

# **SCIENCE INVESTMENT CONTRACT**

between

**THE MINISTRY OF BUSINESS,  
INNOVATION AND EMPLOYMENT**

and

**{Contractor}**

Contract Number

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## SCIENCE INVESTMENT CONTRACT

**Date:** [insert date]

**Parties:**

Her Majesty the Queen in right of New Zealand, acting by and through the Ministry of Business, Innovation and Employment ("**Ministry**")

and [insert Contractor name] (the "**Contractor**")

together referred to as the "**Parties**".

### BACKGROUND

- A. The Science Board is responsible for making funding decisions on proposals for allocation of funding for research, science, or technology, or related activities under the Research, Science, and Technology Act 2010. The Ministry is responsible for implementing the Science Board's decisions by overseeing the allocation of funding to persons whose funding proposals are approved by the Science Board.
- B. The Contractor has applied for funding for one or more research, science, or technology work programmes. The Contractor's proposal has been approved by the Science Board.
- C. The Contractor may, from time to time, apply for funding for other research, science, or technology work programmes. The details of each research, science, or technology work programme for which funding is allocated by the Science Board will be set out in a separate Work Programme Agreement.
- D. The purpose of this Contract is to:
  - (a) set out the terms that will apply to each Work Programme Agreement;
  - (b) recognise that the Parties to this Contract have a mutual goal of achieving the delivery of the impact statements, research aims and critical steps of each Work Programme, and enable both Parties to achieve that goal;
  - (c) deal with any change in the delivery of or risks to the delivery of a Work Programme; and
  - (d) ensure that the Ministry can get information about the progress of each Work Programme from the Contractor.

## 1. DEFINITIONS

1.1 In this Contract and each Work Programme Agreement, the following definitions apply, unless the context otherwise requires:

**Change Event** has the meaning set out in clause 6.1.

**Confidential Information** means, in relation to a Party, all information concerning the organisation, administration, operation, business, customers, clients, finances, and methods (including any secret process or formula or other trade secret) of that Party, the content of this Contract and each Work Programme Agreement, and includes all information concerning each Work Programme.

**Cost of Dissemination** means the costs incurred by the Contractor in providing access to the Primary Results on an ongoing and sustainable basis.

**Critical Performance Indicators** means, in relation to a Work Programme:

- (a) impact statements, research aims, and critical steps as specified in the relevant Work Programme Agreement;
- (b) financial information relating to co-funding, sub-contracting, and budgets as specified in the relevant Work Programme Agreement; and
- (c) the Quality Assurance Criteria, requirements relating to Key Personnel, the Intellectual Property Management Plan, Māori Science and Innovation and Special Ethical and Regulatory Requirements specified in the relevant Work Programme Agreement.

**End Date** means the end date of a Work Programme Agreement as specified in the Work Programme Agreement, or the date that a Work Programme Agreement is terminated (whichever is the earlier).

**Frascati Definition of Research and Experimental Development** means the Frascati Definition of Research and Experimental Development as set out in *Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development*, published by the Organisation for Economic Co-operation and Development (Frascati Manual 2015: Guidelines for Collecting and Reporting Data on Research and Experimental Development (oecd-ilibrary.org)).

**Full Time Equivalent** means persons working on an equivalent full time basis on a Work Programme.

**Funding** means the amount of funding paid in respect of a Work Programme as set out in the relevant Work Programme Agreement.

**Intellectual Property Management Plan** means a plan specified in a Work Programme Agreement that sets out how the Contractor anticipates managing the Intellectual Property Rights generated by a Work Programme to maximise the benefit of that Work Programme for New Zealand.

**Intellectual Property Policies and Principles** means the policies and principles relating to the management of Work Programme Intellectual Property Rights that the Contractor must adopt pursuant to Principle 2 of Appendix 2.

**Intellectual Property Rights** includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, together with all right, interest or licence in or to any of the foregoing.

**Key Personnel** means, in relation to a Work Programme, the science leader, the impact statement leader, the key individuals, and key researchers, together with any other key personnel of the Contractor or a subcontractor, or Key Personnel who are co-funded by a co-funder; all as identified in the relevant Work Programme Agreement.

**Māori Science and Innovation** means Māori science and innovation specified in a Work Programme Agreement.

**Nationally Significant Database or Collection** means a database or collection that is identified on the Ministry's website or in a Work Programme Agreement as being nationally significant.

**Notice** means a notice given in accordance with clause 11.

**Overseas Party** means:

- (a) any individual or association of persons not ordinarily resident in New Zealand; or
- (b) any incorporated body:
  - (i) not registered, or deemed to be registered, under Part 18 of the Companies Act 1993; or
  - (ii) that does not have a registered place of business in New Zealand; and
  - (iii) that is not carrying on a business in New Zealand.

**Performance Management and Reporting Requirements** means the requirements set out in clause 5.10.

**Primary Results** means the data and findings produced as part of a Work Programme and the available interpretations and explanations of such data and findings in a form that facilitates their uptake and application by the public, and includes any part of the data and findings but does not include primary data that is an input into creating the primary results.

**Quality Assurance Criteria** means the requirements in a Work Programme Agreement relating to the governance, science quality, and human capability development of the Work Programme.

**Science Board** means the Board established by the Minister of Science and Innovation under the Research, Science, and Technology Act 2010 to make decisions in respect of proposals for funding predominantly from research organisations.

**Special Ethical and Regulatory Requirements** means special ethical and regulatory requirements specified in a Work Programme Agreement.

**Start Date** means the start date of a Work Programme Agreement as specified in the Work Programme Agreement.

**Transaction** means a formal agreement between the Contractor and an Overseas Party under which any Work Programme Intellectual Property Right is to be transferred for a defined term or permanently (by way of assignment, licence to use, or otherwise), but does not include:

- (a) any proprietary information exchange agreement or confidentiality agreement made in anticipation of a formal agreement;
- (b) any option or preliminary agreement which has not resulted in a final agreement;
- (c) any agreement relating solely to a common law right in the nature of know-how, trade secrets, biological material, or the like, except where a trade secret, or the like, is subject to statutory definition in the Overseas Party's jurisdiction; or
- (d) any agreement made by a third party in New Zealand, to whom the Contractor has previously transferred a Work Programme Intellectual Property Right, with an Overseas Party.

**Working Days** means a day of the week other than:

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; or
- (b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year.

**Work Programme** means a research, science, or technology programme described in a Work Programme Agreement.

**Work Programme Agreement** means an agreement entered into by the Parties in respect of a specific research, science, and technology work programme in the form set out in Appendix 1 of this Contract.

**Work Programme Conditions** means contractual conditions that apply in respect of a Work Programme that are set out in the relevant Work Programme Agreement.

**Work Programme Intellectual Property Rights** means Intellectual Property Rights arising directly from the performance of a Work Programme.

- 1.2 In this Contract and each Work Programme Agreement, unless the context requires otherwise:
- (a) clause and other headings are for ease of reference only and are not to be deemed to form any part of the context, or to affect the interpretation, of the Contract or any Work Programme Agreement; and
  - (b) words importing the singular include the plural and vice versa, unless the context requires otherwise.

## **2. HOW WE CONTRACT WITH EACH OTHER**

- 2.1 If the Science Board approves a proposal submitted by the Contractor for funding for a research, science, or technology work programme and the Parties agree to enter into an agreement in respect of the Work Programme, the Parties must enter into a Work Programme Agreement.
- 2.2 A Work Programme Agreement must include a description of the impact statements, research aims, critical steps, timeframes, Key Personnel, Funding payable, and any other details that relate to the Work Programme.
- 2.3 The terms set out in this Contract and in the relevant Work Programme Agreement, including the Work Programme Conditions and schedules, will apply in respect of that Work Programme.
- 2.4 If there is any conflict between the terms of this Contract and a Work Programme Agreement, this Contract takes precedence, except to the extent that the Work Programme Agreement, including any Work Programme Conditions or schedules, expressly states otherwise by:
- (a) setting out the term or terms that the Parties wish to vary; and
  - (b) setting out the variation to the term or terms.

## **3. TERM**

- 3.1 This Contract commences on the date it is signed by the Parties, and stays in force until terminated in accordance with this Contract.

- 3.2 Each Work Programme Agreement starts on the Start Date and ends on the End Date or the date on which anything required to be done by either Party under the Work Programme Agreement is completed (whichever is the later), unless terminated earlier in accordance with this Contract.

#### **4. MINISTRY'S OBLIGATIONS**

##### *Funding*

- 4.1 In consideration of the Contractor carrying out a Work Programme and meeting its obligations under this Contract and the relevant Work Programme Agreement, the Ministry will provide the Funding to the Contractor subject to the terms and conditions of this Contract and the Work Programme Agreement.
- 4.2 The Ministry will provide Funding in accordance with the payment schedule set out in the relevant Work Programme Agreement.
- 4.3 The Funding is exclusive of GST, and the Contractor is responsible for all taxation liabilities, rates, and levies payable in relation to the Funding.

##### *Intellectual Property Rights*

- 4.4 The Ministry agrees that all Intellectual Property Rights arising from this Contract and any Work Programme Agreement are the property of the Contractor, and will make no claim to ownership of any Intellectual Property Rights arising from this Contract or any Work Programme Agreement.

#### **5. CONTRACTOR'S OBLIGATIONS**

##### *Work Programmes*

- 5.1 The Contractor will use its best endeavours to deliver each Work Programme and the impact statements, research aims, and critical steps of the Work Programme in the manner set out in the relevant Work Programme Agreement.
- 5.2 The Contractor warrants that all consents required (including, without limitation, statutory consents, appropriate ethics committee approvals, informed ethical consents (if a person is the subject of research), Environmental Protection Agency approvals) to carry out each Work Programme have been, or will be, obtained. The Contractor will notify the Ministry immediately if any required consent is not able to be obtained, expires, is withdrawn, or otherwise lapses.
- 5.3 The Contractor will comply with any Work Programme Conditions relating to a Work Programme.



### *Funding*

- 5.4 In respect of a Work Programme, the Contractor will use the Funding only:
- (a) for Work Programme costs incurred between the Start Date and the End Date;
  - (b) to deliver the impact statements, research aims, and critical steps specified in the relevant Work Programme Agreement, which must be consistent with the Frascati Definition of Research and Experimental Development, and which include any activities that are reasonably ancillary to purposes that are consistent with the Frascati Definition of Research and Experimental Development;
  - (c) to meet the Performance Management and Reporting Requirements;
  - (d) to carry out activities that are reasonably necessary to deliver the Work Programme;
  - (e) to meet the Contractor's reasonable costs of providing access, information, and reports to the Ministry if the Ministry undertakes an audit as set out in clauses 5.8 and 5.9, or a review or evaluation as set out in clause 5.12; and
  - (f) to carry out any other activities directly relating to the Work Programme as agreed between the Parties.
- 5.5 The Contractor will acknowledge, as appropriate, provision of Funding by the Ministry.
- 5.6 The Contractor will ensure that the direct cash and direct in-kind co-funding (if any) specified in a Work Programme Agreement is allocated to the relevant Work Programme.

### *Record Keeping*

- 5.7 For each Work Programme, the Contractor must maintain true and accurate records, including appropriate accounting records, of its use of the Funding for at least 7 years after termination or expiry of the relevant Work Programme Agreement.

### *Audit*

- 5.8 There are no scheduled audits planned in respect of this Contract or any Work Programme Agreement. However, the Ministry may appoint an independent auditor to audit all records relevant to this Contract or a Work Programme Agreement:
- (a) if the Ministry has cause to believe that the Contractor is in breach of its obligations under this Contract or any Work Programme Agreement;
  - (b) as part of a random audit programme required by the Ministry in order to satisfy its obligations as a Government funder; or

- (c) if directed to do so by the Minister responsible for the Vote (as defined in the Public Finance Act 1989) from which the Funding originates.

5.9 The Ministry will use its best endeavours to ensure that any audit carried out under clause 5.8 minimises:

- (a) disruption to the Contractor; and
- (b) overlap with any other audit and/or review that has been carried out in respect of the Contractor's use of funds.

*Performance Management and Reporting Requirements*

5.10 The Contractor will meet the following Performance Management and Reporting Requirements in respect of each Work Programme Agreement to the reasonable satisfaction of the Ministry:

- (a) provide an annual report by no later than 31 July each year that covers the delivery of the Work Programme between 1 July of the previous year (or the Start Date of the Work Programme, whichever is the latter) and 30 June of the year in which the report is due, and includes:
  - (i) information about all Critical Performance Indicators, Primary Results and total Full Time Equivalents as specified in the Work Programme Agreement, with comments where there has been a significant departure from the projected figures or information contained in the Work Programme Agreement;
  - (ii) information to be shared publicly on the status of the Work Programme; and
  - (iii) the status of the Work Programme including progress towards delivering each impact statement, critical step, or research aim; and
- (b) if the End Date of the Work Programme Agreement is a day other than 30 June, provide a final report by no later than 1 month after that End Date that covers the delivery of the Work Programme for the partial year from the preceding 1 July to the End Date, and that describes any changes to the information set out in the previous annual report provided under paragraph (a);
- (c) provide statistical information including basic profiling data as reasonably required;
- (d) provide information that would enhance the Ministry's understanding of the research performance in the Work Programme as appropriate; and
- (e) comply with any additional performance management and reporting requirements specified in the Work Programme Agreement.

5.11 The Contractor will provide additional reports or information reasonably required by the Ministry.

#### *Reviews and Evaluations*

5.12 For each Work Programme Agreement, the Contractor will:

- (a) on reasonable Notice from the Ministry, provide reasonable access, information, and reports to the Ministry:
  - (i) during working hours for the term of the Work Programme Agreement, to allow the Ministry to review its investment in the Work Programme; and
  - (ii) for a period of up to 7 years after the Work Programme Agreement ends, to allow the Ministry to review or evaluate whether the post-contract outcomes for New Zealand described in the Work Programme Agreement have been delivered; and
- (b) comply with any additional review or evaluation requirements specified in the Work Programme Agreement.

#### *Intellectual Property Rights*

5.13 The Contractor must comply with Principles 1 – 3 of Appendix 2 in respect of each Work Programme, including by adopting Intellectual Property Policies and Principles as required by clause 2 of Appendix 2.

5.14 The Contractor's Intellectual Property Policies and Principles must be published on the Contractor's website or, where this is inappropriate, made available if requested by a member of the public. However, the Contractor is not required to publish individual agreements relating to its Intellectual Property Rights on its website.

5.15 For each Work Programme, the Contractor will maintain the Intellectual Property Management Plan specified in the relevant Work Programme Agreement, and will manage any Work Programme Intellectual Property Rights arising from the Work Programme in accordance with that plan, in order to contribute towards delivering the impact statements, research aims, and critical steps listed in the relevant Work Programme Agreement.

#### *Nationally significant databases*

5.16 The Contractor will maintain any Nationally Significant Database or Collection subject to the Ministry continuing to provide funding for the maintenance of the Nationally Significant Database or Collection at the level set out in the relevant Work Programme Agreement.

### *Making data available*

- 5.17 The Contractor will make any data available, at the Cost of Dissemination and in the least aggregated form, from any Nationally Significant Database or Collection, for which the Contractor has any responsibility.
- 5.18 Subject to clause 5.19, the Contractor will make the Primary Results of each Work Programme available at the Cost of Dissemination to the public and stakeholder groups, on request through appropriate means in order to contribute towards delivering the impact statements, research aims, and critical steps specified in the relevant Work Programme Agreement.
- 5.19 The Contractor is not required to make the Primary Results of a Work Programme available under clause 5.18 if the Contractor considers that:
- (a) making the Primary Results available would prejudice the commercial position of the Contractor;
  - (b) withholding the Primary Results is necessary to protect the privacy of a person;
  - (c) making the Primary Results available would breach an ethical standard;
  - (d) the request for the Primary Results is vexatious or frivolous;
  - (e) making the Primary Results available would prejudice the Work Programme;
  - (f) making the Primary Results available would be contrary to the Contractor's statutory or existing legal obligations; or
  - (g) making the Primary Results available would prejudice the filing of a valid patent application in New Zealand or overseas, or a similar application for intellectual property protection, or the commercial value of developed intellectual property.

### *Overseas transactions*

- 5.20 If the Contractor concludes a Transaction with an Overseas Party that was an Overseas Party at the date of commencement of the Transaction, the Contractor will report to the Ministry in a manner to be reasonably agreed by the Contractor and the Ministry. If the Contractor is obligated under the terms of the Transaction not to reveal the identity of the Overseas Party, the Contractor will provide information on:
- (a) the particular nature of the Work Programme Intellectual Property Right in the Transaction;
  - (b) the form of the Transaction;
  - (c) the territorial and/or application limits of the Transaction; and

- (d) financial information and related material that indicates the Transaction's contribution to the Contractor's overseas earnings.

## **6. CHANGE EVENTS**

6.1 In relation to a Work Programme Agreement, the following matters constitute a Change Event:

- (a) an impact statement, research aim, critical step, or any other significant aspect of the Work Programme cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, the Work Programme Agreement;
- (b) the Ministry is not satisfied with the progress the Contractor has made in relation to the delivery of an impact statement, research aim, critical step, or any significant aspect of the Work Programme;
- (c) there is a change in the involvement of a Key Personnel and the Contractor, sub-contractor, or co-funder (as appropriate) is unable to find an adequate replacement within a reasonable time;
- (d) there is a significant decrease in the total number of Full Time Equivalents specified in the Work Programme Agreement and the Contractor does not find adequate replacements within a reasonable time; or
- (e) the Contractor materially fails to deliver any of the Critical Performance Indicators set out in the Work Programme Agreement.

6.2 If a Change Event occurs:

- (a) the Party that is aware of the Change Event will give the other Party Notice of the Change Event as soon as reasonably practicable after becoming aware of the Change Event; and
- (b) the Science Board, or any person acting under a delegation given by the Science Board, may suspend payment of all or part of the Funding for the Work Programme to the Contractor.

6.3 The Parties may, at any time after receipt of the Notice of a Change Event:

- (a) agree that the circumstances giving rise to the Change Event no longer exist;
- (b) agree to vary the relevant Work Programme Agreement; or
- (c) agree that no further action is required in respect of the Change Event.

6.4 If the Parties reach agreement in accordance with clause 6.3:

- (a) the Ministry will pay the Contractor the Funding suspended under clause 6.2(b) (if any), but only if the Science Board, or any person acting under a delegation given by the Science Board, determines that the Funding must be paid to the Contractor; and
  - (b) no further action will be required under this clause 6.
- 6.5 The Contractor must try to remedy the Change Event by no later than 3 months (or any other period agreed in writing by the Parties) after the date the Notice of the Change Event was given in accordance with clause 11 ("remedy date").
- 6.6 The Ministry may, at any time after the date the Notice of the Change Event was received, obtain an independent review of the Work Programme that considers the impact of the Change Event on the delivery of the Work Programme.
- 6.7 If the Change Event has not been remedied to the satisfaction of the Parties by the remedy date, the Ministry will refer the Change Event to the Science Board for its determination in accordance with clause 6.9, but only if the Ministry has obtained an independent review in accordance with clause 6.6. The Ministry will give the Contractor Notice of the referral.
- 6.8 If the Change Event is referred to the Science Board, the Ministry will provide to the Science Board:
  - (a) the results of the independent review of the Change Event referred to in clause 6.6;
  - (b) any information, including recommendations, that the Ministry considers is relevant; and
  - (c) any information that the Contractor wants the Science Board to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).
- 6.9 The Parties agree that if the Science Board determines that:
  - (a) no further action is required in respect of the Change Event:
    - (i) the Ministry will pay the Contractor any Funding suspended under clause 6.2(b); and
    - (ii) no further action will be required under this clause 6;
  - (b) a Work Programme Agreement must be varied (which may include a change to the amount of Funding payable), subject to clause 6.10 the Parties will do anything necessary to give effect to that decision, including by entering into a variation of agreement;

- (c) a Work Programme Agreement must be terminated, the Work Programme Agreement will terminate with effect from the date specified by the Science Board (which may provide for a disengagement period, if the Science Board considers that is appropriate).
- 6.10 If the Science Board determines that a Change Event must be resolved by varying the relevant Work Programme Agreement, and the Contractor does not wish to continue delivering the Work Programme, the Contractor may, at any time before the variation is executed by the Parties, terminate the Work Programme Agreement immediately by Notice to the Ministry.
- 6.11 If a Work Programme Agreement is terminated by the Science Board under clause 6.9(c) or by the Contractor under clause 6.10, the Ministry:
- (a) is not required to pay any Funding suspended under clause 6.2(b) (if applicable), unless the Science Board determines that such Funding should be paid to the Contractor;
  - (b) may require the Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.
- 6.12 The Parties agree:
- (a) neither Party may raise a dispute under clause 9 if a Change Event is notified under clause 6.2;
  - (b) nothing in this clause 6 prevents the Ministry from terminating this Contract or a Work Programme Agreement (as the case may be) under clause 7; and
  - (c) the Ministry will provide details of any delegations given by the Science Board under section 11 of the Research, Science, and Technology Act 2010, in relation to clauses 6.2(b) and 6.4(a) of this Contract.

## **7. TERMINATION**

- 7.1 The Ministry, with the approval of the Science Board, may suspend the payment of Funding or terminate this Contract immediately by Notice to the Contractor if the Contractor:
- (a) commits or is likely to commit a material breach of the terms or conditions of this Contract that is not capable of being remedied;
  - (b) commits or is likely to commit a material breach of this Contract that is capable of being remedied, but fails to remedy the breach to the Ministry's satisfaction within any reasonable time specified by the Ministry in a Notice;
  - (c) fraudulently misuses or misappropriates any Funding;

- (d) becomes insolvent (or is deemed or presumed to be so under any applicable law) to be unable to pay its debts, or in the case of an individual or partnership, commits an act of bankruptcy;
  - (e) makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
  - (f) has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property; or
  - (g) passes any resolution, or proceedings are commenced, for amalgamation with any other company (except for the purposes of a reconstruction approved by the Ministry, for which approval may be withheld by the Ministry in its absolute discretion).
- 7.2 If this Contract is terminated under clause 7.1, each Work Programme Agreement will terminate on the same day as this Contract terminates.
- 7.3 The Ministry, with the approval of the Science Board, may terminate a Work Programme Agreement immediately by Notice to the Contractor if:
- (a) the government reduces, stops, or freezes funding to the Ministry;
  - (b) the Contractor fraudulently misuses or misappropriates any Funding;
  - (c) the Contractor commits or is likely to commit a material breach of the Work Programme Agreement that is not capable of being remedied;
  - (d) the Contractor commits or is likely to commit a material breach of the Work Programme Agreement that is capable of being remedied, but fails to remedy the breach to the Ministry's satisfaction within any reasonable time specified by the Ministry in a Notice; or
  - (e) the Contractor gives any information, representation, or statement to the Ministry about the Work Programme that is misleading or inaccurate in any material respect.
- 7.4 If a Work Programme Agreement is terminated under clause 7.2 or 7.3, the Ministry may require the Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.
- 7.5 If this Contract is terminated under clause 7.1(c) or a Work Programme Agreement is terminated under clause 7.3(b), the Ministry may require the Contractor to return all Funding paid up to the date of termination under all Work Programme Agreements in force at the date of termination, together with interest on all sums due, which will be charged on a daily basis at a rate that is same as the credit and debit rate that is charged by Inland Revenue on each day on which interest is charged by the Ministry, from the date on which the Contractor was paid the money by the Ministry to the date the Contractor returns the money, or set off the amount



against any payment to be made to the Contractor under any other contract, existing or future, with the Ministry.

- 7.6 If payment of Funding is suspended in accordance with clause 7.1 but the Contract is not terminated, the Ministry is not required to pay any Funding unless the Science Board determines that such Funding should be paid to the Contractor.

## **8. CONFIDENTIALITY**

- 8.1 Except as required by law, and subject to clauses 8.2 to 8.6, each of the Parties will keep the Confidential Information of the other Party confidential and will not use, or allow the use of, the other Party's Confidential Information other than for the purpose for which it was disclosed.

- 8.2 The Contractor recognises that from time to time the Ministry may release the following information relating to this Contract and each Work Programme Agreement:

- (a) the name of the Contractor;
- (b) the Contract ID;
- (c) the title of the Work Programme;
- (d) the public statement set out in the Work Programme Agreement;
- (e) the research fund from which the Work Programme is funded;
- (f) the relevant sector;
- (g) the total amount of funding paid to the Contractor in the current financial year and previous years;
- (h) the total amount of Funding payable to the Contractor over the duration of each Work Programme Agreement;
- (i) the year Funding was approved in respect of each Work Programme; and
- (j) the period of time for which Funding will be provided in respect of each Work Programme.

- 8.3 Information arising from the Contract and each Work Programme Agreement, including reports provided by the Contractor to the Ministry, will remain confidential to the extent to which the Ministry is able to protect confidentiality in accordance with the Official Information Act 1982 or any other statutory or evidentiary requirement.

- 8.4 Subject to any legal requirements, the Ministry will give Notice to the Contractor if it receives a request for information other than the information listed in clause 8.2 concerning the Contractor.

8.5 The Ministry may release any information in an aggregated form that does not specifically identify the Contractor.

8.6 Nothing in this clause 8 prevents the Ministry from disclosing Confidential Information to:

(a) a Minister; or

(b) any of the Ministry's advisors (including relevant third parties) or any other government agency (including any Crown entity), provided that any person to whom Confidential Information is disclosed is bound in writing by obligations no less onerous than those contained in this clause 8 prior to any disclosure.

## **9. DISPUTE RESOLUTION**

9.1 Subject to clause 6.12, if any dispute arises between the Parties in relation to this Contract or a Work Programme Agreement, then a Party may give Notice to the other Party of the initiation of the dispute resolution process set out in this clause 9.

9.2 The Parties will attempt in good faith to settle the dispute amicably.

9.3 If the Parties cannot settle the dispute amicably within 10 Working Days of Notice being given, a Party may seek to have it mediated. If the Parties agree to attend mediation, they will agree upon a mediator, or failing agreement within 5 Working Days of the Notice regarding mediation, a mediator will be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.

9.4 If a Party refuses to attend mediation, either at all or within a reasonable time frame, or the Parties can not settle the dispute at mediation within 10 Working Days of the appointment of the mediator (or such further period agreed by the Parties), then a Party may, after giving Notice to the other Party, refer the dispute to the arbitration of a single arbitrator to be agreed upon by the Parties, or failing agreement within 5 Working Days of the Notice regarding arbitration, to be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.

9.5 The arbitration will be conducted with and subject to the provisions of the Arbitration Act 1996, excluding the Second Schedule to the Act.

9.6 The decision of the Arbitrator will be final and conclusive as between the Parties.

9.7 The arbitration will be held in Wellington, New Zealand.

## **10. VARIATION**

- 10.1 No modification to or variation of this Contract or any Work Programme Agreement, will be effective and binding on the Parties unless made in writing and signed by the Parties.

## **11. NOTICES**

- 11.1 Notices under this Contract and any Work Programme Agreement will be given by post or by email. Notices given by email will be followed by a hard copy sent by post. Notices will be deemed to have been given three days after dispatch.
- 11.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager, Science Investment, Science, Skills and Innovation, Ministry of Business, Innovation and Employment, PO Box 5762, Wellington. Notices given by email will be sent to [imssupport@mbie.govt.nz](mailto:imssupport@mbie.govt.nz)
- 11.3 In respect of the Contractor, Notices will be addressed to the contact person for the Work Programme specified in the relevant Work Programme Agreement.

## **12. NO EMPLOYMENT RELATIONSHIP**

- 12.1 Neither this Contract nor any Work Programme Agreement creates a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.
- 12.2 The Contractor will not lead any person to believe that remuneration for work or any other payment received by that person is met directly by the Ministry.
- 12.3 The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract and one or more Work Programme Agreements.

## **13. ENTIRE CONTRACT**

- 13.1 This Contract, and each Work Programme Agreement, represents the entire contract between the Parties and supersedes and extinguishes all prior agreements, discussions, and arrangements between the Parties that relate to the subject matter contained in each Work Programme Agreement.

## **14. FORCE MAJEURE**

- 14.1 No Party will be liable for any delay or default due to natural calamities, acts or demands of government or any government agency, wars, riots, strikes, floods, accidents or any other unforeseen cause beyond its control and not due to that Party's or those Parties' fault or neglect.

14.2 If an event described in clause 14.1 occurs, in which resources employed in this Contract are required for public good purposes in relation to the event, the Ministry will negotiate a reasonable variation to the Contract to take account of the diversion of resources.

## **15. PARTIAL INVALIDITY**

15.1 The illegality, invalidity, or unenforceability of a provision of this Contract or a Work Programme Agreement under any law, will not affect the legality, validity, or enforceability of any other provision of this Contract or a Work Programme Agreement (as the case may be).

15.2 If any clause of this Contract or a Work Programme Agreement is held to be unenforceable or in conflict with the law, the invalid or unenforceable clause will be replaced with a clause which, as far as possible, accomplishes the original purpose of the clause.

## **16. ASSIGNMENT**

16.1 The Contractor may not assign, or otherwise transfer its rights and obligations under this Contract or any Work Programme Agreement to a third party, except with the prior written consent of the Ministry.

16.2 Any change affecting the control of the Contractor will be deemed a transfer and an assignment.

## **17. SURVIVAL OF CLAUSES**

17.1 Termination of the Contract or a Work Programme Agreement for any reason will not affect the validity and enforceability of this clause and the confidentiality, reporting, termination, dispute resolution, and governing law clauses of this Contract and each Work Programme Agreement.

## **18. GOVERNING LAW**

18.1 The Contract and each Work Programme Agreement will be governed by and construed in accordance with the laws of New Zealand, and the Parties submit to the jurisdiction of the Courts of New Zealand.

Signed on behalf of Her Majesty the Queen  
in right of New Zealand by

---

Signature

---

Name and position

Ministry of Business, Innovation and Employment

Witness Signature

---

Full Name

Address

Occupation

Date

---

Signed on behalf of the Contractor by

---

Signature

---

Name and position

Witness Signature

---

Full Name

Address

Occupation

Date

---

## APPENDIX 1 – WORK PROGRAMME AGREEMENT

### Parties

Her Majesty the Queen in right of New Zealand, acting by and through the Ministry of Business, Innovation and Employment ("**Ministry**")

and

[insert Contractor name] (the "**Contractor**")

together referred to as the "**Parties**".

### Background

1. The Parties have entered into a science investment contract ("Contract") that sets out the terms that apply when the Science Board approves a proposal for funding submitted by the Contractor for a research, science, or technology work programme.
2. The Science Board has approved such a proposal, and the Parties wish to enter into an agreement under which funding will be provided to the Contractor to carry out the work programme.

### This Work Programme Agreement

3. The Parties agree:
  - (a) to enter into this Work Programme Agreement, which sets out the details of the work programme to be carried out by the Contractor, and the Funding to be provided by the Ministry; and
  - (b) that the terms of the Contract will apply to this Work Programme Agreement.

Signed on behalf of Her Majesty the Queen  
in right of New Zealand by

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and position

Ministry of Business, Innovation and Employment

Witness Signature

\_\_\_\_\_  
Full Name

Address

Occupation

Date

---

Signed on behalf of the Contractor by

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and position

Witness Signature

\_\_\_\_\_  
Full Name

Address

Occupation

Date

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### SCHEDULE 1 – SUMMARY

Contract ID:	
Work Programme title:	
Proposal reference:	
Contract reference:	
Research fund:	
Investment mechanism:	
Investment priority/priorities:	
Research question(s):	
Total Funding year one (GST exclusive):	
Total Funding year one (plus GST, if GST is payable):	
Total Funding (GST exclusive):	
Total Funding (plus GST, if GST is payable):	
Number of years of funding:	
Contractor:	
Contractor's Contract Manager:	
Science Leader:	
Contact person:	
Contact email:	
Contact phone:	
Special flags:	
Payment schedule:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	
Public statement:	



**Executive Summary**

**Confidentiality Request**

Template

**SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND**

<b>Time period</b>	<b>Description of post-contract outcomes</b>
2 years after the End Date	
5 years after the End Date	
10 years after the End Date	

### SCHEDULE 3 – WORK PROGRAMME

#### Impact Statement 1

<b>Short title</b>	
<b>Impact statement</b>	
<b>Start date</b>	
<b>End date</b>	
<b>Impact statement leader</b>	
<b>Primary end user(s)</b>	

## Impact Statement Information

### Research Aim

<b>Research aim sequence 1.1</b>	
<b>Research aim title</b>	
<b>Research aim text</b>	
<b>Start date</b>	
<b>End date</b>	

### Research Aim Critical Steps

<b>Critical step 1.1.1</b>	
<b>Description</b>	
<b>Start date</b>	
<b>End date</b>	

<b>Critical step 1.1.2</b>	
<b>Description</b>	
<b>Start date</b>	
<b>End date</b>	

**SCHEDULE 4 – FINANCIAL INFORMATION**

**Impact statement 1 funding**

**Summary of contract year funding (GST exclusive)**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
Contract year				

**Summary of contract year funding (GST inclusive)**

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>
Contract year				

**Impact statement 1 subcontracting (GST exclusive)**

Organisation	Organisation type	Status	Year 1	Year 2	Year 3	Year 4
<b>Total</b>						

**Impact statement 1 co-funding (GST exclusive)**

Type	Year 1	Year 2	Year 3	Year 4
Related in-kind				
Related cash				
Direct in-kind				
Direct cash				
Unspecified				
<b>Total</b>				

**Impact statement 1 related in-kind co-funding (GST exclusive)**

<b>Organisation</b>	<b>Organisation type</b>	<b>Status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>

**Impact statement 1 related cash co-funding (GST exclusive)**

<b>Organisation</b>	<b>Organisation type</b>	<b>Status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>

**Impact statement 1 direct in-kind co-funding (GST exclusive)**

<b>Organisation</b>	<b>Organisation type</b>	<b>Status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>

**Impact statement 1 direct cash co-funding (GST exclusive)**

<b>Organisation</b>	<b>Organisation type</b>	<b>Status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>



**Impact statement 1 unspecified co-funding (GST exclusive)**

<b>Organisation</b>	<b>Organisation type</b>	<b>Status</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>

Template

**Budget (GST exclusive)**

<b>Budget Item</b>	<b>Annualised average yearly figure</b>
Personnel	
General Operating Expenses (Include capital purchases up to \$5,000)	
Building Depreciation / Rental	
Equipment Depreciation / Rental	
Overheads	
Sub-contracting	
Other Expenditure	
Annualised Average Yearly Budget (GST exclusive)	

**Nationally Significant Databases and Collections**

<b>Name</b>	<b>Maintenance</b>	<b>Related Research</b>

## **SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS**

### **Clause 5.10(e) – Additional Performance Management and Reporting Requirements**

### **Clause 5.12(b) – Additional Review and/or Evaluation Requirements**

**Work Programme Conditions**

**Special Ethical and Regulatory Requirements**

**Māori Science and Innovation**

**Quality Assurance Criteria (if required):**

**Governance**

**Science Quality**

**Human Capability Development**

**SCHEDULE 6 – FULL-TIME EMPLOYEES (FTES) AND KEY PERSONNEL**

**FTEs and Key Personnel (Year 1 figures)**

**Contractor**

<b>Position</b>	<b>Staff Member</b>	<b>Organisation</b>	<b>Years of experience</b>	<b>IS 1</b>	<b>IS 2</b>	<b>IS 3</b>
Science leader						
Contact person						
Impact statement leader						
Key individual						
Key researcher						
Key researcher						
Key researcher						
Other						
Student						
Contract manager						
Post-doctoral researcher						
<b>Total</b>						

**Non-contracted organisation**

<b>Position</b>	<b>Staff Member</b>	<b>Organisation</b>	<b>IS 1</b>	<b>IS 2</b>	<b>IS 3</b>
<b>Total</b>					

**SCHEDULE 7 – INTELLECTUAL PROPERTY MANAGEMENT PLAN**

## APPENDIX 2 – INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES

In the following principles, “should” indicates a non-obligatory best practice.

1. The Contractor must use its best endeavours to maximise the benefits to New Zealand of each Work Programme through its management of any Work Programme Intellectual Property Rights.
2. The Contractor must, before a Work Programme Agreement commences, have a set of Intellectual Property Policies and Principles in place in respect of that Work Programme.
3. The Contractor’s Intellectual Property Policies and Principles must:
  - (i) determine the ownership and/or assignment, if any, of Work Programme Intellectual Property Rights and require employees, or grant holders using the Contractor for that purpose, to acknowledge the relevant ownership and rights associated with Work Programme Intellectual Property;
  - (ii) ensure that researchers are advised of the potential value of Work Programme Intellectual Property Rights and of the options available to them to add value to those rights;
  - (iii) ensure that researchers are advised of any actual or potential confidentiality issues relating to Work Programme Intellectual Property Rights;
  - (iv) make clear and binding to the Contractor’s staff the separate and mutual obligations of the staff and the Contractor in relation to Work Programme Intellectual Property Rights management and protection;
  - (v) set out a review process to identify protectable and potentially valuable Work Programme Intellectual Property Rights and associated commercial activities and to prevent the infringement of existing protected Work Programme Intellectual Property Rights and associated commercial activities;
  - (vi) provide guidance on the prompt disclosure and resolution of potential conflicts of interest concerning the generation, ownership, management and use of Work Programme Intellectual Property Rights, such as on:
    - (a) staff members’ financial interests in external firms that contract with the Contractor, particularly where these entail research contacts and the exchange of Intellectual Property Rights;
    - (b) the nature and terms of institutional support for start-up companies and the equity holdings of the Contractor and its staff.
  - (vii) satisfy all legal and regulatory obligations with such amendments promptly incorporated as may be necessary to comply with all changes or additions to

legal or regulatory obligations that may be made during the term of the relevant Work Programme Agreement; and

- (viii) cover good scientific conduct, including sound record keeping and human and animal experimentation ethics.
4. The Intellectual Property Policies and Principles should ensure that cultural, Treaty of Waitangi and Māori issues are properly taken into consideration.
  5. The Contractor should give preferential access to competent New Zealand-based firms to develop the Work Programme Intellectual Property Rights. Where a Contractor believes that it is best to commercialise the Work Programme Intellectual Property Rights outside of New Zealand, the Contractor should seek to retain ongoing research, science, and technology in New Zealand and reinvest any net income derived from the commercialisation of the Work Programme Intellectual Property Rights in research, science, and technology in New Zealand.
  6. The Contractor should, wherever possible:
    - (i) provide assistance to researchers in fulfilling Work Programme Intellectual Property Rights obligations and responsibilities;
    - (ii) encourage participation by researchers in any subsequent commercialisation process of any Work Programme Intellectual Property Rights; and
    - (iii) develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.