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**STRATEGIC SCIENCE INVESTMENT FUND – [PROGRAMMMES/PLATFORM]**

**INVESTMENT CONTRACT**

between

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

and

**[Contractor]**

Contract Number ……………………………

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**STRATEGIC SCIENCE INVESTMENT – [PROGRAMMES/PLATFORMS] INVESTMENT CONTRACT**

**Date:** [*insert date*]

**Parties:**

The Sovereign in Right of New Zealand, acting by and through the Secretary for Business, Innovation and Employment & Chief Executive, Te Tumu Whakarae mō Hīkina Whakatutuki (the **"Ministry"**)

and

***[insert FULL LEGAL NAME OF CONTRACTOR]*** (the "**Contractor**"),

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

**BACKGROUND**

The Strategic Science Investment Fund is a fund 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.

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.

The Contractor is **[*add detail relevant to the specific Contractor eg ‘is a Crown Research Institute as defined in Section 2 of the Crown Research Institutes Act and established pursuant to the Companies Act 1993 and its constitution’*]**.

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, facilities, 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 or outcomes (or risks to potential achievement of outcomes) of research in a Science Platform; and

(d) ensure that the Ministry can get information about the science the Strategic Science Investment Fund is purchasing and the progress of each Science Platform from the Contractor.

# Definitions and INTERPRETATION

## In this Contract 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 and the content of this Contract. For the avoidance of doubt, “Confidential Information” excludes:

#### the name of the Contractor;

#### the Contract ID;

#### the titles of the Science Platforms;

#### the Public Statement set out in Schedule 1;

#### the research fund from which Science Platforms are funded;

#### the relevant sector(s);

#### the total amount of Funding paid to the Contractor in the current financial year and previous years;

#### the total amount of Funding payable to the Contractor over the duration of this Contract for each Science Platform;

#### the year Funding was approved in respect of the Science Platforms;

#### the period of time for which Funding will be provided in respect of each Science Platform;

#### any Australian and New Zealand Standard Research Classification (ANZSRC) codes assigned to the Contract;

#### the progress of the Science Platform; and

#### the benefits to New Zealand from this investment.

## **Contract** means this agreement, including the schedules.

## **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 2015: Guidelines for Collecting and Reporting Data 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 Platforms as set out in the Schedule 1.

## **Gold OA** means a mode of open access where all articles in a journal are made freely available to readers, but authors may be required to pay a one-off charge.

## **Government** means the government of New Zealand.

## **Green OA** means a mode of open access where access to publications is provided through an online repository.

## **Intellectual Property Management Plan** means a plan that sets out how the Contractor anticipates managing the Intellectual Property Rights generated by the Science Platform to maximise the benefit of that Science Platform for New Zealand, as specified in Schedule 6.

## **Intellectual Property Policies and Principles** means the policies and principles relating to the management of Science Platform Intellectual Property Rights that the Contractor must adopt pursuant to Principle 3 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 or unregistered designs, circuit layouts, plant varieties, data or databases, 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, but does not include mātauranga Māori.

## **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 Plans, as specified in Schedule 3.

## **Notice** means a noticegiven in accordance with clause 12.

## **NZRIS** means the New Zealand Research Information System, the online hub of information about research, science and innovation in New Zealand, (or any system which replaces it), established by government directive outlined in the 2016 Research, Science and Innovation Domain Plan.

## **Open Access** means free of charge, online access for any person either through Gold OA or Green OA.

## **Overseas Party** means:

* + 1. any individual or association of persons not ordinarily resident in New Zealand; or
		2. any incorporated body:
			1. not registered, or deemed to be registered, under Part 18 of the Companies Act 1993; or
			2. that does not have a registered place of business in New Zealand; and
			3. that is not carrying on a business in New Zealand.

## **Personnel** of any person, means individuals directly or indirectly engaged by that person.  Examples include directors, employees, contract staff, agents, consultants, specialists, support staff and co-opted or seconded staff.

## **Platform Plan** means the document in Schedule 2 that sets out how the Contractor, as a recipient of Strategic Science Investment Funding, will address the investment signals set out in the Strategic Science Investment Fund Investment Plan 2017-2024.

## **Science Platform** means a combination of people, facilities, information and knowledge that provide a particular, ongoing science and innovation capability for New Zealand funded under this Contract and recorded in Platform Plans.

## **Science Platform Conditions** means contractual conditions that apply in respect of a Science Platform that are set out in Schedule 5.

## **Science Platform Intellectual Property Rights** means Intellectual Property Rights arising directly from research conducted as part of a Science Platform.

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

## **Strategic Science Investment Fund** has the meaning given in paragraph 1 of the background to this Contract.

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

* + 1. any proprietary information exchange agreement or confidentiality agreement made in anticipation of a formal agreement;
		2. any option or preliminary agreement which has not resulted in a final agreement;
		3. 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
		4. any agreement made by a third party in New Zealand, to whom the Contractor has previously transferred a Science Platform Intellectual Property Right, with an Overseas Party.

## **Working Day** means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of 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.

## In this Contract,unless the context requires otherwise:

### references to clauses and schedules are to clauses of and schedules to this Contract;

### references to persons include bodies corporate, unincorporated associations or partnerships;

### the headings to clauses are for convenience only and do not affect interpretation of this Contract;

### the singular includes the plural and vice versa;

### “including” and similar words do not imply any limitation;

### references to a statute include references to that statute as amended or replaced from time to time;

### references to NZD or $ are to New Zealand currency.

## If there is any conflict between the body of this Contract and the schedules, the body of this Contract will prevail.

# TERM

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

# Ministry’s Obligations

## *Funding*

## In consideration of the Contractor investing in strategic science, delivering science in accordance with the Platform Plans 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.

## The Ministry will provide Funding in accordance with the payment schedule set out in Schedule 1.

## 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*

## The Ministry agrees that all Intellectual Property Rights arising from the Science Platform are the property of the Contractor, and will make no claim to ownership of any Intellectual Property Rights arising from the Science Platform, unless otherwise stated in Schedule 6.

# CONTRACTOR’s OBLIGATIONS

##  *Science Platforms*

## The Contractor will use its best endeavours to deliver a Science Platform as set out in Schedule 2.

## The Contractor will comply with any Science Platform Conditions relating to the Science Platform.

## The Contractor must deliver each Science Platform in accordance with all applicable laws, rules and professional codes of conduct or practice.

## The Contractor must obtain all consents required (including statutory consents) to deliver each Science Platform and must immediately notify the Ministry if any required consent expires, is withdrawn, or otherwise lapses.

## *Funding*

## In respect of the Science Platforms, the Contractor will use the Funding only:

### for the costs of research, science and technology that meet the intent of a Science Platform incurred between the Start Date and the End Date;

### to deliver the science in accordance with the Platform Plans, 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;

### to meet all performance management and reporting requirements under this Contract;

### to carry out activities that are reasonably necessary to deliver a Science Platform;

### 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 clause 4.8, or a review or evaluation as set out in clauses 4.15 and 4.17; and

### to carry out any other activities directly relating to the Science Platform as agreed between the Parties.

## The Contractor will acknowledge, as appropriate, the provision of Funding by the Ministry in all public communications.

## *Record Keeping*

## For each Science Platform, 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 this Contract.

## *Audit*

## 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:

### if the Ministry has cause to believe that the Contractor is in breach of its obligations under this Contract;

### in order to satisfy its obligations as a Government funder; or

### 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.

## If the Ministry decides to conduct an audit under clause 4.8, the Contractor must:

### give the Ministry or the independent auditor, as applicable, full access to their premises, Personnel, systems, information, data, accounts, documents and records relevant to this Contract;

### assist the Ministry or the independent auditor, as applicable, in a timely manner with any audit conducted under clause 4.8 and ensure its Personnel and subcontractors and partner research organisations also assist the Ministry or independent auditor, including by making their relevant premises, personnel, systems, information, data, accounts, documents and records available if requested.

## If an audit reveals any material non-compliance with this Contract, the Contractor will bear all of the Ministry’s costs in carrying out that audit, in addition to any other rights and remedies the Ministry may have in respect of the non-compliance.

## *Performance Management and Reporting Requirements*

## The Contractor will meet the following performance management and reporting requirements to the reasonable satisfaction of the Ministry:

### provide an annual report by no later than 31 August each year that covers the delivery of strategic science as part of a Science Platform between 1 July of the previous year (or the Start Date of the Science Platform, whichever is the latter) and 30 June of the year in which the report is due, and includes:

* + - 1. information about all Key Performance Indicators as specified in Schedule 3 with comments where there has been a significant departure from the projected figures or information contained in that Platform Plan;
			2. information to be shared publicly on the status of the Science Platforms; and
			3. the status and progress towards delivery of the Science Platforms.

### 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 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 clause 4.11(a);

### provide statistical information including basic profiling data as reasonably required;

### provide information that would enhance the Ministry’s understanding of the research performance in a Science Platform as appropriate; and

### comply with any additional performance management and reporting requirements specified in Schedule 5.

## The Contractor will provide a forward looking plan by 30 April each year that provides information about the research, science, or technology or related activities that it proposes to undertake within the upcoming 12-month period.

## The Contractor will provide additional reports or information reasonably required by the Ministry, including through a strategic discussion following the submission and assessment of the forward-looking plan and annual report.

## The Contractor grants to the Ministry a perpetual, non-exclusive, sub-licensable, transferable, fully paid and irrevocable licence to use the reports provided under clauses 4.11, 4.12 and 4.13 of this Contract in whole or in part for any purpose in the Ministry’s sole discretion which includes the right to use, store, copy, disseminate, or modify such reports.

## *Reviews and Evaluations*

## The Ministry will review the performance of the Contractor in respect of this Contract by the end of the fourth year of the term of this Contract.

## The Ministry may review the performance of the Contractor in respect of this Contract on 90 days’ Notice to the Contractor.

## The Contractor will:

### on reasonable Notice from the Ministry, provide reasonable access, information, and reports to the Ministry:

#### during working hours for the term of this Contract, to allow the Ministry to review its investment in the Science Platforms; and

#### 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

### comply with any additional review or evaluation requirements specified in the Schedules.

## *Intellectual Property Rights, Data Management and Risk Management*

## The Contractor must comply with principles 1 to 5 of Appendix 1, including by adopting Intellectual Property Policies and Principles as required by principle 3 of Appendix 1.

## 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.

## The Contractor must maintain the Intellectual Property Management Plan specified in Schedule 6 and manage any Science Platform Intellectual Property Rights arising from the Science Platform in accordance with that plan, in order to contribute towards delivering science in accordance with the Platform Plans.

## The Contractor must comply with the data management principles set out in principles 8 of Appendix 1.

## The Contractor must comply with the risk management principles set out in principles 10,12 and 13 of Appendix 1.

## *Overseas transactions*

## 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:

### the particular nature of the Science Platform Intellectual Property Right in the Transaction;

### the form of the Transaction;

### the territorial and/or application limits of the Transaction; and

### financial information and related material that indicates the Transaction’s contribution to the Contractor’s overseas earnings.

## *Open Research*

## The Contractor must ensure all peer-reviewed journal articles and peer-reviewed conference proceedings relating in any way to the Science Platform are made available with Open Access:

### immediately on publication; or

### in the case of such papers published in a subscription-based publication that requires an embargo period, immediately at the end of the embargo period or 12 months after the date of such publication, whichever is earlier.

## *Health and Safety*

## The Contractor will have in place processes for identifying and assessing the extent of health and safety risk and the available ways to eliminate or minimise the risk to ensure health and safety as required under the Health and Safety at Work Act 2015.

## The Contractor 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 Contract or that have the potential to impact the performance of the Contract.

## The Ministry may suspend this Contract immediately by giving Notice to the Contractor if the Ministry has what it considers are material concerns about the Contractor’s health and safety practices. Upon Notice of the suspension, the Contractor 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 Working Days, the Ministry may terminate this Contract immediately under clause 7.1.

# governance

## [*Option 1 – Governance clause when new collaborations are being established and requires MBIE’s approval of all members of the governance group]*

## The Contractor must take all steps open to it to ensure that the Contractor’s governance structure reflects the Platform Plan at all times.

## The Contractor must obtain the Ministry’s prior written approval of each member of the Science Platform’s governance entity in advance of their appointment.

## The Ministry may appoint an observer to represent the Ministry at all meetings of the Science Platform’s governance entity. That observer will have all the rights to attend and speak at all meetings of the Science 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.

## The Contractor must ensure that all members of the Science 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.

## The Contractor must ensure that all members of the Science Platform’s governance entity will be required to act in the best interests of the Science Platform and not in the interests of a particular member.

## [*Option 2 – Governance clause to be used in instances where the governance entity is well established and/or and we have a high degree of confidence about Platform delivery – MBIE is required to approve the governance group Chair only]*

## The Contractor must take all steps open to it to ensure that the Contractor’s governance structure reflects the Platform Plan at all times.

## The Contractor must obtain the Ministry’s prior written approval of the independent chair of the Science Platform in advance of their appointment.

## The Ministry may appoint an observer to represent the Ministry at all meetings of the Science Platform’s governance entity. That observer will have all the rights to attend and speak at all meetings of the Science 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.

## The Contractor must notify the Ministry of any change (or anticipated change) in the composition of the Science Platform’s governance entity within seven Working Days of that change (or anticipated change).

## The Contractor must ensure that all members of the Science 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.

## The Contractor must ensure that all members of the Science Platform’s governance entity will be required to act in the best interests of the Science Platform and not in the interests of a particular member.

## *[Option 3 – where there is an appropriate governance arrangement already in place]*

## The Contractor must ensure that all members of the Science Platform’s governance entity are made aware of the terms of this Contract.

# Change EventS

## The following matters constitute a Change Event:

### any significant aspect of the Science Platform cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, this Contract;

### the Ministry is not satisfied with the progress the Contractor has made in relation to the delivery of its Science Platform;

### the Contractor materially fails to deliver any of the KPIs set out in Schedule 3;

### the Contractor fails to meet any of the contract conditions listed in Schedule 5; or

### the Government requiring a variation to or otherwise changing a Science Platform(through changing or replacing the Strategic Science Investment Plan 2017-2024 or otherwise).

## If a Change Event occurs:

### 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

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

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

### agree that the circumstances giving rise to the Change Event no longer exist;

### agree to vary this Contract; or

### agree that no further action is required in respect of the Change Event.

## If the Parties reach agreement in respect of a Change Event in accordance with clause 6.3:

### the Ministry will pay the Contractor the Funding suspended under clause 6.2(b) (if any); and

### no further action will be required under this clause 6.

## 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 Change Event was given in accordance with clause 6.2 (“remedy date”).

## The Ministry may, at any time after the date the Notice of Change Event was received, obtain an independent review that considers the impact of the Change Event on the provision of the Science Platforms under this Contract.

## 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 6.9.

## If the Change Event is to be determined by the Ministry, the Contractor may provide to the Ministry any information that it wishes the Ministry to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).

## The Parties agree that if the Ministry determines that:

### no further action is required in respect of the Change Event:

#### the Ministry will pay the Contractor any Funding suspended under clause 6.2(b); and

#### no further action will be required under this clause 6;

### this Contract 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 entering into a variation of agreement;

### 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).

## 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 Platforms 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.

## If this Contract is terminated by the Ministry under clause 6.9(c) or by the Contractor under clause 6.10, the Ministry:

### is not required to pay any Funding suspended under clause 6.2(b) (if applicable), unless it determines that such Funding should be paid to the Contractor; and

### 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.

## The Parties agree that:

### neither Party may raise a dispute under clause 9 if a Change Event is notified under clause 6.2; and

### nothing in this clause 6 prevents the Ministry from terminating this Contract (as the case may be) under clause 7.

# Termination

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

### the Government reduces, stops, or freezes funding to the Ministry;

### the Contractor commits, or is likely to commit, a material breach of this Contract that is not capable of being remedied;

### 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;

### the Contractor gives any information, representation, or statement to the Ministry about its Science Platforms that is misleading or inaccurate in any material respect;

### the Contractor misuses or misappropriates any Funding;

### the Contractor becomes insolvent (or is deemed or presumed to be so under any applicable law), or in the case of an individual or partnership, commits an act of bankruptcy;

### the Contractor makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;

### the Contractor has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;

### 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);

### the Contractor does or omits to do anything in relation to this Contract that in the Ministry’s reasonable opinion may cause damage to the business or reputation of the Ministry or of the Government;

### the Ministry is advised that there has been an adverse audit finding for any current or prior agreements entered into between the Parties;

### there is a change of Government policy or priorities affecting the Science Platform (through amendment or replacement of the Strategic Science Investment Plan 2017-2024 or otherwise).

## If this Contract is terminated under clause 7.1, 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.

## If this Contract is terminated under clause 7.1(e), the Ministry may require the Contractor 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 Contractor was paid the money to the date the Contractor returns the money.

# Confidentiality

## Except as required by law, and subject to clauses 8.3 to 8.5, each of the Parties will keep 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.

## The Contractor recognises that from time to time the Ministry may proactively release information that is not Confidential Information relating to the Science Platform.

## Notwithstanding clause 8.1, the Ministry may disclose Confidential Information:

### if the Contractor consents to the disclosure;

### to a Minister;

### to 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 under this clause 8.3(b) is bound in writing by obligations no less onerous than those contained in this clause 8 prior to such disclosure;

### if required by the Official Information Act 1982 or any other statutory or evidentiary requirement; or

### where such information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Ministry or its employees or contractors, or was disclosed to the Ministry on a non-confidential basis by a third party.

## The Ministry, as a public funder, has obligations to provide research, science and innovation sector data to NZRIS. The Contractor acknowledges this and must assist the Ministry to comply with these obligations.

## The Ministry and the Contractor will work together in good faith to ensure the Contractor's Confidential Information (including any personal information) is not made public by NZRIS.

## Clause 8.5 does not impose any obligation on the Contractor to provide any further information than is otherwise already required under the other terms of this Contract.

## Notwithstanding anything else in this Contract, the Ministry may release any information in an aggregated form that does not specifically identify the Contractor.

# Dispute Resolution

## Subject to clause 6.12, 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 9.

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

## If the Parties cannot settle the dispute amicably within 10 Working Days of Notice being given, a Party may seek to have the dispute 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.

# Variation

## This Contract may be varied only by agreement in writing signed by the Parties.

# WARRANTIES

## 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.

## The Contractor warrants that:

### it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Contractor;

### 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

### 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.

# Notices

## Any notice under this Contract must be in writing and hand delivered or sent by email or post to the address of the relevant Party set out in clause 12.2 (or to any other address from time to time designated for that purpose by the relevant Party by notice in accordance with this clause to the other Party). A notice is deemed to be received:

### if personally delivered, when delivered;

### if posted, three Working Days after the date of posting; or

### 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 9.00am the next Working Day.

## The Parties’ address for Notices is:

|  |  |
| --- | --- |
| **Ministry:** | **Contractor:** |
| Ministry of Business, Innovation & Employment PO Box 1473WELLINGTON 6140Email address: imssupport@mbie.govt.nzAttention: The General Manager of Science System Investment & Performance | [*insert name*][*insert physical and postal address*]Email address: [*insert email address*]Attention: [*Insert details]* |

#

# No Employment Relationship

## This Contract does not create a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.

## 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.

## The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract.

# Force Majeure

## Neither Party will be liable to the other for any failure or delay in performance of any obligations under this Contract 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 Contract (“**Force Majeure Event**”). The Party affected (“**affected party**”) must:

### notify the other Party (“**non-affected party”**) as soon as practicable of the nature and expected duration of the Force Majeure Event and keep the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;

### use reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Contract to the extent reasonably practicable; and

### resume full performance as soon as reasonably practicable.

## 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.

# NO WAIVER

## A waiver by either Party of any rights arising from any breach of any term of this Contract 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 Contract. No failure or delay on the part of either Party in the exercise of any right or remedy in this Contract 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.

# Entire agreement

## This Contract sets out the entire agreement between the Parties and supersedes and extinguishes all prior agreements, discussions, and arrangements between the Parties relating to the subject matter of this Contract.

# Partial Invalidity

## 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.

## 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.

# Assignment

## The Contractor must not assign, delegate or transfer any or all of its rights and obligations under this Contract without the prior written approval of the Ministry. The Contractor remains liable for performance of its obligations under this Contract despite any approved assignment. The Contractor must ensure that an appropriate written agreement is in place between the Contractor and any subcontractor that is consistent with the terms of this Contract in all material respects (including as to record keeping and audit, confidentiality and health and safety) and acknowledges the benefit to the Ministry for the purposes of the Contract and Commercial Law Act 2017.

## If the Contractor is a company, any transfer of shares, or other arrangement affecting the Contractor or its holding company which results in a change in the effective control of the Contractor is deemed to be an assignment subject to clause 18.1.

# Survival of Clauses

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

# counterparts

## This Contract 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.

# electronic signatures

## Each Party consents to this Contract (or any counterpart of it) being executed by a Party by applying an electronic signature (as defined in section 209 of the Contract and Commercial Law Act 2017) (and, where witnessing of a signature is required, such signature being electronically witnessed), and being delivered in electronic form by means of an electronic communication, all in accordance with sections 222 to 227 of the Contract and Commercial Law Act 2017.

## Where the Contractor has transmitted to the Ministry an electronic copy of this Contract (whether by email or otherwise) the Ministry is entitled to rely on the contents of that electronic copy as accurately reproducing the original and on that electronic copy (including the signatures) being authentic and complete.

# Governing Law

## 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.

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| --- | --- | --- |
| **SIGNED** by the **SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Secretary for Business, Innovation & Employment and Chief Executive,Te Tumu Whakarae mō Hīkina Whakatutuki (the “**Ministry**”):  | ))))) |  Signature Print Full Name Print Title Date |

|  |  |  |
| --- | --- | --- |
| **SIGNED** by **[*FULL LEGAL NAME OF CONTRACTOR*]** by its authorised signatory:  | ))))) |  Signature Print Full Name Print Title Date |

# Schedule 1 – summary

|  |  |
| --- | --- |
| Contract ID: |  |
| Science Programme/Platforms (titles): |  |
| Investment Area: |  |
| Contracting Organisation: |  |
| Start Date: |  |
| End Date: |  |
| Total Funding (GST exclusive): |  |
| Number of years of funding: |  |
| Contractor: |  |
| Primary Contact: |  |
| Contact email: |  |
| Contact phone: |  |
| Payment schedule: |  |

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| --- |
| **Public statement** *(Suggested length maximum 1/3 page per Platform)* |
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| --- |
| **Executive Summary***(Maximum 1 -2 pages; will not be made public).* |
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# Schedule 2 – Platform Plans

# SCHEDULE 3 – KEY PERformance indicators

# Schedule 4 – FINANCIAL INFORMATION

# Schedule 5 – PERFORMANCE MANAGEMENT and CONTRACT CONDITIONS

*To be used if a one particular Science Platform has special contract conditions and or performance management and reporting requirements.*

# SCHEDULE 6 – INTELLECTUAL PROPERTY MANAGEMENT PLAN

# APPENDIX 1 – POLICIES AND PRINCIPLES

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

**INTELLECTUAL PROPERTY**

1. The Contractor must ensure that all persons involved in the delivery of the Science Platform are aware of, and comply with, the Contractor’s obligations under principles 2 to 5 of this Appendix 1.
2. 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.
3. The Contractor must, at the Start Date and at all times during the term of this Contract, have a set of Intellectual Property Policies and Principles in place in respect of this Contract.
4. The Contractor’s Intellectual Property Policies and Principles must:

(i) determine the ownership and/or any rights of assignment, if any, of Science Platform Intellectual Property Rights and require all persons involved in the delivery of the Science Platform to acknowledge the relevant ownership and rights associated with Science Platform Intellectual Property;

(ii) ensure that all persons involved in the delivery of the Science Platform are aware 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 all persons involved in the delivery of the Science Platform are aware of any actual or potential confidentiality issues relating to Science Platform Intellectual Property Rights;

(iv) 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;

(v) 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, including guidance:

regarding employees and contractors’ financial interests in external firms that contract with the Contractor, particularly where these involve research contracts and the exchange of Intellectual Property Rights;

on the nature and terms of institutional support for any start-up companies incorporated as part of the Science Platform; and

for the shareholders of the Contractor, and its employees and contractors;

 (vi) satisfy all legal and regulatory obligations and be promptly amended to ensure any relevant changes or additions to legal or regulatory obligations are satisfied; and

(vii) define good scientific conduct, including sound record keeping and human and animal experimentation ethics.

1. The Intellectual Property Policies and Principles must ensure that cultural, Treaty of Waitangi and Māori rights and interests are properly understood and taken into consideration.
2. 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.
3. The Contractor should, wherever possible:
	* 1. provide assistance to researchers in fulfilling Science Platform Intellectual Property Rights obligations and responsibilities;
		2. encourage participation by researchers in any subsequent commercialisation process of any Science Platform Intellectual Property Rights; and
		3. develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.

**DATA MANAGEMENT**

1. The Contractor must, at the Start Date and at all times during the term of this Contract, have a data management plan in place in respect of this Contract. The data management plan must set out how the Contractor will manage, access, analyse, protect and share data held as a result of the Science Platform via appropriate systems and tools to maximise the benefit of that data for New Zealand. It should ensure that the data management principles are properly taken into consideration.
2. The data management plan should set out which of the following policies are guiding the Contractor’s data management approach:
	* 1. the New Zealand Government Open Access and Licensing Framework. This framework advocates the use of creative commons licenses;
		2. the Ministry’s Environmental Data Management Policy Statement. If the Contractor receives new funding for research that includes environmental science it must agree to license copyright works produced under a Creative Commons Attribution 3.0 New Zealand licence (CC-BY);
		3. principles for safe and effective use of data and analytics when appropriate. These principles were developed by the Privacy Commissioner and Government Chief Data Steward and are designed to support safe and trusted use of data and analytics by New Zealand government agencies;
			+ 1. the FAIR data principles for scientific data management and stewardship; Findable, Accessible, Interoperable and Reusable; and
				2. any other policies relevant to the Science Platform.

**RISK MANAGEMENT**

1. The Contractor must, at the Start Date and at all times during the term of this Contract, have a risk management plan in place in respect of this Contract. The risk management plan should set out how all actual and potential identified risks in relation to the Science Platform will be mitigated and/or managed.
2. The risk management plan should consider risks associated with:
	* 1. delivery of excellent science;
		2. availability of key personnel;
		3. duplication of research, internationally and domestically;
		4. collaborations, internationally and domestically;
		5. attraction or retention of required capability;
		6. unintended or improper use of research technological application that is contrary to responsible and ethical scientific conduct; and
		7. the misuse of the research to develop technology with dual use applications.
3. The Contractor must maintain a register that identifies actual and potential risks in relation to the Science Platform, and how the risk was mitigated and/or managed. The register must be updated annually and at the time a risk or potential risk is identified. The Ministry may request a copy of the risk register at any time.
4. The Contractor must take steps to consider risks associated with sensitive technologies. Where this Contract provides for devolved funding, such steps must include undertaking due diligence of third parties who will be allocated Funding. Where risks associated with sensitive technologies are identified, the Contractor must:
	* 1. assess the need or potential need to satisfy legal and regulatory obligations under New Zealand’s export controls regime;
		2. assess the need to limit access to sensitive technology that could be used in ways contrary to the responsible conduct of research and the principles of research integrity; and
		3. notify the Ministry as soon as practicable.