



**EQUITY, DIVERSITY AND INCLUSION CAPABILITY FUND
FUNDING AGREEMENT FOR
[NAME OF PROJECT]**

DATED the day of 2021

BETWEEN The Sovereign in Right of New Zealand acting by and through the Chief Executive of the
Ministry of Business, Innovation and Employment (“**Ministry**”)

AND **[FULL LEGAL NAME OR FULL NAME OF NATURAL PERSON]** of [address] (“**Recipient**”)

BACKGROUND

The Ministry wishes to contribute to the Project by providing funding as set out in the Details on the terms set out in this Agreement.

AGREEMENT

The Ministry will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details) and Schedule 2 (Funding Agreement Standard Terms and Conditions).

Signed by **[INSERT NAME AND POSITION HERE]** the authorised delegate of the Chief Executive of the Ministry of Business Innovation and Employment:

Signature

Date: _____

Signed for and on behalf of **[FULL NAME OF RECIPIENT]** by:

Signature

Print Full Name

Print Title

Date: _____

SCHEDULE 1 – DETAILS

1 **Context**

The Equity, Diversity and Inclusion (EDI) Capability Fund (the Fund) seeks to support research organisations to identify and break down barriers to attracting, retaining and growing an equitable, diverse and inclusive workforce.

The Fund aims to promote best EDI practice across Aotearoa New Zealand to ensure our research sector includes different perspectives reflecting our diverse population. The Fund will support research organisations to build stronger connections and partnerships with Māori, and to create an environment and workforce that reflects the diversity of Aotearoa New Zealand, giving equal opportunities for all to participate, grow and thrive.

2 **Funding** *(clause 2, Schedule 2)*

The total amount of the Funding is:

\$(X) excluding GST.

3 **Project** *(clause 2, 3, Schedule 2)*

[Insert the Project Introduction from the proposal]

The project will be carried out in collaboration with the following organisations:

[Insert Collaborating organisations from the proposal]

4 **Project Deliverables** *(clause 2.5(a), Schedule 2)*

[Insert KPIs from the proposal form as agreed/negotiated to confirm project deliverables]

5 **Methodology** (*clause 2.5(c), Schedule 2*)

Not applicable.

6 **Payment terms** (*clause 2, Schedule 2*)

Detail here. This will be an agreed amount upon signing and a further payment in July 2021, or as negotiated

7 **Commencement Date** (*clause 4.1 Schedule 2*)

[Insert date]

8 **Completion Date** (*clause 2.5(b), Schedule 2*)

[Insert date]

9 **Reporting Requirements** (*clause 5.1, Schedule 2*)

Within one month of the Completion Date.

10 **Content of Report** (*clause 5.1, Schedule 2*)

The report must include:

- (a) the status and progress towards delivering on the Project Deliverables as indicated by the Key Performance Indicators (KPIs);
- (b) expenditure;
- (c) resource contributions from Project partners;
- (d) impact achieved in line with the investment signals;
- (e) key achievements;
- (f) emerging risks and what is being done to address them;
- (g) an assessment of the EDI opportunities; and
- (h) any other information requested by the Ministry.

11 **Public Statement** (clause 8.4, 8.5, Schedule 2)

[Insert from proposal]

12 **Address for Notices** (clause 12.5, Schedule 2)

| Ministry: | Recipient: |
|--|---|
| Ministry of Business, Innovation & Employment 15 Stout Street PO Box 1473 WELLINGTON Email address: <u>EDICapabilityFund@mbie.govt.nz@mbie.govt.nz</u> Attention: Helen Sillars | [Insert name] [Insert physical and postal address] Email address: [Insert details] Attention: [Insert details] |

13 **Special Terms**

The Recipient must publish on their website:

- (a) Project report as set out in clause 10 of this Schedule;
- (b) information, material, and methodology relating to the Project delivery and outcomes; and
- (c) the development of best practice arising from the Project.

FUNDING AGREEMENT STANDARD TERMS AND CONDITIONS - SCHEDULE 2

1. Interpretation

1.1 In this Agreement, the following terms have the following meanings:

“Agreement” means this agreement, including Schedule 1 and this Schedule 2;

“Business Day” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“Commencement Date” means the commencement date set out in the Details or, if no commencement date is set out, the date of this Agreement;

“Completion Date” has the meaning given in the Details;

“Confidential Information” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Agreement;

“Details” means Schedule 1;

“Funding” means the funding amount set out in the Details;

“GST” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“Intellectual Property Rights” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“Parties” means the Ministry and the Recipient and their respective successors and permitted assigns;

“Project” means the project described in the Details;

“Project Deliverables” means the Key Performance Indicators (if any) set out in

the Details which must be achieved by the Recipient; and

“Public Statement” means the public statement described in the Details.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 “Including” and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency.

1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail.

2. Funding

2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.

2.2 Payments will be made to the credit of a bank account to be designated in writing by the Recipient.

2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Recipient and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

2.4 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement.

2.5 In consideration of the Funding, the Recipient must:

- (a) achieve each Project Deliverable (if any) by the relevant payment date set out in the Details;
- (b) complete the Project to the Ministry's satisfaction by the Completion Date;
- (c) carry out the Project in accordance with:
 - (i) the methodology (if any) set out in the Details;
 - (ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and
 - (iii) all applicable laws, regulations, rules and professional codes of conduct or practice including the Employment Relations Act 2000, the Immigration Act 2009 and the Health and Safety at Work Act 2015; and
- (d) refund any unspent Funding to the Ministry within 10 Business Days of the Completion Date.

2.6 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total cost of the Project, the Recipient must refund to the Ministry the excess amount. The Recipient is not required to refund, under this clause 2.6, any amount that exceeds the total amount of Funding.

3. Project Progress

3.1 If:

- (a) the Ministry is not satisfied with the progress of the Project;
- (b) the Recipient does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which, in the Ministry's opinion, may damage the business or reputation of the Ministry; or
- (c) the Recipient breaches any of its obligations under this Agreement,

the Ministry may (without limiting its other remedies):

- (d) renegotiate this Agreement with the Recipient; or
- (e) terminate this Agreement immediately by notice to the Recipient, and clause 4.4, 4.5 and 4.6 will apply.

4. Term and Termination

4.1 Subject to clauses 4.2 and 4.3, this Agreement will commence on the Commencement Date and expire when:

- (a) the final report is completed and provided to the Ministry; and
- (b) the Project is completed, to the satisfaction of the Ministry.

4.2 The Ministry may terminate this Agreement at any time by giving at least 10 Business Days' notice to the Recipient.

4.3 The Ministry may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from the Ministry;
- (c) does or omits to do something, or any matter concerning the Recipient comes to the Ministry's attention, which in the Ministry's opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;
- (d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or
- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of

the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, the Ministry may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or
- (b) require the Recipient to refund to the Ministry:
 - (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or
 - (ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or
- (c) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.

4.6 The provisions of this Agreement relating to termination (clause 4), audit and record-keeping (clause 5.2(b), (c) and (d)), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

5. Reporting Requirements and Audit

5.1 The Recipient must report on the progress of the Project to the Ministry:

- (a) as set out in the Details;

- (b) as otherwise reasonably required by the Ministry; and

- (c) in any format and on any medium reasonably required by the Ministry.

5.2 The Recipient must:

- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
- (b) permit the Ministry, at the Ministry's expense, to inspect or audit (using an auditor nominated by the Ministry), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement;
- (c) allow the Ministry reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) if required by the Ministry, appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

6. Warranties

6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

6.2 The Recipient warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and

- (c) it is not aware of any material information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

7. Intellectual Property

- 7.1 The Intellectual Property Rights of the Parties in the following materials (including any modification, enhancement or derivative work of those materials) remain the property of the current owner, regardless of its use in anything created or provided by the Recipient in carrying out its obligations under this Agreement:
 - (a) materials that existed prior to the date of this Agreement; and
 - (b) materials that were developed independently of this Agreement.
- 7.2 New Intellectual Property. All Intellectual Property Rights in relation to anything created or provided to the Ministry by the Recipient in carrying out its obligations under this Agreement (including any reports the Recipient is required to provide to the Ministry under this Agreement) will be owned by the Recipient from the date the Intellectual Property Rights are created or developed.
- 7.3 The Recipient grants or must obtain for the Ministry, at no charge, a non-exclusive, transferable, perpetual, royalty-free, irrevocable worldwide licence for the Ministry for use (which includes copying, modifying, developing, disseminating, marketing, assigning or licensing) relating to the Project, any Intellectual Property Rights in anything created or provided to the Ministry by the Recipient in carrying out its obligations under this Agreement (including any third party's Intellectual Property Rights incorporated in anything provided to the Ministry by the Recipient under this Agreement).
- 7.4 The Recipient must ensure that the rights, including the Intellectual Property Rights, of any person are not infringed by the Recipient in the course of performing this Agreement or by the Recipient's provision

of anything under this Agreement or by the Ministry's use of anything provided under this Agreement in accordance with the license at clause 7.3 of this Schedule.

8. Confidentiality

- 8.1 The Recipient must:
 - (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
 - (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.
- 8.3 The Recipient must obtain the Ministry's prior written agreement over the form and content of any public statement made by the Recipient relating to this Agreement, the Funding, or the Project.
- 8.4 The Recipient recognises that from time to time the Ministry may release the following information relating to this Agreement:
 - (a) the Project title;

- (b) the name of the Recipient;
- (c) the names of all collaborating organisations;
- (d) the Public Statement set out in the Details;
- (e) the total amount of Funding, the Commencement Date and the Completion Date; and
- (f) a 'success story' of the Project at the Completion Date.

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

9. Liability and Insurance

9.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.

9.2 The maximum liability of the Ministry under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

9.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Recipient's obligations under the Health and Safety at Work Act 2015 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Accident Compensation Act 2001.

9.4 If required by the Ministry, the Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by the Ministry.

The Recipient must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

10. Dispute Resolution

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Agreement amicably and in good faith, referring the dispute to the Parties' senior managers for resolution if necessary.

11. Force Majeure

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

12. General

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this

Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement. The Recipient remains liable for performance of its obligations under this Agreement despite any approved subcontracting or assignment.
- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in the Details. A notice is deemed to be received:

- (a) if personally delivered when delivered; or
- (b) if posted, three Business Days after posting;
- (c) if sent by email, at the time the email enters the Recipient's information system as evidenced by a delivery receipt requested by the sender and it

is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 This Agreement may be signed in any number of counterparts (including emailed copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.8 This Agreement will be governed by and construed in accordance with the laws of New Zealand.

13. Health and Safety

13.1 The Recipient must promptly notify the Ministry of any notifiable events under the Health and Safety at Work Act 2015 that occur in the performance of the Agreement or that have the potential to impact the performance of the Agreement.

13.2 The Ministry may suspend this Agreement immediately by giving written notice to the Recipient if the Ministry has what it considers are material concerns about the Recipient's health and safety practices. Upon notice of the suspension, the Recipient will have an opportunity to rectify the health and safety issue(s) specified in the notice to the satisfaction of the Ministry. If the health and safety issue(s) specified in the notice are not rectified to the satisfaction of the Ministry within 20 Business Days, the Ministry may terminate the Agreement immediately under clause 4.3.