



## **Operational Agreement Standard Contract**

**DRAFT**

**Date: March 2014**

### **Document control**

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## Important note to authors

This standard contract has been drafted to assist the development of Operational Agreements (OAs) under the GIA Deed. The text should be used in all OAs, as relevant. It can be amended by agreement of the contracting Parties. For example, where any clauses in this standard contract are not relevant to a specific OA, they can be removed.

The parties negotiating an OA should refer to the Operational Agreement Guidance in the GIA Handbook. This guidance document prompts consideration and discussion of provisions to be included in the OA and reflects both the intent and provisions of the Deed.

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

### References:

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

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

## An Operational Agreement

Between

The Ministry for Primary Industries

And

***[Insert industry organisation(s)]***

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

Ministry for Primary Industries  
Manatū Ahu Matua



*[Insert industry  
organisation logo here]*

Ministry for Primary Industries  
Pastoral House, 25 The Terrace, PO Box 2526  
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*[Insert name, address and contact details of  
signing industry organisation here]*

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## 1. The Parties signing the agreement

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

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

## 2. Lodgement

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

## 3. Introduction

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

### 3.1 Purpose

### 3.2 Specific organisms of concern

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

- Organism X
- Organism Y

### 3.3 Outcomes for readiness and response

### 3.4 Outcomes relating to the wider biosecurity system

### 3.5 In the event of inconsistency with the Deed

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

### 3.6 Replacement of previous agreements on this matter

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

## **4. Governance**

### **4.1 OA Governance Group**

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

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

### **4.2 Decision-making**

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

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

### **4.3 Disputes**

#### **4.3.1 Dispute Notice**

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

#### **4.3.2 Initial meeting**

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

#### **4.3.3 Mediation**

If the Parties to this OA have not resolved the dispute within one month of the giving of the Dispute Notice or an alternative agreed time then any affected Party may refer the dispute to mediation by way of a Mediation Notice to all OA Parties. The mediation will be conducted as soon as possible by a sole mediator and otherwise in accordance with the LEADR New Zealand Incorporated (LEADR) Standard Mediation Agreement. The mediator and his/her fee may be agreed by the Parties but failing such agreement within 10 business days of the giving of the Mediation Notice, the mediator will be selected, and the mediator's fee determined, by the chair of LEADR or his/her nominee. The mediation will be discontinued if any affected Party gives an Arbitration Notice.

#### **4.3.4 Arbitration**

If the Parties have been unable to resolve the dispute within two months of the giving of the Dispute Notice, or such later time as they



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

#### 4.3.5 Costs

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

#### 4.3.6 Continuation

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

### 4.4 New Parties to this OA

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

### 4.5 Withdrawal and removal

#### 4.5.1 Withdrawal by a Party

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

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

#### 4.5.2 Removal of Industry Party

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

- (a) No longer meets the eligibility criteria to be an industry organisation under clause 100ZA of the Biosecurity Act 1993; or
- (b) Has materially breached its commitment under this OA and:
  - i. The breach cannot be remedied; or
  - ii. If the breach can be remedied, has failed to remedy the breach within two months of receiving Formal Notice requiring it to do so.

#### 4.5.3 Effect of withdrawal and removal

If any Party withdraws or is removed from this OA:

- (a) That Party will remain liable up to and including the date of withdrawal or removal, for any cost-sharing obligations and liabilities arising from this OA;
- (b) The remaining Parties will not be liable for any loss caused to or suffered by the withdrawing Party as a result of its withdrawal or removal; and
- (c) The remaining Parties will continue to be bound by the OA, as long as the performance of their obligations is not rendered impossible by the withdrawal of the Party from the OA.

#### 4.6 Liability

No Party will be liable to any other Party, under the law of contract, tort, equity or otherwise, for any damages, whether direct or indirect, arising out of or in connection with this OA, except for such liability arising due to:

- (a) Non-payment of any amount due under this OA (up to the amount owed);
- (b) Any wilful default, gross negligence, fraud or breach of clause 4.12 (Confidentiality);
- (c) Acts or omissions causing liability that are not protected from liability under clause 163 of the Biosecurity Act 1993.

#### 4.7 Cessation of this OA

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

#### 4.8 Performance measurements

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

#### 4.9 Activity audits and recordkeeping

##### 4.9.1 Recordkeeping

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

##### 4.9.2 Audit purpose

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

- (a) Auditing any aspect of either Party's compliance with the clauses of any funding agreement for this OA and/or any

elements of either Party's financial administration of such funding agreement.

- (b) Evaluating any agreed elements of the process steps and activities which contribute to the delivery of the agreed outputs for the specific activities for an operational agreement (those activities directed and agreed under relevant schedules including Schedule I: Readiness work and work plans; Schedule J: Training and education; Schedule L: Market access recovery); Schedule M: Response strategy and related plans.

#### 4.9.3 Audit arrangements

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

### 4.10 Review and reporting

#### 4.10.1 Reports

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

#### 4.10.2 Continual improvements

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

### 4.11 Communications

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

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

### 4.12 Confidentiality

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

- (a) To its professional advisers or personnel directly concerned with the implementation or operation of this OA and to the extent necessary for performing its obligations under this OA and are bound by equivalent confidentiality agreements;
- (b) As required by law, court order, other legal obligation, or parliamentary rules or convention;
- (c) Under the Official Information Act 1982;
- (d) To the extent necessary to subcontract to third parties, as approved by the OA Parties, in accordance with this OA;

- (e) Where the information subsequently becomes part of the public domain through no fault of the Party receiving the information; or
- (f) With the prior written consent of the other Parties.

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

#### **4.13 Privacy**

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

#### **4.14 Conflicts of interest**

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

All Parties must be notified immediately in writing of any matter, event or circumstance that gives rise to any conflict of interest (real, perceived or potential). If a conflict of interest does arise, the Parties will endeavour to agree on how it will be managed and record in writing the steps that will be taken to manage the conflict.

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

#### **4.15 Variations**

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

## **5. Readiness activities**

### **5.1 Readiness**

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

The work has taken into account:

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

#### **5.1.1 Stopping readiness activities**

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

#### 5.1.2 Training and education

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

#### 5.1.3 Research and development

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

#### 5.1.5 Negotiating market access recovery

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

## 6 Response activities

### 6.1 National Biosecurity Response System

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

### 6.2 Pre-agreed response strategies or plans

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

### 6.3 Contact details for response role holders

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

### 6.4 Investigations to determine biosecurity risk

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

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

### 6.5 Containing biosecurity risks pending response decisions

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

## **6.6 Deciding whether to respond**

The Parties will decide whether to respond considering the:

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

## **6.7 Decision-making during response**

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

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

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

## **6.8 Absent decision-makers**

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

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

## **6.9 Delegation of statutory powers**

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

## **6.10 Effect of fiscal caps**

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

## **6.11 Withdrawal from a response**

## **6.12 Whole-of-Government responses**

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

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

# **7. Finance**

## **7.1 Non-Signatory beneficiaries**

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

## **7.2 Deed Signatory beneficiaries not party to this OA**

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

## **7.3 Cost-shares**

### **7.3.1 Agreed cost-shares**

The agreed cost-shares for this OA are:

MPI:

[Name Industry Party 1]:

[Name Industry Party 2]:

[Name Industry Party 3]:

[Name Industry Non-Signatory 1]

[Name Industry Non-Signatory 2]

### **7.3.2 Renegotiating cost-shares**

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

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

#### **7.4 Fiscal cap**

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

#### **7.5 In-kind contributions**

#### **7.6 Compensation**

#### **7.7 Funding administration**

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

#### **7.8 Payments and reconciliation**

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

#### **7.9 Transitional discounts**

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

#### **7.10 Exacerbators**

### **8. Other provisions**

### **9. Glossary**

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



- |     |               |   |
|-----|---------------|---|
| 9.3 | Deed          | The Government Industry Agreement for Biosecurity Readiness and Response. Version 1.0. June 2013.   |
| 9.4 | Organism Type | Organisms of a similar biology, likely to be members of the same Order, which can be treated generically for the purposes of achieving particular biosecurity outcomes. |
| 9.5 | Parties       | The Parties to this OA as recorded in clause 1 of this OA.  |

## 10. Contact details

## 11. Execution

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

)  
)  
)  
)

---

Signature

in the presence of:

---

Witness Signature

---

Witness name (printed)

---

Location

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

)  
)  
)  
)

---

Signature

in the presence of:

---

Witness Signature

---

Witness name (printed)

---

Location

**[Copy the last section for additional industry signatories]**

# Schedules

**Schedule A** Specific organisms of concern in this OA

**Schedule B** OA Governance Group and Terms of Reference

**Schedule C** Governance and decision-making

**Schedule D** Performance indicators and milestones

**Schedule E** Audit

**Schedule F** Annual report template

**Schedule G** Communications strategy

**Schedule H** Conflict of interest declarations

**Schedule I** Readiness work and work plans

**Schedule J** Training and education

**Schedule K** Research and development plan

**Schedule L** Market access recovery

**Schedule M** Response strategy and related plans

**Schedule N** Funding agreement

**Schedule O** Application of transitional discounts