

**VISION MĀTAURANGA
CAPABILITY FUND
INVESTMENT CONTRACT**

between

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

and

{Contractor}

Contract Number

CONTENTS

1. DEFINITIONS	4
2. HOW WE CONTRACT WITH EACH OTHER.....	7
3. TERM	7
4. MINISTRY'S OBLIGATIONS	8
5. CONTRACTOR'S OBLIGATIONS	8
6. CHANGE EVENTS	13
7. TERMINATION	15
8. CONFIDENTIALITY	17
9. DISPUTE RESOLUTION	18
10. INDEMNITY	19
11. VARIATION	19
12. NOTICES	19
13. NO EMPLOYMENT RELATIONSHIP	19
14. ENTIRE CONTRACT	19
15. FORCE MAJEURE	20
16. PARTIAL INVALIDITY	20
17. ASSIGNMENT	20
18. SURVIVAL OF CLAUSES	20
19. GOVERNING LAW	20
APPENDIX 1 – WORK PROGRAMME AGREEMENT	22
SCHEDULE 1 – SUMMARY	
SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND	
SCHEDULE 3 – WORK PROGRAMME	
SCHEDULE 4 – FINANCIAL INFORMATION.....	
SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS	
SCHEDULE 6 – KEY INDIVIDUALS	
SCHEDULE 7 – INTELLECTUAL PROPERTY MANAGEMENT PLAN	
SCHEDULE 8 - PAYMENT DETAILS	
APPENDIX 2 – INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES	33

VISION MĀTAURANGA CAPABILITY 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 ("**Ministry**")

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

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

BACKGROUND

- A. The purpose of the Vision Mātauranga Capability Fund is to develop skilled people and organisations undertaking research that supports the four themes of MBIE's Vision Mātauranga ("**VM**") policy that has the following themes: indigenous innovation, taiao/environment, hauora/oranga, and mātauranga.

Investment in the Vision Mātauranga Capability Fund will lead to increased awareness of the contribution of science to Māori organisations, the development of new VM-relevant opportunities, the improved uptake of VM-relevant research by Māori organisations, and the development of researchers and research organisations to carry out VM-relevant research.

- B. The Ministry is responsible for making funding decisions on proposals for allocation of funding under the Vision Mātauranga Capability Fund.
- C. The Contractor has applied for funding under the Vision Mātauranga Capability Fund for a work programme. The Contractor's proposal has been approved by the Ministry.
- D. The details of each work programme for which funding is allocated by the Ministry will be set out in a separate Work Programme Agreement.
- E. The purpose of this Contract is to:
- (a) set out the terms under which Funding is provided to the Contractor and that will apply to each Work Programme Agreement;
 - (b) recognise that the Parties to this Contract have a mutual goal of achieving the delivery of each 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 a Work Programme; and
 - (d) ensure that the Ministry can get information about the progress of each Work Programme from the Contractor.

1. DEFINITIONS

- 1.1 In this Contract and each Work Programme Agreement, 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, the content of this Contract and each Work Programme Agreement, and includes all information concerning each Work Programme.

Co-funding means cash and in-kind co-funding invested by the Contractor and the Partner Organisation.

Connect Scheme means the Te Pūnaha Hihiko Connect Scheme described in the Investment Plan.

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

End Date means the end date of a Work Programme Agreement as specified in the Work Programme Agreement, or the date that a Work Programme Agreement 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).

Funding means the amount of funding paid or payable in respect of a Work Programme as set out in the relevant Work Programme Agreement.

Intellectual Property Management Plan means a plan specified in a Work Programme Agreement that sets out how the Contractor anticipates managing any Intellectual Property Rights generated by a 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 any Work Programme Intellectual Property Rights that the Contractor must adopt pursuant to Principle 2 of 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, 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.

Investment Plan means the document that sets out the objectives, scope, and schemes of the Vision Mātauranga Capability Fund.

Key Personnel means, in relation to a Work Programme, the key individuals, contact person, and any other key personnel of the Contractor and the Partner Organisation as identified in the relevant Work Programme Agreement.

Partner Organisation means the organisation that works with the contract holder to develop the proposal and deliver the Work Programme. The partner organisation is responsible for providing the compulsory co-funding on a Placement Scheme Work Programme.

Māori Organisation means a Māori organisation(s) referred to in a Work Programme Agreement.

Notice means a notice given in accordance with clause 12.

Overseas Party means:

(a) any individual or association of persons not ordinarily resident in New Zealand; or
any incorporated body:

not registered, or deemed to be registered, under Part 18 of the Companies Act 1993; or

that does not have a registered place of business in New Zealand; and

that is not carrying on a business in New Zealand.

Performance Management and Reporting Requirements means the requirements set out in clauses 5.11 and 5.12.

Placement Scheme means the Te Pūnaha Hihiko Placement Scheme described in the Investment Plan.

Primary Results means any data and findings produced as part of a 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 a Work Programme Agreement relating to the governance, science quality, and human capability development of the Work Programme.

Schemes means both the Connect Scheme and the Placement Scheme.

Special Ethical and Regulatory Requirements means special ethical and regulatory requirements specified in a Work Programme Agreement.

Start Date means the start date of a Work Programme Agreement as specified in the Work Programme Agreement.

Transaction means a formal agreement between the Contractor and an Overseas Party under which any Work Programme Intellectual Property Rights are 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, or 3 or 4 January if 1 or 2 January fall on a weekend day.

Work Programme means a programme described in a Work Programme Agreement.

Work Programme Agreement means an agreement entered into by the Parties in respect of a specific Work Programme in the form set out in Appendix 1 of this Contract.

Work Programme Conditions means contractual conditions that apply in respect of a Work Programme that are set out in the relevant Work Programme Agreement.

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

- 1.2 In this Contract and each Work Programme Agreement, 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 the Contract or any Work Programme Agreement; and
 - (b) words importing the singular include the plural and vice versa, unless the context requires otherwise.

2. HOW WE CONTRACT WITH EACH OTHER

- 2.1 If the Ministry approves a proposal submitted by the Contractor for funding for a Work Programme and the Parties agree to enter into an agreement in respect of the Work Programme, the Parties must enter into a Work Programme Agreement.
- 2.2 A Work Programme Agreement must include a description of the Work Programme, including a description of the impact statements, programme aims, critical steps, timeframes, mentoring support arrangements, Key Personnel, Funding and any other details that relate to the Work Programme.
- 2.3 The terms set out in this Contract and in the relevant Work Programme Agreement, including the Work Programme Conditions and schedules, will apply in respect of that Work Programme.
- 2.4 If there is any conflict between the terms of this Contract and a Work Programme Agreement, this Contract takes precedence, except to the extent that the Work Programme Agreement, including any Work Programme Conditions or schedules, expressly states otherwise by:
- (a) setting out the term or terms that the Parties wish to vary; and
 - (b) setting out the variation to the term or terms.

3. TERM

- 3.1 This Contract commences on the date it is signed by the Parties, and stays in force until terminated in accordance with this Contract.
- 3.2 Each Work Programme Agreement starts on the Start Date and ends on the End Date or the date on which anything required to be done by either Party under the Work Programme Agreement is completed (whichever is the later), unless terminated earlier in accordance with this Contract.

4. MINISTRY'S OBLIGATIONS

Funding

- 4.1 In consideration of the Contractor carrying out a Work Programme and meeting its obligations under this Contract and the relevant Work Programme Agreement, the Ministry will provide the Funding to the Contractor subject to the terms and conditions of this Contract and the Work Programme Agreement.
- 4.2 The Ministry will provide Funding in accordance with the payment schedule set out in the relevant Work Programme Agreement, subject to clause 5.6 being complied with to the Ministry's satisfaction.
- 4.3 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

- 4.4 The Ministry agrees that all Intellectual Property Rights arising from this Contract and any Work Programme Agreement are the property of the Contractor, and will make no claim to ownership of any Intellectual Property Rights arising from this Contract or any Work Programme Agreement.

5. CONTRACTOR'S OBLIGATIONS

Work Programmes

- 5.1 The Contractor will use its best endeavours to deliver each Work Programme in the manner set out in the relevant Work Programme Agreement.
- 5.2 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 each 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 meets and will continue to meet the eligibility criteria set out in the call for proposals entitled Te Pūnaha Hihiko Vision Mātauranga Capability Fund Call for Proposals under which the Work Programme Agreement was funded.
- 5.3 The Contractor will comply with any Work Programme Conditions relating to a Work Programme.

Funding

- 5.4 In respect of a 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 Work Programme specified in the relevant Work Programme Agreement, which, where research is an aspect of the Work Programme, must be consistent with the Frascati Definition of Research and Experimental Development and which includes 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 5.9 and 5.10, or a review or evaluation as set out in clause 5.13; and
 - (f) to carry out any other activities directly relating to the Work Programme as agreed between the Parties.
- 5.5 The Contractor will acknowledge, as appropriate, provision of Funding by the Ministry.
- 5.6 The Contractor will ensure that:
- (g) the Co-funding specified in a Work Programme Agreement is allocated to the relevant Work Programme;
 - (h) it enters into a legally binding contract with the Partner Organisation that requires that organisation to contribute the amount of Co-funding specified in a Work Programme Agreement in relation to a Placement Scheme; and
 - (i) the Co-funding specified in a Work Programme Agreement must represent:
 - (i) for a Placement Scheme, at least one third of the combination of Co-funding provided by the Partner Organisation and the Funding;
 - (ii) for a Connect Scheme, at least one third of the combination of Co-funding provided by the Contractor and the Funding.
- 5.7 For the purposes of this Contract:
- (a) in relation to any Placement Scheme, the Co-funding for salary and salary-related costs must be cash. Any other Co-funding may be cash or in kind. Any in-kind Co-Funding must be valued at reasonable commercial rates;
 - (b) in relation to any Connect Scheme, the Co-funding may be cash or in kind.

Record Keeping

- 5.8 For each Work Programme, the Contractor must maintain true and accurate records, including appropriate accounting records, of its use of the Funding and Co-funding for at least 7 years after termination or expiry of the relevant Work Programme Agreement.

Audit

- 5.9 There are no scheduled audits planned in respect of this Contract or any Work Programme Agreement. However, the Ministry may appoint an independent auditor to audit all records relevant to this Contract or a Work Programme Agreement:

- (a) if the Ministry has cause to believe that the Contractor is in breach of its obligations under this Contract or any Work Programme Agreement;
- (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.

- 5.10 The Ministry will use its best endeavours to ensure that any audit carried out under clause 5.9 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

- 5.11 The Contractor will meet the following Performance Management and Reporting Requirements in respect of each Work Programme Agreement to the reasonable satisfaction of the Ministry:

- (a) provide a progress report 1 month before the mid-point of the work programme, or as otherwise agreed with the Ministry, that covers the delivery of the Work Programme between the Start Date of the Work Programme Agreement and the last day of the month before the report is due, and includes:
 - (i) information about the status and progress towards delivering on the impact statement/s, programme aim/s and critical steps described in the Work Programme Agreement, with comments if there has been a significant departure from the projected figures or information contained in the Work Programme Agreement;
 - (ii) information to be shared publicly on the status of the Work Programme; and

- (b) provide a final report no later than 1 month after the End Date of the Work Programme Agreement that covers the delivery of the Work Programme from the Start Date to the End Date, and includes whether or not the Work Programme has or will lead to further VM outcomes, the Work Programme's success in building skills and networks, and the delivery of the impact statement/s, programme aim/s and critical steps in the Work Programme;
- (c) provide information that would enhance the Ministry's understanding of any research performed as part of the Work Programme, if relevant;
- (d) include in all information provided under clause 5.11 (a) to (d), information relating to both the Contractor and the Partner Organisation, where the relevant Work Programme Agreement has a Partner Organisation specified; and
- (e) comply with any additional performance management and reporting requirements specified in the Work Programme Agreement.

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

Reviews and Evaluations

5.13 For each Work Programme Agreement, 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 the Work Programme Agreement, to allow the Ministry to review its investment in the Work Programme; and
 - (ii) for a period of up to 7 years after the Work Programme Agreement ends, to allow the Ministry to review or evaluate whether the post-contract outcomes for New Zealand described in the Work Programme Agreement have been delivered; and
- (b) comply with any additional review or evaluation requirements specified in the Work Programme Agreement.

Intellectual Property Rights

- 5.14 The Contractor must comply with Principles 1 – 6 of Appendix 2 in respect of each Work Programme, including by adopting Intellectual Property Policies and Principles as required by clause 2 of Appendix 2.
- 5.15 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.
- 5.16 For each Work Programme, the Contractor will maintain any Intellectual Property Management Plan specified in the relevant Work Programme Agreement, and will manage any Work Programme Intellectual Property Rights arising from the Work Programme in accordance with that plan, in order to contribute towards delivery of the impact statement/s, programme aim/s and critical steps described in the relevant Work Programme Agreement.

Making data available

- 5.17 Subject to clause 5.18, the Contractor will make the Primary Results of each Work Programme available at the Cost of Dissemination to the public and stakeholder groups, on request through appropriate means in order to contribute towards delivery of the impact statement/s, programme aim/s and critical steps specified in the relevant Work Programme Agreement.
- 5.18 The Contractor is not required to make the Primary Results of a Work Programme available under clause 5.17 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

5.19 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 Rights 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.

6. CHANGE EVENTS

6.1 In relation to a Work Programme Agreement, 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, the Work Programme Agreement;
- (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) there is a change in the involvement of a Key Personnel without the prior written approval of the Ministry;
- (d) the Contractor materially fails to deliver any of the impact statement/s, programme aim/s and critical steps described in the Work Programme Agreement;
- (e) there is a change in the percentage shareholding or beneficial ownership structure (including voting rights) of the Partner Organisation or the involvement of the Partner Organisation in the Work Programme; or
- (f) the Contractor and/or the Partner Organisation, fail to provide the Co-funding, as specified in a Work Programme Agreement.

6.2 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.
- 6.3 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 the relevant Work Programme Agreement; or
 - (c) agree that no further action is required in respect of the Change Event.
- 6.4 If the Parties reach agreement in accordance with clause 6.3:
- (a) the Ministry will pay the Contractor the Funding suspended under clause 6.2(b) (if any), if it determines that the Funding must be paid to the Contractor; and
 - (b) no further action will be required under this clause 6.
- 6.5 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 12 (“remedy date”).
- 6.6 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.
- 6.7 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 6.9.
- 6.8 If the Change Event is to be determined by the Ministry the Contractor can provide any information that the Contractor wants the Ministry to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).
- 6.9 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 6;
 - (b) a Work Programme Agreement 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 by entering into a variation of agreement;

- (c) a Work Programme Agreement must be terminated, the Work Programme Agreement 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).
- 6.10 If the Ministry determines that a Change Event must be resolved by varying the relevant Work Programme Agreement, 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 the Work Programme Agreement immediately by Notice to the Ministry.
- 6.11 If a Work Programme Agreement is terminated by the Ministry under clause 6.9(c) or by the Contractor under clause 6.10, the Ministry:
- (a) 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;
 - (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.
- 6.12 The Parties agree that:
- (a) neither Party may raise a dispute under clause 9 if a Change Event is notified under clause 6.2; and
 - (b) nothing in this clause 6 prevents the Ministry from terminating this Contract or a Work Programme Agreement (as the case may be) under clause 7; and
 - (c) if a Change Event under clause 6.1(f) occurs and the Contractor and/or the Partner Organisation has failed to provide the Co-funding, as specified in a Work Programme Agreement the Contractor will, if requested by the Ministry, promptly pay to the Ministry an amount to make the ratio between the Funding received to date by the Contractor and Co-funding as anticipated in that Work Programme Agreement.

7. TERMINATION

- 7.1 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) fraudulently misuses or misappropriates any Funding;

- (d) or the Partner Organisation, 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) or the Partner Organisation, makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- (f) or the Partner Organisation, has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;
- (g) or the Partner Organisation, 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) or the Partner Organisation, passes any resolution to merge with another entity.

7.2 If this Contract is terminated under clause 7.1, each Work Programme Agreement will terminate on the same day as this Contract terminates.

7.3 The Ministry may terminate a Work Programme Agreement immediately by Notice to the Contractor if:

- (a) the government reduces, stops, or freezes funding to the Ministry;
- (b) the Contractor fraudulently misuses or misappropriates any Funding;
- (c) the Contractor commits or is likely to commit a material breach of the Work Programme Agreement that is not capable of being remedied;
- (d) the Contractor commits or is likely to commit a material breach of the Work Programme Agreement 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;
- (e) the Contractor gives any information, representation, or statement to the Ministry about the Work Programme that is misleading or inaccurate in any material respect; or
- (f) the Partner Organisation ceases to participate in the relevant Work Programme.

7.4 If a Work Programme Agreement is terminated under clause 7.2 or 7.3, 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.

7.5 If this Contract is terminated under clause 7.1(c) or a Work Programme Agreement is terminated under clause 7.3(b), the Ministry may require the Contractor to return all Funding paid up to the date of termination under all Work Programme Agreements in force at the date of termination, together with interest on all sums due, which will be charged on a daily basis at a rate that is the 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.

- 7.6 If payment of Funding is suspended in accordance with clause 7.1 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.
- 7.7 If at the End Date the ratio between the Funding and the Co-funding is not as anticipated in the relevant Work Programme Agreement the Contractor will, if requested by the Ministry, promptly pay to the Ministry an amount to make the ratio the ratio anticipated in the Work Programme Agreement, after taking into account any payments that may have been made under clause 6.12 (c), 7.4 and 7.5.

8. CONFIDENTIALITY

- 8.1 Except as required by law, and subject to clauses 8.2 to 8.6, 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.
- 8.2 The Contractor recognises that from time to time the Ministry may release the following information relating to this Contract and each Work Programme Agreement:
- (a) the name of the Contractor;
 - (b) the name of the Māori and/or Partner Organisation;
 - (c) the name of any other organisations involved in a Work Programme, for example, collaborators;
 - (d) the Contract ID;
 - (e) the title of the Work Programme;
 - (f) the public statement set out in the Work Programme Agreement;
 - (g) that the Work Programme is funded from the Vision Mātauranga Capability Fund;
 - (h) the total amount of funding paid to the Contractor in the current financial year and previous years;
 - (i) the total amount of Funding payable to the Contractor over the duration of each Work Programme Agreement;
 - (j) the year Funding was approved in respect of each Work Programme; and

(k) the period of time for which Funding will be provided in respect of each Work Programme.

8.3 Information arising from the Contract and each Work Programme Agreement, 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.

8.4 Subject to any legal requirements, the Ministry will give Notice to the Contractor if it receives a request for information other than for the information listed in clause 8.2 concerning the Contractor.

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

8.6 Nothing in this clause 8 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 8 prior to any disclosure.

9. DISPUTE RESOLUTION

9.1 Subject to clause 6.12, if any dispute arises between the Parties in relation to this Contract or a Work Programme Agreement, then a Party may give Notice to the other Party of the initiation of the dispute resolution process set out in this clause 9.

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

9.3 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 appointed by the Chair of LEADR New Zealand Inc.) and on the terms of the LEADR New Zealand Inc. standard mediation agreement (unless the Parties agree otherwise). The Parties will pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

9.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

9.5 Nothing in this clause 9 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand court.

10. INDEMNITY

- 10.1 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 or a Work Programme Agreement, negligence, or wilful misconduct by the Contractor, except to the extent that loss arises out of an act or omission by the Ministry.

11. VARIATION

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

12. NOTICES

- 12.1 Notices under this Contract and any Work Programme Agreement will be given by post or by email. Notices will be deemed to have been given three days after dispatch.
- 12.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager of Science System Investment & Performance, Ministry of Business, Innovation and Employment, PO Box 1473, Wellington. Notices given by email will be sent to imssupport@mbie.govt.nz.
- 12.3 In respect of the Contractor, Notices will be addressed to the contact person for the Work Programme specified in the relevant Work Programme Agreement.

13. NO EMPLOYMENT RELATIONSHIP

- 13.1 Neither this Contract nor any Work Programme Agreement creates a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.
- 13.2 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.
- 13.3 The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract and one or more Work Programme Agreements.

14. ENTIRE CONTRACT

- 14.1 This Contract, and each Work Programme Agreement, 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 each Work Programme Agreement.

15. FORCE MAJEURE

- 15.1 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.
- 15.2 If an event described in clause 15.1 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.

16. PARTIAL INVALIDITY

- 16.1 The illegality, invalidity, or unenforceability of a provision of this Contract or a Work Programme Agreement under any law, will not affect the legality, validity, or enforceability of any other provision of this Contract or a Work Programme Agreement (as the case may be).
- 16.2 If any clause of this Contract or a Work Programme Agreement 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.

17. ASSIGNMENT

- 17.1 The Contractor may not assign, or otherwise transfer its rights and obligations under this Contract or any Work Programme Agreement to a third party, except with the prior written consent of the Ministry.
- 17.2 Any change affecting the control of the Contractor will be deemed a transfer and an assignment.

18. SURVIVAL OF CLAUSES

- 18.1 Expiry or termination of this Contract or a Work Programme Agreement for any reason will not affect the validity and enforceability of this clause and the confidentiality, Contractor's obligations, termination, indemnity, dispute resolution, and governing law clauses of this Contract and each Work Programme Agreement.

19. GOVERNING LAW

- 19.1 The Contract and each Work Programme Agreement will be governed by and construed in accordance with the laws of New Zealand, and the Parties submit to the jurisdiction of the Courts of New Zealand.

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

Signature

Name and position

Ministry of Business, Innovation and Employment

DATE:

Signed on behalf of the Contractor by

Signature

Name and position

DATE:

APPENDIX 1 – WORK PROGRAMME AGREEMENT

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

1. The Parties have entered into a Vision Mātauranga Capability Fund investment contract ("**Contract**") dated [X] that sets out the terms that apply when the Ministry approves a proposal for funding submitted by the Contractor for a work programme.
2. The Ministry has approved such a proposal, and the Parties wish to enter into an agreement under which funding will be provided to the Contractor to carry out the work programme.

This Work Programme Agreement

3. The Parties agree:
 - (a) to enter into this Work Programme Agreement, which sets out the details of the Work Programme to be carried out by the Contractor, and the Funding to be provided by the Ministry; and
 - (b) that the terms of the Contract will apply to this Work Programme Agreement.

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

Signature

Name and position

Ministry of Business, Innovation and Employment

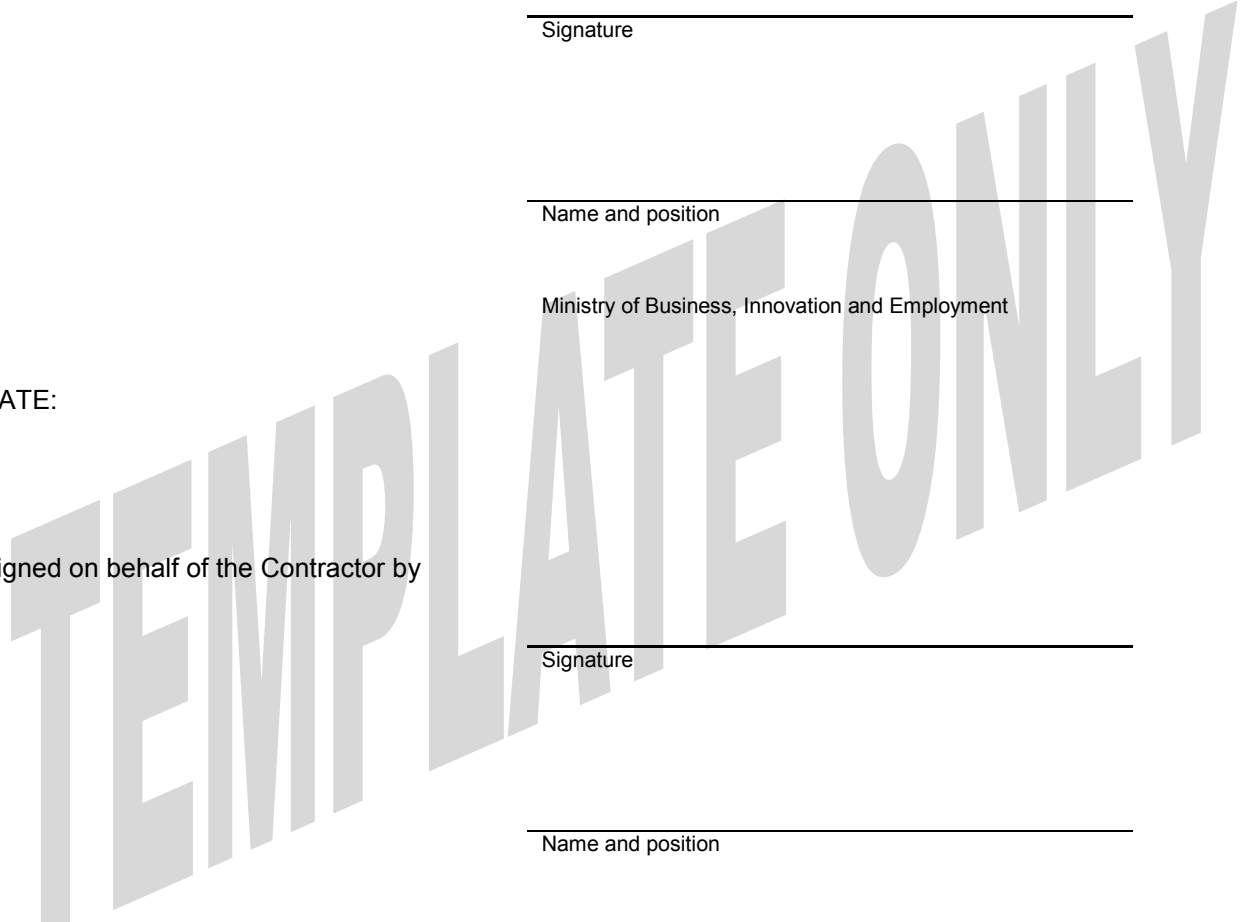
DATE:

Signed on behalf of the Contractor by

Signature

Name and position

DATE:



SCHEDULE 1 – SUMMARY

Contract ID:	
Work Programme title:	
Proposal reference:	
Contract reference:	
Connect Scheme or Placement Scheme:	
Connect Scheme Co-Funding ratio:	% Funding
Placement Scheme Co-Funding ratio:	% Funding
Total Funding paid as set out below (GST exclusive):	
Total Funding (plus GST, if GST is payable):	
50% of the total Funding payable within 5 Business Days of execution and exchange of this Agreement	
40% of the total Funding payable at the mid-point of the contract	
10% of the total Funding payable by the end of the month following the month that the Recipient submits a final report in accordance with clause 5.11	
Number of years of funding:	
Contractor:	
Contact person:	
Contact email:	
Contact phone:	
Partner Organisation:	
Special flags:	
Payment schedule:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	

Contract Summary

Public Statement

Executive Summary

TEMPLATE ONLY

SCHEDULE 2 – POST-CONTRACT OUTCOMES FOR NEW ZEALAND

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

TEMPLATE ONLY

SCHEDULE 3 – WORK PROGRAMME

Impact Statement

Programme Aims

Critical Steps

Assessment criteria

TEMPLATE ONLY

SCHEDULE 4 – FINANCIAL INFORMATION

Summary of contract year funding (GST exclusive)

	Year 1	Year 2
Contract year		

Co-funding (GST exclusive)

Type	Organisation	Year 1	Year 2
Cash			
In kind			
Total			

Subcontracting (GST exclusive)

Subcontracting Org	Subcontracting status	Platform org type

Year	Start Date	End Date	Months	Amount

Budget (GST exclusive)**For Placement Scheme only**

Income	\$'000 average per annum excl GST
MBIE funding sought	
Compulsory co-funding (from Partner organisation)	
- Cash co-funding for salary and salary-related costs	
- Cash or in-kind co-funding for other costs	
TOTAL INCOME	
Expenditure	
Personnel cost	
Travel	
Overheads	
Consumables	
Subcontracting	
TOTAL EXPENDITURE	

For Connect Scheme only

Income	\$'000 average per annum excl GST
MBIE funding sought	
Compulsory cash or in-kind co-funding (from contracting organisation/individual researcher)	
TOTAL INCOME	
Expenditure	
Personnel cost	
Travel	
Overheads	
Consumables	
Subcontracting	
TOTAL EXPENDITURE	

TEMPLATE ONLY

SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS

Performance Management and Reporting Requirements

Work Programme Conditions

Special Ethical and Regulatory Requirements

TEMPLATE ONLY

SCHEDULE 6 – KEY PERSONNEL

Key Personnel

Position	Name	Organisation	FTE (if applicable)
Contact person			
Key individual			
Placement			
Other key individuals			
Other			

TEMPLATE ONLY

SCHEDULE 7 – INTELLECTUAL PROPERTY MANAGEMENT PLAN

TEMPLATE ONLY

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 each Work Programme through its management of any Work Programme Intellectual Property Rights.
2. The Contractor must, before a Work Programme Agreement commences, have a set of Intellectual Property Policies and Principles in place in respect of that Work Programme if research activity is involved.
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 and Work Programme participants 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 and Work Programme participants 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 and Partner Organisation’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:
 - staff members’ financial interests in external firms that contract with the Contractor, particularly where these entail research contracts and the exchange of Intellectual Property Rights;
 - 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 relevant Work Programme Agreement; 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 and work programme participants in fulfilling Work Programme Intellectual Property Rights obligations and responsibilities;
 - (ii) encourage participation by researchers and work programme participants 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.