

**FOOD SAFETY CENTRE
INVESTMENT CONTRACT
("FSCIC")**

between

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

and

{Contractor}

Contract Number

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FOOD SAFETY CENTRE 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. In December 2013, the Government agreed to establish and fund a Food Safety Science and Research Centre ("the Centre") in response to the recommendations of the Government Inquiry into the Whey Protein Concentrate Contamination Incident Report.
- B. The Science Board is responsible for making funding decisions on proposals for allocation of funding for research, science, or technology, or related activities under the Research, Science, and Technology Act 2010. The Ministry is responsible for implementing the Science Board's decisions by overseeing the allocation of funding to entities whose funding proposals are approved by the Science Board.
- C. In July 2014, the Ministry issued a request for proposals to select a host for the Centre. On [insert date], the Contractor submitted a proposal ("the Proposal") on behalf of the [insert collaboration description].
- D. The Proposal has been approved by the Science Board subject to the terms of this Contract.
- E. The Contractor may from time to time apply for funding for other research, science, or technology Centre Programmes in accordance with this Contract. The details of each research, science, or technology Centre Programme for which funding is allocated by the Science Board will be set out in a separate Centre Programme Agreement.
- F. As host of the Centre, the Contractor is responsible for establishing the Centre; allocating the funding it receives under this Contract to the Centre to enable the Centre to cover its operating costs (enabling it to ensure that it is adequately resourced and staffed) and to distribute the funding to research providers via subcontract; ensuring that the Centre undertakes its functions and meets its objectives as outlined in this Contract; and meeting its own obligations as Contractor under this Contract. The Centre is not a separate legal entity from the host and will, therefore, subcontract in the name of the host.

G. The Ministry is responsible for monitoring the Centre's performance in undertaking its functions and achieving its objectives as outlined in this Contract.

H. The Centre will coordinate the delivery of food safety science and research for New Zealand. The establishment of the Centre represents an increase in the funding available for food safety science and research, and is designed to ensure that the New Zealand food safety system remains among the best in the world.

I. The aim of the Centre is to fund research, science, or technology, or related activities that will ensure:

- the delivery of excellent food safety science and research to minimise the risk of foodborne illness and maximise economic growth opportunities;
- an increased level of food safety knowledge and capability across the science sector, industry and Government;
- the provision of cutting-edge food safety outputs to relevant stakeholders, in a timely manner;
- the national and international visibility, good reputation and credibility of New Zealand food safety science and research.

J. The purpose of this Contract is to:

- (a) set out the terms under which Funding is provided to the Contractor;
- (b) set out the terms that will apply to each Centre Programme Agreement;
- (c) recognise that the Parties to this Contract have a mutual goal of achieving the delivery of the Centre Programme Agreement(s), and enable both Parties to achieve that goal;
- (d) deal with any change in the delivery of or risks to the delivery of a Centre Programme;
- (e) ensure that the Ministry can get information about the progress of each Centre Programme from the Contractor;
- (f) establish the Centre and provide for the Contractor to be the host of the Centre;
- (g) ensure that there are appropriate governance arrangements for the Centre; and
- (h) provide for the Centre to develop annual work plans and a business plan and to commission research from research providers for the benefit of New Zealand and industry stakeholders.

1. DEFINITIONS

1.1 In this Contract and each Centre Programme Agreement, the following definitions apply, unless the context otherwise requires:

Centre means the Food Safety Science and Research Centre.

Centre Programme means a programme of research, science, or technology or related activities as described in a Centre Programme Agreement(s).

Centre Programme Agreement means an agreement entered into by the Parties in respect of a research, science, and technology or related activity Centre Programme in the form set out in Appendix 1 of this Contract.

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

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

Change Event has the meaning set out in clause 9.1.

Contractor means the host entity nominated by the Collaboration to enter into this Agreement on its behalf.

Collaboration means the group of Members who will be involved in delivering the Centre Programmes.

Collaboration Agreement means the agreement between the Members in the form annexed to this Contract.

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 Centre Programme Agreement, and includes all information concerning each Centre Programme .

Cost of Dissemination means the costs incurred by the *Contractor / Members [amend to reflect contracting structure]* in providing access to the Primary Results on an on-going and sustainable basis.

Critical Performance Indicators *definition has been removed*

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

Full Time Equivalent *definition has been removed.*

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

Funding Decision means the independent decision made by the Science Board under the Research, Science, and Technology Act 2010.

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

Intellectual Property Policies and Principles means the policies and principles relating to the management of Centre 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.

Key Personnel *definition has been removed*

Key Performance Indicators (KPIs) means the defined quantifiable measures used to assess how well the Contractor is performing in achieving the Challenge objective and outcomes.

Māori Science and Innovation means Māori science and innovation specified in a Centre Programme Agreement.

Members means the research providers and other entities described in the Proposal who will be involved in delivering the Centre Programmes as set out in Schedule 1.

Nationally Significant Database or Collection *definitions and clauses 5.16 and 5.17 from the SIC have been removed as not applicable.*

Notice means a notice given in accordance with clause 16.

Overseas Party means:

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

Performance Management and Reporting Requirements means the requirements set out in clause 6.11.

Primary Results means the data and findings produced as part of a Centre 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.

Proposal means PROP [insert number]

Quality Assurance Criteria definition has been removed

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

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

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

Transaction means a formal agreement between the Contractor and an Overseas Party under which any Centre 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 or any Member has previously transferred a Centre 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.

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

2. CONDITIONS PRECEDENT

Conditions Precedent to the Contract taking effect

2.1 This Contract is conditional on:

- (a) the constitutional documents of the Contractor being adopted and registered in the form attached as Schedule 1 to this Contract; *[customise to reflect the approved structure of the contracting entity]*
- (b) the Contractor and all Members signing the Collaboration Agreement in the form in Schedule 1 to this Contract/consistent with the governance structure approved by the Science Board and incorporating any reasonable requirements of the Ministry. *[customise to reflect the approved structure of the contracting entity]*
- (c) *Science Board to set conditions precedent as a term of its funding decision*

Contract terminated if Conditions Precedent are not satisfied

2.2 If the conditions set out in clause 2.1 are not satisfied on or before 4:00pm on X XXXX 2014 then this Contract shall be terminated and none of the Parties including any Member shall have any rights or obligations under it, except any rights or obligations which arise in relation to a prior breach of this Contract.

3. HOW WE CONTRACT WITH EACH OTHER

- 3.1 If the Science Board approves a proposal submitted by the Contractor [customise to reflect entity which submitted proposal] for Funding for a research, science, or technology Centre Programme , and the Parties agree to enter into an agreement in respect of the Centre Programme , the Parties must enter into a Centre Programme Agreement.
- 3.2 A Centre Programme Agreement must include a description of the detailed Centre Programme in the Research Plan, Funding payable, and any other details that relate to the Centre Programme .
- 3.3 The terms set out in this Contract and in the relevant Centre Programme Agreement, including the Centre Programme Conditions and schedules, will apply in respect of that Centre Programme.
- 3.4 If there is any conflict between the terms of this Contract and a Centre Programme Agreement, this Contract takes precedence, except to the extent that the Centre Programme Agreement, including any Centre 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.

4. TERM

- 4.1 This Contract commences on the date it is signed by the Parties, and stays in force until terminated in accordance with this Contract.
- 4.2 Each Centre 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 Centre Programme Agreement is completed (whichever is the later), unless terminated earlier in accordance with this Contract.
- 4.3 If the Science Board approves a further proposal submitted by the Contractor for additional funding for research, science, or technology programmes or related activities, and the Parties agree to enter into an agreement in respect of the Centre Programme , the Parties will enter into a new Centre Programme Agreement.

5. MINISTRY'S OBLIGATIONS

Funding

- 5.1 In consideration of the Contractor carrying out a Centre Programme and meeting its obligations under this Contract and the relevant Centre Programme Agreement, the Ministry will provide

the Funding to the Contractor subject to the terms and conditions of this Contract and the Centre Programme Agreement.

- 5.2 The Ministry will provide Funding in accordance with the payment schedule set out in the relevant Centre Programme Agreement.
- 5.3 The Funding is exclusive of GST, and the Contractor is responsible for all taxation liabilities, rates, and levies payable in relation to the Funding.

Prerequisite Conditions for Funding

5.4 Except to the extent (if any) otherwise agreed in writing by the Ministry, the Ministry shall not be obliged to make any scheduled payment under the payment schedule set out in the relevant Centre Programme Agreement on any date, unless the Ministry is satisfied that:

(a) there has been no breach of this Contract by the Contractor, except any breach which the Ministry is satisfied has been remedied;

(b) there has been no material breach of the *Collaboration Agreement* [*customise to reflect terms of funding*], except any breach which the Ministry is satisfied has been remedied, and the Collaboration Agreement has not been terminated;

(c) the Contractor has achieved all relevant KPIs within the expected timeframe(s), as reported to the Ministry, unless the Ministry is satisfied with the reason for the delay;

(d) there has been no amendment to the Contractor's constitution/the Collaboration Agreement (*delete as appropriate*) (except as approved in writing by the Ministry under clauses 7 and 8); and

(e) the Contractor reflects the composition set out in the Contractor's constitution/the Collaboration Agreement (*delete as appropriate*) (or fails to do so only because:

(i) a Member/Collaborator has failed to nominate a director in a timely manner despite having been requested in a timely manner to do so, or

(ii) a process of filling a vacancy, which has commenced, is incomplete,

and in each case that failure has persisted for no more than two months).

5.5 If, in respect of any scheduled payment, the Ministry is not satisfied as to any matter set out in clause 5.4, the Ministry will give notice to the Contractor of that matter and may require the Contractor to remedy it or take such action as the Ministry considers appropriate in respect of it. Upon the Ministry being satisfied that the matter has been remedied or that that other action has been taken (as the case maybe), the Ministry will make payment of the amount of the scheduled payment. If the matter is not remedied or such other action is not taken (as the case

may be) to the Ministry's satisfaction within two months of the Ministry's notice, the Ministry may give the Contractor a Notice of Termination under clause 10.

No other funding required

5.6 The Ministry will not be liable to provide funding to, or for payment of any costs incurred, by the Contractor (or any Member) except to the extent expressly agreed in this Contract or otherwise agreed in writing by the Ministry.

Intellectual Property Rights

5.7 The Ministry agrees that all Intellectual Property Rights arising from this Contract and any Work Programme Agreement are the property of the Contractor/ the Members [*delete as appropriate*] and will make no claim to ownership of any Intellectual Property Rights arising from this Contract or any Centre Programme Agreement.

6. CONTRACTOR'S OBLIGATIONS

Centre Programme s

6.1 The Contractor will use its best endeavours to deliver each Centre Programme in the manner set out in the relevant Centre Programme Agreement.

6.2 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 Centre 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) the Collaboration meets and will continue to meet the criteria set out in the notice *Criteria for Selecting New Zealand Food Safety Science and Research Centre Host* that was published in the *New Zealand Gazette* on 10 July 2014.

6.3 The Contractor will comply with any Centre Programme Conditions relating to a Centre Programme .

Funding

6.4 In respect of a Centre Programme , the Contractor will use the Funding only:

(a) for Centre Programme costs incurred between the Start Date and the End Date;

- (b) to deliver the activities, outputs, outcomes and KPIs specified in the relevant Centre Programme Agreement, which must be consistent with the Frascati Definition of Research and Experimental Development, and which include any activities that are reasonably ancillary to purposes that are consistent with the Frascati Definition of Research and Experimental Development;
- (c) to meet the Performance Management and Reporting Requirements;
- (d) to carry out activities that are reasonably necessary to deliver the Centre 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 6.9 and 6.10, or a review or evaluation as set out in clause 6.14; and
- (f) to carry out any other activities directly relating to the Centre Programme as agreed between the Parties.

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

6.6 The Contractor will ensure that:

- (a) it enters into legally binding contracts with Members; sub-contractors and any other entity pursuant to the Proposal and as required to fulfil the Centre Programme Agreement(s); and
- (b) the Funding is distributed in accordance with the Collaboration Agreement and the legally binding contracts required under clause 6.6(a) above. *[customise to reflect the approved structure of the contracting entity]*

6.7 The Contractor will ensure that:-

- (a) any direct cash and direct in-kind co-funding (if any) specified in a Centre Programme Agreement is allocated to the relevant Centre Programme ; and
- (b) it enters into legally binding contracts with co-funders for the amounts approved in the Funding Decision. *[amend to reflect terms of funding as applicable]*

Record Keeping

6.8 For each Centre Programme , the Contractor must maintain true and accurate records, including appropriate accounting records, of its, and the Collaboration's use of the Funding for at least 7 years after termination or expiry of the relevant Centre Programme Agreement.

Audit

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

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

6.10 The Ministry will use its best endeavours to ensure that any audit carried out under clause 6.9 minimises:

- (a) disruption to the Contractor/Collaboration [*delete as appropriate*]; 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

6.11 The Contractor will meet the following Performance Management and Reporting Requirements in respect of each Centre Programme Agreement 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 Centre Programme between 1 July of the previous year (or the Start Date of the Centre Programme, whichever is the later) and 30 June of the year in which the report is due, and includes:
 - (i) information about the status and progress towards delivering the programme of work required as specified in Schedule 2 to the Centre Programme Agreement, including reporting against KPIs with comments where there has been a significant departure from the projected figures or information contained in the Centre Programme Agreement;
 - (ii) information to be shared publicly on the status of the Centre Programme ;
 - (iii) the status of the Centre Programme ; and
 - (iv) *complete to reflect Sch 2 of the CPA*
- (b) if the End Date of the Centre Programme Agreement is a day other than 30 June, provide a final report by no later than 1 month after that End Date that covers the delivery of the Centre Programme for the partial year from the preceding 1 July to the End Date,

and that describes any changes to the information set out in the previous annual report provided under paragraph (a);

- (c) provide statistical information including basic profiling data as reasonably required;
- (d) provide information that would enhance the Ministry's understanding of the research performance in the Centre Programme as appropriate; and
- (e) comply with any additional performance management and reporting requirements specified in the Centre Programme Agreement.

6.12 The Contractor will provide by no later than [31 July/TBC] each year an annual update that provides information about the research, science, or technology or related activities that it proposes to undertake within the upcoming 12-month period. The research, science or technology or related activities proposed must be consistent with those originally proposed in the Proposal approved by the Science Board.

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

Reviews and Evaluations

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

6.15 The Ministry may review the performance of the Contractor in respect of the Centre Programme Agreement on 90 days' written notice to the Contractor. The Ministry will provide this information to the Science Board if it requests it when considering any further proposal submitted under clause 4.3.

6.16 The costs of the review panel will be borne by the Ministry but any costs of providing information for and participating in the review incurred by the Contractor and/or Collaboration will be paid for out of the Funding in accordance with clause 6.4(e).

Intellectual Property Rights

- 6.17 The Contractor must comply with Principles 1 – 3 of Appendix 2 in respect of each Centre Programme , including by adopting Intellectual Property Policies and Principles as required by Principle 2 of Appendix 2.
- 6.18 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.
- 6.19 For each Centre Programme , the Contractor will maintain the Intellectual Property Management Plan specified in the relevant Centre Programme Agreement, and will manage any Centre Programme Intellectual Property Rights arising from the Centre Programme in accordance with that plan, in order to contribute towards delivering the Centre Programme Agreement.

Making data available

- 6.20 Subject to clause 6.19, the Contractor will make the Primary Results of each Centre Programme available at the Cost of Dissemination to the public and stakeholder groups, on request through appropriate means in order to contribute towards delivering the relevant Centre Programme Agreement.
- 6.21 The Contractor is not required to make the Primary Results of a Centre Programme available under clause 6.20 if the Contractor considers that:
- (a) making the Primary Results available would prejudice the commercial position of the Contractor;
 - (b) withholding the Primary Results is necessary to protect the privacy of a person;
 - (c) making the Primary Results available would breach an ethical standard;
 - (d) the request for the Primary Results is vexatious or frivolous;
 - (e) making the Primary Results available would prejudice the Centre 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

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

7. GOVERNANCE OF THE CONTRACTOR

Governance Structure

7.1 The Contractor will take all steps open to it to ensure that its governance arrangement, including its governing structure at all times reflects the composition set out in Schedule 1 to this Contract and Schedule 2 to the Centre Programme Agreement *[update to reflect the agreed contracting structure]*.

Contractor governance agreements

7.2 The Contractor will ensure that, following the satisfaction of the condition set out in clause 2.1(a), the constitution remains in the form attached as Schedule 1 to this Contract, except to the extent approved in writing by the Ministry.

7.3 *Add further clauses as required to reflect the Business Plan and the terms of funding*

8. COMPLIANCE WITH COLLABORATION AGREEMENTS

8.1 The Parties acknowledge that the *Collaboration Agreement [amend to reflect the agreed governance and contracting structure]* is integral to the management of the Contractor and achievements of the Ministry's intentions in entering into this Contract. The Contractor shall comply with the Collaboration Agreement at all times, and shall use its best endeavours to ensure each Member complies with the Collaboration Agreement to which it is a party.

8.2 The Contractor shall ensure that the Collaboration Agreement in the form attached as Schedule 1 to this Contract is not materially amended or supplemented except to the extent (if any) approved by the Ministry in writing.

8.3 *Add further clauses as required to reflect the Business Plan and the terms of funding*

9. CHANGE EVENTS

9.1 In relation to a Centre Programme Agreement, the following matters constitute a Change Event:

- (a) any significant aspect of the Centre Programme cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, the Centre 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 Centre Programme ;
- (c) the Ministry is not satisfied with the annual update referred to in clause 6.12 setting out the intended research, science or technology or related activities for the upcoming year;
- (d) there is a change in the involvement of a Member without the prior written approval of the Ministry,
- (e) the Contractor materially fails to deliver any of the Key Performance Indicators set out in the Centre Programme Agreement.;
- (f) *reference to decrease in FTEs removed*
- (g) co-funding set out in the Centre Programme Agreement is materially reduced;
- (h) there is a change in the percentage shareholding or beneficial ownership structure (including voting rights) of the Challenge Collaboration. *[update to reflect the agreed contracting structure].*

9.2 If a Change Event occurs:

- (a) the Party that is aware of the Change Event will give the other Party Notice of the Change Event as soon as reasonably practicable after becoming aware of the Change Event; and
- (b) the Science Board, or any person acting under a delegation given by the Science Board, may suspend payment of all or part of the Funding for the Centre Programme to the Contractor.

9.3 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 Centre Programme Agreement if the variation does not materially alter the original Funding Decision; or
- (c) agree that no further action is required in respect of the Change Event.

- 9.4 If the Parties reach agreement in accordance with clause 9.3:
- (a) the Ministry will pay the Contractor the Funding suspended under clause 9.2(b) (if any), but only if the Science Board, or any person acting under a delegation given by the Science Board, determines that the Funding must be paid to the Contractor; and
 - (b) no further action will be required under this clause 9.
- 9.5 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 16 ("remedy date").
- 9.6 The Ministry may, at any time after the date the Notice of the Change Event was received, obtain an independent review of the Centre Programme that considers the impact of the Change Event on the delivery of the Centre Programme .
- 9.7 If the Change Event has not been remedied to the satisfaction of the Parties by the remedy date, the Ministry will refer the Change Event to the Science Board for its determination in accordance with clause 9.9, but only if the Ministry has obtained an independent review in accordance with clause 9.6. The Ministry will give the Contractor Notice of the referral.
- 9.8 If the Change Event is referred to the Science Board, the Ministry will provide to the Science Board:
- (a) the results of the independent review of the Change Event referred to in clause 9.6;
 - (b) any information, including recommendations, that the Ministry considers is relevant; and
 - (c) any information that the Contractor wants the Science Board to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).
- 9.9 The Parties agree that if the Science Board determines that:
- (a) no further action is required in respect of the Change Event:
 - (i) the Ministry will pay the Contractor any Funding suspended under clause 9.2(b);
and
 - (ii) no further action will be required under this clause 9;
 - (b) a Centre Programme Agreement must be varied (which may include a change to the amount of Funding payable), subject to clause 9.10 the Parties will do anything necessary to give effect to that decision, including by entering into a variation of agreement;

- (c) a Centre Programme Agreement must be terminated; the Centre Programme Agreement will terminate with effect from the date specified by the Science Board (which may provide for a disengagement period, if the Science Board considers that is appropriate).

9.10 If the Science Board determines that a Change Event must be resolved by varying the relevant Centre Programme Agreement, and the Contractor does not wish to continue delivering the Centre Programme, the Contractor may, at any time before the variation is executed by the Parties, terminate the Centre Programme Agreement immediately by Notice to the Ministry.

9.11 If a Centre Programme Agreement is terminated by the Science Board under clause 9.9(c) or by the Contractor under clause 9.10, the Ministry:

- (a) is not required to pay any Funding suspended under clause 9.2(b) (if applicable), unless the Science Board determines that such Funding should be paid to the Contractor;
- (b) may require the Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.

9.12 The Parties agree that:

- (a) neither Party may raise a dispute under clause 12 (Dispute Resolution) if a Change Event is notified under clause 9.2;
- (b) nothing in this clause 9 prevents the Ministry from terminating this Contract or a Centre Programme Agreement (as the case may be) under clause 10; and
- (c) the Ministry will provide details of any delegations given by the Science Board under section 11 of the Research, Science, and Technology Act 2010, in relation to clauses 9.2(b) and 9.4(a) of this Contract.

10. TERMINATION

10.1 The Ministry, with the approval of the Science Board, may suspend the payment of Funding or terminate this Contract immediately by Notice to the Contractor if 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) **or any Member,** fraudulently misuses or misappropriates any Funding;

- (d) or any Member, 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 any Member, makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;
- (f) or any Member, has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;
- (g) or any Member, 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 any Member, terminates the Collaboration Agreement, amends the Constitution or otherwise changes the governance arrangements without the prior approval of the Ministry.

10.2 If this Contract is terminated under clause 10.1, each Centre Programme Agreement will terminate on the same day as this Contract terminates.

10.3 The Ministry, with the approval of the Science Board, may terminate a Centre Programme Agreement immediately by Notice to the Contractor if:

- (a) the government reduces, stops, or freezes funding to the Ministry;
- (b) the Constitution [or the governing document as the case maybe] is no longer in the form attached as Schedule 1;
- (c) the Contractor fraudulently misuses or misappropriates any Funding;
- (d) the Contractor commits or is likely to commit a material breach of the Centre Programme Agreement that is not capable of being remedied;
- (e) the Contractor commits or is likely to commit a material breach of the Centre 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;
- (f) the Contractor gives any information, representation, or statement to the Ministry about the Centre Programme that is misleading or inaccurate in any material respect;
- (g) a specified Member ceases to participate in the relevant Centre Programme ; or
- (h) the Science Board is not satisfied with the outcome of a review carried out under clause 6.15 of this Contract.

- 10.4 If a Centre Programme Agreement is terminated under clause 10.2 or 10.3, 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.
- 10.5 If this Contract is terminated under clause 10.1(c) or a Centre Programme Agreement is terminated under clause 10.3(c), the Ministry may require the Contractor to return all Funding paid up to the date of termination under all Centre 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 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.
- 10.6 If payment of Funding is suspended in accordance with clause 10.1 but the Contract is not terminated, the Ministry is not required to pay any Funding unless the Science Board determines that such Funding should be paid to the Contractor.

11. CONFIDENTIALITY

- 11.1 Except as required by law, and subject to clauses 11.2 to 11.6, 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.
- 11.2 The Contractor recognises that from time to time the Ministry may release the following information relating to this Contract and each Centre Programme Agreement:
- (a) the name of the Contractor;
 - (b) the names of Members and any other organisations involved in a Centre Programme ;
 - (c) the Contract ID;
 - (d) the title of the Centre Programme ;
 - (e) the public statement set out in the Centre Programme Agreement;
 - (f) that the Centre Programme is funded from the National Science Challenges programme;
 - (g) the total amount of funding paid to a Member over the duration of each Centre Programme Agreement;
 - (h) the relevant sector;

- (i) the total amount of funding paid to the Contractor in the current financial year and previous years;
- (j) the total amount of Funding payable to the Contractor over the duration of each Centre Programme Agreement;
- (k) the year Funding was approved in respect of each Centre Programme ; and
- (l) the period of time for which Funding will be provided in respect of each Centre Programme.

11.3 Information arising from the Contract and each Centre 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.

11.4 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 11.2 concerning the Contractor.

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

11.6 Nothing in this clause 11 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 by obligations no less onerous than those contained in this clause 11 prior to any disclosure.

12. DISPUTE RESOLUTION

12.1 Subject to clause 9.12, if any dispute arises between the Parties in relation to this Contract or a Centre 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 12.

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

12.3 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.

- 12.4 If a Party refuses to attend mediation, either at all or within a reasonable time frame, or the Parties can not settle the dispute at mediation within 10 Working Days of the appointment of the mediator (or such further period agreed by the Parties), then a Party may, after giving Notice to the other Party, refer the dispute to the arbitration of a single arbitrator to be agreed upon by the Parties, or failing agreement within 5 Working Days of the Notice regarding arbitration, to be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.
- 12.5 The arbitration will be conducted with and subject to the provisions of the Arbitration Act 1996, excluding the Second Schedule to the Act.
- 12.6 The decision of the Arbitrator will be final and conclusive as between the Parties.
- 12.7 The arbitration will be held in Wellington, New Zealand.

13. WARRANTIES

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

13.2 The Contractor warrants (on its behalf and on behalf of each of the Members) that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Challenge Contract or any of the Members;
- (b) all information provided by it to the Ministry in connection with this Contract was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any material information that has not been disclosed to the Ministry or the Science Board, which may, if disclosed, materially adversely affect the decision of the Science Board whether to provide the Funding.

14. INDEMNITY

14.1 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 Centre 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.

15. VARIATION

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

16. NOTICES

- 16.1 Notices under this Contract and any Centre Programme Agreement 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.
- 16.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager, Science Investment, Science, Skills and Innovation, Ministry of Business, Innovation and Employment, PO Box 5762, Wellington. Notices given by email will be sent to contact NSC@mbie.govt.nz.
- 16.3 In respect of the Contractor, Notices will be addressed to the contact person for the Centre Programme specified in the relevant Centre Programme Agreement.

17. NO EMPLOYMENT RELATIONSHIP

- 17.1 Neither this Contract nor any Centre Programme Agreement creates a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.
- 17.2 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.
- 17.3 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 Centre Programme Agreements.

18. ENTIRE CONTRACT

- 18.1 This Contract, and each Centre 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 Centre Programme Agreement.

19. FORCE MAJEURE

- 19.1 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.

19.2 If an event described in clause 19.1 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.

20. PARTIAL INVALIDITY

20.1 The illegality, invalidity, or unenforceability of a provision of this Contract or a Centre Programme Agreement under any law, will not affect the legality, validity, or enforceability of any other provision of this Contract or a Centre Programme Agreement (as the case may be).

20.2 If any clause of this Contract or a Centre 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.

21. ASSIGNMENT

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

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

22. SURVIVAL OF CLAUSES

22.1 Termination of the Contract or a Centre Programme Agreement for any reason will not affect the validity and enforceability of this clause and the confidentiality, reporting, termination, indemnity, dispute resolution, and governing law clauses of this Contract and each Centre Programme Agreement.

23. GOVERNING LAW

23.1 The Contract and each Centre 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

Witness's Signature

Full Name

Address

Occupation

Signed on behalf of the Contractor by

Signature

Name and position

Witness's Signature

Full Name

Address

Occupation

SCHEDULE 1
GOVERNANCE TERMS AND MEMBERS

[This will be populated based on the Proposal to reflect the terms of funding approved by the Science Board. It will include a list of Members and a copy of the terms on which the Collaboration will be governed [e.g. a Constitution or a Partnership Contract] will be attached here. There may be more than one relevant document.]

APPENDIX 1 – CENTRE PROGRAMME AGREEMENT

[The Centre Programme Agreement (CPA) will be populated by the information in the Proposal. It is expected that the CPA will cover the terms set out in this template but its final form will be determined by the Science Board as a term of funding.]

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 Food Safety Centre Investment Contract ("the Contract") that sets out the terms that apply when the Science Board approves a proposal for funding submitted by the Contractor for a research, science, or technology or related activity Centre Programme .
2. The Science Board 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 Centre Programme .

This Centre Programme Agreement

3. The Parties agree:
 - (a) to enter into this Centre Programme Agreement which is made up of Schedules 1 to 4 inclusive, which sets out the details of the Centre Programme to be carried out by the Contractor (and the Collaboration – [amend to reflect the approved contracting structure]), and the Funding to be provided by the Ministry; and
 - (b) that the terms of the Contract will apply to this Centre 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

Witness's Signature

Full Name

Address

Occupation

Signed on behalf of the Contractor by

Signature

Name and position

Witness's Signature

Full Name

Address

Occupation

**SCHEDULE 1 TO APPENDIX 1
SUMMARY**

Contract ID:	
Centre Programme title:	
Proposal reference:	
Contract reference:	
Total Funding year one (GST exclusive):	
Total Funding year one (plus GST, if GST is payable):	
Total Funding (GST exclusive):	
Total Funding (plus GST, if GST is payable):	
Number of years of funding:	
Contractor:	
Contact person:	
Contact email:	
Contact phone:	
Special flags:	
Payment schedule:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	
Public statement:	

**SCHEDULE 2 TO APPENDIX 1
ESTABLISHMENT PHASE**

[Attach appropriate plans taken from Proposal – as approved by the Science Board]

**SCHEDULE 3 TO APPENDIX 1
FINANCIAL INFORMATION**

NOTE NEW FORMAT

Summary of funding (GST exclusive)

	Year 1	Year 2	Year 3	Year 4	Year 5
Funding (GST exclusive)					

Summary of funding (GST inclusive)

	Year 1	Year 2	Year 3	Year 4	Year 5
Funding (GST inclusive)					

**FOLLOWING SCHEDULES DELETED AS COVERED AS APPLICABLE BY THE DETAILED
RESEARCH PLAN FOR YEARS 1 TO 5**

SCHEDULE 2 – POST CONTRACT OUTCOMES FOR NEW ZEALAND DELETED

SCHEDULE 5 – PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS DELETED

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

**SCHEDULE 4 TO APPENDIX 1
INTELLECTUAL PROPERTY MANAGEMENT PLAN**

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 Centre Programme through its management of any Centre Programme Intellectual Property Rights.
2. The Contractor must, before a Centre Programme Agreement commences, have a set of Intellectual Property Policies and Principles in place in respect of that Centre Programme .
3. The Contractor’s Intellectual Property Policies and Principles must:
 - (i) determine the ownership and/or assignment, if any, of Centre 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 Centre Programme Intellectual Property;
 - (ii) ensure that researchers are advised of the potential value of Centre 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 Centre 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 Centre Programme Intellectual Property Rights management and protection;
 - (v) set out a review process to identify protectable and potentially valuable Centre Programme Intellectual Property Rights and associated commercial activities and to prevent the infringement of existing protected Centre 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 Centre Programme Intellectual Property Rights, such as on:
 - (a) staff members' financial interests in external firms that contract with the Contractor, particularly where these entail research contacts and the exchange of Intellectual Property Rights;
 - (b) the nature and terms of institutional support for start-up companies and the equity holdings of the Contractor and its staff.

- (vii) satisfy all legal and regulatory obligations with such amendments promptly incorporated as may be necessary to comply with all changes or additions to legal or regulatory obligations that may be made during the term of the relevant Centre 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 Centre Programme Intellectual Property Rights. Where a Contractor believes that it is best to commercialise the Centre 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 Centre 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 Centre Programme Intellectual Property Rights obligations and responsibilities;
 - (ii) encourage participation by researchers in any subsequent commercialisation process of any Centre Programme Intellectual Property Rights; and
 - (iii) develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.