**FUNDING CONTRACT**

**FOR**

***[PROJECT TITLE]***

**DATED**

**BETWEEN** The Sovereign in Right of New Zealand acting by and through the Secretary for Business, Innovation & Employment and Chief Executive, Te Tumu Whakarae mō Hīkina Whakatutuki (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 the Secretary for Business, Innovation & Employment and Chief Executive,Te Tumu Whakarae mō Hīkina Whakatutuki (the “**Ministry**”):  | ))))) |  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. **Contract ID**[Insert Contract ID]
2. **Project** *(clause 2, 3, Schedule 2)*

The Project is the project described in the Contractor’s proposal as follows:

“[*Insert Project Summary from the proposal in quotation marks]”*

1. **Start Date** *(clause 4.1, Schedule 2)*

1 June 2026

1. **End Date** *(clause 2.5(b), Schedule 2)*

31 May 2028

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

The total amount of the Funding is $350,000.00 excluding GST.

1. **Fund and Appropriation**The Ministry is responsible for administering the "He Ara Whakahihiko Capability Fund". The funding will come from the Vote Business, Science and Innovation: Talent and Science Promotion appropriation.
2. **Project Outcomes** *(clause 2.5(a), Schedule 2)*

As described in the Contractor’s Project Plan, attached as Appendix 2.

1. **Public Statement**

“[*Insert Public Statement from proposal between quotation marks]*”

1. **Payment terms** *(clause 2, Schedule 2)*

In instalments on the payment dates set out below, subject to completion of the relevant milestone to the Ministry’s satisfaction:

|  |  |  |
| --- | --- | --- |
| **Instalment (excluding GST)** | **Date** | **Milestone** |
| $175,000.00 | Within 1 month from the Start Date | This Contract executed by both Parties and received by the Ministry. |
| $175,000.00 | Within 1 month of the date the Contractor’s Progress Report is approved by the Ministry | Progress Report. |

1. **Reporting Requirements** *(clause 6.1, Schedule 2)*
	1. A progress report due 1 month after the mid-point of the term of this Contract, that covers the progress of the Project up to the last day of the month before the progress report is due (Progress Report).
	2. A final report no later than 1 month after the End Date that covers the delivery of the Project (Final Report).
2. **Content of Report** *(clause 6.1, Schedule 2)*

Each 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.
1. **Period of Post-Contract Reporting** (*clause 6.2, Schedule 2*)

10 years.

1. **Trust** *(clause 10.5, Schedule 2)*

*[If the Contractor is a trustee acting on behalf of a trust, insert the following details. If the Contractor is not a trustee acting on behalf of a Trust, delete this clause]*

* *[Insert the name of the trust on behalf of which the Contractor trustee is/trustees are acting, including the date of the trust deed (if possible*)]
* [*Insert the name of any trustee identified as an “independent trustee”]*
1. **Address for Notices** *(clause 16.5, 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*] |

15 **He Ara Whakahihiko Capability Fund (HAWCF) Special Conditions**

1. The Partner Organisation is:

[*Insert name of each partner organisation*]

1. The Contractor must work collaboratively with each Partner Organisation to complete the Project and achieve the Project Outcomes.
2. The Project Team is listed as attached in Appendix 3
3. The Contractor must ensure that the Project is carried out by the Project Team.
4. For the purposes of clause 16.2 of Schedule 2, the Ministry approves the following subcontractors in relation to the Project:

[*Insert details of subcontractors and the nature of their involvement in the Project from the proposal*].

*\*All amounts are GST exclusive.*

1. In addition to the termination events listed in clause 5.3 of Schedule 2, the Ministry may terminate this Contract immediately, by giving notice to the Contractor, if a Partner Organisation ceases to participate in the Project or becomes insolvent, bankrupt or subject to any form of insolvency action or administration.
2. For the avoidance of doubt, the definition of “Confidential Information” in Schedule 2 does not include the name of the Partner Organisation.

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

**1. Definitions & Interpretation**

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

“**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 and the content of this Contract. For the avoidance of doubt, “Confidential Information” does not include:

1. the name of the Contractor;
2. the Contract ID;
3. the title of the Project;
4. the Public Statement set out in the Details;
5. the research fund from which the Project is funded;
6. the relevant sector(s);
7. the total amount of Funding paid to the Contractor in the current financial year and previous years;
8. the total amount of Funding payable to the Contractor over the duration of this Contract for the Project;
9. the year Funding was approved in respect of the Project;
10. the period of time for which Funding will be provided in respect of the Project;
11. any Australian and New Zealand Standard Research Classification (ANZSRC) codes assigned to the Project;
12. the names of individuals in key roles, unless the Contractor or individual concerned has requested these remain confidential;
13. the progress of the Project; and
14. the benefits to New Zealand from this investment.

“**Conflict of Interest**” in relation to the Contractor means any conflict of the Contractor’s interest or obligations with its responsibilities under this Contract. A conflict of interest means that the Contractor’s independence, objectivity or impartiality can be called into question. A conflict of interest may be:

1. actual: where the conflict actually exists; or
2. potential: where the conflict is about to happen, or could happen; or
3. perceived: where other people may reasonably think that a person is compromised.

“**Contract**” means this agreement, including the Schedules and Appendices.

“**Details**” means Schedule 1.

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

“**Funding**” means the funding amount set out in the Details, being a “payment in the nature of a grant or subsidy” within the meaning of section 5(6D) of the GST Act.

“**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 chargeable, or to which a person may be liable, under the GST Act at the rate prevailing from time to time, including any tax levied in substitution for that tax.

“**GST Act**” means the Goods and Services Tax Act 1985.

“**Intellectual Property Management Plan**” means a plan that sets out how the Contractor anticipates managing the Intellectual Property Rights generated by the Project to maximise the benefit of that Project for New Zealand.

“**Intellectual Property Policies and Principles**” means the policies and principles relating to the management of Project Intellectual Property Rights that the Contractor must adopt pursuant to principle 2 of Appendix 1.

“**Intellectual Property Rights**” includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trademarks, registered or unregistered designs, circuit layouts, plant varieties, data or databases, 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, but does not include mātauranga Māori.

“**NZRIS**” means the New Zealand Research Information System, the online hub of information about research, science and innovation in New Zealand, (or any system which replaces it), established by government directive outlined in the 2016 Research, Science and Innovation Domain Plan.

“**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.

“**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.

“Taxable Activity” has the meaning given to that term in section 6(1) of the GST Act.

“Taxable Supply Information” has the meaning given to that term in section 19E of the GST Act.

“**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 accordance with any other requirements set out in the Details. The Funding is the total maximum amount payable by the Ministry for the Project.

2.2 If GST is applicable to the Funding, the Ministry is not obliged to make any payment under this Contract until it has received Taxable Supply Information from the Contractor. 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 Funding is exclusive of GST, and the Contractor is responsible for all taxation liabilities, rates, and levies payable in relation to the Funding. 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) or other milestone by any 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. meet any key performance indicators and comply with any expense allocation, budget allocation, personnel requirements or any other conditions included in any appendices attached to this Contract;
2. ensure all peer-reviewed journal articles and peer-reviewed conference proceedings relating in any way to the Project are made available with Open Access:
3. immediately on publication; or
4. 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;
5. ensure that, where practicable, all research outputs that have a digital object identifier (DOI) and that relate in any way to the Project, cite the Contract number and the Ministry as the source of funding; and
6. unless otherwise agreed in writing by the Ministry, refund any unspent Funding to the Ministry within 10 Working Days of the End Date.
	1. 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.
	2. The Contractor must comply with principles 1 to 5 of Appendix 1, including by adopting Intellectual Property Policies and Principles as required by principle 3 of Appendix 1.
	3. The Contractor’s Intellectual Property Policies and Principles must be made available if requested by a member of the public, and, if appropriate, published on the Contractor’s website. However, the Contractor is not required to publish individual agreements relating to its Intellectual Property Rights on its website.
	4. The Contractor must maintain the Intellectual Property Management Plan, provide a copy of that plan to the Ministry if requested, and manage any Intellectual Property Rights arising from the Project in accordance with that plan, in order to deliver the Project as described in Schedule 1.
	5. The Contractor must comply with the data management principles set out in principles 8 of Appendix 1.
	6. The Contractor must comply with the risk management principles set out in principles 10 and 12 of Appendix 1.
	7. The Contractor must implement risk mitigation measures in accordance with the Government’s Protective Security Requirements (or any equivalent replacement of those guidelines). Specific reference should be made to the management of legal and regulatory obligations under New Zealand’s export controls regime. The Contractor must report annually to the Ministry, in writing, confirming the implementation of risk mitigation measures by no later than 31 August of each year.

**3. Suspension**

3.1 Without limiting clause 5.3 below, the Ministry may suspend payment of the Funding by written notice to the Contractor if the Ministry reasonably considers or suspects the Contractor has committed a material breach of this Contract, in which case the Ministry may suspend payment of the Funding for such period that the breach continues or remains unremedied or the suspected breach is investigated by the Ministry (which may include the undertaking of an audit in accordance with clause 6.2).

**4. Project Progress**

4.1 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 5.4, 5.5 and 5.6 will apply.

**5. Term and Termination**

5.1 Subject to clauses 5.2 and 5.3, 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.

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

5.3 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;

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

(f) has any Conflict of Interest that:

(i) in the Ministry’s opinion is so material as to impact adversely on the delivery of the Project, the Ministry or the New Zealand Government;

(ii) the Contractor has failed to notify the Ministry of; or

(iii) in the Ministry’s opinion, the Contractor is unable or unwilling to resolve or deal with as required by the Ministry acting reasonably.

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

5.5 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.

5.6 The provisions of this Contract which by their nature survive termination, including those relating to termination (clause 5), audit and record-keeping (clause 6.2 and clause 6.3), warranties (clause 7), intellectual property (clause 8), confidentiality (clause 9), liability and insurance (clause 10) and dispute resolution (clause 12) will continue after the expiry or termination of this Contract.

**6. Reporting Requirements and Audit**

6.1 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.

6.2 The Contractor must, on request by the Ministry, during the term and for the period specified in the Details following the expiry or termination of this Contract, provide:

(a) statistical information relating to the Project, including basic profiling data, as reasonably required by the Ministry; and

(b) information reasonably required by the Ministry for the purpose of the Ministry evaluating the impact or outcomes of the Project over time.

6.3 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 to the Contractor and its Personnel.

6.4 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.

6.5 If the Ministry decides to conduct an audit under clause 6.4, the Contractor must:

1. give the Ministry or the independent auditor, as applicable, full access to their premises, Personnel, systems, information, data, accounts, documents and records relevant to this Contract;
2. assist the Ministry or the independent auditor, as applicable, in a timely manner with any audit conducted under clause 6.4 and ensure its Personnel and subcontractors and partner research organisations also assist the Ministry or independent auditor, including by making their relevant premises, personnel, systems, information, data, accounts, documents and records available if requested.

6.6 If an audit reveals any material non-compliance with this Contract, the Contractor will bear all of the Ministry’s costs in carrying out that audit, in addition to any other rights and remedies the Ministry may have in respect of the non-compliance.

6.7 The Contractor grants to the Ministry a perpetual, non-exclusive, sub-licensable, transferable, fully paid and irrevocable licence to use the reports provided under clauses 2.12 and 6.1 in whole or in part for any purpose in the Ministry’s sole discretion which includes the right to use, store, copy, disseminate, or modify such reports.

**7. Warranties**

7.1 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.

7.2 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.

**8. Intellectual Property**

8.1 Unless otherwise specified in the Details, the Ministry agrees that all Intellectual Property Rights arising from this Project are the property of the Contractor, and will make no claim to ownership of any Intellectual Property Rights arising from this Project.

8.2 The Contractor must ensure that material created, developed, licensed or otherwise used in connection with the Project (including any report provided under clause 6.1) does not infringe the Intellectual Property Rights of any person.

**9. Confidentiality**

9.1 Except as required by law, and subject to clauses 9.3 to 9.5, each of the parties will keep 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.

9.2 The Contractor recognises that from time to time the Ministry may proactively release information that is not Confidential Information relating to the Project.

9.3 Notwithstanding clause 9.1, the Ministry may disclose Confidential Information:

(a) to a Minister;

(b) to 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 under this clause 9.3(b) is bound in writing by obligations no less onerous than those contained in this clause 9 prior to such disclosure;

(c) if required by the Official Information Act 1982 or any other statutory or evidentiary requirement; or

(d) where such information has become public other than through a breach of the obligations of confidentiality in this clause 9 by the Ministry or its Personnel, or was disclosed to the Ministry on a non-confidential basis by a third party.

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

9.5 The Ministry, as a public funder, has obligations to provide research, science and innovation sector data to NZRIS. The Contractor acknowledges this and must assist the Ministry to comply with these obligations.

9.6 The Ministry and the Contractor will work together in good faith to ensure the Contractor's Confidential Information (including any personal information) is not made public by NZRIS.

9.7 Clause 9.5 does not impose any obligation on the Contractor to provide any further information than is otherwise already required under the other terms of this Contract.

9.8 Notwithstanding anything else in this Contract, the Ministry may release any information in an aggregated form that does not specifically identify the Contractor.

# 10 Liability and Insurance

10.1 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.

10.2 To the maximum extent permitted by law, 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.

10.3 The Contractor (including its Personnel, 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.

10.4 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.

10.5 Where any person has entered into this Contract as an independent trustee of the trust named in the Details and are identified as an independent trustee in the Details, the Ministry acknowledges that provided the independent trustee has no interest in any of the assets of the trust other than as trustee, and except where the independent trustee acts fraudulently, they are liable under this Contract only to the extent of the value of the assets of the trust available to meet the Contractor’s liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the independent trustee’s wilful default or dishonesty.

10.6 Where any person enters into this Contract as a trustee of a trust then (in addition to their warranty in clause 7.1) they warrant that:

(a) they have signed this Contract in accordance with the terms of the trust;

(b) they have the right to be indemnified from the assets of the trust; and

(c) all trustees of the trust have approved entry into this Contract.

# 11. Conflict of Interest

11.1 The Contractor must maintain a high standard of honesty and integrity at all times in the performance of this Contract and must avoid Conflicts of Interest.

11.2 The Contractor warrants, as at the Start Date, it has no Conflict of Interest, other than any that it has declared to the Ministry and which the Ministry has accepted in writing on the basis that the Contractor has implemented an appropriate management plan for such Conflict of Interest.

11.3 Without limiting clause 11.1, the Contractor must:

(a) immediately notify the Ministry in writing if a Conflict of Interest arises; and

(b) take all actions reasonably required by the Ministry to manage any such Conflict of Interest.

# 12. Dispute Resolution

12.1 Subject to clause 12.6, a Party may not commence any court proceedings relating to a dispute between the Parties unless the Party has complied with clauses 12.2 to 12.5.

12.2 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.

12.3 If the Parties’ senior managers are unable to resolve the dispute within 10 Working Days of it being referred to them, the Parties will refer the dispute to mediation, or another form of alternative dispute resolution agreed between the Parties.

12.4 If a dispute is referred to mediation, the mediation will be conducted by a single mediator appointed by the Parties (or if they cannot agree, appointed by the Chair of Resolution Institute) and on the terms of the Resolution Institute 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).

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

12.6 Nothing in this clause 12 precludes either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

**13. Force Majeure**

13.1 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 (“affected party”) must:

(a) notify the other Party (“non-affected party”) as soon as practicable after the Force Majeure Event occurs of the nature and expected duration of the Force Majeure Event and keep the non-affected party reasonably informed of the steps the affected party is taking to mitigate and remedy the Force Majeure Event;

(b) use reasonable endeavours to mitigate the effect the Force Majeure Event;

(c) continue to perform its obligations under this Contract to the extent reasonably practicable; and

(d) resume full performance of its obligations under this Contract as soon as reasonably practicable.

# 14. Health and Safety

14.1 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.

14.2 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 5.3.

# 15. Taxation

15.1 Where the Contractor is registered for GST, the Contractor confirms it is receiving the Funding in furtherance of its Taxable Activity.

15.2 Where the Contractor is not registered for GST, it must inform the Ministry without delay should it become registered for GST during the term of this Contract and provide the Ministry with its GST number.

# 15.3 The Contractor acknowledges and agrees that it is responsible for accounting to the Inland Revenue in relation to any tax obligations it may have arising from its receipt of the Funding, including:

(a) obtaining independent advice as to whether or not it is required to be registered for GST (for the purposes of the GST Act); and

(b) understanding its GST obligations.

# 16. General

16.1 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.

16.2 Assignment/subcontracting/transfer:

(a) The Contractor must not assign, delegate, subcontract or otherwise transfer any or all of its rights and obligations under this Contract without the prior written approval of the Ministry. The Contractor remains liable for performance of its obligations under this Contract despite any such approved subcontracting, assignment or other transfer. The Contractor must ensure that an appropriate written agreement is in place between the Contractor and any subcontractor that is consistent with the terms of this Contract in all material respects (including as to record keeping and audit, confidentiality and health and safety) and acknowledges such terms are intended to create a benefit enforceable by the Ministry for the purposes of the Contract and Commercial Law Act 2017.

(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 and is subject to clause 16.2(a).

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

16.4 Each party will, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Contract.

16.5 This Contract does not create any relationship between the Parties of principal and agent, partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another Party, except as expressly provided for in this Contract.

16.4 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.

16.5 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 Contractor’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.

16.6 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.

16.7 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.

16.8 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.

16.9 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.

16.10 This Contract will be governed by and construed in accordance with the laws of New Zealand and the Parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.

**APPENDIX 1 – POLICIES AND PRINCIPLES**

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

**INTELLECTUAL PROPERTY**

1. The Contractor must ensure that all persons involved in the delivery of the Project are aware of, and comply with, the Contractor’s obligations under principles 2 to 5 of this Appendix 1.
2. The Contractor must use its best endeavours to maximise the benefits to New Zealand of each Project through its management of any Project Intellectual Property Rights.
3. The Contractor must, at the Start Date and at all times during the term of this Contract, have a set of Intellectual Property Policies and Principles in place in respect of this Contract.
4. The Contractor’s Intellectual Property Policies and Principles must:
5. determine the ownership and/or any rights of assignment, if any, of Project Intellectual Property Rights and require all persons involved in the delivery of the Project to acknowledge the relevant ownership and rights associated with Project Intellectual Property;
6. ensure that all persons involved in the delivery of the Project are aware of the potential value of Project Intellectual Property Rights and of the options available to them to add value to those rights;
7. ensure that all persons involved in the delivery of the Project are aware of any actual or potential confidentiality issues relating to Project Intellectual Property Rights;
8. set out a review process to identify protectable and potentially valuable Project Intellectual Property Rights and associated commercial activities, and to prevent the infringement of existing protected Project Intellectual Property Rights and associated commercial activities;
9. provide guidance on the prompt disclosure and resolution of potential conflicts of interest concerning the generation, ownership, management and use of Project Intellectual Property Rights, including guidance:
	* 1. regarding employees and contractors’ financial interests in external firms that contract with the Contractor, particularly where these involve research contracts and the exchange of Intellectual Property Rights;
		2. on the nature and terms of institutional support for any start-up companies incorporated as part of the Project; and
		3. for the shareholders of the Contractor, and its employees and contractors.
10. satisfy all legal and regulatory obligations and be promptly amended to ensure any relevant changes or additions to legal or regulatory obligations are satisfied; and
11. define good scientific conduct, including sound record keeping and human and animal experimentation ethics.
12. The Intellectual Property Policies and Principles must ensure that cultural, Treaty of Waitangi and Māori rights and interests are properly understood and taken into consideration.
13. The Contractor should give preferential access to competent New Zealand-based firms to develop the Project Intellectual Property Rights. Where a Contractor believes that it is best to commercialise the Project 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 Project Intellectual Property Rights in research, science, and technology in New Zealand.
14. The Contractor should, wherever possible:
15. provide assistance to researchers in fulfilling Project Intellectual Property Rights obligations and responsibilities;
16. encourage participation by researchers in any subsequent commercialisation process of any Project Intellectual Property Rights; and
17. develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.

 **DATA MANAGEMENT**

1. The Contractor must, at the Start Date and at all times during the term of this Contract, have a data management plan in place in respect of this Contract. The data management plan must set out how the Contractor will manage, access, analyse, protect and share data held as a result of the Project via appropriate systems and tools to maximise the benefit of that data for New Zealand. It should ensure that the data management principles are properly taken into consideration.
2. The data management plan should set out which of the following policies are guiding the Contractor’s data management approach:
3. the New Zealand Government Open Access and Licensing Framework. This framework advocates the use of creative commons licenses;
4. the Ministry’s Environmental Data Management Policy Statement. If the Contractor receives new funding for research that includes environmental science it must agree to license copyright works produced under a Creative Commons Attribution 3.0 New Zealand licence (CC-BY);
5. principles for safe and effective use of data and analytics when appropriate. These principles were developed by the Privacy Commissioner and Government Chief Data Steward and are designed to support safe and trusted use of data and analytics by New Zealand government agencies;
6. the FAIR data principles for scientific data management and stewardship; Findable, Accessible, Interoperable and Reusable; and
7. any other policies relevant to the Project.

**RISK MANAGEMENT**

1. The Contractor must, at the Start Date and at all times during the term of this Contract, have a risk management plan in place in respect of this Contract. The risk management plan should set out how all actual and potential identified risks in relation to the Project will be mitigated and/or managed.
2. The risk management plan should consider risks associated with:
	* 1. delivery of excellent science;
		2. availability of key personnel;
		3. duplication of research, internationally and domestically;
		4. collaborations, internationally and domestically;
		5. attraction or retention of required capability;
		6. unintended or improper use of research technological application that is contrary to responsible and ethical scientific conduct; and
		7. the misuse of the research to develop technology with dual use applications.
3. The Contractor must maintain a register that identifies actual and potential risks in relation to the Project, and how the risk was mitigated and/or managed. The register must be updated annually and at the time a risk or potential risk is identified. The Ministry may request a copy of the risk register at any time.

**APPENDIX 2 – Project Plan**

[*Insert Deliverables table*]

**APPENDIX 3 – Project Team**

[*Insert Project team table*]