recognise that individuals and organisations may have to make decisions in situations where much is uncertain or unknown, but delay or hesitation may have significantly worse consequences than any well-intentioned decision where hindsight and different information might suggest an alternative course of action. The Parties do not wish decision making to be dominated by fears of retrospective second guessing and the disproportionate risks of uncompensated liability to particular Parties for participating in decision-making, where the benefits of the risky decisions are captured by others or the sector as a whole.

5 DECISION MAKING

5.1 Governance Group

If the OA has more than two Parties those Parties will establish a Governance Group made up of a Designated Representative for each Party. The Governance Group will be the primary forum for those Parties to meet, agree or make decisions, determinations or agreements (in this clause 5 "decisions") in respect of the OA.

The Governance Group will operate in accordance with any Governance Group Terms of Reference adopted by the Parties from time to time. The Governance Group shall otherwise set its own procedure, subject always to the OA.

A Party may appoint another Party to represent them on the Governance Group on such terms as they agree. Unless otherwise agreed by the Parties, only the Parties to the OA have decision-making rights and authority under that OA with respect to matters in the OA. The Governance Group may invite one or more observers to attend Governance Group meetings, on conditions the Governance Group determines from time to time. For convenience, the Governance Group may operate together with or as a subset of another governance group, council, or body. The Governance Group may delegate some of its tasks or responsibilities to any person, including to any sub-committee of the governance group.

The Parties to a Response OA need not establish a separate Governance Group but may rely on Response Governance when a response commences - see clause 5.5 (Response Governance).

5.2 Chair

The Governance Group shall appoint a Chair from amongst its members, unless the Parties agree to appoint and fund an independent Chair who during their tenure shall act as the Chair of the Governance Group. The responsibilities of the Chair will be determined by the Governance Group from time to time. The position of Chair shall be subject to reappointment as the Governance Group determines, or failing a determination, on an annual basis. The Chair of Response Governance shall be appointed in accordance with Response Governance Terms of Reference.

5.3 Consensus

All decisions under the OA, other than Reserved Matters, shall be made by Consensus. Decisions made by Consensus are joint decisions of the Parties. Each Party will abide by decisions made under the OA that have been duly made by Consensus.

Consensus means the mutual agreement of the Parties, and if the OA has more than two Parties includes deemed Consensus on the basis of a vote pursuant to the following process.

If the Parties cannot reach mutual agreement within a timeframe that is reasonable in the circumstances then the Chair will set the timeline for the following steps. At each step the Parties will urgently seek to reach mutual agreement before the next step is undertaken:

- (a) The Parties should decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolving the points identified.
- (b) If the Parties cannot reach Consensus within the timeline set by the Chair, the Chair will call for a vote, and Consensus shall be deemed to be achieved if all of the following occur:
 - (i) A majority of Industry Parties Present and casting a vote are in favour;
 - (ii) Industry Parties which contribute at least a percentage specified in the Agreement Section ("Specified Industry Voting Percentage") (or if there is no Specified Industry Voting Percentage the default percentage is 51%) of the total Industry Party cost-share that is Present and voting, cast a vote are in favour; and
 - (iii) MPI is Present and casts a vote in favour.

Industry Parties may abstain from voting, and decisions reached by the voting procedure above are binding on all Industry Parties, whether Present and/or voting or not. Consensus decisions and agreements will be noted in the minutes of the Governance Group.

5.4 Reserved Matters

This clause 5.4 applies to all OAs, including Response OAs. Reserved Matters require the unanimous written agreement of all Parties to the OA. The Reserved Matters are:

- (a) Variation of the OA (clause 19.4);
- (b) Adopting or amending the terms of reference of a Governance Group or Response Governance;
- (c) Changing the proportionate share of shareable costs of one or more Party (clause 6.9);
- (d) Changing the Agreed Outcomes (if any) (clause 20);
- (e) Adding a Party (clause 19.5);
- (f) Consenting to assignment (clause 22.12);
- (g) Any other matter listed as a Reserved Matter in the Agreement Section.

Where a provision expressly requires the unilateral decision or consent of a Party or Parties, that may be made or given by that Party or those Parties alone.

5.5 Response Governance

During a response under a Response OA or a Readiness and Response OA the Governance Group in respect of Response Activities shall be Response Governance operating in accordance with the Response Governance Terms of Reference, and decisions in respect of Response Activities shall be made by Response Governance. If there is any inconsistency between the Response Governance Terms of Reference and the provisions in clauses 5.1, 5.2 and 5.3 above, the Response Governance Terms of Reference will prevail in respect of Response Activities.

If the Parties to a Readiness and Response OA have established a Governance Group and a Response commences under the OA, the Governance Group may continue to act in respect of Readiness Activities, while Response Governance shall act in respect of Response Activities as above.

6 COST-SHARES

6.1 Obligations

Each Party must meet its cost-sharing obligations by paying its share of cost-shareable OA Activities. Contributions to cost-shareable OA Activities can be by payment, reimbursement, or contributions of goods and services in accordance with the OA.

6.2 Cost Shareable Activities

The OA Activities that are cost-shareable are set out in Parts B and C of the Appendix. The Parties may agree different or varied cost shareable OA Activities in the Agreement Section.

6.3 The Exacerbator Share

As set out in clause 3.3.1 of the GIA Deed, MPI shall pay 20% of the total cost of OA Activities as the cost attributed to exacerbators.

6.4 Crown cost share

The Agreement Section will set out the agreed cost share division between MPI and Industry. Normally this will be expressed as percentages of the total cost of Readiness Activities and/or Response Activities, with the 20% attributed to exacerbators included in the percentage of total cost shares payable by MPI. MPI shall pay the percentage of total cost-share allocated to it under the OA.

6.5 Industry Party cost shares

If the OA has only one Industry Party, that Industry Party shall pay the total Industry cost-share.

If the OA has two or more Industry Parties the total Industry cost-share in respect of Readiness Activities and/or Response Activities will be apportioned between them based on their relative Industry Sector Values (including an Impact Rating if relevant -see clause 6.8) or as otherwise set out in the Agreement Section. Each Industry Party shall pay its apportioned share of the total Industry cost-share.

Provided that where Non-Signatory Beneficiaries to the OA have been identified, MPI will pay the portion of the total Industry cost-share attributable to those Non-Signatory Beneficiaries.

6.6 Calculating Relative Industry Sector Values

An Industry Party's relative Industry Sector Value is the Industry Sector Value of the Industry Sector that Party represents under that OA (or if it represents more than one Industry Sector for the purposes of that OA, the total of those values) as a percentage of the total of the Industry Sector Values represented by Industry Parties under the OA.

6.7 Determining Industry Sector Values

Industry Sector Value will be determined as follows or as otherwise set out in the Agreement Section.

Industry Sector Value will be measured at the first point of sale ("FPOS"). Usually this is the "farm-gate production output value" determined by four year rolling average figures but a Party may use an alternative measure that is transparent and applied consistently. FPOS values will be calculated and provided by each Party to the Administrator annually by 31 July under a consistent and transparent approach, using the most current information reasonably available. FPOS values as at 1 July will be used in determining the Industry cost-shares for OA Activities

for the next 12 months. The most recent 4-year FPOS calculations will remain in effect until superseded. The Administrator may request a Party to provide supporting information to justify the submitted value and that Party will promptly do so.

If a GIA Operational Rule applies, or a current general valuation round under GIA includes a Party, that rule and the valuation used in that round shall be used as a starting point, unless it is inappropriate to do so.

6.8 Response Levels

The Agreement Section may make provision for Response Levels and different cost-share percentages that will apply in respect of Response Activities at those different Response Levels.

6.9 Applying an Impact Rating

If the impact of an Unwanted Organism covered by the OA is expected to vary between Industry Sectors, and it is practical to do so, the Parties may agree to apply an expected impact rating to Industry Sector Values to arrive at each Industry Party's final percentage of total Industry cost-shares for Readiness Activities and/or Response Activities. Details of any impact rating and its application will be set out in the Agreement Section.

6.10 Changing Cost-Shares

Cost-shares may be reviewed if new information becomes available that materially changes the factors relevant to the previous cost-share determination.

A change in cost-shares, including as a result of the annual determination process above, requires the agreement of all affected Parties.

6.11 Non-Signatory Beneficiaries

The Parties will, acting in good faith, use objective information (where available) to determine whether there are Non-Signatory Beneficiaries to an OA Activity and if so will develop and agree estimates of the first point of sale revenue or other appropriate measure for each Non-Signatory Beneficiary as a basis for determining cost-shares for those Non-Signatory Beneficiaries under the OA. MPI will meet the cost-shares attributable to Non-Signatory Beneficiaries as set out in clause 6.5. Unless the Parties agree otherwise, they will review the identification and cost-share of Non-Signatory Beneficiaries annually.

The Parties will, acting in good faith, use objective information (where available) to determine whether an Industry Deed Signatory which is not a Party to the OA is a Beneficiary of an OA Activity under the OA. If that Industry Deed Signatory is determined to be a Beneficiary the Parties will take appropriate steps pursuant to clause 5.1.15 of the GIA Deed and in compliance with any Operational rule, or similar, adopted by DGG in this regard, to have that Industry Deed Signatory become an Industry Party to the OA.

6.12 Effect of Withdrawal or Removal of an Industry Party

If an Industry Party withdraws or is removed from an OA Activity/OA then the remaining Parties will re-apportion that withdrawing or removed Industry Party's cost-share between the remaining Parties in good faith, based on the circumstances at the time. See also clause 10 (Leaving an OA or OA Activities).

6.13 Response decisions by others

Cost-sharing shall not apply to the costs of Response Activities directly attributable to a decision or direction of a person or body appointed by the Crown to have a role in the Response when that decision or direction is directly contrary to an earlier express decision of Response Governance as defined in the OA and has not been subsequently agreed by Response Governance or the Parties.

7 PAYMENT ADMINISTRATION

7.1 Annual Budgets

The primary vehicle for setting and reconciling cost-shares and other payments by the Parties will be each Annual Budget. The Governance Group will approve the process for developing, approving, administering and varying Annual Budgets.

If the OA is to cover a defined activity or small number of relatively short-term projects the Parties may decide that an Annual Budget is not the most effective vehicle for setting and reconciling cost-shares and other payments in respect of a particular OA. In that case they may adopt another approach, such as agreeing a maximum budget for a particular OA Activity.

7.2 Budgeted Payments

Unless otherwise agreed between the Parties, based on the agreed and budgeted cost-shares, each Party will be invoiced or credited quarterly for 1/4th of their estimated annual share with the final quarter (April – June) including a 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.

7.3 Invoices

All Parties must be registered for GST and each invoice must be a valid GST invoice. Each invoice will, unless otherwise agreed, contain sufficient details to enable an invoiced Party to identify:

- (a) The OA Activity and where relevant the MPI activity/cost centre codes;
- (b) The particular Goods and Services and the period during which they were provided;
- (c) The cost value and corresponding invoiced amount;
- (d) The relevant cost-shareable charges;
- (e) 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;
- (f) Full details of any expenses; and
- (g) Any other details the invoiced Party reasonably requests.

7.4 Payment

Each Party must pay all invoices duly rendered by or on behalf of the Administrator or, where relevant another Party, in full by the due date.

The due date for an invoice shall be the later of:

- (a) if an invoice is received on or before the 5th Business Day of a month, the 20th day of that month; or
- (b) if an invoice is received after the 5th Business Day of a month, the 20th day of the next month;
- (c) the date for payment stated on the invoice; or
- (d) the date agreed by the invoicing Party in writing.

Any payment not received when due will be subject to interest if demanded at the current capital charge rate published by the Inland Revenue Department and accruing from two (2) months of the due date. This clause 7.4 is subject to clause 17.3 (Disputed Invoices).

7.5 Rates and Charges

Unless otherwise agreed, the Parties will use the following rates and costs when invoicing or making in kind contributions for OA Activities:

- (a) Standard Hourly Rates will be used where applicable - see the Appendix;
- (b) Goods and services will otherwise be provided at actual and reasonable cost, on the following basis:
 - (i) Goods contributed to OA Activities that were the property of the Party contributing them, and services provided to OA Activities by the internal personnel of that Party will be fully costed (i.e. overheads associated with the personnel's role in implementing the OA Activity can be included); and
 - (ii) The cost of goods and services agreed to be sourced from or provided by third parties will be passed-through (without margin or mark-up).

Each Party will retain and provide on reasonable request proof of expenditure and reconciliations to support the costs incurred or claimed. Including in relation to services, 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 and any other reasonable supporting documentation.

Where the invoice amount is based on the time spent providing goods or services, each Party will complete the relevant services in the minimum possible time consistent with its other obligations under the OA.

7.6 Contributions of goods and services

Where agreed by the Parties, contributions to cost-shares can be made in the form of goods and services that meet agreed levels of quality and performance (in this clause “Goods and Services”). The Parties may pre-agree specific contributions of Goods and Services, and/or general categories of contribution that shall be considered Goods and Services. The Parties anticipate that most cost-shares will be paid in money and not by contribution of Goods and Services.

Where an Industry Party contributes Goods and Services to an OA Activity that Industry Party shall invoice MPI, or MPI’s appointed service agency for the cost of the Goods and Services provided. That Industry Party shall be reimbursed the duly invoiced costs. Those reimbursement payments by MPI, or MPI’s appointed service agency are cost-shareable. Where MPI contributes Goods and Services to a Response, the cost to MPI of those Goods and Services are also cost-shareable.

The Parties may agree that in kind contributions are appropriate. If the Parties agree in respect an OA Activity, instead of invoicing MPI as above a Party may elect to have its contributions of Goods and Services treated as in kind contributions to its cost-share obligations. The contributing Party must provide a reconciliation report that will contain sufficient details to enable all Parties and the Administrator to identify the OA Activity and where relevant the MPI activity/cost centre codes, the particular Goods and Services, the period during which they were provided and the equivalent monetary values calculated in accordance with this clause.

Contributions of Goods and Services whether invoiced or in kind are subject to audit in accordance with the OA.

7.7 Industry Payment Obligations

In accordance with clause 5.1.2 of the GIA Deed, each Industry Party must ensure they can meet their cost sharing obligations to all other Parties under the OA as they fall due.

In respect of payments to or for the benefit of MPI, if despite an Industry Party’s best endeavours to raise sufficient funds, that Industry Party has insufficient funds available to make payment by the due date that Industry Party must make the payment as soon as possible but in any event not later than 2 years following the due date, unless MPI otherwise agrees. MPI may demand Interest from the due date in accordance with clause 7.4 (Payment).

8 RESPONSE FISCAL CAPS

8.1 Including Response Fiscal Caps

The Agreement Section may include Response Fiscal Caps in relation to one or more Industry Parties. Fiscal Caps may be individual or collective and may be a dollar amount or refer to a formula or calculation. The Agreement Section should specify the period to which the Fiscal Cap applies, for example a year, a single Response or the term of the OA, but if no period is specified the Fiscal Cap will apply for the term of the OA including any renewal. If an Industry Party has a Fiscal Cap for the OA that Industry Party’s liability for cost-sharing in respect of Response Activities under that OA is limited to that Fiscal Cap. No Industry Party shall be liable to pay a cost-share under the OA in respect of Response Activities in excess of that Industry Party’s Fiscal Cap. The Fiscal Cap of an Industry Party operates as a cap on the payments that Industry Party is liable to make, even if the events giving rise to those liabilities occurred before its Fiscal Cap was reached (for example cost shareable s162A compensation payments made by MPI after the Fiscal Cap is reached that are the consequence of Response activities before the Fiscal Cap was reached).

8.2 Reaching Response Fiscal Caps

As the Industry Parties' portion of the Response expenditure (including forecast liabilities) approaches the total of their combined Fiscal Caps, Response Governance will review the Response objectives. If Response Governance decides to continue the Response and forecasts that the Industry Parties' portion of the Response expenditure will exceed the total of the combined Fiscal Caps of the Industry Parties, then Response Governance may propose an increased Fiscal Cap for each Industry Party. An Industry Party's Fiscal Cap can only be increased with the written consent of that Industry Party.

If an Industry Party's Fiscal Cap is reached or is projected to be reached imminently and that Industry Party considers it will be unable to agree to increase its Fiscal Cap it must immediately withdraw from the Response (i.e. the usual notice period will not apply). If Response Governance approves it may continue to attend Response Governance meetings in any capacity that the remaining Parties determine.

9 RESPONSE COMPENSATION PAYMENTS

Section 162A of the Act applies for the assessment of statutory compensation liability under the OA in respect of a Response.

Compensation payments made by MPI under section 162A are a cost-shareable Response Activity under the OA that applies to that Response. Compensation claims will be administered, assessed and paid by MPI in accordance with its compensation procedures for Responses.

In no circumstances will the 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 under the OA.

MPI will consult with and provide regular and timely reports to Response Governance on MPI's compensation forecasts, assessment and processing of compensation claims. MPI will continue to provide timely reports to the Parties on MPI's processing of compensation claims after the Response has terminated. An Industry Party will only be liable to pay its cost-share for compensation paid by MPI pursuant to section 162A (including such compensation paid after a Response has terminated) for losses incurred during and in the course of that Response, or which are a demonstrably direct consequence of that Response.

Cost-shareable compensation does not include compensation for losses attributable to the actions of New Zealand's trading partners precipitated by detection of the unwanted organism or Response Activities.

10 LEAVING AN OA OR OA ACTIVITIES

10.1 Withdrawal from specific OA Activities

A Party is entitled under clause 6.2 of the GIA Deed to withdraw from any OA Activity. The withdrawing Party must be able to demonstrate that its reasons for withdrawing are in good faith and allow the impact of the withdrawal on the remaining Parties to be assessed. If a Party wishes to withdraw from an OA Activity, then:

- (a) That Party must provide at least 10 working Days (or such other period as the Parties agree) Formal Notice to the other Parties of its intention to withdraw and the reason for its decision.
- (b) The remaining Parties will then consider the implications under the OA including on cost sharing and decide whether to continue the relevant OA Activity.
- (c) All decisions regarding the withdrawal and the impact will be recorded in the minutes of the relevant meetings.

Withdrawal from an OA Activity does not necessarily result in withdrawal from the OA. See also clause 10.4 (Effect of withdrawal and removal) below.

10.2 Withdrawal of a Party from an OA

Any Party may, by not less than 6 months' (or a lesser period as the Parties agree) Formal Notice to the other Parties and the GIA Secretariat, withdraw from the OA. Formal Notice to withdraw may be revoked within 20 Business Days of being given, but not otherwise unless the other Parties agree. Withdrawal occurs at the end of the Formal Notice period.

10.3 Removal of a Party from an OA.

A Party (“defaulting Party”) may be removed immediately from the OA by Formal Notice:

- (a) from MPI where the defaulting Party is an Industry Party determined by the responsible Minister (as defined in the Act) to no longer meet the eligibility criteria to be an industry organisation under section 100ZA (2) of the Act; or
- (b) from the other Parties where the defaulting Party has breached a material obligation under the OA and the breach cannot be remedied or where capable of remedy, is not remedied within two months of receiving a Formal Notice from the other Parties requiring that Party to do so or face removal; or
- (c) from the other Parties where the defaulting Party has become:
 - (i) insolvent, or has an administrator, receiver, liquidator, statutory manager, or chargee's agent appointed; or
 - (ii) subject to any form of external administration; or
 - (iii) unable to pay its debts as they become due or is presumed by law to be unable to pay its debts.

If an Industry Party ceases to be a party to the GIA Deed for any reason, that Industry Party automatically ceases to be a Party to the OA.

If MPI is removed from the OA, the OA automatically terminates .

10.4 Effect of withdrawal and removal

If any Party withdraws or is removed from the OA or a particular OA Activity then:

- (a) That Party remains liable (but if it has a Fiscal Cap, only up to that Fiscal Cap) for its liabilities (if any) for:
 - (i) liabilities incurred by other Parties up to the date of withdrawal; and
 - (ii) any obligations entered into under the OA or in respect of that particular OA Activity, which have been committed to, up to the date of withdrawal.
- (b) The remaining Parties will not be liable for any loss or damage caused to or suffered by the withdrawing or removed Party as a result of its withdrawal or removal other than loss or damage caused by breach of the OA by the remaining Parties that is not excluded by clause 11 (Limitation of Liability);
- (c) During, and after, any Formal Notice period, the withdrawing Party may if the other Parties agree attend, but will have no rights to participate in any agreement or decision by, any decision making body under the OA other than in respect of matters that Party remains liable for under sub-clause (a).

This clause 10.4 applies instead of Clause 6.2.2 of the GIA Deed.

10.5 Termination of an OA

The OA will be terminated:

- (a) When its term (including any extension) ends;
- (b) If, and on such terms as the Parties agree;
- (c) Immediately if MPI ceases to be a Party; or
- (d) Immediately if there is not at least one Industry Party.

Termination of an OA shall not relieve the Parties of their obligations to make payments in respect of liabilities incurred before the termination date, and other obligations that by their nature are intended to extend beyond termination including under clauses 9 (“Response Compensation Payments”), 12 (Activity Audits and Recordkeeping), 13 (“Confidentiality and Privacy”), 16 (“Intellectual Property”) and 17 (Disputes”).

11 LIMITATION OF LIABILITY

Without prejudice to the Crown Indemnity and to each Party’s liability to meet its payment obligations to another Party under the OA, no Party will be liable to any other Party, nor as far as the law permits any other person,

whether under the law of contract, tort, equity, or otherwise, for any damages, whether direct or indirect, arising out of or in connection with the OA or any act or omission under or in respect of or in performing the OA (including any OA Activity or decision). This provision does not limit liability (if any) for such losses or damages arising due to:

- (a) Non-payment of any amount due under the OA (up to the amount owed); or
- (b) Any wilful default, gross negligence or fraud;
- (c) Any knowing or reckless breach of their respective confidentiality obligations under clause 13 (Confidentiality and Privacy);

For the avoidance of doubt, but without prejudice to the Crown Indemnity, MPI will not be liable to any person, including any other Party in respect of any act or omission for which civil liability is excluded by section 163 of the Act.

This clause 11 takes precedence over the GIA Deed.

12 **ACTIVITY AUDITS AND RECORDKEEPING**

12.1 **Recordkeeping**

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

Without limiting the Parties obligations to retain records, all records shall be retained by the Parties for the duration of the OA including any renewals and for any period thereafter required by law but not less than 7 years.

12.2 **Audit**

At any time during the OA or within 12 months after its termination, any Party may upon a minimum of one month's Formal Notice to another Party (or to a Party that has withdrawn or been removed prior to the date of the Formal Notice), at the requesting Party's own cost seek reasonable assurance by auditing or obtaining an audit of any aspect of that other Party's compliance with the OA, including the performance of any specific OA Activity or with any payment or funding arrangements under or in respect of the OA.

The audit scope and timing will be agreed in writing between the relevant Parties and an audited Party shall provide reasonable co-operation with such audit.

13 **CONFIDENTIALITY AND PRIVACY**

The Parties will each ensure that their Designated Representatives, and each of their Alternates have signed and will strictly observe the GIA confidentiality deed.

Except as permitted by the following provisions of this clause 13, no information relating to the OA or OA Activities may be released in the public domain without the approval of the Parties, such approval not to be unreasonably withheld or delayed.

The Parties may agree in advance that certain information or categories of information may be unilaterally released in the public domain by a Party.

Information required to be disclosed by law, court order, regulatory authority, Ministerial request, Parliamentary Rules and Conventions, International Treaties and Conventions binding on the Crown, or the Official Information Act 1982 will be disclosed in accordance with the GIA confidentiality deed.

The Parties will comply with the Privacy Act 2020 when performing activities under the OA, and will not disclose any personal information acquired in the course of performing activities under the OA in contravention of that Act.

Unless the Parties decide otherwise, during a Response the release of information relating to the Response and Response Activities will be managed by Response Governance.

14 **CONFLICTS OF INTEREST**

The Parties:

- (a) Warrant that as at the Commencement Date, they have no Conflict of Interest other than any Conflict of Interest declared and recorded in writing in the conflict register;

- (b) Will promptly declare to the Administrator any Conflict of Interest they become aware of during the term of the OA;
- (c) If there are more than two Parties, each Party will be guided by the Conflict Protocol below.

The Administrator will maintain a register of Conflicts of Interest on behalf of the Parties.

If a Conflict of Interest does arise, the Parties will agree how the conflict will be managed and the steps that will be taken to manage the Conflict of Interest. Parties will use reasonable endeavours to minimise the impact of any adverse Conflict of Interest. Each Party will pay its own costs associated with the management of any Conflict of Interest.

15 **CONFLICT PROTOCOL**

This Clause 15 only applies if there are more than two Parties.

The Parties acknowledge that Conflicts of Interest are inevitable for some or all of them in relation to OA Activities and decisions. 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 therefore wish to ensure that:

- (a) Any Governance Group, Response Governance, and 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;
- (b) 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
- (c) 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.

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 to discuss the matter with fair knowledge of the nature and implications of the Conflict without that Party being present;
- (c) Must not vote on any decision where the Conflict is a material factor unless invited to vote by a majority of Parties without that kind of Conflict;
- (d) If requested by the Chair (if any), or otherwise 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 to address the conflict. If not satisfied by the response they may raise the matter with the Chair or the Parties (other than that Party) for a decision on any management required. Where the majority of the Parties have a Conflict of Interest, or the Parties whose contributions are likely to be key to effectively managing Readiness or Response situation have Conflicts of Interest, the Parties may decide to vary this protocol to achieve an effective, pragmatic solution in the circumstances. For the avoidance of doubt, having a Conflict of Interest will not preclude MPI from participating or voting on any issue.

16 **INTELLECTUAL PROPERTY**

16.1 **Pre-existing IP**

Any Intellectual Property Right 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 Pre-Existing IP

available. If Pre-Existing IP is to be made available for the OA, the terms on which it is to be made available (and any conditions) will be agreed separately.

16.2 **Developed IP**

The ownership of all Intellectual Property Rights created after the Commencement Date by any of the Parties in relation to an OA (“Developed IP”) will be the property of the Party that created the Developed IP, unless otherwise agreed by that Party.

16.3 **Licencing**

Unless specified otherwise in individual project plans for OA Activities, each Party grants to the others a non-exclusive, royalty free and sub-licensable licence to use, copy, modify, publish, and display, whether publicly or otherwise any and all Developed IP for the strictly limited purpose of enabling the other Parties to, in good faith, perform OA Activities and otherwise to perform their obligations under the OA but for no other purpose.

17 **DISPUTES**

17.1 **Definitions for this Process**

In this clause 17:

“Dispute” means a complaint that a Party has not fully or appropriately performed an obligation owed to the complainant Party under the OA or is not meeting an obligation under the OA, and this has not been resolved within a reasonable period.

“Dispute Notice” means Formal Notice of the Dispute containing (at a minimum) the following information:

- (a) Identification of each Recipient;
- (b) Summary of the Dispute;
- (c) Suggestion for resolving the Dispute;
- (d) Nominating a representative authorised to resolve the Dispute; and
- (e) An express reference to this Disputes Clause and notice that failure to respond may result in the Recipient being unable to contest the subject matter of the Dispute in future.

“Initiator” means Party or Parties issuing a Dispute Notice;

“Involved Parties” means the Initiator and all Parties issuing a Reply;

“Party” means as defined in clause 23.2 (“Definitions”) and in this clause 17 may include GOL if GOL agrees;

“Recipient” means Party or Parties alleged to be in breach in a Dispute; and

“Reply” means Formal Notice by the Recipient and any other Party containing (at a minimum) 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) Nominating a representative authorised to resolve the Dispute.

17.2 **Dispute Process**

The process for the Dispute will be as follows:

- (a) In order to proceed with a Dispute the Initiator must first issue a Dispute Notice to the Recipient and provide a copy to all other Parties.
- (b) A Dispute Notice may not be lodged in respect of the presumed consequences of decisions or agreements yet to be formally made under the OA.
- (c) The Recipient must, and other Parties to whom the Dispute is relevant may, issue a Reply to all other Parties within ten Business Days of receiving the Dispute Notice.

- (d) If a Party to whom the Dispute is relevant opts not to issue a Reply it may not raise the same issue as a Dispute in the future unless material information becomes available that was not available at the time the Party opted not to issue a Reply.
- (e) The Involved Parties must enter into negotiations to resolve the Dispute within five Business Days of the due date for receipt of Replies.
- (f) Where the Involved Parties are unable to resolve the Dispute within 10 Business Days of those negotiations commencing, they will appoint a mediator and agree a fee for that mediator.
- (g) If, within five Business Days, the appointment and fee are:
 - (i) agreed, the procedure for the mediation will be determined by that mediator; or
 - (ii) not agreed, the appointment and fee will be determined by the chair for the time being of the organisation known as the Arbitrators and Mediators Institute of New Zealand (or his/her nominee) and the mediation will be conducted in accordance with the rules of that Institute.
- (h) In all cases, the Involved Parties will co-operate and use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- (i) Subject to the following sub-clause each Involved Party must each bear its own costs of presenting its views during the Dispute process, including its costs in respect of mediation.
- (j) Any costs or expenses of any mediator appointed under this Disputes provision 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 a recommendation about the costs and expenses of the Dispute process, 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.
- (k) 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.
- (l) Except where it is necessary for a Party to seek urgent interlocutory relief from a court, no Party may commence litigation in relation to a Dispute prior to this Disputes process having been concluded.
- (m) In the event of a Dispute, the Parties will continue to meet their obligations under an OA and the GIA Deed to the extent reasonably practicable.
- (n) This clause 17 takes precedence over the GIA Deed.

17.3 Disputed Invoices

If a Party has a bona fide dispute in relation to all or any portion of an invoice, that Party must **either** make the invoiced payments in full on the due date(s) **or** promptly invoke the Disputes Process above and:

- (a) Pending resolution of that Dispute the Party may, should they elect to, withhold so much of the invoice (and any interest accruing thereon) as they would be relieved of if the Dispute were resolved in their favour; and
- (b) To the extent the Dispute is resolved in favour of the invoicing party the invoiced Party must immediately pay the withheld amount and late payment interest thereon at the Interest Rate calculated from the due date of the invoice in accordance with clause 7.4 (Payment).

18 HEALTH AND SAFETY

The Parties acknowledge that they will comply fully with their obligations under the Health and Safety at Work Act 2015 (“HSWA”).

18.1 Health and Safety in the Workplace

These clauses are intended to extend and supplement, rather than override, the Parties' own HSWA policies, practices and plans in relation to workers under each Parties' influence and control. Accordingly, nothing in this policy imposes or is intended to impose on any person a duty that is greater than or additional to any duty or duties imposed on that person by or under the Health and Safety at Work Act 2015 and associated regulations ("HSWA").

18.2 Health and Safety in OA Activities

The Parties regard health and safety at work as a top priority and are committed to taking all steps to ensure that workers under their influence and control are safe, and that their obligations and duties under the HSWA are fully and promptly complied with in a positive health and safety culture. To help ensure that high level of compliance, the Parties have agreed as follows.

The Parties acknowledge and agree that in relation to those OA Activities under an OA in respect of which they are PCBU's (Person Conducting a Business or Undertaking):

- (a) They have legal duties in accordance with the provisions of the HSWA;
- (b) Each Party has entered that OA on the basis that the other Parties comply with the requirements of the HSWA as a minimum;
- (c) They have a legal duty to ensure the health and safety of workers and others in accordance with the provisions of the HSWA;
- (d) As outlined in Section 34 of the HSWA, PCBUs are legally obliged to consult, co-ordinate and co-operate in relation to the identification and management of health and safety risks arising from OA Activities; and
- (e) In accordance with their obligations under the HSWA, they will take active steps to ensure, so far as is reasonably practicable, that risks to health and safety are eliminated or, where this is not reasonably practicable, minimised.

18.3 In a Response

In the event of a Response, the Parties will also:

- (a) Keep each other appropriately informed on all health and safety matters concerning the Response, including any new or increased risks or concerns;
- (b) Consult, co-operate and co-ordinate with each other, on an ongoing basis and as regularly as changing circumstances necessitate, with respect to all health and safety matters concerning those Response Activities under the OA, including but not limited to:
 - (i) Ensuring that a jointly developed and maintained health and safety risk management plan is in place for the Response. The plan must include a risk register and control measures for each risk, and identify which Parties (and if possible, which person within the Parties) are responsible for implementing the control measures and monitoring and reporting health and safety performance to the Parties.
 - (ii) Determining which Party will carry out various specific duties under the HSWA on behalf of the Parties (e.g. notification of "notifiable incidents"), based on which Party is best placed to influence and control a matter.
 - (iii) Establishing health monitoring programmes, if warranted.
 - (iv) Do everything reasonably practicable to ensure that the health and safety plan for the Response is maintained, audited and reviewed throughout the Response and complied with by all personnel involved in the Response, and that any non-compliances are addressed by Response Governance.
 - (v) At regular intervals during a Response and as soon as practicable after the conclusion of the Response, the Parties will ensure that they conduct a formal review of the overall health and safety performance of personnel during the Response, including addressing any issues that

arose during the Response and lessons learned; and ensure that lessons learned are implemented by the Parties to improve best practice for future Responses.

19 FORMING AND VARYING AN OA

19.1 Documents comprising an OA

Each OA consists of an Agreement Section executed by the Parties and these Standard Terms. The Agreement Section may modify these Standard Terms as they apply to that OA. In the event of any conflict or inconsistency between provisions of these Standard Terms and provisions in the Agreement Section, the provisions in the Agreement Section shall prevail.

19.2 Execution of an OA

A Party may enter into an OA in any manner that Party may enter into a written agreement. An OA may be executed in any number of counterparts and communicated electronically. All counterparts will together be deemed to constitute one and the same document. Each Party will provide a counterpart of the Agreement Section executed by that Party to the GIA Secretariat which shall be deemed to be delivery of the executed OA to each other Party. Any deficiency in the way a Party enters into, executes, or delivers an Agreement Section will not affect the formation or validity of the OA nor prevent the provisions of the OA being binding on that Party or any other Party.

19.3 Entire Agreement

The GIA Deed, the Agreement Section and these Standard Terms (as modified by the Agreement Section) and any documents incorporated into the OA by reference constitute 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. Provided that the GIA Confidentiality Deed will remain in force in accordance with its terms.

19.4 Variation

An Agreement Section can only be varied with the written agreement of all Parties to that OA. Particular Schedules may also be amended in accordance with their terms.

The Secretariat is the author of and may revise these Standard Terms from time to time. The revision will apply to OAs entered into on or after the date of the revision. If the Parties to the OA agree in writing or all vote in favour at a DGG meeting, the revised Standard Terms will apply to an OA in force and entered into before the revision date as if that OA had been varied.

19.5 Adding Parties

If all Parties to an OA agree, a Signatory to the GIA Deed may become a party to that OA by executing an Accession Document and providing it to the GIA Secretariat.

19.6 General Right of Review

In addition to any reviews specified in the Agreement Section or in other provisions of these Standard Terms the Parties may, and if any two or more Parties require on reasonable grounds the Parties shall, conduct a good faith review of any part of the OA. If one Party alone seeks a review,

- that Party may at its own cost provide reasoned arguments for the desirability of the review, and the other Parties will fairly consider those arguments in deciding whether to jointly proceed with that review.
- that Party may at its own cost carry out the review and present recommendations to the other Parties, and the other Parties will fairly consider those recommendations

A review may only result in a variation to the OA in accordance with clause 19.4 (Variation).

20 AGREED OUTCOMES

The Agreed Readiness Outcomes and/or Agreed Response Outcomes are set out in the Agreement Section or otherwise agreed by the Parties, but if none are set out or agreed the following shall apply:

- (a) The Agreed Readiness Outcomes are that the Parties will work together to achieve the following in respect of the Unwanted Organisms they have identified:

- (i) New and emerging biosecurity risks are identified early and profiled (to assist in the informing of Readiness Activities);
 - (ii) Readiness Activities, which will measurably improve the ability to respond to biosecurity events, are identified and implemented;
 - (iii) Surveillance activities, which improve the early detection of pests, are identified and implemented;
 - (iv) Research and development underpins improved Readiness and more effective Response to biosecurity events; and
 - (v) Other outcomes are achieved as agreed; and
- (b) The Agreed Response Outcomes are that the Parties will work together to achieve the following:
- (i) Successfully eradicating the Unwanted Organism they have identified before it can establish; or
 - (ii) If the Parties agree eradication is or becomes impractical, reducing the spread and establishment potential of that Unwanted Organism where detected and developing transition plans and funding arrangements for long-term management of that organism.

Without limiting the provisions of clause 5 (Decision Making), the Parties to an OA expect that decisions will be made taking into account to any Agreed Readiness Outcomes and/or Agreed Response Outcomes.

21 NOTICES

All notices and communications under an OA may be made and received electronically.

The Parties will provide the Administrator and each other with the contact details of their Designated Representative including any Alternates, and update these details immediately if and when they change. These details must include the current nominated email address of their Designated Decision Maker for the receipt of Formal Notices.

All Formal Notices must be communicated by email to the nominated email address of the recipient Party's Designated Representative. Other notices and communications under an OA may be communicated by email to the email address of the recipient Party's Designated Representative, their Alternate or to any other email address the recipient Party nominates or habitually uses to receive GIA related correspondence.

All Formal Notices and other notices and communications shall be deemed to have been delivered to the intended recipient when, in relation to a properly addressed email to the last nominated email address of the recipient, the sender receives an automated message confirming delivery, or 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

In the event that the sender has used its best endeavours to deliver a Formal Notice to the recipient as set out in the preceding paragraph but has been unable to do so (for example because the recipient does not have a current functioning nominated email address), the sender may deliver the Formal Notice by any method authorised for the service of notices in legal proceedings in New Zealand.

22 MISCELLANEOUS

22.1 Executive Committee

A Governance Group may decide to establish an executive committee. The membership, purpose, powers and terms of reference of any such executive committee will be determined by that Governance Group from time to time.

22.2 Administrator

The Parties may appoint and fund an Administrator who shall be responsible for the administration of an OA. If the Parties do not appoint an Administrator references to the Administrator in an OA will be deemed references to the Governance Group or its delegate.

22.3 Role of GOL and GIA Secretariat

If the Parties agree, the GIA Secretariat through GOL may be used to perform some, or all of the following activities in respect of an OA:

- (a) Facilitating the development of the OA and any revisions and assisting with its interpretation;
- (b) Being appointed as Administrator;
- (c) Calculating and reconciling cost-shares under the OA;
- (d) Providing financial transactional services including invoicing and receiving payments; and
- (e) Any other matter under the OA where it makes sense to do so.

Provided that, unless agreed otherwise by DGG or its delegated executive committee, any cost incurred by GOL is cost-sharable under the OA amongst the Parties.

22.4 Relationship with GIA Deed

Each OA is formed under and subject to the GIA Deed. In the event of any inconsistency between an OA and the GIA Deed, the terms of the GIA Deed shall prevail except where a clause in that OA specifically states that the OA takes precedence and the GIA Deed does not prevent this.

If the enabling Biosecurity Act legislation is amended and materially impacts any of the provisions of this Operational Agreement, the Operational Agreement shall be either amended or reviewed. In this situation the Parties will work together to preserve as much of the agreed provisions and intent of this OA as possible.

22.5 GIA Operational Rules and Policies

Where a GIA Operational Rule is relevant to the OA, the Parties to that OA will follow that rule, policy or guidance except to the extent doing so is inconsistent with the other provisions of the OA.

22.6 Crown Indemnity

The Industry Parties enter into OAs on the basis that they are beneficiaries under the Crown Indemnity.

In the event that an Industry Party ceases to be a beneficiary of the Crown Indemnity or the Crown Indemnity terminates without being replaced with another protection from liability the Industry Party agrees is acceptable, that Industry Party may immediately withdraw from any OA. Nothing in an OA limits or affects the provisions or application of the Crown Indemnity.

22.7 Relationship of the parties

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

22.8 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.

22.9 Exigency Actions

For the avoidance of doubt, the OA is subject to Part 7 of the Act including but not limited to any declaration made pursuant to Part 7 of the Act.

22.10 Force Majeure

In the event of a Force Majeure a Party may suspend operations to the extent the Force Majeure makes necessary. If a Party is unable to meet its obligations under the OA for three months or longer due to a Force Majeure those Parties who remain able to meet their obligations may terminate that OA immediately by giving notice. If none of the Parties are able to meet their obligations under that OA for three months or longer due to a Force Majeure, the Parties may terminate that OA immediately by agreement.

22.11 Transition from Response to Long Term Management

If Response Governance makes or endorses a decision to transition from a Response to long term management whether under a pest management plan or otherwise the Parties shall agree a transition plan or other mechanism to enable the Response to be wound down in an orderly way. The transition plan should include an agreed date and time of day when cost-sharing and shared decision making in respect of that Response ceases. If the OA is a Response OA for the term of a single Response, the transition plan shall also include provisions for the OA to terminate. Notwithstanding the termination of the Response or the OA, Response Governance may continue to meet and perform functions pursuant to the agreed transition plan.

22.12 Assignment

No Party may assign any of its rights under the OA without the prior written agreement of all the other Parties.

22.13 Change of Control

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

22.14 Severability

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

23 INTERPRETATION**23.1 Rules of Interpretation**

In the OA, unless the context requires otherwise:

- (a) The singular includes the plural and vice versa. For example, if the OA has only two Parties, references to “the other Parties” shall be read as references to “the other Party” ;
- (b) References to persons include any natural person, body corporate, Government department, Crown agency, or other entity or association, and includes that person’s successors;
- (c) Money is New Zealand dollars and amounts are stated are exclusive of GST;
- (d) Where the OA refers to a decision by the Industry Parties alone, that Consensus shall not require MPI.
- (e) The use of headings is for convenience only and shall not affect the interpretation or construction of the OA;
- (f) References to a Party or Designated Representative may include their Alternate;
- (g) Except in respect of Reserved Matters, reference to the agreement or decision of or by the Governance Group or the Parties means agreement or decision by Consensus;
- (h) The power to appoint includes the power to dismiss, reappoint, fund and set and revise terms of reference;
- (i) References to a particular position title or description include that position title or description as varied or replaced;
- (j) References to a document incorporated by reference (for example the GIA Response Guide or Response Governance Terms of Reference) includes that document as updated;
- (k) If there is no Governance Group or Response Governance that can act, references to Governance Group shall be deemed to be references to the Parties; and
- (l) A Party is a related party of a person (other than another Party) if they would be associated persons as defined in sub-part YB of the Income Tax Act 2007.

23.2 Definitions

In an OA, unless the context requires otherwise and subject to the Agreement Section the following terms have the meanings specified below. Terms used but not defined in the Agreement Section or these Standard Terms and that are defined in the GIA Deed have the same meaning as in the GIA Deed.

Accession Document	means a document in a form approved by the GIA Secretariat for the purposes of joining new parties to the OA.
Act	means the Biosecurity Act 1993 as amended from time to time.
Administrator	means the person approved and funded by all the Parties to administer the Operational Agreement and related documents, contracts, transactions and other administrative matters.
Agreed Readiness Outcomes	means the agreed readiness outcomes described in the Agreement Section.
Agreed Response Outcomes	means the agreed response outcomes described in the Agreement Section.
Agreement Section	means the Agreement Section of an OA including its Schedules, that when executed by all Parties forms the OA consisting of that Agreement Section (as varied from time to time in accordance with clause 19.5), and these Standard Terms.
Alternate	means an appropriately delegated person with written and current authorisation to represent another person, which may include confirmation by a Designated Representative to the other Designated Representatives or to the Chair by email and includes a proxy of a Party.
Annual Budget	means the annual budget agreed to be undertaken by the Parties under an OA. An Annual Budget may be standalone, or be part of another budgeting process as agreed by the Parties including without limitation an annual readiness work plan in respect of Readiness Activities, or an annual response budget in respect of Response Activities.
Appendix	means the appendix to these Standard Terms.
Beneficiary	means as defined in the GIA Deed.
Business Days	means any day of the week other than— a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, Matariki and Waitangi Day; b) if Waitangi Day, Matariki or Anzac Day falls on a Saturday or a Sunday, the following Monday; and c) a day in the period commencing with 20 December in any year and ending with 15 January in the following year, both inclusive.
Chair	means, as the case requires, the: (a) Chair of the Governance Group (if any) or their Alternate; or (b) the Chair of Response Governance (refer to the GIA Response Guide for terms of reference) or their Alternate.
Commencement Date	has the meaning given in the Agreement Section.
Conflict of Interest	means any conflict of the Party’s interests or obligations with its responsibilities under the 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 is compromised).

Consensus	does not have the meaning given in the GIA Deed but instead has the meaning in clause 5.3 of these Standard Terms.
Crown Indemnity	means the written indemnity provided by the Crown dated 28 May 2019 as amended by agreement in accordance with its terms. The Crown indemnity expires on 28 May 2024 unless renewed or replaced.
Designated Representative	means the natural person, including their Alternate, who represents that Party for the purposes of the OA.
DGG	means the GIA Deed governance group, comprising a representative from each party to the GIA Deed.
Fiscal Cap	means, in respect of an Industry Party, the upper limit of that Party’s liability for cost-sharing Response Activities under the OA.
Formal Notice	means a written notice communicated by email to the most recently notified email address of the recipient Party’s Designated Representative.
Force Majeure	means an event beyond the reasonable control of the Party seeking to invoke clause 22.10 (Force Majeure) that could not have been prevented by that Party taking reasonable care and that significantly compromises that Party’s ability to perform its obligations under the OA. Such events may include: (a) Acts of God, earthquakes, tsunamis, volcanic eruptions, floods, storms, pandemics and Government ordered restrictions and lockdowns as a result of a pandemic; or (b) Acts of war.
GIA	means the government/industry agreement for Readiness or Response defined in Part 5A of the Act.
GIA Confidentiality Deed	means the confidentiality deed executed by GIA Deed Signatories.
GIA Deed or the Deed	means the latest version of the multi-party deed titled “Government Industry Agreement for Biosecurity Readiness and Response Deed” entered into under part 5A of the Act.
GIA Operational Rule	means an operational rule, policy or guidance applicable to OAs or OA Parties generally and endorsed by the DGG.
GIA Operations Limited, or GOL	means the registered co-operative company of that name, New Zealand company number 6325540.
GIA Secretariat	means the Secretariat established under GIA and with the functions and responsibilities described in the GIA Deed.
Governance Group	means the governance group referred to in clause 5 (Governance) and if no governance group has been established means the Parties.
Industry Deed Signatory	means a party to the GIA Deed other than MPI.
Industry Party	means an Industry Deed Signatory who is a Party to the Operational Agreement and “Industry” means those Industry Deed Signatories collectively
Intellectual Property Rights	means all industrial and intellectual property rights whether conferred by statute, at common law or in equity, including, but not limited to copyright, trademarks, designs and patents and including any modification or enhancement thereto.
Industry Sector	means the Sector represented by an Industry Party.
Industry Sector Value	means the annual output or production value of an Industry Sector at the first point of sale as determined in accordance with clause 6.7 (“Determining Industry Sector Values”)

MPI	means the Ministry for Primary Industries or any other department or entity that the Crown determines will perform the Crown’s obligations under Part 5A of the Act. For the purposes of the OA, MPI may choose to act by and through its business unit, Biosecurity New Zealand.
Non-Signatory Beneficiary	means in respect of the OA, a group of businesses comprising of a Sector that: a) is not represented by an Industry Deed Signatory; and b) has been identified by the Parties to the OA as Beneficiaries of Readiness Activities and/or Response Activities under the OA.
OA Activities	means, as the context requires, Readiness Activities, Response Activities, or both Readiness Activities and Response Activities.
Operational Agreement or OA	means the agreement made between MPI and one or more Industry Parties comprising an Agreement Section and these Standard Terms.
Party	means a party to the OA, and “Parties” means the parties to the OA.
Present	A Party is treated as Present when, having the right to participate in or vote on a decision or agreement, its Designated Representative (including by Alternate) is in attendance in person, on the phone or other electronic means until they are recorded as having ceased to be available for two way communication, and “Presence” has a corresponding meaning.
Readiness Activities	means as defined in the GIA Deed.
Readiness OA	means an OA intended to cover Readiness Activities but not Response Activities.
Readiness and Response OA	means an OA intended to cover both Readiness Activities and Response Activities.
Response	means, depending on the context either: (a) the period during which Response Activities are undertaken in respect of an Unwanted Organism as detailed in the Agreement Section; or (b) the total of those Response Activities.
Response Activities	means as defined in the GIA Deed.
Response Governance	means the governance group for a Response under an OA.
Response Governance Terms of Reference	means the terms of reference for Response Governance adopted by the Parties from time to time.
Response Level	means the level of the Response, typically on a scale of 1 (low) to 4 (high). As part of making a decision to change Response Levels, Response Governance will also decide the date and time of day that change is to take effect.
Response OA	means an OA intended to cover Response Activities but not Readiness Activities
Schedule	means a schedule or other attachment to an Agreement Section.
Sector	means “sector” as defined in Part 5A of the Act.
Standard Hourly Rates	means as provided in Part A of the Appendix.
Standard Terms	means these Standard Terms including the Appendix, as updated from time to time.
Unwanted Organism	means as defined in the GIA Deed.

APPENDIX

PART A - STANDARD HOURLY RATES AND CHARGES

The hourly rates for the Parties’ contributions (in kind or payable) to OA Activity costs for specific roles are detailed in Table 1 below, unless activities equate to published MPI hourly rates and unit charges in which case those published rates and charges will apply, for example MPI market access hourly rates and laboratory diagnostic testing charges.

Table 1 Hourly rates for specific roles

Range	Role	Hourly Rate (\$) Excluding GST	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 Parties.
Range A & B	Manager to tier 4	150	
Range C	Principal Adviser Principal Analyst Technical Specialist (Industry resource)	120	
Range D & E	Senior / Specialist Adviser Senior / Specialist Analyst Technical Specialist (Industry resource)	90	
Range F	Adviser / Analyst Technical Specialist (Industry resource)	75	
Range H, I and J	Support	50	

PART B - READINESS COST-SHAREABLE ACTIVITIES

Subject to the Agreement section, the Readiness Activities that are cost-shareable under the OA are listed in Table 2 below.

Table 2: Readiness Cost-Shareable Activities

Description	Shareable		Comment
All costs related to the facilitation and management of targeted surveillance activities and 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		<i>[Procurement cost of outsourced surveillance activities based on actual and reasonable cost.]</i> Research projects activities that are funded via other sources are excluded – but MPI and Industry Party time involved in such projects is cost-shareable, if involvement is agreed by the Parties.
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

Description	Shareable		Comment
			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		Any jointly developed readiness plans/manuals for operational activities in a response. Contingency planning for business continuity is an industry responsibility.
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 which is not a cost shareable Readiness activity under this OA.
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/animal treatment.
All costs to deliver and maintain a national notification mechanism and report the detection of any Sector Risk Organisms (i.e. 0800 number).		No	MPI minimum commitment to deliver a national notification mechanism or equivalent – GIA 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.
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.
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 for market access, including steps to achieve pre-negotiated market access arrangements for sectors sits outside the scope of GIA cost sharing and operates under existing cost-recovery arrangements.

Description	Shareable		Comment
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.
Maintaining systems and capability to respond to new incursions (including the CIMS based Response system maintaining generic management and technical capability to respond, and IM systems).		No	MPI minimum commitment.
MPI will maintain the process, capacity and capability to manage the development and maintenance of a group of biosecurity response staff including service providers to support the delivery for operational services for readiness and response activities..		No	Industry Parties' minimum commitment is to identify appropriate industry resources for Readiness and Responses activities, along with utilising agreed deployment approaches
Yes = An OA cost-shareable Readiness activity		No = Not an OA cost-shareable Readiness activity	

PART C - RESPONSE COST-SHAREABLE ACTIVITIES

Subject to the Agreement Section, the Response Activities that are cost-shareable under an OA are listed in Table 3 below.

Table 3: Response Cost-Shareable Activities

Description	Shareable		Comment
All diagnostic facility, personnel and consumable costs, transport of the PC2 container lab and use of an on-site facility. 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.
All Response personnel costs (including backfill and contract costs).	Yes		Apply to both Parties personnel used during a Response.
All Response consumable related costs.	Yes		
All Response facilities related costs (when outside of non MPI facilities).	Yes		When used for a Response.
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, billboards to increase passive surveillance during the Response to support Response objective.
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). Any award, additional award, or settlement that result from a compensation eligibility dispute is included within this activity. Any legal costs (including any costs and expenses of the arbitration that form a part of an award) that are incurred in a compensation eligibility dispute are not cost-shareable.	Yes		
Response management and all Response activities associated with the biosecurity Response; including:	Yes		

Description	Shareable		Comment
Response operations; Logistics; Planning and intelligence (except for preparations of policies and briefings).			
Response debrief.	Yes		Participation during debriefs is at Parties' own costs
Specialist technical advice (e.g., Technical Advisory Groups) requested by Response strategic leadership group.	Yes		
Short-term targeted applied research during a Response.	Yes		E.g. research a Sector Risk Organism that is subject to a Response, literature review to inform technical advice to answer a specific trading partner enquiry to assist with regaining market access.
Negotiation of measures to address any changes in risk that importing countries may require.		No	Industry 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.
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.
Internal communications and media management.		No	Applies to all Parties.
Response Governance.		No	Each Party will meet the costs of its representative attending Response governance.
Policy and regulatory advice to the Government (including briefing senior leaders and Ministers).		No	Same applies to 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 authorised person as defined in the Act).

Description	Shareable		Comment
Administering activities (i.e. Policy and Processing) associated with compensation.		No	