



Mycoplasma bovis 2017 Response Operational Agreement

Date: 25 June 2019

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PART A: SPECIFIC TERMS

1. Parties

The parties (MPI and Industry Parties) to this OA are those parties which have executed this OA, or an Accession Agreement pursuant to clause 28.13, who together will be referred to as “the Parties” throughout this OA.

2. Commencement Date

The Commencement Date of this OA is the first date by which Beef + Lamb New Zealand Limited, DairyNZ Incorporated, and MPI have all executed this OA.

3. Term and Renewal

The term of this OA commences on the Commencement Date and continues for the period of the response (being the response that commenced in 2017).

The term of this OA is subject to the provisions of this OA relating to early termination or withdrawal of a Party.

4. Unwanted Organism

The specific unwanted organism covered by this OA is the bacterium *Mycoplasma bovis*.

Mycoplasma bovis is an infectious disease primarily affecting cattle. In cattle, *Mycoplasma bovis* can cause mastitis, arthritis, pneumonia, and several other diseases that affect productivity.

5. Response Cost-Shares

The estimated benefit shares for Response Activities are:

Public	60%
Industry	40%

The cost-shares between MPI and Industry as agreed are:

MPI	68%
Industry	32%

6. Fiscal Caps

The Industry Parties' fiscal caps referred to in clause 17.3 are:

Industry sector	Industry Party	Fiscal Cap
Dairy Farmers who produce milk from cows for supply to Dairy Processors	DairyNZ Incorporated	\$271.85m*
Beef producers sector	Beef + Lamb New Zealand Limited	\$17.35m*
*Refer to Tables 1 and 3 of Schedule A – Cost-Shares		

The fiscal cap for each Industry Party is equal to that Party's cost-share of the estimated total Industry contribution to the response (\$289.2m) which is based on the estimated cost of the response for its entire duration as set out in Table 1 of Schedule A – Cost-Shares.

The fiscal cap of an Industry Party is the maximum contribution in total an Industry Party can be required to make in relation to the response.

7. Industry Payment Obligations

The Industry Parties' obligation to pay their cost-share of those budgeted costs in Table 1 of Schedule A – Cost-Shares that were incurred prior to the Commencement Date is their total cost-share liability in respect of that period of the response commencing from the start of the response in 2017 and up to the Commencement Date.

The Industry Parties agree to each pay their cost-share of the \$11.2 million of budgeted costs for Phase One as set out in Table 1 of Schedule A – Cost-Shares no later than two years from the Commencement Date.

An Industry Party shall otherwise meet its obligation to pay its cost-share liability by making payment to MPI as soon as practicable but in any event not later than 5 years from the date the relevant financial expenditure took place ("Payback Period") unless otherwise agreed.

At the Commencement Date of this OA, the Industry Parties do not yet have funding mechanisms in place to meet their cost-share liabilities under this OA. Accordingly, each Industry Party undertakes to lodge their applications for Levy Orders with MPI for submission to the Minister by 31 July 2019 and to take all other steps required to obtain a Levy Order capable of allowing that Industry Party to meet these liabilities in the case of the initial \$11.2 million not later than two years from the Commencement Date, and in the case of all other cost-share liabilities within the Payback Period. The Industry Parties undertake to keep MPI informed of the progress of their levy raising activities and expected receipts.

Notwithstanding any other provision of this agreement, an Industry Party shall only be required to meet a cost-share liability under this OA when the Industry Party is able to

fund the cost of meeting that cost-share liability from the proceeds of Levy Orders. Accordingly, a cost-share liability does not become due and payable until the date the Industry Party has been invoiced and is able to fund the cost of meeting its cost-share liabilities through a Levy Order.

Where an Industry Party has payments due to MPI under this OA, that Industry Party shall immediately pass to MPI the proceeds of the Levy Order (net of collection costs) sufficient to meet those payments. The Industry Party may, with the agreement of MPI, retain up to 15% of those proceeds (net of collection costs) received under the Levy Order to use for lawful purposes as permitted under the terms of the Levy Order.

Each Industry Party undertakes to manage the proceeds of any Levy Order to ensure it meets its payment obligations to MPI under this OA as they arise, but for the avoidance of doubt is not otherwise restricted by the terms of this OA in its lawful use of the proceeds of a Levy Order.

If the necessary funding mechanisms for the Industry Parties to meet their cost-sharing liabilities under this OA are not in place by 31 March 2020 MPI may choose to immediately withdraw from this OA whereby this OA shall be immediately terminated.

8. Response Governance

Response Governance for this OA shall consist of the Designated Decision Makers of the Parties to this OA.

The Parties may appoint and fund an Independent Chair of Response Governance ("Independent Chair"). Decisions with regard to the appointment, terms of reference and removal of the Independent Chair shall be unanimously agreed by the Parties.

9. Administration

The Parties may appoint and fund an Administrator for this OA. Decisions to appoint and remove the Administrator shall be by Consensus. If the Parties do not elect to appoint an Administrator references to the Administrator in this OA will be deemed references to Response Governance or its delegate.

10. Crown Indemnity

The Industry Parties are entering into this OA on the basis that they are beneficiaries under a Crown Indemnity.

In the event that an Industry Party ceases to be a beneficiary of the Crown Indemnity or the Crown Indemnity terminates without being replaced with another protection from liability the Industry Party agrees is acceptable, that Industry Party may immediately withdraw from this OA.

Nothing in this OA limits or affects the provisions or application of the Crown Indemnity.

11. Schedules

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

Schedule A – Cost-Shares

Schedule B – Pre-Agreed Response Strategies or Plans
Schedule C – Terms of Reference

12. Execution

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

Signed by and on behalf of the **Ministry for**)
Primary Industries by its Director-General,)
Ray Smith, on *RS* June 2019)



Signature

in the presence of:



Witness Signature



Witness name (printed)



Location

DAIRYNZ INCORPORATED, representing the sector Comprising Dairy Farmers who Produce Milk from Cows for Supply to Dairy Processors, gazetted for GIA purposes on the 3rd of August 2018.

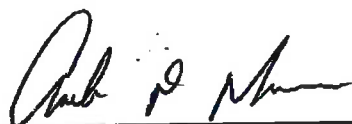
Signed by and on behalf of DairyNZ Incorporated by its Chair, Jim van der Poel, on 21 June 2019



Signature

BEEF + LAMB NEW ZEALAND LIMITED,
representing the Beef Producers sector,
gazetted for GIA purposes on the 3rd of
August 2018.

**Signed by and on behalf of Beef + Lamb
New Zealand Limited by its Chair, Andrew
Morrison, on 25 June 2019**

A handwritten signature in black ink, appearing to read "Andrew Morrison", written over a horizontal line.

Signature

PART B: GENERAL TERMS

13. Purpose

This agreement is an Operational Agreement for the purposes of the GIA Deed and specifies how the Parties will work together to respond to *Mycoplasma bovis* and meet GIA Deed commitments for joint decision-making and cost-sharing for Response Activities.

The objective of this OA is to provide a governance framework for the ongoing management of the *Mycoplasma bovis* response.

14. Context Regarding Agreement

The Parties recognise that the involvement of the Industry Parties in the response provides significant advantages including contributions in the form of industry enthusiasm, knowledge, guidance, resources, and cost-sharing. GIA provides a framework within which Industry may gain decision rights in relation to readiness and response and, in return, may become contractually obliged to share in the burden of cost and statutory compensation obligations associated with these activities.

Accordingly, the fundamental purpose of this OA is to arrange for and foster the Industry Parties' involvement in response decisions and activities for mutual benefit in return for sharing in certain costs of these activities, including a reimbursement for compensation payments made by MPI.

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

15. Context Regarding Liability

This OA contains provisions limiting, allocating and negating the potential liability of Parties and the individuals representing them against allegations of negligent or inadvertent acts or omissions. That risk allocation and limitation is an intentional trade-off the Parties have made in uncertainty about the future to encourage fast and effective decision-making.

The Parties recognise that individuals and organisations may have to make decisions in situations where much is uncertain or unknown, but delay or hesitation may have significantly worse consequences than any well intentioned decision where hindsight and different information might suggest an alternative course of action.

The Parties do not wish decision-making to be dominated by fears of retrospective second guessing and the disproportionate risks of uncompensated liability to particular Parties for participating in decision-making, where the benefits of the risky decisions are captured by others or the sector as a whole.

16. Governance and Administration

16.1 Governance of the OA

Only the Parties to this OA have decision-making rights and authority under this OA with respect to matters in this OA.

The primary forum for the Parties to meet, agree or make decisions in respect of this OA shall be Response Governance.

Subject to this OA, Response Governance shall set its own procedure. For convenience, Response Governance may operate with or as a subset of another governance group, council, or body.

16.2 Contract Management

Each Designated Decision Maker's responsibilities shall include providing or ensuring the provision of contract management oversight of this OA on behalf of that Party.

16.3 Reporting

The Parties will, unless otherwise agreed produce regular financial reporting for stakeholder purposes including an annual report of OA Response Activities. The timing and use of this report will be as the Parties decide. In accordance with clause 24 the Parties shall maintain a 'no surprises' policy that proactively keeps each other informed of their constituent reporting in relation to this OA.

16.4 Decision-Making

16.4.1 Consensus

All decisions under this OA, other than Reserved Matters, shall be made by Consensus. Consensus means the mutual agreement of the Parties (whether written or verbal) and includes deemed Consensus following a vote pursuant to the process in this clause 16.4.1.

If mutual agreement cannot be reached within a timeframe that recognises the necessity of urgent action (usually during a Response Governance meeting) then the Chair will set the timeline for the following steps. At each step the Parties will urgently seek to reach mutual agreement before the next step is undertaken:

- a) The Parties should decide where they can agree, identify points of disagreement, and agree the timeframe and approach to resolving the points identified.
- b) If the Parties cannot reach mutual agreement within the timeline set by the Chair, the Chair will call for a vote, and Consensus shall be deemed to be achieved so long as MPI and DairyNZ Incorporated vote in favour.
- c) For the avoidance of doubt, response decisions reached by the voting procedure above are binding on all Parties, whether present or not.
- d) Response Governance decisions will be noted in the Response Governance minutes.

16.4.2 Reserved Matters

Reserved Matters require the unanimous written agreement of all Parties to this OA.

The reserved matters under this OA are (see referenced clauses for the full provisions):

- a) appointing an Independent Chair (clause 8);
- b) changing cost-shares (clause 17.1 and Schedule A – Cost-Shares);
- c) whether particular goods or services can be contributed to the response (clause 17.5);
- d) making cost-shareable additional assistance payments (clause 17.8);
- e) confirming a post-response transition plan (clause 20);
- f) consent to assignment (clause 28.6);
- g) variation of this OA (clause 28.11);
- h) adding Parties (clause 28.13); and
- i) agreeing or varying a strategy or plan for the response (including an annual response plan).

In addition, where a provision requires the expressly unilateral decision or consent of a Party that decision may be made or given by that Party alone (for example, increasing a Party's fiscal cap pursuant to clause 17.4, or accepting an alternative to the Crown Indemnity pursuant to clause 10, require only the unilateral agreement in writing of the Party concerned).

17. Finance

17.1 Cost-Shares

All Parties must meet their cost-sharing obligations.

Intra Industry cost-shares are set out in Table 3 of SCHEDULE A – Cost-Shares. Cost-shares in this OA shall be reviewed annually or as otherwise agreed by the parties and may be renegotiated when new information becomes available that materially changes the previous cost-share determination, provided that the existing cost-shares will apply until all Industry Parties unanimously agree to the revised cost-shares.

17.2 Cost-Shareable Activities

The Parties have agreed the categories of response costs that are cost-shareable and these are set out in Table 2 of Schedule A – Cost-Shares.

Without limiting the Parties' other obligations under this OA, cost-sharing shall not apply to costs directly attributable to a decision or direction of a person or body appointed by the Crown to have a role in the *Mycoplasma bovis* response when that decision or direction is directly contrary to an earlier express decision of Response

Governance as defined in this OA and has not been subsequently agreed by Response Governance or the Parties.

17.3 Fiscal Caps

The Parties have agreed to set fiscal caps to limit each Industry Party's financial liability under this OA for the response. No Industry Party shall be liable to pay a response cost-share under this OA in excess of that Industry Party's fiscal cap.

Individual Industry Party fiscal caps are set out in clause 6.

17.4 Reaching Fiscal Caps

As the Industry Parties' portion of the response expenditure (including forecast liabilities) approaches the total of their combined fiscal caps, Response Governance will review the response objectives. If Response Governance decides to continue the response and forecasts that the Industry Parties' portion of the response expenditure will exceed the total of the combined fiscal caps of the Industry Parties, then Response Governance may propose an increased fiscal cap for each Industry Party. Each Industry Party's fiscal cap will be increased only if agreed by that Industry Party.

If an Industry Party's fiscal cap is reached or is projected to be reached imminently and that Industry Party considers it will be unable to agree to increase its fiscal cap it must immediately withdraw from the response (i.e. the usual 6 month notice period will not apply). If Response Governance approves it may continue to attend Response Governance meetings as an observer only.

17.5 Contributions of Goods and Services

Where unanimously agreed by the Parties, contributions can also be made to the response in the form of contributions of goods and services that meet agreed levels of quality and performance ("Goods and Services"). The Parties may unanimously pre-agree specific contributions of goods and services, and/or general categories of contribution that shall be considered Goods and Services.

Where an Industry Party contributes Goods and Services to the response that Industry Party shall invoice MPI for the cost of the Goods and Services provided. MPI shall reimburse that Industry Party by paying to that Industry Party the duly invoiced costs.

The cost to MPI of reimbursing an Industry Party for Goods and Services is a cost-shareable response cost

Where MPI contributes Goods and Services to the response, the cost to MPI of those Goods and Services are also cost-shareable response costs.

Goods and Services will be provided at cost. Goods contributed to the response that were the property of the Party contributing them, and services provided by the internal personnel of that Party will be fully costed (i.e. overheads associated with the personnel's role in the response can be included). For the avoidance of doubt the cost of Goods and Services provided will be passed-through (without margin or mark-up).

Contributions of Goods and Services are subject to the audit provisions in clause 22 of this OA.

17.6 Cost-Shares and Recovery of Compensation Costs

Section 162A of the Act applies to the assessment of statutory compensation liability under this OA.

The Parties agree that:

- a) compensation payments made by MPI under section 162A of the Act are a cost-shareable Response Activity under this OA (refer to Schedule A – Cost-Shares); other compensation costs (if any) will be cost-shareable only if agreed by the Parties;
- b) for the avoidance of doubt, cost-shareable compensation does not include losses attributable to the actions of trading partners precipitated by Response Activities.

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

In no circumstances will any 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 Schedule A.

17.7 Compensation Process

MPI will consult with and provide regular and timely reports to Response Governance on MPI's compensation forecasts, assessment and processing of compensation claims. MPI will continue to provide timely reports to the Parties on MPI's processing of compensation claims after the response has terminated.

An Industry Party will only be liable to pay its cost-share for compensation paid by MPI pursuant to section 162A for losses incurred during and in the course of the response, or which are a demonstrably direct consequence of the response.

17.8 Additional Assistance Payments

If the Parties unanimously agree that a specific payment shall be made under this OA by a Party to a person or class of person affected by the response for the purposes of assisting that person or class of persons, other than as a compensation payment pursuant to section 162A of the Act, and if the Parties unanimously agree the terms on which that payment shall be made, then that payment shall be cost-shareable under this OA.

For the avoidance of doubt, none of the provisions of this clause:

- a) Are provisions that vary or take priority over section 162A of the Act; or
- b) Limit the ability of any Party to unilaterally make a payment that is not a cost-shareable payment to any person.

17.9 Payment Administration

17.9.1 Payment Process Agreement

The Parties will agree in writing as soon as practicable payment processes to meet the Parties' financial commitments under this OA. The payment process agreement(s) must be in accordance with this OA and include without limitation:

- a) How costs shall be met initially as they arise.
- b) How costs will be apportioned between the Parties.
- c) The timing, frequency, and size of payments to reimburse a Party for any costs incurred by that Party that are cost-shareable.
- d) How the payment process shall be administered and by whom.
- e) Requirements for how Parties provide proof of expenditure to each other for costs they have incurred that are cost-shareable.
- f) Requirements for the details that invoices should include and when they must be paid by the Party invoiced.
- g) How payments under Levy Orders will be administered.
- h) How cost-share invoices and payments will be matched to payments received under Levy Orders.

17.9.2 Complete Applicable Services

Where an invoiced 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 to the extent that another Party is unable to provide appropriate timesheets, third party invoices or any other reasonable supporting documentation.

17.9.3 Late Payment

Any payment not received when due will be subject to interest if demanded at the current capital charge rate published by the Treasury and accruing from two (2) months of the due date. Provided that interest will not accrue on any portion of a payment that is subject to a bona fide Dispute.

For the avoidance of doubt, a payment shall not be regarded as overdue for the purposes of this clause to the extent and during the period that the necessary funding mechanisms are not in place and as a consequence the Industry Parties are unable to meet that cost-sharing liability under this OA in accordance with clause 7.

18. Withdrawal and Removal from this OA

18.1 Withdrawal from the Response

Any Party may, by not less than 6 months' Formal Notice in writing (or a lesser period as agreed in writing by the Parties) to the other Parties and the GIA Secretariat, withdraw from this OA. Withdrawal occurs at the end of the Formal Notice period.

If a Party provides such Formal Notice then Response Governance including the withdrawing Party will urgently meet and discuss the impact and implications of the withdrawal of that Party on the response.

Following the meeting above if the withdrawing Party does not withdraw its Formal Notice the Parties shall meet during the notice period to develop a Withdrawal Plan.

All decisions regarding a withdrawal and the impact will be recorded in the minutes of Response Governance meetings.

Rights of withdrawal elsewhere in this OA shall be without prejudice to the general right of withdrawal in this clause 18.1.

Notwithstanding clause 6.2.2 of the Deed, a Party may not withdraw from certain Response Activities only, withdrawal must be from the OA as a whole. This provision takes precedence over clause 6.2 of the Deed.

If a Party's withdrawal does not lead to the termination of this OA, the remaining Parties shall review the response and decide whether to continue it, and if they decide to continue the response shall agree new cost-shares in respect of the response.

18.2 Removal of an Industry Party

An Industry Party to this OA is deemed removed immediately from this OA by Formal Notice from MPI where that Party:

- a) is determined by the responsible Minister (as defined in the Act) to no longer meet the eligibility criteria to be an industry organisation under section 100ZA (2) of the Act; or
- b) 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 Formal Notice from MPI requiring it to do so; or
- c) has become:
 - i. insolvent or bankrupt, or has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed; or
 - ii. subject to any form of external administration; or
 - iii. becomes unable to pay its debts as they become due or is presumed by law to be unable to pay its debts.

18.3 Termination for Breach by MPI

This OA may be terminated on 10 Business Days' Formal 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 Formal 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 of the Industry Parties.

18.4 Effect of Withdrawal and Removal

- a) If any Party gives notice to withdraw under clause 18.1 or is removed from this OA under clause 18.2:
- i. clause 6.2.2 of the GIA Deed will apply except where this OA expressly takes precedence;
 - ii. the remaining Parties will not be liable for any loss caused to or suffered by the withdrawing or removed Party as a result of its withdrawal or removal;
 - iii. the remaining Parties will review this OA and decide whether and on what terms to continue the response;
 - iv. from the date of that Party's termination or withdrawal that Party is no longer a current "Party" as defined under this OA.

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.

- b) Without prejudice to its fiscal cap, a withdrawing Party remains liable for liabilities incurred in accordance with clause 6.2.2 of the GIA Deed.

For the avoidance of doubt, the fact that a Party has entered into this OA and thereby committed to pay its cost-share of the total budgeted costs of the response set out in Table 1 of Schedule A – Cost-Shares shall not in itself constitute a liability incurred or obligation committed to by that Party for the purposes of clause 6.2.2 of the GIA Deed.

A withdrawing Party shall remain liable for:

- i. its cost-share of that portion of the total budgeted cost of the response as set out in Table 1 of Schedule A – Cost-Shares that has been expended on the response at the date that Party withdraws;
- ii. subject to this provision, its liabilities (if any) in accordance with clause 6.2.2 of the GIA Deed provided that clause 6.2.2 (a) of the Deed shall be read for this purpose as if the words "up to the date on which the notice of withdrawal takes effect" were replaced with "up to the date of withdrawal" and clause 6.2.2 (b) of the Deed shall be read for this purpose as if the words "prior to the Signatory giving notice" were replaced with "up to the date of withdrawal"; and

- iii. its liabilities under clause 17.7 (including for the avoidance of doubt its cost-share of statutory Compensation costs for losses incurred prior to its withdrawal, or which are incurred after its withdrawal but are a demonstrably direct consequence of decisions of Response Governance prior to that date).

This provision 18.4 (b) takes precedence over the GIA Deed.

Note that in accordance with clause 7 of this OA an Industry Party is only required to meet these cost-share liabilities when able to fund the cost of doing so from the proceeds of Levy Orders.

19. Response Governance – Terms of Reference

This response shall be governed in accordance with the Terms of Reference in Schedule C – Terms of Reference as amended from time to time.

20. Transition to Long Term Management

If the decision is made to transition to long term management whether under a pest management plan or otherwise the Parties shall unanimously agree a transition plan or other mechanism to enable the response to be wound down in an orderly way.

The transition plan shall include an agreed time and date when cost and decision sharing under this OA ceases.

Once long term management commences, or such later date as the Parties otherwise unanimously agree, this OA shall terminate. Notwithstanding the termination of this OA Response Governance may continue to meet and perform functions pursuant to an agreed transition plan.

21. Limitation of Liability

Without prejudice to the Crown Indemnity and to each Party's liability to meet its payment obligations to another Party under this OA, no Party will be liable to any other Party, nor as far as the law permits any other person, whether under the law of contract, tort, equity or otherwise, for any 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 response decision or activity). This provision does not limit liability (if any) for such losses or damages arising due to:

- a) non-payment of any amount due under this OA (up to the amount owed);
- b) any wilful default, gross negligence or fraud; or
- c) any knowing or reckless breach of a Party's respective confidentiality obligations under clause 23 (Confidentiality and Privacy).

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

This provision takes precedence over the GIA Deed.

22. Activity Audits and Recordkeeping

22.1 Recordkeeping

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

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

22.2 Audit Purpose

At any time during the performance of a Response Activity under this OA, and up to 12 months from the completion of the specific activity thereafter, any Party may upon written notice to any other Party, at its own cost seek to obtain assurance by seeking permission (which shall not be unreasonably withheld) to:

- a) audit or commission an audit of any aspect of the other Party's compliance with this OA; and
- b) assess compliance with any agreed elements of the process for carrying out a Response Activity.

22.3 Audit Arrangements

The audit scope and timing, and the identity of the auditor, will be agreed in writing between the Parties involved, acting reasonably, and the audited Party shall provide reasonable co-operation with the audit.

23. Confidentiality and Privacy

The Parties to this OA acknowledge that their Designated Decision Makers have signed and are bound by the GIA confidentiality deed.

No information relating to this OA or Response Activities undertaken under this OA may be released in the public domain without the approval of the Parties or Response Governance, such approval not to be unreasonably withheld or delayed.

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

Information required to be disclosed by law, court order, regulatory authority, Ministerial request, Parliamentary Rules and Conventions, or the Official Information Act 1982 will be disclosed in accordance with 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.

24. Information Sharing

In accordance with clauses 2.2.1 and 2.2.2 of the GIA Deed the Parties to this OA will work collaboratively, transparently, and in good faith to promote a culture of resource sharing and open communication. Each Party shall operate on the presumption that it will share information with a Party where requested by that Party unless there is a compelling reason not to.

25. Conflicts of Interest

All Parties:

- a) warrant that as at the Commencement Date, they have no Conflict of Interest other than any Conflict of Interest declared and lodged with the Administrator;
- b) will promptly declare any Conflict of Interest they become aware of during the term of this OA;
- c) will be guided by the Conflict Protocol in clause 26.

The Administrator will maintain a register of Conflicts of Interest.

Each Party must promptly notify all the other Parties and the Administrator of any matter, event or circumstance that gives rise to any Conflict of Interest. If a Conflict of Interest does arise, the Parties will use reasonable endeavours to follow the protocol in clause 26.

Parties will use reasonable endeavours to minimise the adverse impact of any Conflict of Interest. Each Party will pay its own costs associated with the management of any Conflict of Interest.

Each Party is responsible for managing any conflicts of interest concerning this OA or Response Activities that their Designated Decision Maker, or that person's Alternate may personally have.

26. Conflict Protocol

This clause 26 does not apply to Reserved Matters.

The Parties acknowledge that Conflicts of Interest are inevitable for some or all of them in relation to 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. This protocol recognises that Parties with a Conflict of Interest ("Conflicted Parties") may be those best equipped with knowledge and resources required to deal with 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) 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 discussions can be held on matters where there are Conflicted Industry Parties without the conclusive influence of those Conflicted Industry Parties; and
- d) No Party, including a Conflicted Industry Party, is precluded from voting in accordance with clause 16.4.1.
- e) To that end, where any Industry Party has a Conflict of Interest, that Industry Party:
 - i. 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;
 - ii. must offer the other Parties reasonable opportunities without that Industry Party being present to discuss the matter with fair knowledge of the nature and implications of the Conflict;
 - iii. may still vote in accordance with clause 16.4.1 on any decision where the Conflict is a material factor; and
 - iv. 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 first endeavour to raise the matter with the potentially Conflicted Party, and if not satisfied by the response, they may then 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 response situation have Conflicts of Interest, the Parties may vary the application of 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 in or voting on any issue.

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 and conditions to make any of that Pre-Existing IP available. If Pre-Existing IP is to be made available for this OA, the terms and conditions on which it is to be made available 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, subject to the terms of any relevant contract.

27.3 Licencing

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

28. Other

28.1 Counterparts

This OA may be executed in any number of counterparts and exchanged electronically.

28.2 Entire Agreement

The Deed and this OA including any provisions incorporated by reference constitute the entire agreement and understanding between the Parties in relation to the subject matter of the same, and in each case supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties. Provided that the GIA confidentiality deed will remain in force in accordance with its terms.

28.3 Governing Law

Each Party irrevocably and unconditionally submits itself to the non-exclusive jurisdiction of the courts of New Zealand and this OA shall be governed and construed in accordance with New Zealand law.

28.4 Relationship of the Parties

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

This OA is not enforceable by any person other than a Party.

28.5 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 a Party to exercise (in whole or in part) any right, power or remedy will operate as a waiver.

28.6 Assignment

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

28.7 Change of Control

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

28.8 Severability

If any provision of this OA is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision will be severed and the remainder of this OA will remain in full force and effect.

28.9 Review

The Parties may decide to initiate a formal review of this OA at any time on such terms as they see fit.

28.10 Notices

The Parties will provide the Administrator and each other with the contact details of their Designated Decision Maker including any Alternates, and update these details immediately if and when they change. These details must include the current nominated email address of their Designated Decision Maker for the receipt of Formal Notices under this OA. Details as at the Commencement Date are set out in Schedule C, clause 3.

All Formal Notices under this OA must be communicated by email to the nominated email address of the recipient Party's Designated Decision Maker. Other notices and communications under this OA may be communicated by email to the email address of the recipient Party's Designated Decision Maker or to the email address of the Alternate to the Designated Decision Maker.

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

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

28.11 Variation

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

For the avoidance of doubt, particular schedules may be amended in accordance with their terms.

28.12 Relationship 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 this OA specifically states that it takes precedence and the GIA Deed does not prevent this.

28.13 Adding Parties

Where the Parties unanimously agree, a Signatory may become a party to this OA by executing an Accession Agreement, and lodging that form with the GIA Secretariat.

Each Party executing this OA must lodge its executed signature page to this OA with the GIA Secretariat.

28.14 Exigency Actions

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

28.15 Force Majeure

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

28.16 Disputes

28.16.1 Definitions for this Process

In this clause:

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

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

- a) identification of each Recipient;
- b) summary of the Dispute;
- c) suggestion for resolving the Dispute;
- d) nominating a representative authorised to resolve the Dispute; and
- e) an express reference to this Disputes Clause and a warning that failure to respond may result in the Recipient being unable to contest the subject matter of the Dispute in future;

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

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

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

“Reply” means Formal Notice by the Recipient and any other Party containing (at a minimum) the following information:

- a) additional or different facts of the Dispute to those stated in the Dispute Notice;
- b) suggestion for resolving the Dispute; and
- c) nominating a representative authorised to resolve the Dispute.

28.16.2 Dispute Process

- a) In order to proceed with a Dispute the Initiator must first issue a Dispute Notice to the Recipient and provide a copy to all other Parties.
- b) No Dispute Notice may be lodged under this clause in respect of the presumed consequences of decisions yet to be formally made whether by Consensus or agreement.
- c) The Recipient must, and other Parties to whom the Dispute is relevant may, issue a Reply to all other Parties within ten Business Days of receiving the Dispute Notice.
- d) If a Party to whom the Dispute is relevant opts not to issue a Reply it may not raise the same issue as a Dispute in the future unless material information becomes available that was not available at the time the Party opted not to issue a Reply.
- e) The Involved Parties must enter into negotiations to resolve the Dispute within five Business Days of the due date for receipt of Replies.
- f) Where the Involved Parties are unable to resolve the Dispute within 10 Business Days of those negotiations commencing, they will appoint a mediator and agree a fee for that mediator.
- g) If, within five Business Days, the appointment and fee are:
 - i. agreed, the procedure for the mediation will be determined by that mediator;
 - ii. not agreed, the appointment and fee will be determined by the Chair for the time being of the organisation known as the Arbitrators and Mediators Institute of New Zealand (or his/her nominee) and the mediation will be conducted in accordance with the rules of that Institute.
- h) In all cases, the Involved Parties will co-operate and use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- i) Subject to the following sub-clause each Involved Party must each bear its own costs of presenting its views during the Dispute process, including its costs in respect of mediation.
- j) Any costs or expenses of any mediator appointed under this Disputes provision will be paid by the Involved Parties in equal shares unless recommended otherwise by the mediator and, if so recommended, will be paid in accordance with that recommendation. The Parties expect that when considering and making a recommendation about the costs and expenses of the Dispute process, the mediator will take into account the principle that it is usually appropriate for cost and expenses to follow the outcome, and in particular that a

Party initiating and pursuing a failed and unmeritorious Dispute should usually bear most or all the costs and expenses of all Involved Parties.

- k) The Involved Parties must notify all Parties when mediation has concluded as soon as reasonably practicable. If the outcome of mediation affects or potentially affects the performance of activities under this OA by other Parties, the Involved Parties must notify them of the outcome as soon as reasonably practicable.
- l) Except where it is necessary for a Party to seek urgent interlocutory relief from a court, no Party may commence litigation in relation to a Dispute prior to this Disputes process having been concluded.
- m) In the event of a Dispute, the Parties will continue to meet their obligations under this OA and the Deed to the extent reasonably practicable.
- n) This Disputes clause 28.16 takes precedence over the Deed.

28.16.3 Disputed Invoices

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

- a) pending resolution of that Dispute the Party may, should they elect to, withhold so much of the invoice as they would be relieved of if the Dispute were resolved in their favour; and
- b) to the extent the Dispute is resolved in favour of the invoicing party the invoiced Party must immediately pay the withheld amount late payment interest thereon at the Interest Rate calculated in accordance with clause 17.9.3.

28.17 Health and Safety in the Workplace

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

28.17.1 Health and Safety in Response Activities

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

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

- a) They have legal duties in accordance with the provisions of the HSWA;

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

The Parties will:

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

28.17.2 Post-Response

At regular intervals during the response and as soon as practicable after the conclusion of the response, the Parties will ensure that they conduct a formal review of the overall health and safety performance of personnel during the response, including addressing any issues that arose during the response and lessons learned; and ensure that lessons learned are implemented by the Parties to improve best practice for future responses.

29. Definitions and Interpretation

In this OA, unless the context requires otherwise:

the following terms have the meanings specified below; and

any terms defined in the Act or the Deed but not defined in this OA have the same meaning as in the Act or the Deed.

29.1 Definitions

Act	means the Biosecurity Act 1993 as amended.
Accession Agreement	means a document in a form approved by the GIA Secretariat for the purposes of joining new parties to this OA.
Administrator	means the person or body, if any, approved and funded by the Parties to provide administrative support for the response, and/or the OA and related documents.
Alternate	means an appropriately delegated person with written and current authorisation, including confirmation by a Designated Decision Maker to the other Designated Decision Makers or to the Chair by email, to represent another and includes a proxy of a Party.
Business Days	means any day of the week other than— a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year, both inclusive.
Chair or Chair of Response Governance	means the chair of Response Governance, and during the tenure of an Independent Chair, is that person.
Chief Technical Officer (CTO)	has the same meaning as defined in the Act.
Commencement Date	means the date specified in clause 2.
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 reasonably 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 or the Party is compromised).

Consensus	means as defined in clause 16.4.
Controller	means the Controller as defined in the GIA Response Guide, and is a person appointed to interface between Response Governance and the Incident Management Team.
Crown Indemnity	means the written indemnity provided by the Crown in favour of GIA Signatories, including the Industry Parties.
Designated Decision Maker	means the natural person who has the authority and delegations to manage a Party's obligations under this OA and to make decisions on behalf of that Party at Response Governance. This also includes an Alternate individual of that person.
Disputes Process	means the process to resolve Disputes under clause 28.16.2
Force Majeure	means an event beyond the reasonable control of the Party seeking to invoke clause 28.15 that could not have been prevented by that Party taking reasonable care and that significantly compromises that Party's ability to perform its obligations under this OA. Such events may include: a) Acts of God, earthquakes, tsunamis, volcanic eruptions, floods, storms; or b) Acts of war. For the avoidance of doubt a Force Majeure does not include this Response itself.
Formal Notice	means a written notice communicated by email to the most recently notified email address of the recipient Party's Designated Decision Maker.
GIA	means the government/industry agreement for readiness or response as defined in section 100Y of the Act.
GIA Deed or Deed	means the latest version of the multi-party deed titled "Government Industry Agreement for Biosecurity Readiness and Response Deed" made pursuant to the Act.
GIA Response Guide	means the document of that name (on the GIA Secretariat website www.gia.org.nz) for how joint decision-making for biosecurity responses works in practice, 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 and responsibilities described in clause 4.2 of the GIA Deed.

Independent Chair	means the person appointed to that position pursuant to clause 8, during their tenure
Industry Party	means an Industry Signatory who is a Party to this OA and "Industry" means those Industry Signatories collectively.
Industry Signatory	means a party to the GIA Deed other than MPI.
Levy Order	means a biosecurity levy order pursuant to the Act.
MPI	means the Ministry for Primary Industries or any other entity that the Crown determines will perform the Crown's obligations under Part 5A of the Act.
<i>Mycoplasma bovis (M bovis)</i>	has the meaning given in clause 4.
Nominated email address	Means the most recently nominated email address of a Party pursuant to clause 2.5 of Schedule C.
Non-Signatory beneficiary	means a group of businesses comprising of a sector under section 100Y(1) of the Biosecurity Act 1993 that: <ul style="list-style-type: none"> a) is not represented by an industry organisation stated by the Minister, by Gazette notice under section 100ZA of the Act, as representing a sector for the purposes of joining GIA and that has signed the GIA Deed; and b) has been identified by the Parties as knowingly or unknowingly gaining, but not paying for, biosecurity benefits generated by the Response Activities detailed in this OA.
OA	means this operational agreement together with the schedules.
Parties	means the parties to this OA as defined in clause 1.
Present	a Party is treated as Present when, having the right to participate in a decision, its Designated Decision Maker (including by Alternate) is in attendance in person, on the phone or other electronic means until they are recorded as having ceased to be available for two way communication.
Reserved Matters	means the matters listed in clause 16.4.2.
Response or response	Means, depending on the context either: <ul style="list-style-type: none"> a) the period during which Response Activities are undertaken under this OA in respect of the bacterium <i>Mycoplasma bovis</i> following its detection in New Zealand in 2017; or b) the total of those Response Activities.

Response Activities	means as defined in the GIA Deed.
Response Governance	means a high level decision-making group comprised of Designated Decision Makers from the Parties for response decision-making under this OA.
Signatory	means each Industry Signatory and MPI.
Withdrawal Plan	means a plan agreed to by the Parties to allow for the orderly exit of a Party withdrawing from this OA intended to enable the withdrawal of that Party with minimum disruption to the response and the remaining Parties.

Note: several items are defined in the Schedules.

29.2 Interpretation

In this OA, unless the context requires otherwise:

- a) The singular includes the plural and vice versa.
- b) The use of headings in this OA is for convenience only and shall not affect the interpretation or construction of this OA.
- c) References to persons include any natural person, body corporate, Government department, Crown agency, or other entity and vice versa, and includes that person's successors.
- d) Money is New Zealand dollars and amounts are stated exclusive of GST.
- e) In the case of inconsistency between any provision in Part A and any other provision of this OA, the provision in Part A shall prevail.
- f) References to a Party, or Designated Decision Maker may include that Party's Alternate.
- g) Reference to the agreement or decision of or by Response Governance means agreement or decision by Consensus.
- h) References to a particular position title or description include that position title or description as varied or replaced.

Schedules

SCHEDULE A – Cost-Shares

Table 1 - Estimated Total Shareable Response Costs (\$millions)

	Phase One – budgeted costs \$ From 27 July 2017 until 28 May 2018 Pre-decision to eradicate		Phase Two – budgeted costs \$ 1 June 2018 to June 2020			Phase Three – estimated costs \$	Estimated Total Shareable Response costs \$
	2017/18 Note B		2018/19	2019/20	2 Year Cost	2020 – 2028	Ending 2027/28
Crown Contribution (68% of total cost)	23.8	8.0	221.0	81.0	302.0	290.0	623.8
Industry Contribution (32% of total cost)	11.2	0.0	104.0	38.0	142.0	136.0	289.2 Note A
Total Cost	35.0	8.0	325.0	119.0	444.0	426.0	913.0
<p>Note A - Each Industry Party's fiscal cap is equal to that Industry Party's individual cost-share of the total Industry Contribution to the Estimated Total Response costs in the right hand column.</p> <p>Note B – The 2017/18 figures vary somewhat from the figures in the Cabinet Paper, which are not included. The \$8m in the second sub-column records a Crown contribution which is not cost-shared with Industry.</p>							

Table 2 - Shareable Response Costs 2018/19

Below is a table of categories of response expenditure which are cost-shareable together with that portion of the budgeted response cost that falls in the 2018/19 year (for reference purposes). The dollar figures below are for the 2018/19 year only, not the entire response. Line items included with an asterisk will be cost-shareable only if and to the extent that Response Governance decides in respect of each item. It is not intended that costs of minimum commitments will be included in the budget as cost-shareable. Category (as per agreed budget)	Budget 2018/19 (\$)
Staff (MPI or contractors)	26,000,000
Travel/Accommodation/Communications	8,400,000
Field Sampling and Lab Analysis/ Supplies	18,600,000

On-Farm Surveillance and Movement Controls	19,000,000
On-Farm Cleaning and Decontamination	20,000,000
Farm Feed	12,800,000
Other Costs	7,100,000
Section 162A Compensation	104,000,000
Agreed Contingency Costs (see below)	88,000,000
Farmer Welfare*	4,600,000
Improvements to the NAIT System*	6,750,000
Strengthening the Biosecurity System*	750,000
On-Farm Biosecurity Improvements*	3,400,000
Comprehensive Farm Plans*	2,200,000
Resilient Farming Systems*	2,200,000
Market Access and Trade*	1,200,000
Total:	325,000,000
<p>Agreed Contingency Costs:</p> <p>An \$88m contingency fund has been established and can be made available with agreement from the Minister of Finance and the Minister for Biosecurity. It represents the difference between 50 and 90 percent operational response and compensation estimates.</p> <p>The following additional activities were identified in conjunction with industry and are expected to be accommodated within the overall budget:</p> <ul style="list-style-type: none"> • Additional Industry staff helping with on-farm management and assistance with compensation claims. • Additional meat processor's fees for stock culling. • Additional sampling costs associated with spring testing. • Research costs. 	

Transitional Discounts

The Industry Parties have elected to forgo the usual transitional discounts for this OA.

Table 3 - Individual Industry Cost-Shares

The cost-share of each Industry Party is the following proportion of total Industry response cost-shares.

Industry sector	Industry Party to the OA	Industry Party proportion of total Industry response cost-shares
Dairy Farmers who Produce Milk from Cows for Supply to Dairy Processors	DairyNZ Incorporated	94%
Beef Producers Sector	Beef + Lamb New Zealand Limited	6%

Process for Apportionment of Individual Industry Sector Cost-Shares

The Parties may review individual Industry sector/Industry Party cost-shares annually, provided that the existing cost-shares will apply until all Parties unanimously agree to the revised cost-shares.

Beneficiaries of Response Activities

If Signatories directly benefit from, but are not party to, this OA clause 5.1.14 of the Deed shall apply to those Signatories.

MPI is responsible for appropriate consultation with and cost recovery from non-Signatory beneficiaries. The Parties agree no non-Signatory beneficiaries have been identified as of the Commencement Date.

SCHEDULE B – Pre-Agreed Response Strategies or Plans

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

Pre-Agreed Response Strategies or Plans

The response shall be managed under the National Response Plan approved by Response Governance.

MPI Response Frameworks

Policy framework: How MPI manages biosecurity responses to risk organisms that could harm people, the environment, and/or the economy is set out in the Biosecurity Response Policy as held by MPI.

Process framework: New Zealand's generic response arrangements are documented and held by MPI.

Organisational response framework: The New Zealand Government Coordinated Incident Management System (CIMS) 2nd Edition 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. Joint decision-making in a *Mycoplasma bovis* response under this OA will occur at the level of Response Governance as defined by CIMS. Under CIMS Response Governance Terms of Reference and in the context of a response, Response Governance is responsible for the strategic direction of the response, setting strategic response objectives and outcomes, and ensuring these are appropriate.

The GIA Response Guide provides guidance on how response decisions will be made in the event of a response affecting GIA Signatories. Refer to 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.

SCHEDULE C – Terms of Reference

1. Response Governance

Governance of a *Mycoplasma bovis* (*M bovis*) response under the *M bovis* Operational Agreement will be conducted by Response Governance.

Response Governance is accountable for setting, reviewing and amending as appropriate the strategic direction of the response, strategic response objectives and response outcomes under this OA. Members of Response Governance have executive oversight of the response, make strategic decisions, and identify strategic risks. Without limiting that role, and unless otherwise agreed in writing by the Parties, specific responsibilities include as required:

- a) Providing the response with directives that set over-arching response objectives, detailing the resources available to the response, and setting any constraints on the response.
- b) Ensuring the response has appropriate resources throughout, to support delivery of the National Response Plan including the approval of any special funding arrangements.
- c) Overseeing the actual and forecast compensation liability throughout a response, the contribution of that liability to total response costs (both actual and forecast) and the fiscal caps.
- d) Approving and monitoring metrics for determining the effectiveness of the response.
- e) Approving and monitoring the response trigger points that cause a review of the response objectives.
- f) Agreeing a spokesperson for the response if necessary.
- g) Delegating authority and operational control to the Response Controller and giving the Response Controller ongoing high level support, advice, and direction.
- h) Ensuring, as far as is reasonably practicable, the health and safety of people working in or directly impacted by *Mycoplasma bovis* Response Activities under this OA in accordance with clause 28.17.
- i) Creating and maintaining a strategic risks register.
- j) Auditing financial reports.

The Chair of Response Governance will be the MPI Head of Biosecurity or as otherwise agreed. The position of Chair does not carry a vote.

If an Independent Chair has been appointed, that person shall be the Chair of Response Governance during their tenure as Independent Chair and this Schedule C Terms of Reference shall be read subject to the terms of reference of the Independent Chair unanimously agreed by the Parties.

The Designated Decision Makers in the *M bovis* Response are the authorised representatives of each of the Ministry for Primary Industries, DairyNZ Incorporated and Beef + Lamb New Zealand Limited, respectively.

Attendance at Response Governance may be in person, or by electronic means. A quorum will be at least two Designated Decision Makers. The only participants entitled to vote are the Parties (usually via their Designated Decision Makers or Alternates).

Each Designated Decision Maker may be accompanied by one advisor at Response Governance meetings.

The Response Controller and the Director, *M bovis* Programme will attend Response Governance meetings.

Other advisors (e.g. technical advisors) or other invited parties may also attend at the discretion of the Chair of Response Governance and in consultation with Response Governance members for specific agenda items.

The Parties recognise that, in the circumstances giving rise to the *Mycoplasma bovis* response under this OA, MPI will liaise with other government departments responsible for administering portfolios other than biosecurity that may also be impacted by *Mycoplasma bovis*. Response Governance may allow representatives of those departments to attend the Response Governance meetings as observers on the basis that the department will provide to Response Governance reciprocal access to that department's decision-making in relation to *Mycoplasma bovis*.

Response Governance shall determine its role in relation to decision-making with reference to the GIA Response Guide.

2. Response Governance Meetings

2.1 Response Governance Meetings

Except in the case of urgent or extraordinary meetings, notice of every meeting, including proposed date, time and venue and agenda will be given to each Party at least 24 hours prior to the meeting.

Each Party must be given the same amount of notice of a meeting and the agenda for the meeting must be distributed at the same time to all Parties.

Decisions may only be made at a meeting on matters mentioned in the agenda for that meeting unless all Parties are Present and agree that other matters may be decided.

Minutes of the meeting shall be taken, and assented to by the Designated Decision Makers present at the following meeting of Response Governance. Once assented to, such minutes shall be deemed an accurate record of decisions reached.

The Parties shall adhere to the GIA Response Guide except where otherwise agreed.

2.2 Absent decision-makers during a response

If a Designated Decision-Maker is unable to attend a Response Governance meeting, the Party may appoint an Alternate.

If neither the Designated Decision Maker nor the Alternate of a Party is Present at a Response Governance meeting, they will be provided notice by the Chair of Response Governance of any decisions made at that meeting, and they will:

- a) have twenty four (24) hours from receipt of that notice to provide the Chair of Response Governance notice of whether they agree or disagree with the decision. Such agreement or disagreement shall be deemed to constitute their vote as if they had been Present;
- b) 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
- c) have an obligation to pay agreed shares of response costs in relation to those Response Activities, unless that Party notifies the Chair of Response Governance within 48 hours of the minutes of the Response Governance meeting being received by that Party of the Party's intention to withdraw from the response.

2.3 Response Governance does not have the authority to oblige an Industry Party to enter into obligations or commitments with third parties or incur costs on that Industry Party's own account (i.e. that are not cost-shareable response costs) without that Party's consent.

3. Contact details for the Parties

The Designated Decision Makers for each Party and their contact details, including their nominated email address for the receipt of Formal Notices under this OA, and details of their Alternates and their email address (for receipt of communications other than Formal Notices) as at the Commencement Date are as follows:

MPI

Designated Decision Maker: Ray Smith, Director-General MPI

Nominated email address for the receipt of Formal Notices:
Ray.Smith@MPI.govt.nz

Alternate: Roger Smith

Alternate's email address: Roger.Smith@mpi.govt.nz

DairyNZ Incorporated

Designated Decision Maker: Tim Mackle, Chief Executive

Nominated email address for the receipt of Formal Notices:
tim.mackle@ceo.dairynz.co.nz

Alternate: David Evans

Alternate's email address: david.evans@dairynz.co.nz

Beef + Lamb New Zealand Limited

Designated Decision Maker: Sam McIvor, Chief Executive

Nominated email address for the receipt of Formal Notices:
sam.mcivor@beeflambnz.com

Alternate: Dave Harrison

Alternate's email address: Dave.Harrison@beeflambnz.com