

**PRESEED ACCELERATOR FUND
INVESTMENT CONTRACT**

between

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

and

{Contractor}

Contract Number

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PRESEED ACCELERATOR FUND INVESTMENT CONTRACT

Date: [insert date]

Parties:

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

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

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

BACKGROUND

- A. The purpose of the PreSeed Accelerator Fund is to undertake early stage technology commercialisation activities to:
- (a) maximise the commercial benefits to New Zealand from publicly funded research;
 - (b) improve the commercial capability and skills of public research organisations;
 - (c) promote linkages between public research organisations and potential private sector partners, including industry players and capital providers, in New Zealand and offshore.

These goals are achieved by progressing technology prospects through a commercialisation process towards a point of investor-readiness. The end goal of the PreSeed Accelerator Fund is to attract investor interest to publicly funded research and development.

The Ministry is responsible for making funding decisions on proposals for allocation of funding under the PreSeed Accelerator Fund.

- B. The Contractor has applied for funding under the PreSeed Accelerator Fund for a research, science, or technology work programme. The PreSeed Accelerator Fund provides research organisations with funding that they can allocate to early stage commercialisation of new ideas. The Contractor's proposal has been approved by the Ministry.
- C. 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 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.

Co-Funding means the total amount of direct cash and direct in-kind co-funding specified in clauses 4.6(b) and 4.7.

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.

CPN Investment Committee means the investment committees which can be used for review, assistance and approval of Eligible Projects. The Ministry reserves the right to approve committees or withdraw support. The current committees are:

- (a) Kiwi Innovation Network Limited Investment Committee;
- (b) Auckland UniServices Limited (Return on Science) Agritech and AgBio Investment Committee;
- (c) Return on Science Biotech and Life Sciences Investment Committee;
- (d) Return on Science ICT Investment Committee;
- (e) Return on Science Physical Sciences Investment Committee.

Critical Performance Indicators means, in relation to the Work Programme:

- (a) the outcomes, objectives and critical criteria as specified in Schedule 3;
- (b) the requirements relating to Co-Funding as specified in clause 4.6(b).

Eligible Expenses means the following expenses:

- (a) pro-rated salaries of research and development and commercialisation staff plus an appropriate proportion of indirect costs, as agreed between the Parties;
- (b) an appropriate proportion of the depreciation cost for equipment, buildings and other assets, as agreed between the Parties;

- (c) related research consumables and field accommodation costs;
- (d) the costs of subcontracted research and development. Overseas contractor costs are permissible;
- (e) prototype development to the point where it is investor-ready. Investor-ready means a working prototype or similar stage at which a private sector firm, venture capital investor or other investor may reasonable be expected to be attracted, in order to advance, or to complete, the commercialisation process;
- (f) product certification costs;
- (g) pre-clinical studies (clinical trial costs are not eligible);
- (h) direct Intellectual Property Rights protection costs (patent defence costs are not eligible);
- (i) market research, Intellectual Property Rights strategy development, commercialisation partner engagement (both within New Zealand and overseas) and other activities associated with progressing a technology development towards investor readiness.

Eligible Project means a project that results from any publicly-funded research or research capability which aligns with the priorities in the current MBIE Contestable Research Fund Investment Plan.

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).

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

Intellectual Property Management Plan means a plan that sets out how the Contractor anticipates managing the Intellectual Property Rights generated by a particular Eligible Project that will form part of the Work Programme to maximise the benefit of that Work Programme for New Zealand.

Intellectual Property Policies and Principles means the policies and principles relating to the management of Work Programme Intellectual Property Rights that the Contractor must adopt pursuant to Principle 2 of Schedule 5.

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

Notice means a notice given in accordance with clause 11.

Overseas Party means:

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

Partnership Members means the Research Organisations comprising the Contractor, if any, as set out in Schedule 1.

Performance Management and Reporting Requirements means the requirements set out in clauses 4.12 and 4.13.

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 a day of the week other than:

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

Work Programme means the research, science, or technology programme or related activities described in Schedule 3.

Work Programme Conditions means contractual conditions that apply in respect of the Work Programme that are set out in Schedule 4.

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 unless terminated earlier in accordance with this Contract.

2.2 This Contract may be extended for a further 3 years at the Ministry's sole discretion subject to a review conducted by the Ministry in accordance with clause 4.15.

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 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.

4.2 The Contractor warrants that:

- (a) 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; and
- (b) it is and continues to be an eligible organisation, which can include:
 - (i) a Crown research institute;
 - (ii) a university, polytechnic, or wānanga;
 - (iii) a majority owned subsidiary of eligible research organisations (for example, Auckland Uniservices Limited, Lincoln Agritech Limited, Otago Innovation Limited);
 - (iv) a collective of eligible research organisations; or
 - (v) an organisation where profit is not solely for the benefit of the research organisation.

4.3 The Contractor will comply with any Work Programme Conditions relating to the Work Programme.

Funding

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

- (a) for Eligible Expenses of Eligible Projects incurred between the Start Date and the End Date;
- (b) to deliver the Work Programme;
- (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 4.10 and 4.11, or a review or evaluation as set out in clauses 4.15 and 4.16; and
- (f) to carry out any other activities directly relating to the Work Programme as agreed between the Parties.

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

4.6 The Contractor will ensure that:

- (a) It enters into legally binding contracts with each of the Partnership Members that require each member to contribute to the co-funding requirements as set out in clauses 4.6(c), 4.6(d), and 4.7;
- (b) that the contracts with each of the Partnership Members will reflect the terms and conditions of this contract;
- (c) the co-funding is allocated to the Work Programme;
- (d) the co-funding must represent at least 50% of the Eligible Expenses of the Eligible Projects; and
- (e) the co-funding requirements specified in clause 4.6(d) must be met at each of the 12 month, 24 month and end of Contract stages of the Contract.

4.7 For the purposes of this Contract:

- (a) Co-funding can be provided by the Contractor and/or third parties but cannot include any other funding provided by the Ministry, except where allowed by the Ministry by way of re-prioritisation or CRI core funding or Callaghan Innovation's Strategic Investment Fund;
- (b) direct in-kind co-funding from the private sector will qualify as co-funding up to 60% of the total amount of co-funding (or up to 30% of the total Eligible Expenses);
- (c) the Contractor may reprioritise existing research funds contracted by the Ministry, up to a maximum of 12.5% of Eligible Expenses. Any such reprioritisation must:
 - (i) remain consistent with the original purpose of the contracted research;
 - (ii) be approved in writing by the Ministry;
 - (iii) be approved in writing by the Science Board, if applicable; and
 - (iv) comply with any other restrictions imposed on it.

Reprioritisation will only be approved by the Ministry and/or the Science Board if it is aligned with original purpose of the contracted research and the impact on delivery of contracted outcomes is not adversely affected.

- (d) the Contractor may reprioritise existing research funds allocated by funding agency/agencies other than the Ministry if:
- (i) any restrictions that may apply to such funding (such as its purpose or contract term) are complied with; and
 - (ii) approved in writing by the Ministry and the other funding agency.

4.8 The Contractor will ensure that it complies with the following approval system in relation to the Funding:

| Level | Amount of Eligible Expenses | Process |
|--------------|--|---|
| 1 | Total Eligible Expenses claim is less than \$60,000 for a specific Eligible Project | <p>The Contractor must notify a CPN Investment Committee of the decision to fund an Eligible Project when that project commences.</p> <p>A brief outcomes report must also be provided to a CPN Investment Committee on completion of that project.</p> <p>Once the total project spend is approaching \$30,000, it is recommended that the project be presented to a CPN Investment Committee for feedback and guidance.</p> |
| 2 | Total Eligible Expenses claim is equal to or greater than \$60,000 for a specific Eligible Project | <p>The Contractor must notify a CPN Investment Committee of the decision to fund an Eligible Project when that project commences.</p> <p>The Contractor must obtain the written approval of a CPN Investment Committee for that project.</p> <p>A CPN Investment Committee will not provide approval in arrears for Eligible Expenses that have been incurred without prior CPN Investment Committee input.</p> |

Record Keeping

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

Audit

- 4.10 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.
- 4.11 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

- 4.12 The Contractor will meet the following Performance Management and Reporting Requirements to the reasonable satisfaction of the Ministry:
- (a) provide an annual report by no later than 31 July each year that covers the delivery of the Work Programme between 1 July of the previous year and 30 June of the year in which the report is due with the first such report being due on 31 July 2017, and includes:
 - (i) commercial benefits realised during the year from any Eligible Projects since their inception including:
 - (1) number of commercial deals;
 - (2) revenue generated by Eligible Projects (whether to the Contractor or to any spin-out entity);
 - (3) capital value of deals, spin-outs or joint ventures;

- (4) investment from external sources;
 - (5) employment opportunities generated or sustained; and
 - (ii) healthy pipeline of Eligible Projects including the number of Eligible Projects in the past year by category:
 - (1) new in the reported year;
 - (2) Intellectual Property Rights transferred in the reported year;
 - (3) matured in the reported year;
 - (4) terminated in the reported year;
 - (5) active and on-going; and
 - (iii) the amount of Co-Funding in the reported year including:
 - (1) percentage and amount of Co-Funding from the Contractor;
 - (2) percentage and amount of Co-Funding from third parties; and
 - (3) percentage and amount of funding from reprioritised existing research funds;
- (b) provide a monthly report by no later than the end of the following month that covers the delivery of the Work Programme for that month, and includes:
 - (i) total Eligible Expenses claimed for that month and year-to-date;
 - (ii) total funding (excluding the Funding) applied to Eligible Projects for that month and year-to-date;
 - (iii) list and description of all active Eligible Projects including and, where available, identifier (such as the Open Researcher and Contributor ID), for the principal investigator;
 - (iv) number of assessed Eligible Projects;
 - (v) number of approved Eligible Projects including ANZRC FOR and SEO codes;
 - (vi) number of matured Eligible Projects; and
 - (vii) number of terminated Eligible Projects.

- 4.13 The Contractor will provide additional reports or information reasonably required by the Ministry.
- 4.14 As a result of considering each of the annual reports provided under clause 4.12 (a), and following discussions with the Contractor, the Ministry may reallocate part or all of the Funding should this be required to ensure that the PreSeed Accelerator Fund is allocated fairly according to demand. The Ministry may also alter the requirements of clauses 4.12 (a) and (b).

Reviews and Evaluations

- 4.15 The Ministry will conduct an end of Contract review of its investment in the Work Programme.
- 4.16 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; and
 - (ii) for a period of up to 7 years after this Contract ends, to allow the Ministry to review or evaluate:
 - (1) its investment in the Work Programme in relation to Eligible Projects that are the subject of this Contract that had not been completed as at the End Date;
 - (2) whether the post-contract outcomes for New Zealand specified in Schedule 2 have been delivered; and
 - (b) comply with any additional review or evaluation requirements specified in Schedule 5.

Intellectual Property Rights

- 4.17 The Contractor must comply with Principles 1 – 3 of Schedule 5 in respect of the Work Programme, including by adopting Intellectual Property Policies and Principles as required by clause 2 of Schedule 5.
- 4.18 The Contractor's Intellectual Property Policies and Principles must be published on the Contractor's website or, where this is inappropriate, made available if requested by a member of the public. However, the Contractor is not required to publish individual agreements relating to its Intellectual Property Rights on its website.
- 4.19 For each Eligible Project within the Work Programme, the Contractor will create and maintain an Intellectual Property Management Plan, and will manage any Work Programme Intellectual Property Rights arising from that project in accordance with that plan, in order to contribute towards delivering that project.

Overseas transactions

4.20 If the Contractor concludes a Transaction with an Overseas Party that was an Overseas Party at the date of commencement of the Transaction, the Contractor will report to the Ministry in a manner to be reasonably agreed by the Contractor and the Ministry. If the Contractor is obligated under the terms of the Transaction not to reveal the identity of the Overseas Party, the Contractor will provide information on:

- (a) the particular nature of the Work Programme Intellectual Property Right in the Transaction;
- (b) the form of the Transaction;
- (c) the territorial and/or application limits of the Transaction; and
- (d) financial information and related material that indicates the Transaction's contribution to the Contractor's overseas earnings.

5. CHANGE EVENTS

5.1 The following matters constitute a Change Event:

- (a) any 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 any significant aspect of the Work Programme;
- (c) the Contractor materially fails to deliver any of the Critical Performance Indicators;
- (d) there is a change in Partnership Members
- (e) there is a change in that would adversely affect their ability to contribute to the Work Programme; or
- (f) the agreed co-funding as specified in 4.6 and 4.7 has not been contributed.

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 Ministry 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);
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 11 ("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 make its determination in accordance with clause 5.9.
- 5.8 If the Change Event is to be determined by the Ministry the Contractor can provide any information it wants the Ministry to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).
- 5.9 The Parties agree that if the Ministry determines that:
- (a) no further action is required in respect of the Change Event:
 - (i) the Ministry will pay the Contractor any Funding suspended under clause 6.2(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 Ministry (which may provide for a disengagement period, if the Ministry considers that is appropriate).
- 5.10 If the Ministry determines that a Change Event must be resolved by varying this Contract, and the Contractor does not wish to continue delivering the Work Programme, the Contractor may,

at any time before the variation is executed by the Parties, terminate this Contract immediately by Notice to the Ministry.

5.11 If this Contract is terminated by the Ministry 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 it 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; and
- (b) nothing in this clause 5 prevents the Ministry from terminating this Contract under clause 6.

6. TERMINATION

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

- (a) commits or is likely to commit a material breach of the terms or conditions of this Contract that is not capable of being remedied;
- (b) commits or is likely to commit a material breach of this Contract that is capable of being remedied, but fails to remedy the breach to the Ministry's satisfaction within any reasonable time specified by the Ministry in a Notice;
- (c) the Contractor or any of the Partnership Members fraudulently misuses or misappropriates any Funding;
- (d) the Contractor or any of the Partnership Members becomes insolvent (or is deemed or presumed to be so under any applicable law) to be unable to pay its debts, or in the case of an individual or partnership, commits an act of bankruptcy;
- (e) the Contractor or any of the Partnership Members makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- (f) the Contractor or any of the Partnership Members has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;

- (g) the Contractor or any of the Partnership Members 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); or
- (h) the Contractor or any of the Partnership Members gives any information, representation, or statement to the Ministry about the Work Programme that is misleading or inaccurate in any material respect.

For the purposes of clause 6.1 a breach of clause 4.6 will be deemed a material breach.

- 6.2 The Ministry may terminate this Contract immediately by Notice to the Contractor if the government reduces, stops, or freezes funding to the Ministry.
- 6.3 If this Contract is terminated under clause 6.1 or 6.2, 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.
- 6.4 If this Contract is terminated under clause 6.1(c) , 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.
- 6.5 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 it determines that such Funding should be paid to the Contractor.

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 any Partnership Members
 - (b) the Contract ID;
 - (c) the research fund from which the Work Programme is funded;

- (d) the relevant sector;
- (e) the total amount of funding paid to the Contractor in the current financial year and previous years;
- (f) the total amount of Funding payable to the Contractor over the duration of this Contract;
- (g) the year Funding was approved in respect of the Work Programme; and
- (h) 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.

9. INDEMNITY

- 9.1 The Contractor indemnifies the Ministry against any claim, liability, or expense (including, without limitation, legal fees, costs, and disbursements) ("loss") brought or threatened against, or incurred by the Ministry, arising directly or indirectly from a breach of this Contract, negligence, or wilful misconduct by the Contractor, except to the extent that loss arises out of an act or omission by the Ministry.

10. VARIATION

- 10.1 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.

11. NOTICES

- 11.1 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.
- 11.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager; Science Investments; Labour, Skills and Enterprise; Ministry of Business, Innovation and Employment; PO Box 5762; Wellington. Notices given by email will be sent to investmentround@mbie.govt.nz.
- 11.3 In respect of the Contractor, Notices will be addressed to the contact person for the Work Programme specified in Schedule 1.

12. NO EMPLOYMENT RELATIONSHIP

- 12.1 This Contract does not create a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.
- 12.2 The Contractor will not lead any person to believe that remuneration for work or any other payment received by that person is met directly by the Ministry.
- 12.3 The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract.

13. ENTIRE CONTRACT

- 13.1 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.

14. FORCE MAJEURE

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

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

15. PARTIAL INVALIDITY

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

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

16. ASSIGNMENT

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

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

17. SURVIVAL OF CLAUSES

17.1 Expiry or termination of this Contract for any reason will not affect the validity and enforceability of this clause and the confidentiality, performance management and reporting requirements, reviews and evaluations, termination, indemnity, dispute resolution, and governing law clauses of this Contract.

18. GOVERNING LAW

18.1 This Contract will be governed by and construed in accordance with the laws of New Zealand, and the Parties submit to the jurisdiction of the Courts of New Zealand.

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

Signature

Name and position

Ministry of Business, Innovation and Employment

Witness Signature

Full Name

Address

Occupation
Date

Signed on behalf of the Contractor by

Signature

Name and position

Witness Signature

Full Name

Address

Occupation
Date

SCHEDULE 1 – SUMMARY

| | |
|--|---|
| Contract ID: | |
| Work Programme title: | |
| Proposal reference: | |
| Contract reference: | |
| Research fund: | |
| Investment mechanism: | |
| Output expense/Priority area: | |
| Total Funding (GST exclusive): | |
| Total Funding (plus GST, if GST is payable): | |
| Number of years of funding: | Three years |
| Contact person: | |
| Contractor's address for notices: | |
| Contact email: | |
| Contact phone: | |
| Partnership Members, if any | |
| Payment schedule: | <p>For the first payment: Monthly in arrears on receipt of:</p> <ul style="list-style-type: none"> • the monthly reports in accordance with clause 4.12(b) • a valid GST invoice, unless otherwise agreed between the Parties • a report on the annual measures set out in clause 4.12(a) for the last 10 years of any PreSeed Accelerator Funding provided to the Contractor (if applicable). <p>For all subsequent payments: Monthly in arrears on receipt of:</p> <ul style="list-style-type: none"> • the monthly reports for that month in accordance with clause 4.12(b) • a valid GST invoice, unless otherwise agreed between the Parties. |
| Start Date: | 1 July 2016 |
| End Date: | 30 June 2019, subject to clause 2.2 |
| Approval date: | |

| | |
|---------------------|--|
| Approval reference: | |
|---------------------|--|

Executive Summary

SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND

| Time period | Description of post-contract outcomes |
|-----------------------------|--|
| 2 years after the End Date | <p>The commercial benefits realised during the 2 year period from any Eligible Projects since their inception including:</p> <ul style="list-style-type: none"> (1) capital value of deals, spin-outs or joint ventures (2) employment opportunities generated or sustained. <p>A healthy pipeline of Eligible Projects including the number of Eligible Projects in the 2 year period by category:</p> <ul style="list-style-type: none"> (1) Intellectual Property Rights transferred in reported years (2) matured in reported years (3) terminated in reported years. |
| 5 years after the End Date | <p>The commercial benefits realised during the 5 year period from any Eligible Projects since their inception including:</p> <ul style="list-style-type: none"> (1) capital value of deals, spin-outs or joint ventures (2) employment opportunities generated or sustained. |
| 10 years after the End Date | <p>The commercial benefits realised during the 10 year period from any Eligible Projects since their inception including:</p> <ul style="list-style-type: none"> (1) capital value of deals, spin-outs or joint ventures (2) employment opportunities generated or sustained. |

SCHEDULE 3 – WORK PROGRAMME

| | |
|---|---|
| Short title | |
| Outcomes | <p>The Contractor must undertake early stage technology commercialisation activities to:</p> <ul style="list-style-type: none"> • maximise the commercial benefits to New Zealand from publicly funded research • improve the commercial capability and skills of public research organisations • promote linkages between public research organisations and potential private sector partners, including industry players and capital providers, in New Zealand and offshore. |
| Objectives | |
| <p>Critical criteria:</p> <ul style="list-style-type: none"> • Governance • Pipeline • Decision making processes • Commercialisation capabilities • Future commercialisation capability | |

SCHEDULE 4 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS

Clause 4.13 – Additional Performance Management and Reporting Requirements

Clause 4.16(b) – Additional Review and/or Evaluation Requirements

Work Programme Conditions

SCHEDULE 5 – 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 this Contract 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 this Contract;
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.