



# **Brown Marmorated Stink Bug Operational Agreement**

**13 July 2017**

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## **PART A: VARIABLE TERMS**

### **1 INTRODUCTION**

This OA is a multi-sector OA.

This OA is for readiness activities and response activities.

### **2 THE PARTIES SIGNING THIS OPERATIONAL AGREEMENT**

The Parties to this OA are:

Ministry for Primary Industries

Kiwifruit Vine Health Incorporated

New Zealand Avocado Growers Association Incorporated

New Zealand Winegrowers Incorporated

Pipfruit NZ Incorporated

Tomatoes New Zealand Incorporated

Vegetables New Zealand Incorporated

### **3 TERM**

The Commencement Date of this OA is 13 July 2017.

Initial term: 3 years.

Renewal terms: 1 renewal for 2 years.

### **4 SECTOR RISK ORGANISM (SRO)**

The specific Sector Risk Organism covered by this OA is the Brown Marmorated Stink Bug (*Halyomorpha halys*) ("BMSB").

### **5 AGREED OUTCOMES**

The Parties will work together to achieve the following outcomes:

- (a) Maintaining and enhancing on-going public, importer, and tourist awareness campaigns;
- (b) Successfully and rapidly detecting BMSB post border, eradicating any population(s) before BMSB can establish, and reducing the spread and establishment potential of any populations detected;
- (c) Continuing to develop and improve readiness and response plans, including targeted research and development activities that will measurably improve the ability to respond to a BMSB incursion;
- (d) Planning to reduce the impact of a BMSB incursion on production, processing and sales;

- (e) Developing transition plans and funding arrangements for long-term management of BMSB;
- (f) Enhancing the integrity and effectiveness of New Zealand's wider biosecurity system, and enhancing the social license for BMSB response activities.

## **6 READINESS COST SHARES**

The estimated benefit shares between MPI and Industry for readiness activities undertaken in this OA are:

MPI: 70%

Industry: 30%

The agreed cost shares between MPI and Industry for readiness activities undertaken in this OA (and incorporating the exacerbator discounts) are:

MPI: 76%

Industry: 24%

## **7 RESPONSE COST SHARES**

The estimated benefit shares between MPI and Industry for response activities undertaken in this OA are:

MPI: Between 90% and 70%

Industry: Between 30% and 10%

The agreed cost shares between MPI and Industry for response activities undertaken under this OA (and incorporating the exacerbator discounts) are:

For a level 1 response

MPI: 76%

Industry: 24%

For a level 2 response

MPI: 84 %

Industry: 16%

For a level 3 response

MPI: 92%

Industry: 8%

The response level definitions are as follows:

- Level 1 response – a single adult bug found without a likely entry pathway; the parties decide to initiate a response; and the total response cost is expected to be less than \$250,000.

- Level 2 response – includes a single breeding female, or bugs identified at multiple stages of life indicating a breeding population, when the cost of a response is expected to be between \$250,000 and \$2,000,000.
- Level 3 response – includes breeding populations being identified in two or more regions; or multiple breeding populations found through a single region of New Zealand contemporaneously.

For the avoidance of doubt where a response starts as a level 1 but develops into a level 2 or 3 response over time the first \$250,000 will be cost shared as a level 1, and expenditure between \$250,000 and \$2,000,000 as a level 2.

### **7.1 Review of impacted parties and cost shares**

The parties are not aware of any established BMSB population in New Zealand. Accordingly, the impact of BMSB under New Zealand conditions on sectors within the New Zealand primary sector is largely unknown. While the Parties have used their best endeavours based on available information to agree the proportional impacts of BMSB the Parties acknowledge these informational constraints and will review by 30 June 2018 and thereafter by dates decided by consensus both the public to industry benefit shares and the amongst industry benefit shares (which may include sector impact ratings, proportions of cost shares, fiscal caps and the treatment of Beneficiaries, including those who withdraw from the OA or an OA activity) in the light of information then available, with any agreed change being recorded in a revised Schedule A of this OA.

## **8 FISCAL CAPS**

Under and during the term of this OA (including any renewal and commencing on the Commencement Date) each Industry Party's response fiscal cap is the amount derived in accordance with clause 2 of Schedule A (Fiscal Caps) and recorded by the Administrator.

This OA does not have fiscal caps for readiness.

Fiscal caps exclude GST.

Each Industry Party's cost share of compensation payments shall be limited [REDACTED] of that Industry Party's response fiscal cap.

## **9 GOVERNANCE GROUP**

The Governance Group for this OA shall be the BMSB Council.

## **10 ADMINISTRATION**

The Administrator for this OA shall be the GIA Secretariat.

## **11 CONSENSUS DECISION MAKING**

Consensus under this OA shall be achieved by the Expanded Consensus decision making process. Part B clause 8.5 shall apply and Part B clause 8.4 shall not apply.

## **12 SCHEDULES**

The following Schedules apply to, and are part of, this OA:

Schedule A: Individual Industry Party Cost Shares and Fiscal Caps as per Part B Clause 9.2;

Schedule B: Interim Arrangements.

## 13 EXECUTION

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

**Signed** by and on behalf of the **Ministry for Primary Industries** by its Director Readiness & Response Services, on 13 July 2017 )  
)  
)

---

Signature

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**Kiwifruit Vine Health Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**New Zealand Avocado Growers Association**  
**Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**New Zealand Winegrowers Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**Pipfruit NZ Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**Tomatoes New Zealand Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

**Signed** by and on behalf of  
**Vegetables New Zealand Incorporated:**

---

Signature

---

Name

---

Position

In the presence of:

---

Witness signature

---

Witness name

---

Witness occupation

---

Witness city of residence

## **PART B: GENERAL TERMS**

### **1 PURPOSE**

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

### **2 TERM**

This OA commences on the Commencement Date and continues for the initial term and each renewal as specified in Part A clause 3.

The Parties may agree in writing to amend the term of this OA at any time.

Each specified renewal shall be automatic, unless any Party notifies the GIA Secretariat not later than two months before the renewal date that they do not wish this OA to renew, in which case that Party shall be deemed to have withdrawn from the OA effective from the renewal date and Part B clause 10.5 applies.

The Parties may decide to initiate a formal review of this OA at any time with at least 10 Business Days' notice on such terms as they see fit.

### **3 LODGEMENT**

The Parties will provide the GIA Secretariat with an executed copy of this OA.

### **4 INCONSISTENCY WITH THE DEED**

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

### **5 CONTEXT REGARDING AGREEMENT**

The Parties recognise that the involvement of the Industry Parties in joint readiness and response activities will provide significant advantages over the pre GIA Deed arrangements including contributions in the form of industry enthusiasm, knowledge, guidance, resources, and cost sharing. Under the pre GIA Deed arrangements, MPI made all readiness and response decisions and assumed the full burden of cost and statutory compensation obligations associated with these activities.

The long term fundamental purpose of this OA is to arrange for and foster Industry Parties' permanent involvement in readiness and response activities for mutual benefit in return for sharing in certain costs of these activities, including a reimbursement for statutory compensation payments made by MPI.

It is not the intention of this OA that by entering into and performing this OA that Industry Parties will also assume general liability risk in respect of decisions or activities made or undertaken under or in connection with this OA.

## **6 CONTEXT REGARDING LIABILITY**

This OA contains provisions limiting, allocating and negating the potential liability of Parties and the individuals representing them for 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.

The Parties know that individuals and organisations will 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 mistakes.

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 participants for mistakes, where the benefits of the risky decisions are captured by others or the sector as a whole.

## **7 PRINCIPLES**

Guiding principles for this OA are included in Part F, clause 1: OA Principles. These OA principles are not legally binding.

## **8 AGREEMENT ADMINISTRATION**

### **8.1 Decision Making**

In this OA unless the context otherwise requires:

- (i) Reference to “agree” means all Parties agree in writing; and
- (ii) Reference to “decide” or “decision” means decide by Consensus.

### **8.2 Contract Management**

Each Party to this OA will nominate a Designated Representative to provide contract management oversight of this OA on behalf of that Party.

### **8.3 OA Governance Group**

The body (if any) specified in Part A clause 9 (“Governance Group”) is to be the governance group whose purpose is to ensure that the implementation of the OA meets the outcomes described in Part A clause 5.

The Governance Group will be made up of one Designated Representative from each Party, unless decided otherwise by the Parties.

Unless the context requires a decision by another forum such as Response Governance, if this OA does have a Governance Group the primary forum for the Parties to agree or make decisions shall be that group.

Subject to this OA the Governance Group and Response Governance shall set their own procedure.

#### **8.4 Ordinary Consensus Decision Making**

Decisions made under this OA will be:

- (i) Made by Consensus; or
- (ii) If Consensus cannot be reached then the following steps will be applied. At each step the Parties will seek to reach Consensus 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 resolve the points identified.
  - b. If Consensus cannot be reached within the initial timeframe agreed, in the spirit of partnership the Parties will each nominate an alternate senior decision-maker from their organisation to engage in meaningful dialogue to attempt to reach Consensus and will set a revised timeframe for Consensus.
- (iii) If the process in (i) and (ii) does not result in a Consensus within the revised timeframe then the dispute may be referred to mediation under clause 17.

#### **8.5 Expanded Consensus Decision Making**

This Part B clause 8.5 shall apply in lieu of Part B clause 8.4 if Part A specifies that Consensus will be by the Expanded Consensus decision making process.

Decisions made by the Parties under this OA including decisions regarding OA Activities will be:

- (a) Made by consensus during a Governance Group or Response Governance meeting (as the case may be), meaning that no representative who is Present is opposed to the decision even if some who are entitled to be Present may be absent (it is assumed those who are absent are not opposed), or if some who are Present have reservations but are not opposed (“Consensus”); or
- (b) If Consensus cannot be reached during a Governance Group or Response Governance meeting then the Chair will set the timeline for the following steps (i) to (iii) (recognising that during a response any timeline may need to be adjusted as circumstances require). At each step the Parties will seek to reach Consensus before the next step is undertaken:
  - (i) The Parties should decide where they can agree, identify points of disagreement, and decide the timeframe and approach to resolve the points identified.
  - (ii) In the spirit of partnership, in the event of non-Consensus, the Chair may require the Parties to each nominate an alternate senior decision-maker from their organisation to engage in meaningful dialogue to attempt to reach Consensus.

- (iii) If the process in (i) and (ii) or any step in them does not result in a Consensus within a timeframe that the Chair considers reasonable, the Chair will call for a vote, and Consensus will be deemed to have been achieved if at least 50% of the Parties are Present and all of the following occur:
  - at least 50% of those Parties Present and casting a vote are in favour; and
  - Industry Parties who together contribute 75% of the industry cost share represented by Presence are in favour; and
  - MPI is in favour.
- (iv) If the process in (i) to (iii) does not result in a decision then the dispute may be referred to mediation under clause 17.

(c) Decisions will be noted in the relevant Governance Group or Response Governance minutes.

## **8.6 OA Administration**

The Parties will appoint and fund an Administrator who is responsible for the administration of this OA. The allocated duties of this Administrator shall be determined upon appointment and may be amended by the Parties by Consensus from time to time.

## **8.7 Reporting**

The Parties will prepare an annual report of OA Activities unless otherwise agreed. The timing and use of this report will be as the Parties decide. The Parties shall maintain a 'no surprises' policy that keeps one another informed of their constituent reporting.

## **9 COST SHARES**

### **9.1 Cost shares**

The Parties have agreed that certain of the OA Activities are cost sharable activities, the cost of which will be shared between MPI and Industry in agreed shares. The type of readiness activities that are cost sharable are set out in Part F clause 5, and the type of response activities that are cost sharable are set out in Part F clause 6. Each Party has agreed to meet a defined share of the cost sharable activities in accordance with this OA.

Industry Readiness Cost Shares and Industry Response Cost Shares agreed by the Parties are set out in Part A of this OA and individual Industry Party cost shares are recorded in Schedule A in accordance with clause 5 of the Deed.

Each Party must meet its cost sharing obligations by meeting its share of the cost sharable activities.

Contributions to cost shareable activities can be by payment, reimbursements, or contributions in kind in accordance with this OA.

Negotiation of cost shares:

- (i) Cost shares in this OA may be renegotiated and agreed when new information becomes available that materially changes the previous cost share determination;
- (ii) Cost shares in this OA may not be re-negotiated during a response under this OA unless the Parties decide to do so;
- (iii) Where an additional Beneficiary to the OA Activities is identified, the Parties will seek to have that Beneficiary join this OA as an Industry Party (with any appropriate amendments) or, if this cannot be reasonably achieved, amend this OA to take into account the additional Beneficiary's status as a non-Signatory beneficiary or an additional public impact.

## **9.2 Industry Apportionment**

The percentage apportionments of the Industry cost share of readiness and/or response activities will be calculated and decided annually in accordance with the agreed methodology (the agreed methodology is set out in Schedule A). For the avoidance of doubt, the then current percentage apportionment will continue to apply until a new percentage is decided.

## **9.3 In-kind contributions**

Contributions can be made to OA Activities in the form of in-kind Contributions that meet appropriate levels of quality and performance as required by each specific activity. These contributions could take the form of goods or services in place of cash.

In-kind Contributions will be valued at cost of supply of those goods or services based on the standard hourly rates and charges for undertaking OA Activities as detailed in Part F (or as otherwise decided), and will form part of the financial reconciliation at the end of every year and/or as part of readiness and response cost reconciliations (which shall be quarterly unless the Parties decide otherwise).

In kind Contributions can only be used and recognised on projects where the Parties would otherwise need to expend cash (i.e. for agreed projects, not to subsidise surveillance contract obligations).

Where a Party proposes to use in-kind Contributions instead of cash to meet its contributions, such in kind work must be agreed in advance by the other Parties.

For responses, in-kind Contributions will be managed by response operations staff.

## **9.4 Cost Reconciliation**

The GIA Secretariat, as set out in clause 5.2.2 of the Deed will reconcile the total OA Activity costs to be shared between the Parties.

## **9.5 Parties will provide proof of expenditure**

For goods and services provided by the Parties as part of OA Activities the Parties will retain proof of expenditure and reconciliations to support the costs incurred.

For in-kind Contributions as part of OA Activities the Parties will provide a reconciliation report that will contain sufficient details to enable each Party and the GIA Secretariat to identify:

- (i) the MPI activity/cost centre codes and the OA Activity title;
- (ii) the particular in-kind Contributions and the period during which they were provided; and
- (iii) the equivalent monetary values.

#### **9.6 GST Invoices**

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

- (i) the MPI activity/cost centre codes and the OA Activity title;
- (ii) the particular goods and services which are the subject of the invoice and the period during which those goods and services were provided;
- (iii) the relevant cost shareable charges;
- (iv) in respect of any charges calculated on the basis of time spent, the basis (including relevant hours worked, and rates) upon which the charge is based; and
- (v) full details of any expenses.

#### **9.7 Payment**

Subject to the payment dispute clause below, the invoiced Party will by the 20th day of the month following the date of any GST Invoices received on or before the 5th Business Day of that month make payment of an invoice. Payment may not be evidence that the services to which the invoice relates have been provided. Any payment not received will be subject to annual interest at the current Capital Charge rate published by The Treasury, accruing from the date two (2) months after the payment due date unless subject to the payment dispute clause below.

The Parties to any payment transaction under this OA may choose to utilise GIA Operations Limited as an intermediary to facilitate that transaction.

#### **9.8 Payment Dispute**

Whilst a Party has a bona fide dispute (the Disputing Party) in relation to all or any portion of any GST Invoice, whether in relation to the performance of the Services, the accuracy of the GST Invoice or otherwise, the Disputing Party may withhold payment of the amount subject to the dispute, provided that:

- (i) the Disputing Party will pay the undisputed amount when it becomes due and payable; and

- (ii) All Parties will continue to perform their obligations under this OA while the dispute is resolved.
- (iii) The relevant Parties will co-operate in resolving the dispute expeditiously.

## **9.9 Complete applicable services**

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

## **10 WITHDRAWAL AND REMOVAL**

### **10.1 Withdrawal from specific OA activities**

A Party is entitled under the GIA Deed (clause 6.2) to withdraw from any OA Activity.

The withdrawing Party must be able to demonstrate that its reasons for withdrawing are made in good faith and allow the impact of the withdrawal on the remaining Parties to be assessed.

If a Party wishes to withdraw, then:

- (i) That Party must provide reasonable written notice to the other Parties of its intention to withdraw and the reason for its decision.
- (ii) The remaining Parties will then decide whether to continue the relevant OA Activity.
- (iii) All decisions regarding a withdrawal and the impact will be recorded in the minutes of the relevant meetings.

Withdrawal from an OA Activity or from a response does not necessarily result in withdrawal from the OA.

Upon withdrawal the removed Party may continue to attend meetings in respect of that response or OA activity with the remaining Parties' approval but will lose its readiness and/or response decision making rights (as may be applicable) in respect of those meetings.

Clause 6.2.2 of the GIA Deed shall apply to the withdrawing Party.

Where an Industry Party withdraws from an OA Activity MPI shall pay their cost share from that date.

### **10.2 Withdrawal by a Party from the OA**

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

### **10.3 Removal of the Industry Party**

An Industry Party to this OA may be removed immediately from this OA by notice from MPI where that Party:

- (i) Is determined by the Minister for Primary Industries to no longer meet the eligibility criteria to be an industry organisation under section 100ZA of the Biosecurity Act 1993; or
- (ii) Has breached a material obligation under this OA and the breach cannot be remedied or where capable of remedy, has not been remedied within two months of receiving a notice from MPI requiring it to do so; or
- (iii) Has become:
  - a. insolvent or bankrupt, or has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or
  - b. subject to any form of external administration; or
  - c. becomes unable to pay its debts as they become due or is presumed by law to be unable to pay its debts.

### **10.4 Termination for breach by MPI**

This OA may be terminated by notice from the Industry Parties where MPI has breached a material obligation under this OA and the breach cannot be remedied or where capable of remedy, has not been remedied within two months of receiving a notice from the Industry Parties requiring it to do so. The decision by the Industry Parties to give such a notice shall be by agreement.

### **10.5 Effect of withdrawal and removal**

If any Party withdraws or is removed from this OA then:

- (i) Clause 6.2.2 of the GIA Deed will apply;
- (ii) During the withdrawal notice period that Party will have no representation in any decision making body unless the relevant decision relates to matters in relation to which that Party remains liable under clause 6.2.2 of the GIA Deed;
- (iii) The remaining Parties will not be liable for any loss caused to or suffered by the withdrawing or terminated Party as a result of its withdrawal or removal; and
- (iv) The Party shall be treated as a non-Signatory beneficiary for the purposes of cost share following the date of withdrawal and MPI shall pay their cost share from that date.

This OA requires MPI and at least one Industry Party. If MPI is no longer a party to this OA, or there is not at least one Industry Party, this OA terminates immediately.

## **11 LIMITATION OF LIABILITY**

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 losses or damages, whether direct or indirect, arising out of or in connection with this OA or any act or omission under or in respect of or in performing this OA (including any readiness or response decision or activity), except for such liability (if any) arising due to:

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

For the avoidance of doubt, no Party will 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 Biosecurity Act 1993.

This provision applies despite the Deed.

## **12 ACTIVITY AUDITS AND RECORDKEEPING**

### **12.1 Recordkeeping**

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

### **12.2 Audit purpose**

At any time during the performance of a specific readiness or response activity under this OA, and up to 12 months from the completion of the specific activity thereafter, any Party may, upon a minimum of one month's written notice to the other Party, at its own cost seek to obtain assurance by requesting that it audit or obtain an audit of any aspect of the other Party's compliance with this OA, or with the clauses of any funding arrangement for this OA and/or any elements of the other Party's financial administration of such funding arrangement.

### **12.3 Audit arrangements**

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

## **13 CONFIDENTIALITY AND PRIVACY**

Before any information relating to this OA or OA Activities undertaken under this OA is released in the public domain, the Parties must have decided by Consensus to release the information. The Parties will also ensure that those of their representatives that have signed the GIA Confidentiality Deed comply with its terms.

The above restriction will not operate to prevent the release of information required to be disclosed by law (including the Official Information Act 1982), court order, regulatory authority, the listing rules of any stock exchange, Ministerial request, Parliamentary Rules and Conventions, or as otherwise allowed for in the GIA Confidentiality Deed.

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

#### **14 CONFLICTS OF INTEREST**

The Parties:

- (i) 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;
- (ii) will promptly declare to the Administrator any Conflict of Interest they become aware of during the term of this OA;
- (iii) if there is more than one Industry Party to this OA the Parties will be guided by the Conflict Protocol in clause 15 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 endeavour to decide by Consensus 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 is more than one Industry Party to this OA.

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

- (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:

- (d) 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;
- (e) must offer the other Parties reasonable opportunities without that Party being present to discuss the matter with fair knowledge of the nature and implications of the Conflict;
- (f) 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;
- (g) if requested by the Chair, or decided by the other Parties, will withdraw from particular discussion or action where the Conflict is likely to be a materially problematic factor; and
- (h) will otherwise follow the reasonable directions of the Chair in managing the Conflict.

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

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

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

## **16 INTELLECTUAL PROPERTY**

### **16.1 Pre-existing IP**

Notwithstanding any other provision of this OA, all intellectual property in existence prior to the Commencement Date ("Pre-Existing IP") will remain the property of its owner. The owner may decide whether and on what terms to make any of that IP available. If Pre-Existing IP is to be made available for an OA, the terms on which it is to be made available (and any conditions) will be recorded in the individual project plan for that activity.

## **16.2 Developed IP**

The ownership of all intellectual property created after the Commencement Date by any of the Parties in relation to this OA ("Developed IP") will be the property of the Party that created the Developed IP.

## **16.3 Licencing**

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

## **17 DISPUTES**

This clause 17 takes precedence over the Deed.

- (i) Except where a Party seeks urgent interlocutory relief, injunction, or specific performance, or after this OA has been terminated, no Party may commence court proceedings against the other without the commencing Party first having followed the procedure in this clause.
- (ii) Where any dispute, disagreement, question or difference (a "Dispute") arises between Parties on any matter arising under or from this OA, either Party (the "Initiator") may notify the other Party (the "Recipient") in writing of the Dispute (the "Dispute Notice"). The Dispute Notice must specify the Initiator's:
  - a. view of the facts of the Dispute;
  - b. position on the Dispute;
  - c. suggestion for resolving the Dispute; and
  - d. representative authorised to resolve the Dispute.
- (iii) The Recipient must respond to the Dispute Notice within ten Business Days of receiving it. The Recipient's response must specify its:
  - a. view of the facts of the Dispute;
  - b. position on the Dispute;
  - c. suggestion for resolving the Dispute; and
  - d. representative authorised to resolve the Dispute.
- (iv) The Parties to the Dispute will, within five Business Days of the Initiator receiving the Recipient's response, enter into negotiations to resolve the Dispute.

- (v) Where those Parties are unable to negotiate a resolution to the Dispute within 20 Business Days of the Recipient's receipt of the Dispute Notice (or such other time as the Parties agree in writing), then:
  - a. Those Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if those Parties cannot so agree within five Business Days, the mediator will be selected, and the mediator's fee determined, by the chair for the time being of the organisation known as Resolution Institute New Zealand (or their nominee). Mediation will be conducted in accordance with the Resolution Institute New Zealand Inc. standard mediation agreement, and the Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
  - b. Where mediation does not resolve the Dispute within 10 Business Days of mediation commencing, then without prejudice to each Party's right to commence court proceedings the Parties to the Dispute may (but are not obliged to) agree to commence arbitration proceedings in accordance with the provisions of the Arbitration Act 1996.
- (vi) Pending resolution of the Dispute, the Parties will continue to perform their obligations under this Agreement as far as is practicable as if the Dispute had not arisen.
- (vii) Any costs or expenses of any mediator or arbitrator will be paid by the Parties to the Dispute in equal shares unless recommended otherwise by the mediator or arbitrator and, if so recommended, will be paid in accordance with that recommendation. The Parties expect that when considering and making such a recommendation, the mediator or arbitrator 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 Parties in the Dispute.

## **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").

The Parties will, within six months of the date of commencement of this OA, agree in writing Health and Safety provisions that appropriately reflect each Parties' respective roles and responsibilities under the HSWA in respect of OA Activities and that ensures that each Party will continue to comply fully with the provisions of that Act.

## **19 MISCELLANEOUS**

### **19.1 Entire Agreement**

The Deed and this OA including any provisions incorporated by reference constitutes the entire agreement and understanding between the Parties in relation to the subject matter of the same, and in each case supersedes all prior agreements, representations, understandings

and negotiations, whether written or oral of the Parties. Provided that the GIA Confidentiality Deed will remain in force in accordance with its terms.

## **19.2 Relationship of the parties**

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

## **19.3 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.

## **19.4 Assignment**

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

## **19.5 Change of Control**

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

## **19.6 Severability**

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

## **19.7 Variation**

This clause applies to any variation of the OA, including the term.

Any provision of this OA can only be varied with the written agreement of all Parties, provided however that:

- (i) the processes described in clause 30.2 will apply to any change to the relevant fiscal cap of Industry Parties; and
- (ii) Part F: Appendix of this OA can be varied by Consensus of the Parties.

## **19.8 Adding Parties**

This Agreement may be executed in any number of counterparts.

If the Parties to this OA decide by Consensus, a Signatory to the GIA Deed may become a party to this OA by executing the accession document in a form approved by the GIA Secretariat, and lodging it with the GIA Secretariat.

## **PART C: READINESS**

### **20 PREAMBLE**

Part C only applies if this OA is an OA that includes readiness activities under Part A clause 1.

The parties will work together to achieve the agreed outcomes for readiness as specified in Part A clause 5.

### **21 READINESS ACTIVITIES**

Readiness activities will focus on the SROs detailed in Part A clause 4.

The Parties will jointly monitor readiness activities and individual project plans will be developed for each readiness activity setting out amongst other things, the objective, targets, expected outcomes, milestones, budget and resources required. A summary of each agreed project will be recorded in accordance with Part F clause 2 of this OA.

Readiness plans completed under the ARWP and approved by the Parties will be listed in accordance with Part F clause 2 of this OA.

The ARWP will be managed by the Administrator.

### **22 READINESS DECISION MAKING**

Readiness decisions will be by Consensus. Cost sharing commences from the date when the Parties decide on the readiness activities to be undertaken. See also Schedule B, Interim Arrangements.

### **23 FINANCE**

#### **23.1 Cost Shareable Activities**

The Parties have agreed the type of readiness activities that are cost shareable and these are set out in Part F clause 5 of this OA.

For readiness activities, the extent to which in-kind Contributions will be accepted shall be recorded in each project brief.

#### **23.2 Funding administration**

##### **23.2.1 Role of Parties and budget holding**

As provided for in clause 5.2.1 of the Deed, readiness activity costs will be budgeted and allocated by agreement of the Parties prior to being incurred. Each individual project plan will set out the budget held by each Party for the readiness activity.

##### **23.2.2 Payment for readiness activities**

The process for reconciling actual and forecast readiness expenditure will be that, based on the agreed cost share, MPI will invoice or credit each other Party on a quarterly basis 1/4<sup>th</sup> of their estimated share for the first 3 quarters of the year with the final quarter (April – June) being the wash-up of the difference between actual and annual expenditure forecast. Should

actual costs incurred differ markedly from the forecast, the expenditure should be re-forecast and agreed by the Parties. This process may be varied in respect of an Industry Party by agreement between MPI and that Party.

## **PART D: RESPONSE**

### **24 PREAMBLE**

Part D only applies if this OA is an OA that includes response activity under Part A clause 1.

The Parties have agreed the type of response activities that are cost shareable and these are set out in Part F clause 6.

The parties will work together to achieve the agreed outcomes for response as specified in Part A clause 5. Any response to SROs impacting an Industry Party will be delivered under MPI Response Frameworks (Part F clause 4).

Pre-agreed response plans for SROs (listed in Part F clause 4) impacting an Industry Party will be utilised during a biosecurity response to inform the development of response documentation as required.

### **25 RESPONSE DECISION MAKING**

Response decisions will be by Consensus and will be noted in the Response Governance minutes.

### **26 COMMENCEMENT OF RESPONSE COST SHARING**

Response cost sharing commences when the Parties decide to initiate a response, at which point each Party will nominate a Designated Representative to join Response Governance. See also Schedule B, Interim Arrangements.

### **27 DEPLOYMENT OF RESOURCES DURING RESPONSES**

Resources from the Parties (including wider sector resources) will be deployed wherever possible into responses, including deployment of field capability through the National Biosecurity Capability Network (NBCN), where these resources are cost-effective and fit for purpose (including personnel with appropriate training and experience).

Subject to complying with its obligations under Government procurement rules, MPI will support opportunities for appropriately trained and experienced Industry Party personnel, or other appropriately trained specialist personnel from associated parts of the industry to be deployed into other work streams (e.g. intelligence, planning etc.) during responses.

### **28 CONTACT DETAILS FOR DESIGNATED REPRESENTATIVES FOR RESPONSES**

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

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

### **29 ABSENT DECISION MAKERS DURING A RESPONSE**

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

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

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

### **30 RESPONSE FISCAL CAP**

#### **30.1 Fiscal Cap**

This clause 30 only applies if the Parties have agreed to set a fiscal cap for response for one or more of the Industry Parties under Part A clause 8 of this OA.

Each Industry Party's total cost share of all responses during the term of this OA including any renewal shall not exceed that Party's response fiscal cap derived in accordance with clause 2 of Schedule A (as varied by agreement from time to time).

#### **30.2 Reaching and reviewing fiscal caps**

**Individual Industry Party:** As an Industry Party's response cost share approaches that Party's response fiscal cap, that Industry Party will consider whether or not it is able to take on further funding commitments and increase its response fiscal cap and will notify the Governance Group accordingly. If the Industry Party is unable to take on further funding commitments and does not agree to increase its response fiscal cap, it may immediately withdraw from the response and Part B clause 10.1 shall apply. For the avoidance of doubt, the response can continue without that Party's participation.

**Industry Parties Collectively:** If the total of the Industry Parties portion of the response expenditure approaches the aggregate of the Industry Parties' then current response fiscal caps, the Parties (through Response Governance or the Governance Group as appropriate) will review the objectives for those response activities. If the Parties decide to continue the response activities and forecast that further expenditure will likely exceed fiscal caps, then those Industry Parties shall meet to agree to new fiscal caps as required. If as a result, aggregate fiscal caps are exceeded and not increased, MPI may review its commitment to continuing those response activities under this OA.

If the Parties otherwise decide that fiscal caps need to be reviewed, the Parties will meet to review and agree new fiscal caps.

Any variation to fiscal caps will be recorded by the Administrator.

In-kind Contributions to response activities can be included in the amounts a party is considered to have contributed towards reaching its fiscal cap and are subject to the audit provisions in Part B clause 12.

## **31 COMPENSATION**

### **31.1 Compensation claims**

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

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

Compensation payments made by MPI under section 162A are a cost shareable response activity under this OA.

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 as set out in Part B clause 9.1.

### **31.2 Cost shares and recovery for compensation costs**

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

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

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

Where the Industry Party withdraws from a response, it will only be liable to pay cost share for compensation [REDACTED] which is known or forecast as at the date of the withdrawal, and is subsequently paid by MPI.

## **32 FUNDING ADMINISTRATION**

### **32.1 MPI’s collection role**

During a response MPI will administer response activity costs to calculate the Industry Party’s response cost contributions based on the agreed response cost shares.

MPI will pay for response costs and apportion the industry share of the response cost as per Part B clause 9. The Industry Party will pay its share of the response costs, quarterly in arrears or as otherwise agreed between MPI and that Party. In kind contributions will be counted towards Industry payments when agreed in advance and verified.

## PART E: DEFINITIONS

### Interpretation

In this OA, unless the context requires otherwise:

- (i) The singular includes the plural and vice versa. For example, if this OA has only two Parties, references to “the other Parties” shall be read as references to “the other Party”;
- (ii) References to persons include all other entities and associations and vice versa;
- (iii) References to clauses that are not accompanied by a reference to a Part, a Schedule or the GIA Deed are references to clauses numbered consecutively from Part B through to D.
- (iv) If this OA is for readiness only, references to readiness and response are references to readiness only. If this OA is for response only, references to readiness and response are references to response only;
- (v) Money is New Zealand dollars and amounts are stated exclusive of GST;
- (vi) Italics are for guidance only;
- (vii) In the case of any conflict or inconsistency between the variable terms in Part A of this OA and any other Part of this OA the variable terms in Part A will prevail.
- (viii) For the avoidance of doubt, where this OA refers to a decision by the Industry Parties only, that decision shall not require MPI regardless of the process by which it is reached.

### Definitions

In this OA, unless the context requires otherwise, the following terms have the meanings specified below. Any terms defined in the Deed but not defined in this Agreement have the same meaning as in the Deed:

Administrator	Means the person approved and funded by all the Parties to administer this Operational Agreement and related documents.
Annual Readiness Work Plan (ARWP)	Means SRO readiness activities and budget agreed to be undertaken by the Parties annually.
Beneficiary	Means a group of businesses comprising of a sector under section 100Y(1) of the Biosecurity Act 1993 that: has been identified by the Parties as knowingly or unknowingly gaining, but not paying for, biosecurity benefits generated by the

	readiness and response activities detailed in this Operational Agreement.
Business Days	Means any day not being a Saturday or Sunday, a public holiday observed in New Zealand, or the period from 26 to 31 December each year.
Chair	Means, as the case requires, the: <ul style="list-style-type: none"> <li>(a) Chair of the Governance Group (if any);</li> <li>(b) Chair of Response Governance for SRO responses (refer to the GIA Response Guide for terms of reference).</li> </ul>
Commencement Date	Has the meaning given in Part A clause 3.
Conflict of Interest	Means any conflict of the Party's interests or obligations with its responsibilities under this OA, such that the Party's independence, objectivity or impartiality can be called into question. A conflict of interest may be actual (where the conflict currently exists), potential (where the conflict is about to happen, or could happen), or perceived (where other people may reasonably think that a person is compromised).
Consensus	Does not have the meaning given in the Deed but instead means if there are only two Parties that both Parties have reached a decision, and if there are more than two Parties that all Parties have either reached a decision or confirm they are not opposed to the decision reached, unless Part A specifies that Consensus will be by the Expanded Consensus decision making process in which case it shall have the meaning set out in Part B clause 8.5.
Designated Proxy	Means a person with written and current authorisation to act for another.
Designated Representative	Means the individual who has the authority and delegations to make decisions on behalf of a Party under this Operational Agreement. This also includes an alternate individual of the Party.
GIA Deed or Deed	Means the latest version of the Government Industry Agreement for Biosecurity Readiness and Response made pursuant to the Biosecurity Act 1993.
GIA Confidentiality Deed	Means the confidentiality deed executed by GIA Deed Signatories.

GIA Response Guide	Means the document of that name (on the GIA Secretariat website <a href="http://www.gia.org.nz">www.gia.org.nz</a> ) for how joint decision making for biosecurity responses works in practice between the Parties, which may be updated from time to time.
GIA Secretariat or 'Secretariat'	Means the GIA Secretariat established under the GIA Deed and with the functions described in clause 4.2 of the GIA Deed.
Governance Group	means the group specified under Part A clause 9 of this OA.
Industry Party	Means an Industry Signatory which is a Party to this Operational Agreement and "Industry" means those Industry Signatories collectively.
Industry Readiness Cost Share	means the percentage of total shareable readiness costs attributed to Industry under Part A clause 6.
Industry Response Cost Share	means the percentage of total shareable response costs attributed to Industry under Part A clause 7.
In-kind Contribution	Means contributions for cost sharable OA Activities that take the form of goods or services in place of cash.
MPI	Means the Ministry for Primary Industries being the "Ministry" as defined in the Biosecurity Act 1993.
Multi-Sector OA	Means an OA between MPI and two or more Industry Parties, usually in respect of a single SRO.
OA Activity/Activities	Means readiness activities and/or response activities as the case may be.
Operational Agreement or OA or Agreement	Means this Operational Agreement, including the Schedules.
Parties	Means the parties to this OA.
Present / Presence	Designated Representatives will be considered Present when, having the right to participate in the decision, they are in attendance in person, on the phone or other electronic means or through a Designated Proxy until they are recorded as having ceased to be available for two way communication.
Readiness activities	Means as defined in the Biosecurity Act 1993.
Response activities	Means as defined in the Biosecurity Act 1993.

Response Governance	Means the group of Designated Representatives from the Parties for response decision making.
Sector OA	Means an OA between a single Industry Party and MPI, usually in respect of multiple SROs affecting a single industry sector.
Sector Risk Organism (SRO)	Means an unwanted organism and includes an organism listed in Part A clause 4 of this OA.

Note: several terms are defined elsewhere in this OA.

## PART F: APPENDIX

### 1 OA PRINCIPLES

1. *Achieving consistency with the principles in clause 2.2 of the GIA Deed.*
2. *Focus on outcomes – Parties agree the outcomes to be achieved, share accountability for achieving those outcomes (including quality assurance), make strategic decisions jointly, and agree how costs will be shared.*
3. *Focus on results and value – Delivery is as efficient and effective as possible, systems and capability are fit for purpose, there is minimal bureaucracy, and all of these culminate in results (achievement of outcomes).*
4. *Responsibilities and expectations to be clear - Areas of responsibility and expectations of each party (including the roles to be played and the standard of services to be delivered) are clear and agreed up front wherever possible.*
5. *Decisions to be underpinned by sound science and risk assessment – Decisions are based on sound science and expert risk assessment, with priorities for readiness work based on modelling the most likely scenario.*
6. *Biosecurity systems approach – All points of intervention need to be evaluated to ensure the overall biosecurity system arrangements for SROs under this OA are effective, and readiness and response decisions should take into account how risk can best be managed across the biosecurity system.*
7. *Focus on creating incentives to drive good biosecurity behaviour – The incentives are strong for each Party to improve its own biosecurity, and there is alignment with MPI's Biosecurity Funding Principles; the latter establish that those required to pay for a biosecurity service should be able to do at least one of the following:*
  - (i) *Change their behaviour to reduce the costs of the service or the risks that give rise to the need for it over time;*
  - (ii) *Assess whether the true benefits of the service at its current levels outweigh its costs on an on-going basis, and thereby influence its on-going provision; and/or*
  - (iii) *Influence whether the service at its current levels is being provided in the most cost effective manner.*
8. *Drive for innovation – Innovation is encouraged and fostered, to enable better outcomes and greater value for money to be achieved over time.*
9. *Focus on building commitment – At the end of the day the operational agreement (and approach to SRO management under this) needs to have the confidence and commitment of the Parties and their constituents, and maintain or grow confidence in New Zealand's biosecurity arrangements.*
10. *Using what exists and achieving leverage –Existing resources and capability are used where possible (i.e. where these are, or can be developed to be, fit for purpose),*

*Parties are able to work to their strengths, and investment in SRO readiness is leveraged as far as possible to address other biosecurity risks. Noting that generic systems, tools and capability provide a foundation for effective response to SROs under this agreement and other pests and diseases, provided these allow for flexibility and innovation.*

11. *Continuous improvement - Amendments to the OA will look to improve the efficacy and efficiency of all aspects within the scope of this OA on an ongoing basis.*

## **2 ANNUAL READINESS WORK PLAN**

The ARWP is a summary table of agreed projects and links to detailed project briefs, approvals and other documentation and is to be held by the Administrator when agreed by the Parties.

The Parties will develop an initial readiness work plan no later than 31 December 2017, and all readiness plans and activities will subsequently be held by the Administrator. This will include consideration of a plan to develop a National Long Term Management Programme for BMSB.

## **3 TRANSITIONAL DISCOUNTS**

Transitional discounts relevant to the delivery of this OA are recorded below. These are based on the Crown's current policy on transitional discounts to assist industry adopt cost sharing for agreed OA Activities under the GIA Deed. Any review of this policy will trigger review by the Parties of the transitional discounts relevant to the delivery of this OA.

Industry cost shares for readiness and response are subject to the transitional discounts as detailed below:

### **Transitional Readiness Discounts**

<b>Year</b>	<b>Readiness Discount</b>
2017/18	40%
2018/19	20%
2019/20	20%
2020/21 and onwards	0%
Transitional discounts are applied after: <ul style="list-style-type: none"> <li>(i) The exacerbator contribution [Deed clause 3.3.1] has been applied</li> <li>(ii) The agreed industry cost share has been applied</li> </ul> Transitional discounts only apply for costs incurred in the specified year. E.g. the 2017/18 discount only applies to costs incurred in the 2017/18 financial year.	

## Transitional Response Discounts

Year	Responses Discount
2017/18	60%
2018/19	60%
2019/20	40%
2020/21	40%
2021/22	20%
2022/23	20%
2023/24 onwards	0%
Transitional discounts are applied after: <ul style="list-style-type: none"><li>(i) The exacerbator contribution [Deed clause 3.3.1] has been applied</li><li>(ii) The agreed industry cost share has been applied</li></ul> Transitional discounts only apply for costs incurred in the specified year. E.g. the 2017/18 discount only applies to costs incurred in the 2017/18 financial year.	

## 4 SRO RESPONSE ARRANGEMENTS

### Context

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

### MPI Response Frameworks

**Policy framework:** The Biosecurity Response Policy sets out how the Ministry manages biosecurity responses to risk organisms that could harm people, the environment, and/or the economy.

**Process framework:** New Zealand's generic response arrangements are documented in the Biosecurity Response Knowledge Base as held by MPI.

**Organisational response framework:** The MPI single scalable response model (SSRM) is the framework used across all the areas of its business for incidents or issues requiring a response, including biosecurity, food and trade responses, and adverse events.

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

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

## 5 READINESS COST SHAREABLE ACTIVITIES

The readiness activities that are cost shareable under this OA are listed below.

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	Procurement cost of outsourced surveillance activities based on actual and reasonable cost. 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 administration part of surveillance cost/SME personnel cost.
All costs related to the development and maintenance of CIMS contingency (readiness) plans under an OA.	Yes	Contingency planning for management of business continuity risks in the event of an incursion.
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.

Description	Shareable		Comment
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 – 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.
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 National Biosecurity Capability Network (NBCN) including provision of MPI's		No	Industry Parties' minimum commitment is to identify appropriate industry resources for readiness and responses activities, along with utilising agreed deployment approaches e.g. NBCN.

Description	Shareable		Comment
National Response Team (NRT) base training.			
Yes = An OA cost shareable readiness activity No = Not an OA cost shareable readiness activity			

## 6 RESPONSE COST SHAREABLE ACTIVITIES

The response activities that are cost shareable under this OA are listed below.

Description	Shareable		Comment
All diagnostic facility, personnel and consumable costs. This excludes investigations.	Yes		When used for response work. A unit charge per diagnostic activity or per day cost per person likely to best way to capture cost. Only other cost would be transport of the PC2 container lab or use of an on-site facility.
All response personnel costs (including backfill and contract costs).	Yes		Apply to all Parties' personnel used during a response MPI minimum commitment includes Response Manager labour costs.
All response consumable related costs.	Yes		
All response facilities related costs (when outside of Pastoral house or non MPI facilities).	Yes		When used for a response.
The costs relating to personnel used from the National Biosecurity Capability Network (NBCN).	Yes		All NBCN personnel utilised during a response including training (excluding NRT).
Specific marketing and communications activities to support achievement of response objectives.	Yes		E.g. production and circulation of response collateral such as fact sheets, flyers, bill boards to increase passive surveillance during the response to support response objective.
Compensation payments as a result of a result of damage to property or controls over the movement of goods, caused by the exercise of powers under the Biosecurity Act 1993 (excluding the cost of administering compensation), including legal costs as a result of compensation claim challenges.	Yes		But only to any limit set out in Part A, clause 8.

Response management and all response activities associated with the biosecurity response; including: <ul style="list-style-type: none"> <li>• Response operations (including deployment of capability through the National Response Capability Network);</li> <li>• Logistics; Planning and intelligence (except for preparations of policies and briefings).</li> </ul>	Yes		
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	However will be cost shareable when a role could be carried out by others (e.g., an MPI appointed authorised person).

Administering activities (i.e. (Policy and Processing) associated with compensation.		No	
Yes = An OA cost shareable response activity No = Not an OA cost shareable response activity			

## 7 STANDARD HOURLY RATES AND CHARGES FOR UNDERTAKING READINESS AND RESPONSE ACTIVITIES

The hourly rates for the Parties' contributions (in kind or payable) to readiness and response costs to specific roles are detailed in Table 1 below, unless activities equate to published MPI hourly rates and unit charges as these published rates and charges will apply, for example MPI market access hourly rates and laboratory diagnostic testing charges.

For Readiness activities, the cost to outsource services to third party suppliers to undertake a specific readiness activity will be agreed to by the Parties and detailed in the Annual Readiness Work Plan for each project.

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

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

**Table 1 Hourly rates for specific roles**

Range	Role	Hourly Rate (\$) Excluding GST
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
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 will be subject to regular review and approval by the Parties.		

## **SCHEDULE A: INDIVIDUAL INDUSTRY PARTY COST SHARES AND FISCAL CAPS**

This Schedule records individual Industry Party cost shares as required by Part B clause 9.2 of this OA calculated in accordance with the GIA Deed, and how individual Industry Party response fiscal caps as permitted by clause 5.1.12 of the GIA Deed shall be derived.

### **1 INDUSTRY VALUE TO DETERMINE INDUSTRY SECTOR COST SHARES FOR READINESS AND RESPONSE**

The apportionment of individual industry sector cost shares of the Industry Readiness Cost Share and Industry Response Cost Share for this OA will be calculated and decided annually and will be based on:

1. the average of four consecutive years of industry sector value of domestic and export sales of fresh produce at the first-point-of-sale (**FPOS**) as a percentage of total sector value impacted by SROs to which this OA applies.
2. The application of an impact rating to consider three criteria, as follows –
  - Crop host preferentiality
  - Production impacts
  - Downstream implications

Each Industry Party to this OA will determine its own industry sector value and impact assessment using the agreed criteria and will provide the methodology and rationale used for calculating their sector value FPOS to the Governance Group to agree.

The Parties to the OA will jointly develop and decide estimates of the FPOS of each non-Signatory beneficiary to determine cost shares for the non-Signatory beneficiaries. The Parties will also review annually or as otherwise agreed the list of identified non-Signatory beneficiaries listed in Table 1.

Industry sector values will be calculated and provided annually by 30 April and decided by 1 July and will be based on the latest available annual data. The values as at 1 July will be used to determine the industry cost shares for the readiness and response activities for the next 12 months and Table 1 updated accordingly. If the Parties cannot decide the industry sector value calculations, then the most recent 4 year FPOS calculation will remain in effect until the Parties reach Consensus.

Table 1: Determining industry sector values and industry sector proportion of readiness and response cost shares.

Industry Sector	Industry Party or non-signatory beneficiary***	FPOS four year average (2012-2016) (\$000,000's)	Impact Rating *	Industry Sector proportion of Industry readiness and response cost shares **
Avocado	NZ Avocado Growers Association In	116.22	Low	0.8%
Beans - Fresh	Vegetables NZ Inc	4.00	Medium	0.1%
Capsicum	Vegetables NZ Inc	77.00	High	3.2%
Carrots	Vegetables NZ Inc	47.8	Very low	0.0%
Cucurbits (Cucumbers, Melons, Pumpkin)	Vegetables NZ Inc	61.90	High	2.6%
Egg Plant	Vegetables NZ Inc	8.50	High	0.4%
Kiwifruit/berries	Kiwifruit Vine Health Ltd	1033.03	Medium	21.5%
Kiwiberries	Kiwifruit Vine Health Ltd	2.42	Medium	0.1%
Lettuce	Vegetables NZ Inc	44.00	Medium	0.9%
Nashi	Pipfruit NZ	1.63	Very High	0.1%
Peas – Fresh	Vegetables NZ Inc	4.00	Low	0.0%
Pipfruit (apples, Pears)	Pipfruit NZ	570.29	Very High	39.6%
Sweetcorn	Vegetables NZ Inc	12.00	Low	0.1%
Tomatoes - Greenhouse	Tomatoes NZ Inc	104.69	High	4.4%
Winegrapes/Producers	NZ Winegrowers Inc	372.00	High	15.5%
Apricots	Non-signatory beneficiary	15.12	Medium	0.3%
Asparagus	Non-signatory beneficiary	7.10	Medium	0.1%
Barley	Non-signatory beneficiary	120.00	Very Low	0.0%
Beans - Processed	Non-signatory beneficiary	7.00	High	0.3%
Beetroot - Processed	Non-signatory beneficiary	4.00	Very Low	0.0%
Blackcurrants	Non-signatory beneficiary	8.25	Very Low	0.0%

Boysenberry	Non-signatory beneficiary	6.88	Low	0.0%
Beans - crop	Non-signatory beneficiary	0.04	Low	0.0%
Blueberries	Non-signatory beneficiary	34.75	High	1.4%
Brassica	Non-signatory beneficiary	17.00	Medium	0.4%
Butternut Squash	Non-signatory beneficiary	57.13	Medium	1.2%
Carrots - Processed	Non-signatory beneficiary	10.00	Very Low	0.0%
Cherries	Non-signatory beneficiary	56.55	Medium	1.2%
Feijoa	Non-signatory beneficiary	2.33	Medium	0.0%
Hops	Non-signatory beneficiary	16.3	Low	0.1%
Maize	Non-signatory beneficiary	310.00	Low	2.2%
Olives	Non-signatory beneficiary	7.7	Low	0.1%
Peaches & Nectarines	Non-signatory beneficiary	25.87	Very High	1.8%
Peas - crop	Non-signatory beneficiary	25.00	Low	0.2%
Peas - Processed	Non-signatory beneficiary	26.00	Low	0.2%
Persimmon	Non-signatory beneficiary	11.48	Medium	0.2%
Plums	Non-signatory beneficiary	8.35	Medium	0.2%
Radish	Non-signatory beneficiary	25.00	Medium	0.5%
Raspberry	Non-signatory beneficiary	3.00	High	0.1%
Sunflower	Non-signatory beneficiary	0.10	Low	0.0%
Tamarillo	Non-signatory beneficiary	2.08	Medium	0.0%
Tomatoes - Processed	Non-signatory beneficiary	8.10	Medium	0.2%
Wheat	Non-signatory beneficiary	150.00	Very Low	0.0%
Sweetcorn - Processed	Non-signatory beneficiary	13.00	Low	0.1%
Amaranthus, Helianthus, Phalaenopsis	Non-signatory beneficiary	0.32	Medium	0.0%

\*the impact rating carries the meaning and impact determined by the interim BMSB Council and agreed by the Parties when negotiating this operational agreement. The master version of the assessment is held by the GIA Secretariat

\*\* A recorded impact rating of 0/0% indicates that there is negligible assessed impact at the commencement date. It does not mean there is no assessed impact.

\*\*\* This column may include individuals with other statuses such as Beneficiaries and former-Parties.

## **2 FISCAL CAPS**

The response fiscal cap of each Industry Party is a dollar amount calculated on the basis of that Party's proportion of Industry Response Cost Share assuming a total response cost (MPI and Industry) of [REDACTED] in total over the duration of the OA (including renewal), based on the following frequency of events:

- For a level 1 response – up to 3 during the term of the OA
- For a level 2 response – up to 1 during the term of the OA
- For a level 3 response – up to 1 during the term of the OA

The Administrator will maintain an up to date record of each Industry Party's response fiscal cap, including the calculation methodology.

For the avoidance of doubt, fiscal caps will apply irrespective of whether the assumptions concerning total cost and frequency of events prove to be accurate or not. Fiscal caps may only be changed in accordance with this OA.

## **SCHEDULE B: INTERIM ARRANGEMENTS**

This Schedule takes precedence over any other clauses in the OA and applies despite any provision of the Deed. The intention of this Schedule is to delay portions of the OA from coming into effect while still enabling collaboration during the interim period.

### **1 DEFINITIONS**

“Readiness Cost Sharing Commencement Date” means the date the mechanism for MPI to effectively recover costs from non-Signatory beneficiaries is in place.

“Response Cost Sharing Commencement Date” means the date the mechanism for MPI to effectively recover costs from non-Signatory beneficiaries is in place and the Parties confirm by Consensus that the Crown has provided them with acceptable protection from potential liability in relation to joint decision-making for responses.

“Voluntary Contribution” has the meaning given below.

### **2 COMMENCEMENT OF COST SHARING**

Notwithstanding anything in this OA, cost-sharing for Industry Parties for readiness activities will only commence on the Readiness Cost Sharing Commencement Date.

Notwithstanding anything in this OA, cost-sharing for Industry Parties for response activities will only commence on the Response Cost Sharing Commencement Date. The Parties will by 30 June 2018 (or earlier if protection is in place) in good faith review the protection being provided or offered by the Crown from potential liability in relation to joint decision-making for responses. If that review does not result in a Consensus decision that the protection is acceptable or unacceptable, any Party may initiate a Dispute for the purposes of Part B clause 17, and in particular for reference to formal mediation.

### **3 MPI RESPONSE DECISION MAKER UNTIL RESPONSE COST SHARING COMMENCEMENT DATE**

For the reasons referred to in Part B clause 5 (Context) of this OA, and notwithstanding Part B clauses 8.4 and 8.5 of this OA, until the Response Cost Sharing Commencement Date, biosecurity response decisions made under this OA will be made by MPI. MPI’s decisions shall be informed by the views of those Present and whether or not Consensus has been reached, but MPI shall have final decision-making rights and takes full responsibility for all response decisions. For the avoidance of doubt this clause applies to biosecurity response decisions only, and does not apply to variation of this OA (including the Schedules) or to attaining Consensus as to whether the Response Cost Sharing Commencement Date has occurred.

### **4 VOLUNTARY CONTRIBUTIONS**

The Parties may have made voluntary financial or in kind contributions (“Voluntary Contributions”) towards additional readiness activities prior to the Readiness Cost Sharing Commencement Date.

Each Party will ensure that its Voluntary Contributions made before the Readiness Cost Sharing Commencement Date are lodged and recorded in a register held by the Administrator. For the June wash-up for the preceding 12 month period during which the Readiness Cost

Sharing Commencement Date occurs each Industry Party's actual expenditure shall be deemed to include any Voluntary Contributions they have made in that period.

The Governance Group will determine the work programme such Voluntary Contributions will support.