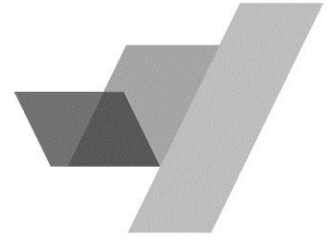




**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



**STRATEGIC SCIENCE
INVESTMENT FUND –
INFRASTRUCTURE PLATFORM
INVESTMENT CONTRACT**

between

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

and

Contract Number

TEMPLATE

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STRATEGIC SCIENCE INVESTMENT - INFRASTRUCTURE PLATFORM 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

... (the "**Contractor**")

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

BACKGROUND

- A. The Strategic Science Investment Fund (SSIF) is for research, science, or technology, or related activities that is subject to a separate decision-making process and has been identified in the *Gazette* by the Minister in accordance with section 5(2) of the *Research, Science, and Technology Act 2010*.
- B. The purpose of the Strategic Science Investment Fund is to support longer-term underpinning infrastructure and programmes of mission-led science critical to the future of New Zealand's economy, environment and wellbeing.
- C. The goals for the New Zealand Data Science Platform are to:
 - 1 **Deliver excellence:** Produce excellent, cutting edge, dynamic and paradigm-shifting data science research.
 - 2 **Grow capability:** Grow the scale, depth, excellence and impact of New Zealand's data science research community, with world-class academic leadership driving deep excellence in defined areas of data science. The Platform should build on existing expertise and attract top researchers, both senior and emerging.
 - 3 **Leverage collaboration:** Foster and grow international and national connections between researchers and across institutions.
 - 4 **Enable New Zealand researchers** to access innovative and advanced data science methods to tackle research questions and real world problems. The Platform will develop data science approaches, methods, tools and technologies that can be accessed by New Zealand researchers.

5 **Deliver additionality:** Provide fresh thinking, new people, new and expanded research, new collaborations and impacts that would not have happened without this investment.

6 Give effect to the **Vision Mātauranga** policy

D. The purpose of this Contract is to:

- (a) set out the terms under which Funding is provided to the Contractor;
- (b) recognise that the Parties to this Contract have a mutual goal of delivering a combination of people, equipment, information and knowledge that provide a particular ongoing science and innovation capability for New Zealand, and enable both Parties to achieve that goal;
- (c) deal with any change in the deliverables, outcomes of or risks to potential achievement of outcomes of research in a SSIF Science Infrastructure Platform; and
- (d) ensure that the Ministry can get information about the national Science Infrastructure Platform that the Strategic Science Investment Fund is purchasing and the progress of that Platform from the Contractor.

1. DEFINITIONS

1.1 In this Contract the following definitions apply, unless the context otherwise requires:

Capital Expenditure or capex is money used to purchase, upgrade, improve, or extend the life of long-term assets. Long-term assets are typically property, infrastructure, or equipment with a useful life of more than one year.

Change Event has the meaning set out in clause 7.1.

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 includes all information concerning the Science Infrastructure Platform.

Consortium Agreement (*To be amended as required by the parties*) means the agreement to be entered into between the research providers and other entities who will be involved in delivering the Science Infrastructure Platform which will be attached at Schedule 7 once executed, and any subsequent amendments.

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

End Date means the end date of this Contract as specified in Schedule 1, or the date that this Contract 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 2002: Proposed Standard Practice for Surveys on Research and Experimental Development*, published by the Organisation for Economic Co-operation and Development

Funding means the amount of funding paid in respect of the Science Infrastructure Platform as set out in Schedule 1.

Intellectual Property Management Plan means a plan specified in the Consortium Agreement that sets out how the Contractor anticipates managing the Intellectual Property Rights generated by the Science Infrastructure Platform to maximise the benefit for New Zealand.

Intellectual Property Policies and Principles means the policies and principles relating to the management of Science Infrastructure Platform Intellectual Property Rights that the Contractor must adopt pursuant to Principle 2 of Appendix 1.

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, plant varieties, 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 Performance Indicators (KPIs) means the defined quantifiable measures used to assess how well the Contractor is performing in delivery of science in accordance with the Platform Plan.

Mission-led means research, science or technology or related activities directed at achieving a specific outcome.

Notice means a notice given in accordance with clause 13.

Outcome Logic Framework specified in Schedule 4, comprises an Outcome Logic Map which is a simple single-page flowchart that tells the story of an investment and exposes its underpinning logic.

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 4.11 to 4.13.

Platform Partners as described in the Work Programme as having signed an agreement to be a full partner in the Platform, or as amended from time to time.

Platform Plan means

- (a) the establishment of the New Zealand Data Science Platform;
- (b) its ongoing management and governance; and
- (c) the delivery of the Work Programme,

each described in Schedule 3 to be delivered by the Contractor, which will address the investment signals set out in the Strategic Science Investment Fund Investment Plan 2017-2024.

Primary Results means the data and findings produced as part of a Science Infrastructure Platform and the available interpretations and explanations of such data and findings in a form that facilitates their uptake and application by other researchers and 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.

Science Infrastructure Platform means a national infrastructure platform that provides access to Research Technology, Infrastructure, Databases and Collections of national importance, and associated support services funded under this Contract and recorded in the Platform Plan.

Science Infrastructure Platform Intellectual Property Rights means Intellectual Property Rights arising directly from the performance of the Science Infrastructure Platform.

Start Date means the start date of this Contract as specified in Schedule 1.

Transaction means a formal agreement between the Contractor and an Overseas Party under which any Science Infrastructure Platform 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:

- (c) any proprietary information exchange agreement or confidentiality agreement made in anticipation of a formal agreement;

- (d) any option or preliminary agreement which has not resulted in a final agreement;
- (e) 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
- (f) any agreement made by a third party in New Zealand, to whom the Contractor has previously transferred a Science Infrastructure Platform Intellectual Property Right, with an Overseas Party.

Work Programme means the research, science, or technology programme described in Schedule 1 as to be delivered by the Contractor using the Funding.

Working Days means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of neither the Holidays Act 2003 nor a day in the period commencing 25 December in a year and ending with 2 January in the following year.

1.2 In this Contract, unless the context requires otherwise:

- a. the singular includes the plural and vice versa;
- b. clause and other headings are for ease of reference only and will not affect the interpretation of this Agreement;
- c. references to a person includes a company, body of persons (corporate or unincorporate) government department or municipal authority;
- d. references to a Party to this Agreement include that Party's successors and permitted assignees;
- e. any obligation not to do anything also constitutes an obligation not to suffer or permit or cause that thing to be done;
- f. including and similar words do not imply any limitations;
- g. where a payment or other obligation is due on a day that is not a Working Day, that payment or other obligation shall be deemed to be due on the Working Day immediately following; and
- h. any reference to any statute or regulation is a reference to that statute or those regulations as amended or replaced from time to time.

2. TERM

2.1 This Contract commences on the Start Date and stays in force until the End Date, unless terminated earlier in accordance with this Contract.

3. MINISTRY'S OBLIGATIONS

Funding

- 3.1 In consideration of the Contractor investing in the Science Infrastructure Platform providing access to research technology, infrastructure databases and collections (if developed) and associated support services in accordance with the Work Programme and meeting its obligations under this Contract, the Ministry will provide the Funding to the Contractor subject to the terms and conditions of this Contract.
- 3.2 The Ministry will provide Funding in accordance with the payment schedule set out in Schedule 6.
- 3.3 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

- 3.4 The Ministry agrees that all Intellectual Property Rights arising from this Contract are the property of the Contractor and Platform Partners as defined in the Consortium Agreement, and will make no claim to ownership of any Intellectual Property Rights arising from this Contract but the Parties agree that those Intellectual Property Rights will be dealt with in accordance with the Intellectual Property Policies and Principles and other relevant provisions of this Contract.

4. CONTRACTOR'S OBLIGATIONS

Science Infrastructure Platform

- 4.1 The Contractor will use its best endeavours to deliver the Science Infrastructure Platform as set out in Schedule 3.
- 4.2 The Contractor will comply with any Science Infrastructure Platform conditions relating to that Science Infrastructure Platform.

Funding

- 4.3 In respect of the Science Infrastructure Platform, the Contractor will use the Funding only:
 - (a) for the costs of research, science and technology and related activities that meet the intent of the Science Infrastructure Platform incurred between the Start Date and the End Date;
 - (b) to deliver the Science Infrastructure Platform in accordance with the Platform Plan, research activities 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 Performance Management and Reporting Requirements;
- (d) to carry out activities that are reasonably necessary to deliver the Science Infrastructure Platform;
- (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 4.9 and 4.10, or a review or evaluation as set out in clauses 4.14 and 4.15; and
- (f) to carry out any other activities directly relating to the Science Infrastructure Platform as agreed between the Parties.

4.4 The Funding will not be used for Capital Expenditure without prior approval of the Ministry.

4.5 The Contractor will acknowledge, as appropriate, provision of Funding by the Ministry.

4.6 The Contractor will ensure that it enters into legally binding contracts with Platform Partners, Subcontractors, and any other entity pursuant to Schedule 3 and terms of this Contract as required to fulfil the Platform Plan and that all legally binding contracts will not be inconsistent with this Contract.

4.7 The Contractor will implement any contestable process where specified in the Platform Plan or in any subsequent annual plan update as set out in clause 4.12 to facilitate the introduction of new ideas and researchers into the Science Infrastructure Platform and in accordance with procedures to be agreed by the Platform Partners.

Record Keeping

4.8 For the Science Infrastructure Platform, the Contractor must maintain true and accurate records, including appropriate accounting records (including cash and in-kind contributions), of its use of the Funding for at least 7 years after termination or expiry of this Contract.

Audit

4.9 There are no scheduled audits planned in respect of this Contract. However, the Ministry may appoint an independent auditor to audit all records relevant to this Contract:

- (a) if the Ministry has cause to believe that the Contractor is in breach of its obligations under this Contract;

- (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.

4.10 The Ministry will use its best endeavours to ensure that any audit carried out under clause 4.9 minimises:

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

Performance Management and Reporting Requirements

4.11 The Contractor will meet the following Performance Management and Reporting Requirements 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 Science Infrastructure Platform between 1 July of the previous year (or the Start Date of the Science Infrastructure Platform, whichever is the latter) and 30 June of the year in which the report is due, and includes:
 - (i) information about all Key Performance Indicators and Primary Results as specified in the Platform Plan with comments where there has been a significant departure from the projected figures or information contained in the Platform Plan;
 - (ii) information to be shared publicly on the status and achievements of the Science Infrastructure Platform; and
 - (iii) the status and progress towards delivery of the Science Infrastructure Platform.
- (b) if the End Date is a day other than 30 June, provide a final report by no later than 1 month after the End Date that covers the delivery of the Science Infrastructure Platform 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 performance of the Science Infrastructure Platform as appropriate; and

- 4.12 The Contractor will provide an annual update to the Ministry for approval no later than 30 April each year prior to the annual strategic discussion with the Ministry, that provides information about the research, science, or technology or related activities that it proposes to undertake within the upcoming 12-month period (1 July – 30 June), including an updated Work Programme and financial information if required.
- 4.13 The Contractor will provide additional reports or information reasonably required by the Ministry.

Reviews and Evaluations

- 4.14 The Ministry will review the performance of the Platform Contractor in respect of this Contract by the end of the fourth year of the Term.
- 4.15 The Ministry may review the performance of the Contractor in respect of this Contract at any time on 90 days' written notice to the Contractor.
- 4.16 The costs of any review or evaluation will be borne by the Ministry but any costs of providing information for and participating in the review incurred by the Contractor and/or Platform Partners will be paid for out of the Funding in accordance with clause 4.3(e).
- 4.17 The Ministry will review the Governance of the Science Infrastructure Platform in the second year of operation to ensure robust and transparent processes are in place.
- 4.18 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 this Contract, to allow the Ministry to review its investment in the Science Infrastructure Platform; and
 - (ii) for a period of up to 7 years after this Contract ends, to allow the Ministry to review or evaluate whether the post-contract outcomes for New Zealand (if any) described in the Schedules have been delivered; and
 - (b) comply with any additional review or evaluation requirements specified in the Schedules.

Intellectual Property Rights

- 4.19 The Contractor must comply with Principles 1 – 3 of Appendix 1, including by adopting Intellectual Property Policies and Principles as required by clause 2 of Appendix 1.
- 4.20 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.

- 4.21 The Contractor will maintain the Intellectual Property Management Plan, and will manage any Science Infrastructure Platform Intellectual Property Rights arising from the Science Infrastructure Platform in accordance with that plan, in order to contribute towards delivering science in accordance with the Platform Plan.

Databases and Collection

- 4.22 The Contractor will be custodian of, any Database or Collection that is developed through the Science Infrastructure Platform with funding from the Strategic Science Investment Fund as identified in the Platform Plan
- 4.23 The Database or Collection is being developed and held on behalf of New Zealand, where continued provision, maintenance and utilisation are important for New Zealand Science to deliver public benefit.
- 4.24 The Database or Collection contains data and/or information that will be made available in the least aggregated form in accordance with the *Easy Access IP process* <http://easyaccessip.com/>.
- 4.25 In the final Annual Plan for the Science Infrastructure Platform, the Contractor will provide the Ministry with a transition plan for each Database and Collection to ensure that these will be sustainably maintained, managed and made available in accordance with Clause 4.26 beyond the term of this Contract.

Making data available

- 4.26 Subject to clauses 4.24 and 4.27, the Contractor will make the Primary Results of the Science Infrastructure Platform available at the Cost of Dissemination to the public and stakeholder groups, on request through appropriate means in order to contribute towards delivering the Science Infrastructure Platform.
- 4.27 The Contractor is not required to make the Primary Results of a Science Infrastructure Platform available under clause 4.26 if the Contractor considers that:
- (a) withholding the Primary Results is necessary to protect the privacy of a person;
 - (b) making the Primary Results available would breach an ethical standard;
 - (c) the request for the Primary Results is vexatious or frivolous; or
 - (d) making the Primary Results available would be contrary to the Contractor's statutory or existing legal obligations.

Overseas transactions

4.28 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 Science Infrastructure Platform 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.

5. GOVERNANCE

- 5.1 The Contractor will take all steps open to it to ensure that the governance structure at all times reflects the Platform Plan.
- 5.2 The Chair of the Science Infrastructure Platform's governance body must be approved by the Ministry in advance of appointment.
- 5.3 The Ministry may appoint an observer to represent the Ministry at all meetings of the Science Infrastructure Platform's governance entity. That observer will have all the rights to attend and speak at all meetings of the Science Infrastructure Platform's governance entity and will have all rights to the same information as all other members, but will not have voting rights on any decision.
- 5.4 The Contractor will notify the Ministry of any change (or anticipated change) in the composition of the Science Infrastructure Platform's governance entity within 7 Working Days of that change (or anticipated change).
- 5.5 The Contractor will ensure that all members of the Science Infrastructure Platform's governance entity are made aware of the terms of this Contract, and that they will operate in a manner consistent with this Contract.
- 5.6 The Contractor will ensure that all members of the Science Infrastructure Platform's governance entity will be required to act in the best interests of the Science Infrastructure Platform and not in the interests of a particular member.

6. COMPLIANCE WITH CONSORTIUM AGREEMENT

- 6.1 The Parties acknowledge that the Consortium Agreement will be integral to the management of the Science Infrastructure Platform and achievements of the Ministry's intentions in entering into this Contract. Once signed by all parties to it,

the Contractor shall comply with the Consortium Agreement at all times, and shall use its best endeavours to ensure each Platform Partner complies with the Consortium Agreement.

7. CHANGE EVENTS

7.1 The following matters constitute a Change Event:

- (a) any significant aspect of the Science Infrastructure Platform cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, this Contract;
- (b) the Ministry is not satisfied with the progress the Contractor has made in relation to the delivery of any significant aspect of its Platform Plan;
- (c) the Ministry is not satisfied with the annual update referred to in clause 4.12 setting out the intended Science Infrastructure Platform activities for the upcoming year;
- (d) a change in the involvement of Platform Partners;
- (e) a change in the involvement of key personnel and the Contractor or sub-contractor is unable to find an adequate replacement within a reasonable time;
- (f) any significant amendment made to the Consortium Agreement or if the Consortium Agreement is terminated;
- (g) the Contractor materially fails to deliver any of the KPIs set out in Schedule 4; or
- (h) if there is a policy change by the government which affects the Funding.

7.2 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 Ministry may suspend payment of all or part of the Funding payable under this Contract to the Contractor.

7.3 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 this Contract; or
- (c) agree that no further action is required in respect of the Change Event.

- 7.4 If the Parties reach agreement in respect of a Change Event in accordance with clause 7.3:
- (a) the Ministry will pay the Contractor the Funding suspended under clause 7.2(b) (if any); and
 - (b) no further action will be required under this clause 7.
- 7.5 With the exception of clause 7.1(h) 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 7.2 (“remedy date”).
- 7.6 The Ministry may, at any time after the date the Notice of the Change Event was received, obtain an independent review that considers the impact of the Change Event on the provision of the Science Infrastructure Platform under this Contract.
- 7.7 If the Change Event has not been remedied to the satisfaction of the Parties by the remedy date, the Ministry will make a determination in accordance with clause 7.9.
- 7.8 If the Change Event is to be determined by the Ministry, the Contractor can provide any information that it wants the Ministry to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).
- 7.9 The Parties agree that if the Ministry 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 7.2(b); and
 - (ii) no further action will be required under this clause 8;
 - (b) this Contract must be varied (which may include a change to the amount of Funding payable), subject to clause 7.10 the Parties will do anything necessary to give effect to that decision, including by entering into a variation of agreement;
 - (c) this Contract must be terminated; this Contract will terminate with effect from the date specified by the Ministry (which may provide for a disengagement period, if the Ministry considers that is appropriate).
- 7.10 If the Ministry determines that a Change Event must be resolved by varying this Contract, and the Contractor does not wish to continue providing one or more of the Science Infrastructure Platform in this Contract, it may, at any time before the variation is executed by the Parties, terminate this Contract immediately by Notice to the Ministry.

7.11 If this Contract is terminated by the Ministry under clause 7.9(c) or by the Contractor under clause 7.10, the Ministry:

- (a) is not required to pay any Funding suspended under clause 7.2(b) (if applicable), unless it determines that such Funding should be paid to the Contractor: and
- (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.

7.12 The Parties agree that:

- (a) neither Party may raise a dispute under clause 10 if a Change Event is notified under clause 7.2; and
- (b) nothing in this clause 7 prevents the Ministry from terminating this Contract under clause 8.1.

8. TERMINATION

8.1 The Ministry may suspend the payment of Funding or terminate this Contract immediately by Notice to the Contractor:

- (a) if the government reduces, stops, or freezes funding to the Ministry;
- (b) if the Contractor commits or is likely to commit a material breach of the terms or conditions of this Contract that is not capable of being remedied;
- (c) if the Contractor 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;
- (d) the Contractor gives any information, representation, or statement to the Ministry about its Science Infrastructure Platform that is misleading or inaccurate in any material respect.
- (e) if the Contractor fraudulently misuses or misappropriates any Funding;
- (f) if the Contractor 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;
- (g) if the Contractor makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- (h) if the Contractor has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;
or

- (i) if the Contractor 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).
- 8.2 If this Contract is terminated under clause 8.1, 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.
- 8.3 If this Contract is terminated under clause 8.1(e), the Ministry may require the Contractor to return all Funding paid up to 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.
- 8.4 If payment of Funding is suspended in accordance with clause 8.1 but the Contract is not terminated, the Ministry is not required to pay any Funding unless it determines that such Funding should be paid to the Contractor.

9. CONFIDENTIALITY

- 9.1 Except as required by law, and subject to clauses 9.2 to 9.6, 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.
- 9.2 The Contractor recognises that from time to time the Ministry may release the following information relating to this Contract:
- (a) the name of the Contractor;
 - (b) the Contract ID;
 - (c) the titles of the Science Infrastructure Platform's themes;
 - (d) the public statement set out in Schedule 2;
 - (e) any of the Contractor's summary reports for public dissemination;
 - (f) the relevant sector(s);
 - (g) 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 this Contract for each theme in the Science Infrastructure Platform ;
- (i) the year Funding was approved in respect of the workstreams within the Science Infrastructure Platform; and
- (j) the period of time for which Funding will be provided in respect of each workstream within the Science Infrastructure Platform.

9.3 Information arising from the Contract, 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.

9.4 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 9.2 concerning the Contractor.

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

9.6 Nothing in this clause 9 prevents the Ministry from disclosing Confidential Information to:

- (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 9 prior to any disclosure.

10. DISPUTE RESOLUTION

10.1 Subject to clause 7.12, if any dispute arises between the Parties in relation to this Contract, then a Party may give Notice to the other Party of the initiation of the dispute resolution process set out in this clause 10.

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

10.3 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.

11. VARIATION

11.1 No modification to or variation of this Contract will be effective and binding on the Parties unless made in writing and signed by the Parties.

12. WARRANTIES

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

12.2 The Contractor warrants that:

- (a) all consents required (including, without limitation, statutory consents) to carry out its business 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;
- (b) It is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Contractor;
- (c) All information provided by it to the Ministry in connection with this Contract was, at the time it was provided, true, complete and accurate in all material respects; and
- (d) 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.

13. NOTICES

13.1 Any notice to be given under this Contract must be in writing and hand delivered or sent by email or post to the Parties' respective addresses as set out in clause 13.2. Any notice is deemed to be received:

- (a) if personally delivered, when delivered;
- (b) if posted, three Working Days after posting; or
- (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 Working Day is deemed not to have been received until the next Working Day.

13.2 The Parties' address for Notices is:

Ministry:	Contractor:
Ministry of Business, Innovation & Employment 15 Stout Street PO Box 1473 WELLINGTON 6140 SSIF.investment@mbie.govt.nz Attention: Helen Sillars	

14. NO EMPLOYMENT RELATIONSHIP

- 14.1 This Contract does not create a relationship between the Parties of employer and employee, principal and agent, partners, or joint ventures.
- 14.2 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.
- 14.3 The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract.

15. ENTIRE CONTRACT

- 15.1 This Contract represents the entire agreement between the Parties and supersedes and extinguishes all prior agreements, discussions, and arrangements between the Parties that relate to the subject matter contained in this Contract.

16. FORCE MAJEURE

- 16.1 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.
- 16.2 If an event described in clause 16.1 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.

17. PARTIAL INVALIDITY

- 17.1 The illegality, invalidity, or unenforceability of a provision of this Contract under any law, will not affect the legality, validity, or enforceability of any other provision of this Contract.

17.2 If any clause of this Contract 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.

18. ASSIGNMENT

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

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

19. SURVIVAL OF CLAUSES

19.1 Expiry or termination of this Contract for any reason will not affect the validity and enforceability of this clause and the intellectual property, confidentiality, reporting, termination, dispute resolution, and governing law clauses of this Contract.

20. GOVERNING LAW

20.1 This Contract 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

Date

Signed on behalf
by:

Signature

Name and position

Date

SCHEDULE 1 – SUMMARY

Contract ID:	
Work Programme title:	
Proposal reference:	
Contract reference:	
Payment schedule:	
Number of years funding (establishment):	
Contractor:	
Contract Manager:	
Contact person:	
Contact email:	

Contact phone:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	

SCHEDULE 2 – PUBLIC STATEMENT

SCHEDULE 3 – PLATFORM PLAN

SCHEDULE 4 – OUTCOME LOGIC FRAMEWORK AND KPIS

SCHEDULE 5 – FINANCIAL INFORMATION

SCHEDULE 6 – PAYMENTS

Totals must equal total in Schedule 1

Date of payment	\$ (GST excl)	\$ (GST inc)

SCHEDULE 7 – CONSORTIUM AGREEMENT

APPENDIX 1 – 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 Science Platform through its management of any Science Platform Intellectual Property Rights.
2. The Contractor must, before this Contract commences, have a set of Intellectual Property Policies and Principles in place in respect of this Contract.
3. The Contractor’s Intellectual Property Policies and Principles must:
 - (i) determine the ownership and/or assignment, if any, of Science Platform Intellectual Property Rights and require employees, or grant holders using the Contractor for that purpose, to acknowledge the relevant ownership and rights associated with Science Platform Intellectual Property;

- (ii) ensure that researchers are advised of the potential value of Science Platform 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 Science Platform 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 Science Platform Intellectual Property Rights management and protection;
 - (v) set out a review process to identify protectable and potentially valuable Science Platform Intellectual Property Rights and associated commercial activities and to prevent the infringement of existing protected Science Platform 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 Science Platform Intellectual Property Rights, such as on:
 - (a) staff members' financial interests in external firms that contract with the Contractor, particularly where these entail research contracts 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 this Contract Science Platform ; 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 Science Platform Intellectual Property Rights. Where a Contractor believes that it is best to commercialise the Science Platform 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 Science Platform Intellectual Property Rights in research, science, and technology in New Zealand.
 6. The Contractor should, wherever possible:

- (i) provide assistance to researchers in fulfilling Science Platform Intellectual Property Rights obligations and responsibilities;
- (ii) encourage participation by researchers in any subsequent commercialisation process of any Science Platform Intellectual Property Rights; and
- (iii) develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.

TEMPLATE