



Commercial Plantation Forestry Sector Operational Agreement for Readiness

Date: 2 July 2018

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PART A: VARIABLE TERMS

This Part must be completed separately for each OA.

1 INTRODUCTION

This OA is a Single Sector OA.

This OA is for Readiness activities.

2 THE PARTIES SIGNING THIS OPERATIONAL AGREEMENT

The Parties to this OA are:

Ministry for Primary Industries (MPI)

New Zealand Forest Owners Association Incorporated (NZFOA)

3 TERM

The Commencement Date of this OA is: 2 July 2018.

Initial term: 5 years.

Renewal terms: 2 further terms for 2 years each.

4 SECTOR RISK ORGANISMS (SRO'S)

This Readiness OA covers all pests and pathogens that are a threat to radiata pine, Douglas-fir, cypress and some Eucalyptus species (commercial plantation forestry species) as identified in the [forestry sector biosecurity profile](#) (ref: Schedule D), and includes the species in the list below.

- *Phytophthora pinifolia* (Dano foliar pini)
- *Fusarium circinatum* (Pine pitch canker)
- *Endocronartium harknesii* (Western gall rust)
- *Lymantria monacha* (Nun moth)
- *Phytophthora ramorum* (Sudden oak death)
- *Bursaphelenchus xylophilus* (Pine wilt nematode)
- *Heterobasidion annosum*

This list provides a point of reference to the types of pests and pathogens that are of concern to the forestry sector, although readiness activities may cover other pests and pathogens.

5 AGREED OUTCOMES

The Parties will work together to achieve the following outcomes:

1. Unwanted organisms are detected and diagnosed early and cost effectively.
2. Readiness activities, which will measurably improve the ability to understand biosecurity risks and respond to biosecurity events, are identified and implemented.

3. The potential impacts of incursions on commercial operations and trade are understood, minimised and based on sound science.
4. Research and development underpins improved readiness and more effective response to biosecurity events.

6 READINESS COST SHARES

When this agreement was established, the estimated benefit share for readiness activities was not agreed by both Parties. However, in the interests of collaboration and working in Partnership, the Parties have accepted a 50:50 cost-share for all readiness activities (ref: Schedule A).

The cost shares between MPI and Industry for readiness activities undertaken under this OA are:

MPI: 50%

Industry: 50%

7 FISCAL CAPS

There is no fiscal cap under and during the term of this OA including any renewal.

8 GOVERNANCE GROUP

This OA will have a governance group called the Forestry Sector Readiness Governance Group.

9 ADMINISTRATION

An Administrator for this OA may be appointed by the parties.

10 CONSENSUS DECISION MAKING

Consensus under this OA shall be achieved by the Ordinary Consensus decision making process. For Ordinary Consensus Part B clause 20.4 shall apply.

11 SCHEDULES

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

Schedule A: Public/Industry Cost Share

Schedule B: Annual Readiness Work Plan

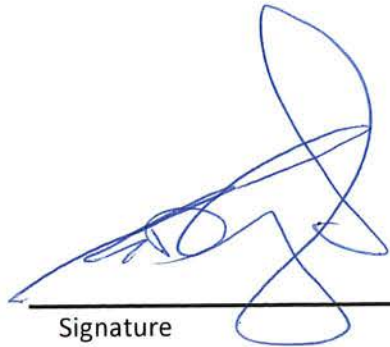
Schedule C: Readiness Plans Relating to the Sector

Schedule D: Forest Sector Biosecurity Profile

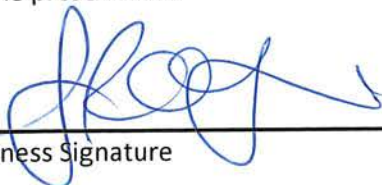
12 EXECUTION

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 Acting Head of Biosecurity New Zealand and Chief Operations Officer, Stephen Gilbert on 2 July 2018.


Signature

in the presence of:


Witness Signature

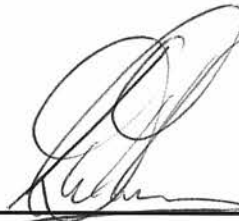
Jen Fagon
Witness name (printed)

25 The Terrace, Wellington.
Location

New Zealand Forest Owners Association
Incorporated, representing the commercial
plantation forestry sector, gazetted for GIA
purposes on the 10 September 2015 and
becoming a Deed Signatory on 5 November
2015.

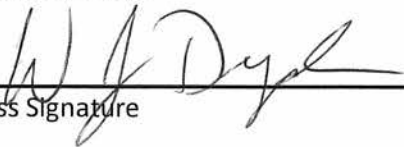
Signed by and on behalf of New Zealand Forest
Owners Association Incorporated, by its Chief
Executive Officer, David Rhodes on 4 July 2018.

Signature



in the presence of:

Witness Signature



William John Dyck
Witness name (printed)

Location

Tauranga

PART B: GENERAL TERMS

13 PURPOSE

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

14 TERM AND ADDITIONAL PARTIES

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 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 14 Business Days before the renewal date that they do not wish this OA to renew, in which case the OA is not renewed and ceases.

The Parties may decide to initiate a formal review of this OA at any time with at least 20 Business Days' notice on such terms as they see fit.

The Parties have agreed that no additional industry parties may be added as parties to this OA. Should further industry parties seek to join this OA then the parties may agree to terminate this OA prior to the expiry of the term of this OA and to agree a multi-sector OA as a replacement.

15 LODGEMENT

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

16 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.

17 CONTEXT REGARDING AGREEMENT

The Parties recognise that the involvement of the Industry Parties in joint readiness activities should provide significant advantages over the pre-GIA Deed arrangements.

Under the pre GIA Deed arrangements, the Industry Party has maintained and fully-funded a readiness programme including surveillance, diagnostics, database management, and strategic research to reduce biosecurity risk. It has also taken responsibility for formal and informal biosecurity readiness training and has staff and contractors fully trained in Coordinated Incident Management Systems. Under the pre-GIA Deed arrangements MPI has also maintained readiness activities.

The long-term fundamental purpose of this OA is to arrange for and foster both Parties' permanent involvement in readiness activities for mutual benefit in return for sharing in certain costs of these activities.

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.

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

19 PRINCIPLES

Guiding principles for this OA are included in Part E: OA Principles. These OA principles are not legally binding.

20 AGREEMENT ADMINISTRATION

20.1 Decision Making

In this OA:

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

20.2 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.

20.3 Forestry Sector Readiness Governance Group

The body specified in Part A clause 8 (“Forestry Sector 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 Forestry Sector Readiness Governance Group will be made up of one Designated Representative from each Party, unless decided otherwise by the Parties.

The Forestry Sector Readiness Governance Group will be the primary forum for the Parties to agree or make decisions.

Subject to this OA, the Forestry Sector Readiness Governance Group shall set their own procedure. This may include an annual review of standard hourly rates and charges for undertaking OA Activities as detailed in Part E, table 6.1.

20.4 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:

The Parties should decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolve the points identified.

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 28 of this Part B.

20.5 OA Administration

The Parties may 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.

20.6 Reporting

The Parties may agree to prepare an annual report of OA Activities. 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.

21 COST SHARES

21.1 Cost shares

The Parties have agreed that where OA Activities are cost-shareable in accordance with the table set out in Part E clause 5, the cost of the relevant OA Activity will be shared between MPI and the Industry Party in accordance with the cost share set out in Part A, clause 6.

Each Party must meet its cost-sharing obligations by meeting its share of the cost-shareable OA Activities.

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

21.2 Renegotiation of cost shares

Cost shares in this OA may be renegotiated by mutual agreement when new information becomes available that materially changes the previous cost-share determination, including where additional Beneficiaries to the OA Activities are identified.

21.3 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 cost-shareable readiness activities as detailed in Part E Table 1 (or as otherwise agreed by the Forestry Sector Readiness Governance Group), and will form part of the financial reconciliation at the end of every year and/or as part of readiness cost reconciliations (which shall be quarterly unless the Parties agree 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.

21.4 Role of GIA Secretariat

Where necessary, 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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 Party 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.

22 WITHDRAWAL AND TERMINATION

22.1 Withdrawal from specific OA Activities

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

If a Party wishes to withdraw, then:

- (i) That Party must provide reasonable written notice to the other Party of its intention to withdraw and the good faith reason(s) for its decision.
- (ii) The remaining Party will provide the withdrawing party with a summary of the likely impact of that withdrawal on the remaining party.
- (iii) The withdrawing Party will undertake in good faith to consider and discuss the likely impact on the remaining Party with that Party before confirming whether or not it will withdraw.
- (iv) If the withdrawal is confirmed, the remaining Party will then decide whether to continue the relevant OA Activity.
- (v) All decisions regarding a withdrawal and the impact will be recorded in the minutes of the relevant meetings.

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

Upon withdrawal the removed Party may continue to attend meetings in respect of that OA Activity with the remaining Party's approval but will lose its 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.

22.2 Termination of OA by withdrawal

Either Party may, by not less than 6 months' notice in writing to the other Parties and the GIA Secretariat, withdraw from this OA. The effect of withdrawal by either party will be to terminate this OA at the end of the 6 months' notice period, unless otherwise agreed between parties.

Unless parties otherwise agree, parties are not required to continue to contribute to a cost-shareable OA activity beyond termination of this OA.

22.3 Termination by MPI

MPI may terminate this OA by notice where the Industry 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:
 - insolvent or bankrupt, or has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or

- subject to any form of external administration; or
- becomes unable to pay its debts as they become due or is presumed by law to be unable to pay its debts.

22.4 Termination for breach by MPI

This OA may be terminated by notice from the Industry Party 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 Party requiring it to do so.

22.5 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.

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.

23 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 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 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 25 (Confidentiality and Privacy);

For the avoidance of doubt, MPI will not be liable to any person, including any other Party in respect of any act or omission for which civil liability is excluded by section 163 of the Biosecurity Act 1993.

This provision applies despite the Deed.

24 ACTIVITY AUDITS AND RECORDKEEPING

24.1 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.

24.2 Audit purpose

At any time during the performance of a specific readiness 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.

24.3 Audit arrangements

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

25 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.

26 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.

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.

27 INTELLECTUAL PROPERTY

27.1 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.

27.2 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.

27.3 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 activities and otherwise to perform their obligations under this OA but for no other purpose.

28 DISPUTES

This clause 28 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 the 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:
 - view of the facts of the Dispute;
 - position on the Dispute;
 - suggestion for resolving the Dispute; and
 - 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:
- view of the facts of the Dispute;
 - position on the Dispute;
 - suggestion for resolving the Dispute; and
 - representative authorised to resolve the Dispute.
- (iv) The Parties will enter into negotiations to resolve the Dispute within five Business Days of the Initiator receiving the Recipient's response.
- (v) Where the 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), then:
- The Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if the Parties cannot agree within five Business Days of the expiry of the timeframe, 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; and
 - 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 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.

29 HEALTH AND SAFETY

The Parties regard Health and Safety at Work as a top priority and are committed to taking all steps to ensure that workers under their influence and control are safe, and that their obligations and duties under the Health and Safety at Work Act 2015 and associated

regulations ("HSWA") are fully and promptly complied with in a positive Health and Safety culture. To help ensure that high level of compliance, the Parties have agreed as follows:

The Parties acknowledge and agree that in relation to those OA Activities under this OA in respect of which they are PCBU's:

- (i) They have legal duties in accordance with the provisions of the Health and Safety at Work Act 2015 and associated regulations ("HSWA");
- (ii) Each Party has entered this OA on the basis that the other Parties comply with the requirements of the HSWA as a minimum;
- (iii) They have a legal duty to ensure the health and safety of workers and others in accordance with the provisions of the HSWA.
- (iv) As outlined in Section 34 of the HSWA, PCBU's are legally obliged to consult, coordinate and cooperate in relation to the identification and management of health and safety risks arising from OA Activities; and
- (v) In accordance with their obligations under the HSWA, they will take active steps to ensure, so far as is reasonably practicable, that risks to health and safety are eliminated or, where this is not reasonably practicable, minimised.

30 MISCELLANEOUS

30.1 Entire Agreement

The Deed and this OA constitutes the entire agreement and understanding between the Parties in relation to the subject matter of the same, and in each case supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties. Provided that the GIA Confidentiality Deed will remain in force in accordance with its terms.

30.2 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.

30.3 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.

30.4 Assignment

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

30.5 Change of Control

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

30.6 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.

30.7 Variation

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

Any part of this OA can only be varied with the written agreement of all Parties.

PART C: READINESS

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

31 READINESS ACTIVITIES

The Parties recognise the importance of both generic readiness planning (to be prepared for “unexpected” threats) and pest-specific readiness to be prepared for known high-risk organisms.

Reflecting this, the approach to readiness planning will include coverage across the major groupings of organisms:

- (i) pathogens
- (ii) pests (including weed species)

Biosecurity surveillance will be designed and implemented to detect new unwanted organisms that are a potential threat both to the forestry sector, and also to other sectors including the conservation estate and urban forests. The surveillance system will be supported by a state-of-the-art diagnostic system that will enable rapid identification of new organisms. This will be supported by scientific capacity to determine the likely threat of a new organism to forestry and to other sectors.

Readiness activities will also include research to better understand the epidemiology of risk organisms, currently not present or not established in New Zealand. It will also cover research to develop control methods for unwanted organisms present and having different effects in New Zealand, where the unwanted organism can be contained or eradicated, and is not covered by a pest management plan as per clause 2.3.2(c) in the GIA Deed.

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 the Annual Readiness Work Plan (“ARWP”) in accordance with Part E clause 2 of this OA.

The ARWP may be managed by the Parties in the absence of an Administrator.

32 READINESS DECISION-MAKING

Readiness activities will be developed collaboratively and readiness decisions will be by Consensus. Cost-sharing commences from the date when the Parties decide to cost-share a readiness activity.

33 FINANCE

33.1 Cost Shareable Activities

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

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

33.2 Funding administration

33.2.1 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.

33.2.2 Payment for readiness activities

Unless otherwise agreed between the Parties, based on the agreed cost share, MPI will invoice or credit the Industry Party on a quarterly basis 1/4th 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.

PART D: 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) Money is New Zealand dollars;
- (iv) Sections in italics are for guidance only;
- (v) 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.

Definitions

In this Agreement, unless the context requires otherwise the following terms have the meanings specified below. Any terms used 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 the readiness activities and budget agreed to be undertaken by the Parties annually.
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 the Chair of the Forestry Sector Governance Group
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 that both Parties have reached a mutual decision.

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 previously executed by GIA Deed Signatories.
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.
GST	All dollar values stated in this OA are exclusive of GST.
Industry Party	Means an Industry Party which has signed this Operational Agreement.
Industry Readiness Cost Share	Means the percentage of total shareable readiness costs attributed to Industry under Part A clause 6.
In-kind Contribution	Means contributions for OA Activities that take the form of goods or services in place of cash, and are agreed in advance and verified.
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.
Non-signatory 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.
OA Activity/Activities	Means a readiness activity or activities under this OA.
Operational Agreement or OA or Agreement	Means this Operational Agreement, including the Schedules.

Forestry Sector Readiness Governance Group	Means the group specified under Part A clause 8 of this OA.
Parties	Means the Parties as defined in Part A clause 2.
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.
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 the pests or pathogens described in Part A clause 4 of this OA.
Unwanted Organism	Means as defined in the Biosecurity Act 1993.

Note: several terms may be defined elsewhere including in Part A of this OA.

PART E: 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. *Long-term strategic research is valuable and important - new research and evidence will be used to underpin decisions. This is particularly the case where there is no information or out-dated information is available on which to base decision-making.*
7. *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 decisions should take into account how risk can best be managed across the biosecurity system.*
8. *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.*
9. *Drive for innovation – Innovation is encouraged and fostered, to enable better outcomes and greater value for money to be achieved over time.*
10. *Focus on building commitment – at the end of the day the operational agreement (and approach to managing biosecurity threats 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.*

11. *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 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 biosecurity threats under this agreement and other pests and diseases, provided these allow for flexibility and innovation – as above.*
12. *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.*
13. *Undue delay - recognise the importance of timeliness in being ready to respond to an incursion and reflecting this principle in readiness planning.*

2 ANNUAL READINESS WORK PLAN

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

The ARWP will be reviewed by the Parties every 12 months.

The ARWP is detailed in Schedule B.

3 TRANSITIONAL DISCOUNTS

Transitional discounts relevant to the delivery of this OA are recorded in the table 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 are subject to the transitional discounts as detailed below:

Transitional Readiness Discounts

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

4 READINESS PLANS RELATING TO THIS SECTOR

Readiness plans relating to this sector are detailed in Schedule C.

5 COST-SHAREABLE READINESS ACTIVITIES

The readiness activities that are cost shareable under this OA are listed and marked 'Yes' below.

Description	Shareable		Comment
All costs related to the facilitation and management of targeted (to the Industry) 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 project 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.
Targeted applied research.	Yes		Research and development that underpins improved readiness and more effective response to biosecurity events.

Description	Shareable	Comment
		E.g. epidemiological studies of pests and pathogens; development and trial of a new surveillance technique or development of a new diagnostic tool, pre-registering an insecticide/animal treatment.
All costs to deliver and maintain a national notification mechanism and report the detection of any Sector Risk Organisms (i.e. 0800 number).	No	MPI minimum commitment to deliver a national notification mechanism or equivalent – Deed clause 23.2.2(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	No	MPI minimum commitment.

Description	Shareable		Comment
generic management and technical capability to respond, and IM systems).			
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 National Response Team (NRT) base training.		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.
Yes = An OA cost shareable readiness activity No = Not an OA cost shareable readiness activity			

6 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 will be guided by the figures in Table 1 below, unless activities equate to published MPI hourly rates and unit charges are 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.

The hourly rates in Table 1 provide a guide only. In the event of an incursion, these figures may be reviewed and amended by the Parties to take account of inflation, market changes, or other agreed circumstances.

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

Table 6.1 Hourly rates for Industry Party and Other Party specific roles or equivalent

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 would be subject to regular review and approval by the Parties.		

SCHEDULE A: PUBLIC/INDUSTRY COST SHARE

A Negotiating Benefit Share

This schedule records the methodology used to agree the public and industry cost share in accordance with the GIA Deed.

When this agreement was established, the estimated benefit share for readiness activities was not agreed by both Parties. However, in the interests of collaboration and working in Partnership, the Parties have accepted a 50:50 cost-share for all readiness activities (ref: Schedule 2).

If at any time, further information becomes available, the benefit share can be assessed further and reviewed by mutual agreement.

Where an additional beneficiary is identified and agreed, the Parties will seek to negotiate a new OA in respect to that relevant readiness activity to take into account the additional Beneficiary as either a Signatory or Non-Signatory Beneficiary or an additional public impact.

SCHEDULE B: ANNUAL READINESS WORK PLAN

The parties will develop and agree a forestry readiness work plan for the term of this Operational Agreement, which will be reviewed annually.

As at the Commencement Date, the Parties anticipate that the readiness work plan will include a three year Forest Biosecurity Surveillance Programme, which will be cost-shared in accordance with the agreed cost-shares under this Operational Agreement.

Note that the Forest Biosecurity Surveillance Programme is an on-going programme and the Parties commit in principle to maintaining the joint readiness activity beyond three years subject to reconfirmation by both Parties.

Note that the budget share for FOA has been confirmed for 2018/19 and subsequent years are subject to Forest Grower's Levy Trust agreement, which is determined on an annual basis. The budgets in the table below for 2019/20 and 2020/21 are estimates only and will be confirmed by both Parties annually. Both Parties recognise that estimated funding levels for 2019/20 and 2020/21 may increase or decrease, subject to approval by both Parties.

Subject to final agreement between the Parties under the annual readiness work plan and the completion of their respective internal budget approvals processes, the Parties anticipate that funding for the Forest Biosecurity Surveillance Programme over the first three years will be based on the contributions set out in the table below:

Table – Forest Biosecurity Surveillance Programme – model allocation costs

Activity	Contractor	Initial Term			Total 3 Years
		2018-19	2019-20	2020-21	
		\$	\$	\$	\$
Field Surveillance - Contracts					
Field work (Transect establishment/inspection)	SPS Biosecurity Ltd	600,000	600,000	600,000	1,800,000
Diagnostics (validated by DSS)	NZ Forest Research Institute T/A Scion	170,000	170,000	170,000	510,000
Database	Forest Health Database run by Scion	15,000	15,000	15,000	45,000
Contract management/reporting	SPS Biosecurity Ltd	30,000	30,000	30,000	90,000
Model management	NZ Forest Research Institute T/A Scion	50,000	30,000	30,000	110,000
(run, maintenance, updates, sensitivity analysis in Year 1)					
Total		865,000	845,000	845,000	2,555,000
		Transitional Discounts	20%	20%	0%
Cost share MPI	as agreed 50%	519,000	507,000	422,500	1,448,500
Cost share FOA	as agreed 50%	346,000	338,000	422,500	1,106,500

Additional non-model allocated surveillance funding may be cost-shared under this OA, once approved by the FBS Governance Group¹, and confirmed by a separate business case.

¹ FBS Governance Group: David Rhodes (FOA), David Cormack (FOA), Brendan Gould (Manager, Biosecurity Surveillance, MPI) and (Acting) Readiness Group Manager (MPI).

SCHEDULE C: READINESS PLANS RELATING TO THE SECTOR

1. The [*"Fusarium circinatum incursion management plan for New Zealand"*](#) (January 2016)" is acknowledged to be a useful resource, but is subject to MPI and industry review before it becomes an agreed Readiness Plan under this OA.

SCHEDULE D: FOREST SECTOR BIOSECURITY PROFILE

The [Forestry Sector Biosecurity Profile](#) is attached as a separate document.