

PARTNERSHIPS INVESTMENT CONTRACT

between

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

and

{Contractor}

Contract Number

CONTENTS

1. DEFINITIONS	4
2. TERM	7
3. MINISTRY'S OBLIGATIONS	7
4. CONTRACTOR'S OBLIGATIONS	7
5. CHANGE EVENTS	13
6. TERMINATION	16
7. CONFIDENTIALITY	17
8. DISPUTE RESOLUTION	18
9. VARIATION	19
10. NOTICES	19
11. NO EMPLOYMENT RELATIONSHIP	19
12. ENTIRE CONTRACT	19
13. FORCE MAJEURE	20
14. PARTIAL INVALIDITY	20
15. ASSIGNMENT	20
16. SURVIVAL OF CLAUSES	20
17. GOVERNING LAW	20
SCHEDULE 1 – SUMMARY	22
SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND	24
SCHEDULE 3 – WORK PROGRAMME	25
SCHEDULE 4 – FINANCIAL INFORMATION	27
SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS	28
SCHEDULE 6 – FULL-TIME EMPLOYEES (FTES) AND KEY PERSONNEL	30
APPENDIX 1 – INTELLECTUAL PROPERTY MANAGEMENT PLAN	31
APPENDIX 2– INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES	32

PARTNERSHIPS CONTRACT

Date: [insert date]

Parties:

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

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

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

BACKGROUND

- A. The Science Board is responsible for making funding decisions on proposals for allocation of funding for research, science, or technology, or related activities under the Research, Science, and Technology Act 2010. The Ministry is responsible for implementing the Science Board's decisions by overseeing the allocation of funding to persons whose funding proposals are approved by the Science Board.
- B. The Contractor has applied for funding under the Partnerships Scheme for a research, science, or technology work programme. The Partnerships Scheme supports high-quality research with high potential for impact in areas of future value, growth or critical need for New Zealand and to give effect to the Vision Mātauranga policy through the establishment of sector-led research partnerships. It aims to stimulate sector-led investment and collaborative effort in longer term, innovative research activity with potential for transformative impact.
- C. The Contractor's proposal has been approved by the Science Board.
- 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 achieving the delivery of the impact statements, research aims and critical steps of the Work Programme, and enable both Parties to achieve that goal;
 - (c) deal with any change in the delivery of or risks to the delivery of the Work Programme; and
 - (d) ensure that the Ministry can get information about the progress of the Work Programme from the Contractor.

1. DEFINITIONS

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

Change Event has the meaning set out in clause 5.1.

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 Work Programme.

Contract means this Contract, including the Schedules.

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

Key Performance Indicators means the defined quantifiable measures used to assess how well the Contractor is performing in delivery of science in accordance with the Work Programme.

Eligible Co-funding means the cash contributions identified in Schedule 4 as eligible co-funding.

End Date means the end date of this Contract as specified in Schedule 1, or the date 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 (http://www.oecd.org/document/6/0,2340,en_2649_34451_33828550_1_1_1_1,00.html).

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

Funding means the maximum amount of funding paid or payable in respect of the Work Programme as set out in Schedule 1.

Intellectual Property Management Plan means the plan that sets out how the Partnership anticipates managing the Intellectual Property Rights generated by the Work Programme to maximise the benefit of the Work Programme for New Zealand, as set out in Appendix 1.

Intellectual Property Policies and Principles means the policies and principles relating to the management of Work Programme Intellectual Property Rights that the Partnership has adopted, and the Contractor must comply with, as set out in Appendix 2

Intellectual Property Rights includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, 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 Personnel means, in relation to the Work Programme, the Contract manager, the Leader, the Key individuals, and Key researchers Science leaders, together with any other key personnel of the Contractor or a subcontractor, or Key Personnel who are co-funded by a co-funder; all as identified in Schedule 6.

Notice means a notice given in accordance with clause 10.

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.

Partnership means the Partnership Participants, who will all be involved in delivering the Work Programme.

Partnership Participants means the Research Organisations, Research Users or sector representative bodies who are involved in delivering the Work Programme.

Performance Management and Reporting Requirements means the requirements set out in clauses 4.11 and 4.12.

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

Quality Assurance Criteria means the requirements in Schedule 5 relating to the governance, science quality, and human capability development of the Work Programme.

Research Organisation means an organisation that has internal capability for carrying out research, science or technology, or related activities

Research User means an entity that uses research and determines the outcomes that will result from research.

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

Special Ethical and Regulatory Requirements means special ethical and regulatory requirements specified in Schedule 5.

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 Work Programme Intellectual Property Right is to be transferred for a defined term or permanently (by way of assignment, licence to use, or otherwise), but does not include:

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

Working Days means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

Work Programme means the research, science, or technology programme, or related activities described in the Schedules to be delivered by the Contractor.

Work Programme Conditions means contractual conditions that apply in respect of the Work Programme that are set out in Schedule 5.

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

1.2 In this Contract, unless the context requires otherwise:

- (a) clause and other headings are for ease of reference only and are not to be deemed to form any part of the context, or to affect the interpretation, of this Contract; and

- (b) words importing the singular include the plural and vice versa, unless the context requires otherwise.

2. TERM

- 2.1 This Contract commences on the Start Date, and stays in force until the End Date.

3. MINISTRY'S OBLIGATIONS

Funding

- 3.1 In consideration of the Contractor carrying out 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 1.
- 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 will make no claim to ownership of any Work Programme Intellectual Property Rights arising from this Contract.

4. CONTRACTOR'S OBLIGATIONS

Work Programme

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

- (b) that it meets and will continue to meet the eligibility criteria set out in the notice entitled Criteria for Proposals for Partnership Funding that was published in the *Gazette* on 24 November 2016 Issue number 108 notice number 2016-go6373;
- (c) annually, prior to the Ministry making its Funding available to the Contractor, that Eligible Co-funding in the amounts outlined in Schedule 4 or as otherwise previously agreed in writing with the Ministry, will be provided in a timely manner.

4.3 In carrying out the Work Programme, the Contractor:

- (a) may use international research capability and infrastructure facilities only to the extent and in the manner described in the Work Programme; and
- (b) must ensure that even if it uses some international research capability and infrastructure facilities, the majority of the Work Programme must be undertaken in New Zealand.

4.4 The Contractor will comply with any Work Programme Conditions (if any) relating to the Work Programme.

Funding

4.5 In respect of the Work Programme, the Contractor will use the Funding only:

- (a) for Work Programme costs incurred between the Start Date and the End Date;
- (b) to deliver the impact statements, research aims, and critical steps specified in Schedule 3, which must be consistent with the Frascati Definition of Research and Experimental Development, and which include any activities that are reasonably ancillary to purposes that are consistent with the Frascati Definition of Research and Experimental Development;
- (c) to meet the Performance Management and Reporting Requirements;
- (d) to carry out activities that are reasonably necessary to deliver the Work Programme;
- (e) to meet the Contractor's reasonable costs of providing access, information, and reports to the Ministry if the Ministry undertakes an audit as set out in clauses 4.9 and 4.10, or a review or evaluation as set out in clause 4.13 and 4.14; and
- (f) to carry out any other activities directly relating to the Work Programme as agreed between the Parties.

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

4.7 The Contractor will ensure that:

- (a) the Eligible Co-funding specified in Schedule 4 is allocated to the Work Programme;
- (b) it enters into legally binding contracts with each of the entities that require each of them to contribute the amount of Eligible Co-funding specified in Schedule 4;.
- (c) the Eligible Co-funding specified in Schedule 4 must represent at least [60/70]% of the total cost of the Work Programme.

Record Keeping

4.8 For the Work Programme, the Contractor must maintain true and accurate records, including appropriate accounting records, of its use of the Funding and Eligible Co-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 4.10 minimises:

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

Performance Management and Reporting Requirements

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 August each year that covers the delivery of the Work Programme between 1 July of the previous year (or the Start Date of the Work Programme, whichever is the latter) and 30 June of the year in which the report is due, and includes:

- (i) information about all Key Performance Indicators, Primary Results and total Full Time Equivalents as specified in the Schedules to this Contract, with comments where there has been a significant departure from the projected figures or information contained in the Schedules;
 - (ii) information about the Eligible Co-funding invested, including information about how much each entity listed in Schedule 4 contributed, and any other co-funding contributed;
 - (iii) information to be shared publicly on the status of the Work Programme; and
 - (iv) the status of the Work Programme including progress towards delivering each impact statement, critical step, or research aim; and
- (b) if the End Date is a day other than 30 June, provide a final report by no later than 2 months after that End Date that covers the delivery of the Work Programme for the partial year from the preceding 1 July to the End Date, and that describes any changes to the information set out in the previous annual report provided under paragraph (a);
- (c) provide, in consultation with MBIE, a final copy of the Key Performance Indicators, within 6 months of the Start Date of this Contract or such later date as agreed;
- (d) provide statistical information including basic profiling data as reasonably required;
- (e) provide information that would enhance the Ministry's understanding of the research performance in the Work Programme as appropriate; and
- (f) comply with any additional performance management and reporting requirements specified in Schedule 5.

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

Reviews and Evaluations

4.13 The Ministry may review the performance of the Contractor in respect of this Contract on 90's days' written notice to the Contractor. It is expected that there will be at least one review during the term of the Contract

4.14 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 Work Programme, including the review required under clause 4.13; 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 described in this Contract have been delivered; and
- (b) comply with any additional review or evaluation requirements specified in Schedule 5.

Intellectual Property Rights

- 4.15 The Contractor must comply with the Intellectual Property Policies and Principles set out in Appendix 2 in respect of the Work Programme.
- 4.16 The 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.
- 4.17 Within 6 months of the signing of this Contract the Contractor must deliver to the Ministry a final Intellectual Property Management Plan, which is substantially in the form of the draft Plan set out at Appendix 1, that sets out how the Partnership anticipates managing the Intellectual Property Rights generated by the Work Programme to maximise the benefit of the Work Programme for New Zealand.
- 4.18 For the Work Programme, the Contractor will ensure that it complies with the Intellectual Property Management Plan, and will manage any Work Programme Intellectual Property Rights arising from the Work Programme in accordance with that Plan, in order to contribute towards delivering the Work Programme.
- 4.19 The Contractor must enter into an Intellectual Property Agreement with the Partnership Participants in respect of how the Partnership will deal with Work Programme Intellectual Property Rights. The Intellectual Property Agreement must be in accordance with the Intellectual Property Management Plan, the Intellectual Property Policies and Principles and other relevant provisions of this Contract. The Contractor must provide a copy of the signed Intellectual Property Agreement to the Ministry within six months of the Start Date.

Making data available

- 4.20 Subject to clause 4.21, the Contractor will make the Primary Results of the Work Programme available at the Cost of Dissemination to the public and stakeholder groups, on request through

appropriate means in order to contribute towards delivering the impact statements, research aims, and critical steps specified in Schedule 3.

- 4.21 The Contractor is not required to make the Primary Results of the Work Programme available under clause 4.20 if the Contractor considers that:
- (a) making the Primary Results available would prejudice the commercial position of the Contractor;
 - (b) withholding the Primary Results is necessary to protect the privacy of a person;
 - (c) making the Primary Results available would breach an ethical standard;
 - (d) the request for the Primary Results is vexatious or frivolous;
 - (e) making the Primary Results available would prejudice the Work Programme;
 - (f) making the Primary Results available would be contrary to the Contractor's statutory or existing legal obligations; or
 - (g) making the Primary Results available would prejudice the filing of a valid patent application in New Zealand or overseas, or a similar application for intellectual property protection, or the commercial value of developed intellectual property.

Overseas transactions

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

Attendance at meetings

- 4.23 The Contractor will ensure that the Ministry may send a representative, as an observer, to attend any meetings held by the Partnership governance group (or equivalent) or any meetings held by any of the Partnership Participants in relation to the Work Programme.

4.24 The Contractor will arrange for the Ministry to be given:

- (a) adequate notice of any meetings referred to in clause 4.23; and
- (b) copies of any papers being circulated to the attendees of any such meetings.

5. CHANGE EVENTS

5.1 The following matters constitute a Change Event:

- (a) an impact statement, research aim, critical step, or any other significant aspect of the Work Programme cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, this Contract:
- (b) the Ministry is not satisfied with the progress the Contractor has made in relation to the delivery of an impact statement, research aim, critical step, or any significant aspect of the Work Programme;
- (c) there is a change in the involvement of a Key Personnel and the Contractor, sub-contractor, or co-funder (as appropriate) is unable to find an adequate replacement within a reasonable time;
- (d) there is a significant decrease in the total number of Full Time Equivalents specified in Schedule 6 and the Contractor does not find adequate replacements within a reasonable time;
- (e) the Contractor materially fails to deliver any of the Key Performance Indicators;
- (f) there is a change in the Partnership Participant percentage shareholding or beneficial ownership structure (including voting rights) specified in Schedule 1 or the involvement of any of the Partnership Participant in the Work Programme;
- (g) there is a change in the governance arrangements of the Partnership, as specified in Schedule 5;
- (h) there is a change to the terms of the Intellectual Property Agreement and/or the Intellectual Property Policies and Principles;
- (i) the entities fail to provide the Eligible Co-funding, and any other agreed co-funding, as specified in Schedule 4.

5.2 If a Change Event occurs:

- (a) the Party that is aware of the Change Event will give the other Party Notice of the Change Event as soon as reasonably practicable after becoming aware of the Change Event; and

- (b) the Science Board, or any person acting under a delegation given by the Science Board, may suspend payment of all or part of the Funding for the Work Programme to the Contractor.
- 5.3 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.
- 5.4 If the Parties reach agreement in accordance with clause 5.3:
- (a) the Ministry will pay the Contractor the Funding suspended under clause 5.2(b) (if any), but only if the Science Board, or any person acting under a delegation given by the Science Board, determines that the Funding must be paid to the Contractor; and
 - (b) no further action will be required under this clause 5.
- 5.5 The Contractor must try to remedy the Change Event by no later than 3 months (or any other period agreed in writing by the Parties) after the date the Notice of the Change Event was given in accordance with clause 10 (“remedy date”).
- 5.6 The Ministry may, at any time after the date the Notice of the Change Event was received, obtain an independent review of the Work Programme that considers the impact of the Change Event on the delivery of the Work Programme.
- 5.7 If the Change Event has not been remedied to the satisfaction of the Parties by the remedy date, the Ministry will refer the Change Event to the Science Board for its determination in accordance with clause 5.9, but only if the Ministry has obtained an independent review in accordance with clause 5.6. The Ministry will give the Contractor Notice of the referral.
- 5.8 If the Change Event is referred to the Science Board, the Ministry will provide to the Science Board:
- (a) the results of the independent review (if any) of the Change Event referred to in clause 5.6;
 - (b) any information, including recommendations, that the Ministry considers is relevant; and
 - (c) any information that the Contractor wants the Science Board to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).

5.9 The Parties agree that if the Science Board determines that:

- (a) no further action is required in respect of the Change Event:
 - (i) the Ministry will pay the Contractor any Funding suspended under clause 5.2(b);
and
 - (ii) no further action will be required under this clause 5;
- (b) this Contract must be varied (which may include a change to the amount of Funding payable), subject to clause 5.10 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 Science Board (which may provide for a disengagement period, if the Science Board considers that is appropriate).

5.10 If the Science Board determines that a Change Event must be resolved by varying this Contract, and the Contractor does not wish to continue delivering the Work Programme on the terms of the variation, the Contractor may, terminate this Contract immediately by Notice to the Ministry.

5.11 If this Contract is terminated by the Science Board under clause 5.9(c) or by the Contractor under clause 5.10, the Ministry:

- (a) is not required to pay any Funding suspended under clause 5.2(b) (if applicable), unless the Science Board determines that such Funding should be paid to the Contractor;
- (b) may require the Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.

5.12 The Parties agree:

- (a) neither Party may raise a dispute under clause 8 if a Change Event is notified under clause 5.2;
- (b) nothing in this clause 5 prevents the Ministry from terminating this Contract under clause 6; and
- (c) the Ministry will provide details of any delegations given by the Science Board under section 11 of the Research, Science, and Technology Act 2010, in relation to clauses 5.2(b) and 5.4(a);
- (d) if a Change Event under clause 5.1(i) occurs and the Eligible Co-funding is not provided, and any other agreed co-funding, as specified in Schedule 4, the Contractor will, if

requested by the Ministry, promptly pay to the Ministry an amount to make the ratio between the Funding and Eligible Co-funding as anticipated in this Contract.

6. TERMINATION

6.1 The Ministry, with the approval of the Science Board, may suspend the payment of Funding or terminate this Contract immediately by Notice to the Contractor if:

- (a) the government reduces, stops, or freezes funding to the Ministry;
- (b) 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) 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 or any of the Partnership Participants fraudulently misuses or misappropriates any Funding;
- (e) the Contractor or any of the Partnership Participants gives any information, representation, or statement to the Ministry about the Work Programme that is misleading or inaccurate in any material respect;
- (f) the Contractor or any of the Partnership Participants 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) the Contractor or any of the Partnership Participants makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- (h) the Contractor or any of the Partnership Participants has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property; or
- (i) the Contractor or any of the Partnership Participants 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).

6.2 If this Contract is terminated under clause 6.1, 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.

- 6.3 If this Contract is terminated under clause 6.1(d), 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.
- 6.4 If payment of Funding is suspended in accordance with clause 6.1 but the Contract is not terminated, the Ministry is not required to pay any Funding unless the Science Board determines that such Funding should be paid to the Contractor.
- 6.5 If at the End Date the ratio between the Funding and the Eligible Co-funding is not as anticipated in this Contract the Contractor will, if requested by the Ministry, promptly pay to the Ministry an amount to make the ratio the ratio anticipated in the Contract, after taking into account any payments that may have been made under clause 5.12 (d), 6.2 and 6.3.

7. CONFIDENTIALITY

- 7.1 Except as required by law, and subject to clauses 7.2 to 7.6, 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.
- 7.2 The Contractor recognises that from time to time the Ministry may release the following information relating to this Contract and the Work Programme:
- (a) the name of the Contractor and the names of each of the Partnership Participants;
 - (b) the Contract ID;
 - (c) the title of the Work Programme;
 - (d) the public statement set out in Schedule 1;
 - (e) the research fund from which the Work Programme is funded;
 - (f) the relevant sector;
 - (g) the total amount of funding paid to the Contractor in the current financial year and previous years;
 - (h) the total amount of Funding payable to the Contractor over the duration of this Contract;
 - (i) the year Funding was approved in respect of the Work Programme; and
 - (j) the period of time for which Funding will be provided in respect of the Work Programme.

- 7.3 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.
- 7.4 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 7.2 concerning the Contractor.
- 7.5 The Ministry may release any information in an aggregated form that does not specifically identify the Contractor.
- 7.6 Nothing in this clause 7 prevents the Ministry from disclosing Confidential Information to:
- (a) a Minister; or
 - (b) any of the Ministry's advisors (including relevant third parties) or any other government agency (including any Crown entity), provided that any person to whom Confidential Information is disclosed is bound in writing by obligations no less onerous than those contained in this clause 7 prior to any disclosure.

8. DISPUTE RESOLUTION

- 8.1 Subject to clause 5.12, 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 8.
- 8.2 The Parties will attempt in good faith to settle the dispute amicably.
- 8.3 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.
- 8.4 If a Party refuses to attend mediation, either at all or within a reasonable time frame, or the Parties can not settle the dispute at mediation within 10 Working Days of the appointment of the mediator (or such further period agreed by the Parties), then a Party may, after giving Notice to the other Party, refer the dispute to the arbitration of a single arbitrator to be agreed upon by the Parties, or failing agreement within 5 Working Days of the Notice regarding arbitration, to be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.
- 8.5 The arbitration will be conducted with and subject to the provisions of the Arbitration Act 1996, excluding the Second Schedule to the Act.

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

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

9. VARIATION

9.1 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.

10. NOTICES

10.1 Notices under this Contract will be given by post or by email. Notices given by email will be followed by a hard copy sent by post. Notices will be deemed to have been given three days after dispatch.

10.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager, Science System Investment and Performance, Labour, Science and Enterprise, Ministry of Business, Innovation and Employment, PO Box 5762, Wellington. Notices given by email will be sent to partnerships@mbie.govt.nz.

10.3 In respect of the Contractor, Notices will be addressed to the contact person for the Work Programme specified in Schedule 1.

11. NO EMPLOYMENT RELATIONSHIP

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

11.2 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.

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

12. ENTIRE CONTRACT

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

13. FORCE MAJEURE

- 13.1 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.
- 13.2 If an event described in clause 13.1 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.

14. PARTIAL INVALIDITY

- 14.1 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.
- 14.2 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.

15. ASSIGNMENT

- 15.1 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.
- 15.2 Any change affecting the control of the Contractor, including but not limited to a change in the Partnership Participants, a change in the percentage holdings of the Partnership Members or a change in voting rights of the Partnership Participants, will be deemed a transfer and an assignment. In relation to this type of transfer and assignment prior written consent of the Ministry will not be unreasonably withheld.

16. SURVIVAL OF CLAUSES

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

17. GOVERNING LAW

- 17.1 The 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 and date

Name and position

Ministry of Business, Innovation and Employment

Witness Signature

Full Name

Address

Occupation

Signed on behalf of the Contractor by

Signature and date

Name and position

Witness Signature

Full Name

Address

Occupation

SCHEDULE 1 – SUMMARY

Contract ID:	
Work Programme title:	
Proposal reference:	
Contract reference:	
Research fund:	
Funding scheme:	
Total Funding year one (GST exclusive):	
Total Funding year one (plus GST, if GST is payable):	
Total Funding (GST exclusive):	
Total Funding (plus GST, if GST is payable):	
Number of years of Funding:	[Drafting Note: insert a date that is no more than 7 years]
Contractor:	
Contractor's Contract Manager:	
Science Leader:	
Contact person:	
Contact email:	
Contact phone:	
Percentage shareholding or beneficial ownership structure (including voting rights):	
Payment schedule:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	

Executive Summary

Public Statement

Partnership Participants

Confidentiality Request

SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND

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

SCHEDULE 3 – WORK PROGRAMME

Impact Statement 1

Short title	
Impact statement	
Start date	
End date	

Impact Statement Information

Research Aim

Research aim sequence 1.1	
Research aim title	
Research aim text	
Start date	
End date	

Research Aim Critical Steps

Critical step 1.1.1	
Description	
Start date	
End date	

Critical step 1.1.2	
Description	
Start date	
End date	

SCHEDULE 4 – FINANCIAL INFORMATION

COSTS

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Direct personnel							
Direct operating							
Equipment usage							
Sub contracts*							
Indirect costs							
TOTAL							

FUNDING

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Eligible co-funding**							
Funding (Ministry)							
In-kind							
TOTAL							

*List of sub contractors and amounts committed

Name	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Sub contractor 1							
Sub contractor 2							
TOTAL							

** Eligible Co-funders contributions

Eligible Co-funders	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Eligible Co-funder A							
Eligible Co-funder B							
TOTAL							

SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS

Key Performance Indicators

[Drafting note: measures and targets relating to impact/outcomes, research aims and critical steps]

There are two categories of KPI:

- (a) “Committed KPIs” are KPIs to which all obligations set out in the Contract in respect of the KPIs apply; and
- (b) “Target KPIs” are KPIs that the Contractor must use reasonable endeavours to meet, but a failure by the Contractor to deliver does not trigger a Change Event under clause 5.1 of the Contract. All other obligations of the Contractor (including reporting) are the same as Committed KPIs.

Clause 4.11(f) – Additional Performance Management and Reporting Requirements

Clause 4.14(b) – Additional Review and/or Evaluation Requirements

Work Programme Conditions

Special Ethical and Regulatory Requirements

Quality Assurance Criteria (if required):

Governance

The Contractor will take all steps open to it to ensure that the governance structure at all times reflects the following:

Science Quality

Human Capability Development

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

Contractor FTEs and Key Personnel

Position	Staff Member Name	Organisation	Annual FTE commitment
Contract manager			
Contact person			
Science leader			
Key researcher			
Other Key personnel			
Total FTE			

[Drafting note: add roles and rows as necessary]

APPENDIX 1 – INTELLECTUAL PROPERTY MANAGEMENT PLAN

MBIE note: This is an agreement to be provided by the Partnership. MBIE will consider requests from Partnerships to make this a deliverable under the Work Programme up to 6 months after the Start Date if a Partnership doesn't this agreed. Failure to deliver within the agreed time period would give MBIE a right to suspend funding

APPENDIX 2– INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES

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

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

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

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