**FUNDING CONTRACT**

**FOR**

***[NAME OF PROJECT]***

**DATED**

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

**AND [*FULL LEGAL NAME OF CONTRACTOR*]** *of* [***ADDRESS***] (the “**Contractor**”)

**BACKGROUND**

The Ministry wishes to contribute to the Project by providing funding as set out in the Details on the terms set out in this Contract.

**CONTRACT**

The Ministry will pay the Funding to the Contractor, and the Contractor accepts the Funding, on the terms and conditions set out in Schedule 1 (**Details**) and Schedule 2 (**Funding Contract Standard Terms and Conditions**).

|  |  |  |
| --- | --- | --- |
| **SIGNED** by the **SOVEREIGN IN RIGHT OF NEW ZEALAND**, acting by and through Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation and Employment and Chief Executive of the **MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT** or their authorised delegate:  | ))))) |  Signature Print Full Name Print Title Date |

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

**SCHEDULE 1 – DETAILS**

1. **Context**

[*insert context e.g from briefing/memo*]

2 **Funding** *(clause 2, Schedule 2)*

The total amount of the Funding is $[*X*] excluding GST.

3 **Project** *(clause 2, 3, Schedule 2)*

[*Describe the Project, including the objective of the Project. Insert from the proposal]*

4 **Project Outcomes** *(clause 2.5(a), Schedule 2)*

[*Insert details from the Executive summary section in proposal which outlines project outcomes]*

5 **Methodology** (*clause 2.5(c), Schedule 2*)

[*Insert if appropriate*]

6 **Payment terms** *(clause 2, Schedule 2)*

*[Option 1 – Payment of Full Amount*

*The Ministry makes Funding payments on the 1st, 20th or last day of the month (payment date). The [first] payment will be made on the first available payment date, being at least two working days after the date the contract is signed by both parties*.]

*[Option 2 – Monthly in Advance*

*Detail here. Eg equal instalments over [x] months, or an agreed amount per month]*

7 **Start Date** *(clause 4.1 Schedule 2)*

[*Insert date*]

8 **End Date** *(clause 2.5(b), Schedule 2)*

[*Insert date*]

9 **Reporting Requirements** *(clause 5.1, Schedule 2)*

[*Insert as appropriate*]

10 **Content of Report** *(clause 5.1, Schedule 2)*

The report must include:

1. progress of the Project, including achievement of Project Outcomes (if any);
2. a summary of expenditure to date;
3. any issues arising or expected to arise with the Project or this Contract; and
4. any other information requested by the Ministry.

11 **Public Statement** (*clause 8.4, 8.5, Schedule 2*)

 [*Insert from proposal]*

12 **Address for Notices** *(clause 13.5, Schedule 2)*

|  |  |
| --- | --- |
| **Ministry:** | **Contractor:** |
| Ministry of Business, Innovation & Employment 15 Stout StreetPO Box 1473WELLINGTONEmail address: imssupport@mbie.govt.nz Attention: The General Manager of Science System Investment & Performance | [*Insert name*][*Insert physical and postal address*]Email address: [*Insert details*]Attention: [*Insert details*] |

**SCHEDULE 2 - FUNDING CONTRACT STANDARD TERMS AND CONDITIONS**

**1. Interpretation**

* 1. In this Contract, the following definitions apply, unless the context otherwise requires:

“**Asset Pool Manager Data**” means any data that is required to be, or may optionally be, provided to NZRIS in accordance with the NZRIS Data Specification.

“**Confidential Information**” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of the Ministry, including any information provided by the Ministry under or in connection with this Contract;

“**Contract**” means this agreement, including Schedule 1 and this Schedule 2.

“**Details**” means Schedule 1.

“**End Date**” has the meaning given in the Details.

“**Funding**” means the funding amount set out in the Details.

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

“**Government Agency**” means any governmental, local governmental, semi-governmental, judicial, statutory or regulatory entity, authority, body or agency or any person charged with the administration of any law.

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

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985.

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity, but does not include mātauranga Māori. Mātauranga Māori in relation to Intellectual Property will mean any information identified as such by the Contractor in accordance with tikanga and kawa.

“**NZRIS**” means the New Zealand Research Information System.

“**NZRIS Specification**” means the document published on the NZRIS website that sets out the data provided to NZRIS and the required form of that data, as that document may be amended from time to time.

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

“**Parties**” means the Ministry and the Contractor and their respective successors and permitted assigns.

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

“**Project**” means the project described in the Details.

“**Project Outcomes**” means the project outcomes (if any) set out in the Details which must be achieved by the Contractor before a Funding payment is made by the Ministry.

“**Public Statement**” means the public statement described in the Details.

“**Start Date**” means the start date set out in the Details or, if no start date is set out, the date of this Contract.

“**Working Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003, nor a day in the period commencing 25 December in a year and ending with 2 January in the following year.

1.2 References to clauses and Schedules are to clauses and Schedules of this Contract and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Contract are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 “Including” and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency.

1.8 If there is any conflict of meaning between the Details and Schedule 2, Schedule 2 will prevail.

1. **Funding**

2.1 The Ministry must pay the Funding at the rate and in the manner set out in the Details. The Funding is the total amount payable by the Ministry for the Project.

2.2 Payments will be made to the credit of a bank account to be designated in writing by the Contractor.

2.3 The Funding is inclusive of all taxation except GST. The Ministry will be entitled to deduct any withholding tax required to be withheld by law from payments made to the Contractor and will not be required to gross-up or increase any such payments in respect of such amounts withheld.

2.4 The Contractor must use the Funding only to carry out the Project in accordance with this Contract.

2.5 In consideration of the Funding, the Contractor must:

1. achieve each Project Outcome (if any) by the relevant payment date set out in the Details;
2. complete the Project to the Ministry’s satisfaction by the End Date;
3. carry out the Project in accordance with:

(i) the methodology (if any) set out in the Details;

(ii) the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and

(iii)all applicable laws, regulations, rules and professional codes of conduct or practice;

1. ensure all peer-reviewed journal articles and peer-reviewed conference proceedings relating in any way to the Project are made available with Open Access:
2. immediately on publication; or
3. in the case of such papers published in a subscription-based publication that requires an embargo period, immediately at the end of the embargo period or 12 months after the date of such publication, whichever is earlier; and
4. refund any unspent Funding to the Ministry within 10 Working Days of the End Date.

2.6 Where all of the monies received by the Contractor to carry out the Project (including the Funding) exceeds the total cost of the Project, the Contractor must refund to the Ministry the excess amount. The Contractor is not required to refund, under this clause 2.6, any amount that exceeds the total amount of Funding.

**3. Project Progress**

3.1 If:

1. the Ministry is not satisfied with the progress of the Project;
2. the Contractor does or omits to do something, or any matter concerning the Contractor comes to the Ministry’s attention, which, in the Ministry’s opinion, may damage the business or reputation of the Ministry; or
3. the Contractor breaches any of its obligations under this Contract,

the Ministry may (without limiting its other remedies):

(d) renegotiate this Contract with the Contractor; or

(e) terminate this Contract immediately by notice to the Contractor, and clause 4.4, 4.5 and 4.6 will apply.

**4. Term and Termination**

4.1 Subject to clauses 4.2 and 4.3, this Contract will commence on the Start Date and expire when:

1. the final report is completed and provided to the Ministry; and
2. the Project is completed,

to the satisfaction of the Ministry.

4.2 The Ministry may terminate this Contract at any time by giving at least 10 Working Days’ notice to the Contractor.

4.3 The Ministry may terminate this Contract immediately by giving notice to the Contractor, if the Contractor:

(a) is in breach of any of its obligations under this Contract and that breach is not capable of being remedied;

(b) fails to remedy any breach of its obligations under this Contract within 5 Working Days of receipt of notice of the breach from the Ministry;

(c) does or omits to do something, or any matter concerning the Contractor comes to the Ministry’s attention, which in the Ministry’s opinion may cause damage to the business or reputation of the Ministry or of the Government of New Zealand;

(d) has given or gives any information to the Ministry which is misleading or inaccurate in any material respect; or

(e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Contract is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Contract, the Ministry may (without limiting any of its other rights or remedies):

1. require the Contractor to provide evidence of how the Funding has been spent; and/or
2. require the Contractor to refund to the Ministry:

(i) any of the Funding that has not been spent or committed by the Contractor. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Contractor, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or

(ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by the Ministry; and/or

1. if the Funding has been misused, or misappropriated, by the Contractor, require the Contractor to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Contractor was paid the money to the date the Contractor returns the money.

4.6 The provisions of this Contract relating to termination (clause 4), audit and record-keeping (clause 5.2(b) and (c) and clause 5.3), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Contract.

**5. Reporting Requirements and Audit**

5.1 The Contractor must report on the progress of the Project to the Ministry:

(a) as set out in the Details;

(b) as otherwise reasonably required by the Ministry; and

(c) in any format and on any medium reasonably required by the Ministry.

5.2 The Contractor must:

(a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable the Ministry to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Contract;

 (b) allow the Ministry reasonable access to the Contractor’s premises or other premises where the Project is being carried out; and

(c) where Funding is over one million dollars, appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding.

5.3 There are no scheduled audits planned in respect of this Contract. However, the Ministry may appoint an independent auditor to audit all records relevant to this Contract:

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

(b) 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. Warranties**

6.1 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.

6.2 The Contractor warrants 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 Contractor;

(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 which may, if disclosed, materially adversely affect the decision of the Ministry whether to provide the Funding.

**7. Intellectual Property**

7.1 All Intellectual Property Rights in the reports provided under clause 5.1 will be owned by the Ministry from the date the reports are created or developed.

7.2 Any new Intellectual Property Rights which are created as a result of, or in connection with, the provision of the Project (including, to avoid doubt, any new Intellectual Property Rights in any Project Deliverables other than the reports provided under clause 5.1) or otherwise in connection with this Contract and all modifications, enhancements or derivative work, will be owned by the Contractor, to be able to be used by the Contractor as it sees fit.

7.3 The Contractor will grant the Ministry a perpetual, non-exclusive, sub-licensable, transferable, fully paid and irrevocable licence to exercise for any purpose all Intellectual Property Rights in all Project Deliverables that are not owned by the Ministry or otherwise licenced to the Ministry under this Contract. This licence includes the right to use, store, copy, maintain, repair and modify, as applicable, such Project Deliverable and to permit the Ministry’s Personnel to use the Project Deliverables, and the right to commercialise (that is make a profit from or distribute to a third party) the Project Deliverables, including to enable the Ministry’s provision of the Project Deliverables to any Government Agencies that the Ministry monitors or to which it provides services.

7.4 The Contractor must ensure that material created or developed in connection with the Project does not infringe the Intellectual Property Rights of any person.

**8. Confidentiality**

8.1 The Contractor must:

(a) keep the Confidential Information confidential at all times;

(b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Contract;

(c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and

(d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 8.

8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:

(a) to the extent that such disclosure is necessary for the purposes of completing the Project;

(b) required by law; or

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

8.3 The Contractor must obtain the Ministry’s prior written agreement over the form and content of any public statement made by the Contractor relating to this Contract, the Funding, or the Project.

8.4 The Contractor recognises that from time to time the Ministry may proactively release information relating to this Contract, including:

(a) the name of the Contractor;

(b) the Public Statement set out in the Details; and

(c) the total amount of Funding.

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

8.6 The Ministry, as an organisation responsible for distributing public funds for research, science and innovation, provides data to NZRIS in accordance with the NZRIS Data Specification. The Contractor authorises the Ministry to provide Asset Pool Manager Data to NZRIS.

# 9. Liability and Insurance

9.1 The Ministry is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Contract.

9.2 The maximum liability of the Ministry under or in connection with this Contract whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Contract if the Project had been carried out in accordance with this Contract.

9.3 The Contractor (including its employees, agents, and contractors, if any) is not an employee, agent or partner of the Ministry or of the Chief Executive of the Ministry. At no time will the Ministry have any liability to meet any of the Contractor’s obligations under the Health and Safety at Work Act 2015 or to pay to the Contractor:

(a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or

(b) redundancy or any other form of severance pay; or

(c) taxes or levies, including any levies under the Accident Compensation Act 2001.

9.4 If required by the Ministry, the Contractor must effect and maintain for the term of this Contract:

(a) adequate insurance to cover standard commercial risks; and

(b) other insurance reasonably required by the Ministry.

The Contractor must, upon request by the Ministry, provide the Ministry with evidence of its compliance with this clause.

# 10. Dispute Resolution

10.1 The Parties will attempt to resolve any dispute or difference that may arise under or in connection with this Contract amicably and in good faith, referring the dispute to the Parties’ senior managers for resolution if necessary.

**11. Force Majeure**

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Contract by reason of any cause or circumstance beyond the Party’s reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Contract (“Force Majeure Event”). The Party affected must:

(a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;

(b) use its best endeavours to overcome the Force Majeure Event; and

(c) continue to perform its obligations as far as practicable.

# 12. Health and Safety

12.1 The Contractor must promptly notify the Ministry of any notifiable events under the Health and Safety at Work Act 2015 that occur in the performance of the Contract or that have the potential to impact the performance of the Contract.

12.2 The Ministry may suspend this Contract by giving written notice to the Contractor if the Ministry has what it considers are material concerns about the Contractor’s health and safety practices. Upon notice of the suspension, the Contractor will have the opportunity to rectify the health and safety issue(s) specified in the notice to the satisfaction of the Ministry. If the health and safety issue(s) specified in the notice are not rectified to the satisfaction of the Ministry within 20 Working Days, the Ministry may terminate this Contract immediately under clause 4.3.

# 13. General

13.1 A waiver by either Party of any rights arising from any breach of any term of this Contract will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Contract. No failure or delay on the part of either Party in the exercise of any right or remedy in this Contract will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

13.2 Assignment:

(a) The Contractor must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Contract. The Contractor remains liable for performance of its obligations under this Contract despite any approved subcontracting or assignment.

(b) If the Contractor is a company, any transfer of shares, or other arrangement affecting the Contractor or its holding company which results in a change in the effective control of the Contractor is deemed to be an assignment subject to clause 13.2(a).

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

13.4 If any part or provision of this Contract is held to be invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Contract will be binding on the Parties.

13.5 Any notice to be given under this Contract must be in writing and hand delivered or sent by email or registered post to the Parties' respective email address, postal address as set out in the Details. A notice is deemed to be received:

1. if personally delivered when delivered; or
2. if posted, three Working Days after the date of posting;
3. if sent by email, at the time the email enters the recipient’s information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error,

provided that any notice received after 5pm or on a day which is not a Working Day shall be deemed not to have been received until 9:00am the next Working Day Day.

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

13.7 This Contract may be signed in any number of counterparts (including emailed copies) and, provided that each Party has signed a counterpart, the counterparts (when taken together) will constitute a binding and enforceable agreement between the Parties.

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

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

13.10 This Contract will be governed by and construed in accordance with the laws of New Zealand.