

**Ministry for Primary Industries**  
Manatū Ahu Matua



*Growing and Protecting New Zealand*

# **PRIMARY GROWTH PARTNERSHIP AGREEMENT**

**BETWEEN**

**THE MINISTRY FOR PRIMARY INDUSTRIES**

**AND**

**[INDUSTRY PARTY'S NAME]**

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	3
2.	TERM.....	9
3.	OUTCOMES & BUSINESS CASE.....	9
4.	ANNUAL PLAN .....	9
5.	ACHIEVEMENT OF THE PROGRAMME .....	10
6.	WARRANTIES .....	11
7.	FUNDING AND CO-FUNDING .....	11
8.	INVOICING AND PAYMENT .....	14
9.	FINANCIAL MANAGEMENT .....	15
10.	INTELLECTUAL PROPERTY.....	16
11.	REPORTING AND AUDIT .....	16
12.	CONFIDENTIALITY.....	17
13.	CHANGE EVENTS.....	18
14.	TERMINATION.....	19
15.	LIABILITY, INDEMNITIES, AND INSURANCE .....	21
16.	DISPUTE RESOLUTION.....	22
17.	NOTICES .....	23
18.	HEALTH & SAFETY.....	23
19.	GENERAL.....	23
	SCHEDULE 1 CONTRACT DETAILS.....	27
	SCHEDULE 2 PROGRAMME GOVERNANCE GROUP – TERMS OF REFERENCE .....	28
	SCHEDULE 3 PRINCIPLES FOR IP MANAGEMENT .....	33
	SCHEDULE 4 PRINCIPLES FOR COMMUNICATIONS PLAN.....	36
	SCHEDULE 5 THE PROGRAMME .....	38
	SCHEDULE 6 GO-EARLY FUNDING .....	39
	SCHEDULE 7 REPORTING AND TEMPLATES .....	40
	APPENDIX A BUSINESS CASE .....	41
	APPENDIX B ATTESTATION LETTER.....	42

This Agreement is made on the

day of

20[17]

between

HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Ministry for Primary Industries ("MPI");

and

[insert name] (registration number [insert]), [a company registered under the Companies Act 1993] or [a limited partnership registered under the Limited Partnerships Act 2008] (the "Industry Party");

each a Party and together the Parties.

## BACKGROUND

- A. The Primary Growth Partnership ("PGP") is a government-industry initiative that invests in significant programmes of research and innovation to boost the economic growth and sustainability of New Zealand's primary and food sectors, including forestry. Investment programmes are funded at least 60% by industry.
- B. The Industry Party submitted the Business Case, which the Director-General of MPI subsequently approved for funding. The programme of research and innovation to be undertaken is set out in Schedule 5 of this Agreement ("Programme").
- C. The Parties intend, acting reasonably and in good faith, to work together in order to satisfy and meet the requirements of this Agreement and to ensure the greatest possibility of success of the Programme and the achievement of the Outcomes.

**Explanatory note:** MPI expects that the agreed programme of work can be expressed at a number of levels. The clauses of this Agreement and the definitions in clause 1 endeavour to reflect those levels:

- at the highest level, *Outcomes* can be briefly stated. These are the big picture results that are being aimed for – the core promise behind the entire programme. These shall also be articulated in the Outcome Logic Model.
- next, the *Business Case* accepted by MPI will have set out a more detailed case as to how the Outcomes will be achieved. Together with the Outcomes, the Business Case should be a touchstone for MPI and the Industry Party – an ongoing point of reference.
- Key *Objectives* and *Milestones* will be recorded in this Agreement, which, if met, should culminate in the achievement of the Outcomes, and the realisation of the Business Case.
- each *Annual Plan* will go into more detail for any given year, and may modify the Key Objectives and Milestones in the Agreement to a limited degree (substantial change requires amendment to this Agreement).

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

"**Agreement**" means clause 1 to 18 of this agreement, all schedules, and each Annual Plan, but does not include the Background section above, or the Business Case;

"**Annual Plan**" means an annual plan as anticipated by clause 4;

**"Business Day"** means any day other than a Saturday, Sunday or a statutory public holiday in Wellington, New Zealand;

**"Business Case"** means the Business Case attached to this Agreement for ease of reference as Appendix A;

**"Change Event"** means any information, circumstance, or event that relates to this Agreement and is a cause for concern for MPI, including:

- (a) anything that has, or is highly likely to have, a material adverse effect on the delivery of, or the likelihood of the delivery of, the Programme or any Objective or Milestone, such that the value for money or benefit to New Zealand is materially reduced;
- (b) anything that causes MPI to breach any statutory duty;
- (c) anything that causes, or has the potential to cause, the New Zealand Government to be in breach of any international obligations;
- (d) anything that may mean the New Zealand Government breached any international obligations by providing Funding for the Programme;
- (e) in relation to (i) the performance, delivery or progress of the whole or any part of the Programme, including with regard to any Annual Plan, the Business Case, or the Outcomes; (ii) the accuracy or completeness of any Quarterly Report; (iii) the Co-funding contributions, the treatment of the Funding and Co-funding, and/or the operation and management of the accounts and ledgers; and (iv) the procedures and assurances set out in the Communications Plan and/or their effect in practice,

**"Chief Executives"** means the chief executives of the Parties or their respective nominees;

**"Co-funding"** means the funding provided by the Industry Party in accordance with clause 7 and as otherwise required by this Agreement;

**"Commercial IP"** means:

- (a) all New Intellectual Property Rights; and
- (b) any Existing Intellectual Property Rights necessary or desirable for the use of the New Intellectual Property Rights,

which the Industry Party Commercialises.

**"Commercialise"** means in relation to Intellectual Property Rights, for consideration, to use, manufacture, sell, hire or otherwise exploit a product or process on a commercial basis, or to provide a service to third parties on a commercial basis, incorporating the Intellectual Property Right, or to licence, sub-licence, joint venture or make any other similar arrangement with any third party to do any of those things, and **"Commercialised"** and **"Commercialisation"** shall be similarly construed;

**"Communications Plan"** has the meaning set out in clause 12.4;

**"Confidential Information"** means all information relating to this Agreement held, acquired, or discovered by one Party that the other Party would reasonably consider to be confidential information:

- (a) including this Agreement, the commercial details of the Programme, and all information exchanged between the Parties during the negotiation of this Agreement that the disclosing Party would reasonably consider to be confidential information; but
- (b) not including generalised aggregated information regarding the Programme, or the Outcomes;

**"Control"** means one person controlling another person, including where the first person directly or indirectly by legal or beneficial ownership:

- (a) has, or may have, the power to appoint, remove or direct the majority of the members of the governing body of the other person;
- (b) controls, or has, or may have, the power to control, the affairs or decisions of the other person; or
- (c) holds more than 50% of the beneficial ownership interest in the other person;

**"Crown Finance"** means the funds made available to MPI under the relevant Parliamentary appropriation for the purpose of Funding for the Programme;

**"End Date"** means the date specified as such in Schedule 1;

**"Exclusive Period"** means the period of time specified as such in Schedule 3;

**"Existing Intellectual Property Rights"** means all Intellectual Property Rights that are owned, created or developed (in the case of the Parties) prior to the Start Date and (in the case of any relevant third parties) prior to being engaged by the Industry Party, and in either case that are necessary for or beneficial to the Programme;

**"Final Report"** means a report provided pursuant to clause 11 which includes:

- (a) a statement of the Funding and Co-Funding provided, spent and remaining;
- (b) a description and analysis of the progress of the Programme including evidence that the Milestones and Objectives have been achieved, details of the extent to which the Programme achieved the Outcomes, and any highlights, breakthroughs or difficulties encountered;
- (c) conclusions or recommendations (if any) arising from the Programme;
- (d) copies of key reports, promotional material, media publicity, pamphlets or other documentation relevant to the Programme; and

- (e) a statement of all Existing and New Intellectual Property Rights comprising the Commercial IP and the Non-Commercialised IP, or that are otherwise necessary for or beneficial to the Programme, and a compilation of the annual reports required to be provided to the PGG under clause 13 of Schedule 3;

**"Force Majeure"** means any event or circumstance which is beyond the reasonable control of any Party, but does not include loss of supply of essential services (except where such loss could not have been prevented or overcome by exercising reasonable diligence at reasonable cost) or lack of funds for any reason;

**"Funding"** means the funding provided by MPI in accordance with clause 7 and as otherwise required by this Agreement;

**"Funding Year"** means [the MPI financial year being from 1 July to 30 June];

**"Guarantee"** means a guarantee from a parent company, shareholder, general and/or limited partners, or other relevant third parties, in respect of the Industry Party's obligations under this Agreement;

**"GST"** means goods and services tax chargeable, or to which a person may be liable, under the Goods and Services Tax Act 1985;

**"Independent Expert"** means a person unrelated to any of the Parties and with the skills and experience to undertake the relevant reporting or assessment required;

**"Insolvency Event"** includes the Industry Party:

- (a) becoming insolvent or bankrupt, including becoming or being presumed to be unable to pay its debts within the meaning of section 91 of the Limited Partnerships Act 2008 or unable to pay its debts as they fall due within the meaning of section 287 of the Companies Act 1993;
- (b) ceasing to carry on all or substantially all of its business (but excluding any seasonal or partial closures);
- (c) being subject to an application to liquidate or deregister (or any actual liquidation or deregistration) of the Industry Party from the relevant official register;
- (d) becoming subjecting to any form of external administration, including having a liquidator, receiver, administrator, statutory manager, or mortgagee's or chargee's agent appointed in respect of it or any material part of its assets;
- (e) entering into any compromise with its creditors, including a compromise within the meaning of Part 14 of the Companies Act 1993;

**"Intellectual Property Right"** means all rights to and any interests in any patent, design, trade mark, copyright, know-how, trade secret, confidential information and any other proprietary right or other form of intellectual property (whether protectable by registration or not);

"**Invoicing Period**" means the invoicing period specified in Schedule 1;

"**Member**" means a member of the PGG;

"**Milestones**" means the milestones of the Programme, as set out in Schedule 5;

"**New Intellectual Property Rights**" means all Intellectual Property Rights arising after the Start Date by or through meeting the Milestones, delivering the Objectives, carrying out the Programme, or otherwise performing this Agreement;

"**Non-Commercialised IP**" means

- (a) all New Intellectual Property Rights; and
- (b) any Existing Intellectual Property Rights necessary or desirable for the use of the New Intellectual Property Rights,

which by the End Date the Industry Party has not Commercialised.

"**Objectives**" means the objectives of the Programme, as set out in Schedule 5;

"**Outcomes**" means the expected outcomes of the Programme, as set out in Schedule 5;

"**Outcome Logic Model**" means the graphical depiction, as set out in Schedule 5, of the logical relationships between the activities, Objectives, Milestones, and Outcomes of the Programme.

"**Post-Programme Report**" means a report provided pursuant to clause 11 detailing the Industry Party's progress towards achieving the Outcomes.

"**Programme**" has the meaning given in the Background section of this Agreement;

"**Programme Costs**" means the costs of meeting the Milestones, delivering the Objectives and otherwise carrying out the Programme, as set out in this Agreement;

"**Programme Manager**" means the individual appointed by the Industry Party, pursuant to clause 5.2 of this Agreement, to manage the Programme;

"**Programme Governance Group**" or "**PGG**" means the committee established under clause 5.4, the terms of reference for which are set out in Schedule 2;

"**Quarterly Report**" means a report provided pursuant to clause 11 reporting on:

- (a) the key activities, outputs, Milestones, and Outcomes achieved or produced in the period covered by the report;
- (b) any loss of critical resources (including loss of people, loss of co-funding, or loss of infrastructure);
- (c) whether the scientific or technical approach has changed significantly;
- (d) any required consents, approvals, licences or permits expiring or being revoked;

- (e) any significant issues with or changes to end-user engagement;
- (f) any changes that do, or are likely to, materially reduce the benefit to New Zealand from the Programmes;
- (g) any discovery of scientific, technical or financial fraud;
- (h) any material organisational changes;
- (i) the management and use of the Funding and Co-funding, including how much Co-funding has been expended, and the management and operation of the accounts and ledgers referred to within clause 9;
- (j) anything that does, or is likely to, materially adversely affect the undertaking of the Programme and/or the achievement of any Objectives and/or Milestones;
- (k) whether and how the Industry Party is dealing with Intellectual Property Rights in accordance with this Agreement;
- (l) whether it has complied with clauses 7.2(b) to (d); and
- (m) a summary of the above matters in a form that is ready for release to the public;

"**Quarter**" means the three month period ending on 31 March, 30 June, 30 September or 31 December;

"**Quorum**" has the meaning given in Schedule 2;

"**Start Date**" means the date specified as such in Schedule 1;

"**Tax Invoice**" has the meaning given in clause 8.1; and

"**Term**" has the meaning given in clause 2.

1.2 In this Agreement, unless the context otherwise requires:

- (a) the Background section does not form part of the terms and conditions of this Agreement;
- (b) the headings to clauses shall be ignored in construing this Agreement;
- (c) the plural includes the singular and vice versa;
- (d) a statute includes that statute as amended from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time and legislation passed in substitution for the statute;
- (e) an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (f) derivatives of any defined word or term have a corresponding meaning;

- (g) in the event of any inconsistency between the various parts of this Agreement, the following descending order of priority shall apply:
  - (i) clauses 1 to 18;
  - (ii) the Schedules to this Agreement;
  - (iii) the more recent Annual Plan.

## **2. TERM**

- 2.1 This Agreement will commence on the Start Date and subject to any earlier termination will expire on the End Date (the “Term”). [Optional: Notwithstanding the foregoing, the execution of a Guarantee satisfactory to MPI in all respects is a condition precedent to the commencement of this Agreement].

## **3. OUTCOMES & BUSINESS CASE**

- 3.1 The Parties acknowledge that the Outcomes and the Business Case together set out the aims of and vision for the Programme, and the rationale for entering into this Agreement.
- 3.2 The Industry Party agrees that it will exercise commercially reasonable endeavours to achieve the Outcomes.
- 3.3 The Parties agree to have regard to the Outcomes and the Business Case in:
  - (a) the event that they wish to vary this Agreement;
  - (b) the formulation and consideration of each Annual Plan, as anticipated by clause 4;
  - (c) the interpretation of this Agreement, including where clause 16 applies.

## **4. ANNUAL PLAN**

- 4.1 The PGG will endeavour to agree an Annual Plan for each Funding Year at least 1 month prior to the end of the current Funding Year, which will, amongst other things, set out how the Outcomes and Business Case will ultimately be achieved. Each Annual Plan will be considered final and agreed when it is signed by the Chair of the PGG. Promptly following signing, the Chair of the PGG will ensure that a copy of the signed Annual Plan will be provided to each Member.
- 4.2 Each Annual Plan:
  - (a) must set out the annual work programme, forecast budget and Funding cash-flow projection for the Funding Year to which it relates, together with a summary of progress to date and with reference to the Business Case and Outcomes;
  - (b) may provide for non-material changes to the timing for delivery of the Milestones and achievement of the Objectives, and for the associated funding changes. For the avoidance of doubt, a “non-material” change is one that does not deviate from or impact on the overall

Funding or timeframe of the Programme, and where there is no material change to the other parts of this Agreement (including the Milestones and Objectives of the Programme). All other changes must be made by way of variation to the relevant clause or Schedule of this Agreement.

- 4.3 The Industry Party agrees that each Annual Plan will substantially follow the format required by MPI from time to time.

## **5. ACHIEVEMENT OF THE PROGRAMME**

### **Approvals and third party arrangements**

- 5.1 The Industry Party will during the Term:
- (a) use all reasonable endeavours to achieve the Milestones, deliver the Objectives, and otherwise carry out the Programme in accordance with this Agreement;
  - (b) enter into any arrangements with third parties that are necessary or appropriate for the Industry Party to carry out and complete the Programme;
  - (c) ensure that all consents, approvals, licences and permits required to carry out the Programme (including any special ethical regulatory requirements, statutory consents, appropriate ethics committee approvals, and informed consents (if a person is the subject of any research undertaken as part of the Programme) are obtained and kept up-to-date;
  - (d) have all necessary arrangements in place to enable it to meet its obligations under this Agreement, and that any agreements that the Industry Party enters into with third parties are not inconsistent with this Agreement.

### **Systems, resources, and processes**

- 5.2 The Industry Party will during the Term ensure that:
- (a) it has effective project management tools, processes, and systems in place (including research, development and marketing plans, the assignment of roles and responsibilities, performance monitoring and reporting, and financial, Intellectual Property Rights and risk management procedures) to carry out and complete the Programme;
  - (b) the purposes of the Programme are, to the extent reasonably possible, clear and understood by personnel involved in the Programme;
  - (c) suitably qualified personnel are available for and engaged in relation to the Programme for the duration of this Agreement (or such other period as is applicable to the work being undertaken), and if any critical personnel are named in Schedule 1 to this Agreement or a personnel or risk register maintained by the PGG, then those critical personnel may not be removed from the performance of this Agreement without the approval of the PGG;

- (d) without prejudice to the role of the PGG, it appropriately (i) monitors the Programme to ensure the Programme is being carried out in accordance with this Agreement; and (ii) monitors and manages the performance and cost of third parties involved in the Programme; and
- (e) it appoints a Programme Manager to undertake the functions and duties as it considers necessary including those set out in Schedule 2.

### **Spirit of partnership**

5.3 The Parties agree, subject to the other terms of this Agreement, to wherever practicable:

- (a) work together in a collegial, respectful, and timely manner;
- (b) be open and transparent with expectations and communications;
- (c) proactively manage issues in a constructive and transparent manner;
- (d) use direct communication to resolve issues rather than communicate via email; and
- (e) work collaboratively and cooperate on a “no surprises” basis.

### **Programme Governance Group**

5.4 The Parties shall establish and operate a Programme Governance Group on the terms set out in Schedule 2.

## **6. WARRANTIES**

6.1 The Industry Party warrants and represents that:

- (a) all information provided by it to MPI in connection with this Agreement is accurate, complete, and not misleading;
- (b) it has full capacity, power and authority to enter into and perform this Agreement and has taken all necessary action to authorise the entry into and performance of this Agreement;
- (c) it has not and will not enter into any contractual arrangements or negotiations for additional government or public sector funding, or for any exploitation, development or other similar arrangements, in respect of the Programme or any Intellectual Property Right, products, processes, goods or services that may arise from the Programme, except as disclosed in or in accordance with the terms of this Agreement.

## **7. FUNDING AND CO-FUNDING**

### **Funding and Co-funding**

7.1 Subject to agreeing an Annual Plan in respect of each Funding Year:

- (a) MPI will provide Funding at the times and in the amounts provided for in this Agreement, up to the total amount of Funding specified in Schedule 1. Other than the Funding, all costs anticipated by, arising from, or in relation to this Agreement are for the account of the Industry Party.
- (b) the Industry Party shall provide the Co-funding in the amounts and within the time frames specified in this Agreement, and ensure that the Co-funding will be used solely and specifically to undertake and meet the costs of the Programme and for no other purpose.

**Explanatory note:** Schedule 1 sets out the total Crown funding payable. How that funding is paid over time (i.e. in what proportions and on what progress) will be set out in Schedule 5 and each Annual Plan.

7.2 The Industry Party acknowledges and agrees that:

- (a) provision of Funding by MPI for the Programme is through this Agreement only;
- (b) the Funding must be used solely and specifically to carry out the Programme;
- (c) the Funding may not be used for Programme Costs incurred before the Start Date unless otherwise specified in Schedule 6 of this Agreement;
- (d) the Funding may not be used for commercial promotion and sale activity (including any branded marketing and any branded in-market sale activities) other than as provided for in the Programme; and
- (e) subject to clauses 14.5 and 14.6, MPI is not liable to provide Funding for any Programme Costs incurred after the end of the Term.

7.3 The Industry Party acknowledges and agrees that notwithstanding that Programme Costs may be incurred in advance of any anticipated date, Funding payments in any Funding Year will not be greater than the amounts forecast in the Annual Plan for the Funding Year, subject to any change made under clause 7.8.

7.4 In the event that the Industry Party seeks additional funding (except for the Co-funding, corporate debt funding and intra-group loans) to support the Programme not previously disclosed to MPI, it shall promptly notify MPI in writing.

### **Suspension**

7.5 MPI may suspend Funding in respect of all or any part of the Programme in the following circumstances on notice to the Industry Party:

- (a) If MPI has appointed an Independent Expert under clause 13 in relation to all or any part of the Programme, provided that:
  - (i) any such suspension shall last no longer than 3 months;
  - (ii) during any such suspension the Industry Party shall be entitled to suspend performance of any parts of the Programme in respect of which MPI has suspended

Funding for the duration of the suspension and any time periods for meeting the Milestones and delivering the Objectives associated with those parts of the Programme suspended shall be extended accordingly; and

- (iii) in the event that an Independent Expert fails to uncover any ground for suspension of the Funding, MPI shall pay the suspended Funding immediately;
- (b) if either Party has served notice that a Change Event has occurred, provided that during any such suspension the Industry Party shall be entitled to suspend performance of any parts of the Programme in respect of which MPI has suspended Funding for the duration of the suspension and, pending the final determination of the process under clause 13, any time periods for meeting the Milestones or delivering the Objectives associated with those parts of the Programme suspended shall be extended accordingly; or
- (c) if the Industry Party has committed a material breach of this Agreement, in which case MPI may suspend the Funding for such period that the breach continues or remains unremedied.

#### **Changes to Crown Finance**

7.6 If the Crown Finance is:

- (a) reduced, then (i) the Industry Party may reduce its Co-funding by an amount equal to the reduction in Funding made available under this Agreement, (ii) the Parties shall use all reasonable endeavours to agree a variation to this Agreement, within 20 Business Days of the Crown Finance being reduced, to reflect the reduced level of Crown Finance and Funding available, and (iii) if no such variation is agreed, either party may exercise its rights under clause 14.3;
- (b) withdrawn entirely, then either party may exercise its rights under clause 14.3.

#### **Taxes**

7.7 The Funding is exclusive of any GST which may be payable. Subject to the foregoing, the Industry Party acknowledges and agrees that it is responsible for all taxation liabilities, ACC and other levies payable in relation to the Funding for the Programme.

#### **Redirection and Funding increases**

7.8 The Parties agree that the PGG may direct and re-direct Funding and Co-funding by:

- (a) up to the amount specified in Schedule 1 for each Funding Year between Objectives, or between any Milestones within an Objective, in the Annual Plan applying to that Funding Year; and
- (b) increasing the total amount of Funding available to the Programme in any Funding Year (the "Relevant Funding Year") by carrying forward unspent Funding available from earlier

Funding Years, or bringing forward Funding available in a later Funding Year, provided that:

- (i) such increase is no more than 20% of the Funding originally allocated for the Relevant Funding Year as set out in Schedule 5; and
- (ii) the total amount of Funding and Co-funding available to the Programme as set out in Schedule 1 is not increased.

**Explanatory note:** This clause works with clause 4.2(b) to provide flexibility for 'non material' changes that might be made in an Annual Plan. It specifically addresses how funding changes associated with a 'non-material change' made pursuant to clause 4.2(b) should be addressed including any limitations to the redirection of funding.

## Refund

- 7.9 If within 3 years of the end of the Term the Industry Party enters into a contract or an arrangement that materially reduces the benefit from the Programme to New Zealand, as assessed by MPI acting reasonably, the Industry Party shall repay the amount of Funding paid to it in the 24 months immediately prior to the end of the Term.

**Explanatory note:** The rationale for this clause is similar to that for clause 14.4(b). From MPI's perspective the eventual benefit to NZ (after the direct benefit to the Industry Party) is of the utmost importance.

## 8. INVOICING AND PAYMENT

### Costs in arrears

- 8.1 The Parties agree that:

- (a) within 15 Business Days of the end of each Invoicing Period, the Industry Party shall ensure the Programme Manager provides MPI with a valid tax invoice ("**Tax Invoice**") as defined in the Goods and Services Tax Act 1985 which:
  - (i) specifies MPI as the invoice recipient;
  - (ii) specifies MPI's agreed share of the actual Programme Costs incurred during the Invoicing Period; and
  - (iii) otherwise conforms to the invoicing requirements notified by MPI from time to time;
- (b) the Industry Party shall ensure the Programme Manager provides sufficient detail to enable MPI to determine that the Programme Costs were incurred in accordance with this Agreement (including a letter using the template attached as Appendix B from the Programme Manager attesting to that fact), and so then MPI shall make a payment to the Industry Party within 15 Business Days of its approval of the Tax Invoice; and
- (c) if any Quarterly Report or other report or information shows that MPI paid Funding to cover Programme Costs incurred in any Invoicing Period that were not in fact incurred, then MPI

may deduct the amount of the over-funding from the amount payable under any subsequent Tax Invoice submitted by the Industry Party.

### **End of Term calculations**

8.2 The Parties agree that:

- (a) within  Business Days of the end of the Term, the Industry Party shall provide MPI with a statement of the actual Programme Costs incurred by the Industry Party during the period between the end of the last Invoicing Period and the end of the Term (“**the Final Period**”), and a statement of the amount paid to the Industry Party by MPI in respect of actual or estimated Programme Costs in the Final Period;
- (b) where MPI considers that the actual Programme Costs incurred by the Industry Party in the Final Period are:
  - (i) less than the amount paid to the Industry Party by MPI in that Final Period, MPI shall notify the Industry Party of the difference and the Industry Party shall repay the difference to MPI within 5 Business Days of receiving the notice;
  - (ii) more than the amount paid to the Industry Party by MPI in the Final Period, then the Industry Party may issue a Tax Invoice to MPI for MPI’s share of those Programme Costs. MPI will pay the amount specified in the Tax invoice within 20 Business Days of its receipt, provided that the actual Programme Costs incurred during the Final Period are in line with this Agreement, and the Final Report has been submitted to the satisfaction of MPI.

## **9. FINANCIAL MANAGEMENT**

9.1 The Industry Party will:

- (a) ensure that the Funding and Co-funding remain separate and identifiable from other operational or general funds, so that MPI can verify that the Funding and Co-funding are only being used in accordance with this Agreement;
- (b) document in reasonably accessible form any in-kind contributions provided by the Industry Party and record its value as agreed between the Parties;
- (c) operate and maintain any ledger in accordance with generally accepted accountancy practice and principles within New Zealand;
- (d) keep appropriate accounting and other records of the use of the Funding and the Co-funding (including relevant payslips, invoices, and receipts).

9.2 Where any Funding has been spent other than in accordance with this Agreement, the Industry Party must repay the same to MPI within any timeframe specified by MPI.

## **10. INTELLECTUAL PROPERTY**

- 10.1 This Agreement will not affect the ownership of any Existing Intellectual Property Rights. New Intellectual Property Rights shall be owned, and all Intellectual Property Rights shall be used, licensed, and otherwise managed, in accordance with Schedule 3.
- 10.2 If at any time following the Exclusive Period MPI determines acting reasonably and in good faith that the Industry Party has breached Schedule 3, MPI may provide written notice of the alleged breach to the Industry Party. If the Parties are unable to agree a satisfactory resolution of the alleged breach within 20 Business Days of receipt by the Industry Party of MPI's notice, then subject to clause 16 MPI shall be deemed to have been granted from the date of its notice to the Industry Party a non-exclusive, perpetual, irrevocable, royalty free licence to the Commercial IP (including the right to Commercialise the Commercial IP) and the Non-Commercialised IP.
- 10.3 If the Industry Party becomes subject to an Insolvency Event or if this Agreement is terminated other than pursuant to clauses 14.2 or 14.3, then from the date of that happening:
- (a) where the Industry Party is an owner of Commercial IP or Non-Commercialised IP, ownership of those Intellectual Property Rights shall be deemed assigned to MPI; and
  - (b) where the Industry Party is not the owner, or where the assignment in paragraph (a) is for any reason reversed or otherwise fails to be achieved or perfected, MPI shall be deemed to have been granted by the Industry Party (or the Industry Party shall procure for MPI from any relevant third party) a non-exclusive, perpetual, royalty free licence to use the Commercial IP (including the right to Commercialise the Commercial IP) and the Non-Commercialised IP.

## **11. REPORTING AND AUDIT**

- 11.1 The Industry Party agrees to keep MPI informed and up-to-date on the performance of the Programme, so that it can report on the benefits to New Zealand arising from the Programme, or take appropriate action in accordance with the terms of this Agreement. Without limiting the foregoing, the Industry Party shall provide to the PGG:
- (a) within 20 Business Days of the end of each Quarter, a Quarterly Report in relation to the Programme covering the Quarter. The Industry Party warrants and represents that all Quarterly Reports it provides will be accurate and complete, and provided in a timely manner; and
  - (b) all other reports specified in Schedule 7, at the times required by MPI; and
  - (c) as much notice as possible of its intent to Commercialise the Commercial IP, and immediate written notice when it does first Commercialise the Commercial IP.
- 11.2 The Industry Party will provide MPI with a copy of its audited annual accounts or financial statements.

- 11.3 At any time upon written notice to the Industry Party during the Term and for up to two years thereafter, MPI may at its own cost audit any aspect of the Programme and the Industry Party's compliance with this Agreement. Following receipt of such notice, the Industry Party must provide MPI or its authorised representative all reasonable assistance to enable MPI to fully and accurately complete the audit at a time reasonably agreed between the Parties (and in any event, no later than 20 Business Days after the notice). This shall include providing MPI with access to the Industry Party's, any related party's, and any relevant third party's (including any subcontractor's) premises, equipment, personnel, information, and documents related to the Programme.
- 11.4 In order to monitor the longer term success of the Programme relative to its intended Outcomes, the Industry Party will provide a Post-Programme Report each year after the End Date, for a period of five years.
- 11.5 The Industry Party agrees that each report provided to MPI (including each Quarterly Report, the Final Report, and each Post-Programme Report) will substantially follow the format required by MPI from time to time.

## **12. CONFIDENTIALITY**

- 12.1 The Parties agree to keep all Confidential Information confidential to the Parties.
- 12.2 Notwithstanding clause 12.1:
- (a) either Party may disclose Confidential Information (i) if required by law, (ii) if the information is publicly available without any cause attributable to the disclosing Party, or (iii) to their employees and legal and other professional advisers;
  - (b) the Industry Party may disclose Confidential Information:
    - (i) in accordance with the rules of any registered stock exchange;
    - (ii) to its third party service providers, if (A) MPI has been informed prior to disclosure, (B) the disclosure is necessary to enable the disclosing Party to perform its obligations under this Agreement, and (C) such third party is subject to confidentiality obligations substantially similar to the obligations placed on the Industry Party under this Agreement, but without any further right of disclosure;
  - (c) MPI may disclose Confidential Information (i) pursuant to the Official Information Act 1982, (ii) to Ministers and/or Cabinet, (iii) to other public service departments, state sector agencies, crown entities or agents, (iv) when publicly announcing that MPI has signed this Agreement, (v) in response to a request for information from Ministers or in response to any Parliamentary question from any Member of Parliament, and (vi) otherwise pursuant to MPI's public and administrative law or other legal obligations.
- 12.3 For the avoidance of doubt, unless MPI has first secured that the relevant information will be kept confidential, information released by MPI in accordance with clause 12.2(c) ceases to be

Confidential Information, and the Industry Party agrees that MPI may release that information again at any time in the future without further consulting with the Industry Party or obtaining the Industry Party's prior agreement.

12.4 Within 20 Business Days of the date of this Agreement MPI shall establish an information management plan ("**Communications Plan**") and seek the approval of the Industry Party for that Communications Plan (and the Industry Party shall act reasonably in considering that approval). The principles for communication which will guide the Communications Plan are appended as Schedule 4. For the avoidance of doubt each Party agrees that:

- (a) the other may make public announcements in relation to the Programme using information that is not Confidential Information; and
- (b) after the Communications Plan is approved by the Industry Party, each Party will adhere to the Communications Plan when making any public announcement in relation to the Programme.

### 13. CHANGE EVENTS

13.1 If either Party, acting reasonably, considers that a Change Event has occurred:

- (a) that Party may give notice of that to the other Party accordingly, describing the Change Event in reasonable detail;
- (b) MPI may appoint an Independent Expert (and will promptly notify the Industry Party of that appointment) to provide an independent review and detailed assessment for the Parties regarding the Change Event, and to make recommendations regarding the matters set out in clause 13.2, in which case:
  - (i) MPI shall ensure that every Independent Expert appointed under this Agreement signs a confidentiality agreement on terms the same or substantially similar as those set out in clause 12; and
  - (ii) the Industry Party shall (and shall ensure that all of its subcontractors) provide the Independent Expert with all reasonable assistance to enable the Independent Expert to fully and accurately complete the task that the Independent Expert was appointed to undertake. That assistance will include providing the Independent Expert with all information the Industry Party and subcontractor hold in relation to the Programme, and reasonable access to the Industry Party's and its subcontractor's premises, equipment, and any staff or third parties involved in the Programme;
  - (iii) MPI shall require the Independent Expert to provide a draft report to the PGG and the Industry Party, and will give both an opportunity to provide comments on any such draft report within a reasonable timeframe. MPI shall require the Independent Expert to finish each report after MPI and the Independent Expert have received

and taken into account any comments received, and a copy of the final report will be provided to the PGG and the Industry Party.

(c) MPI may suspend payment of Funding under and in accordance with 7.5(b).

13.2 As soon as practicable following receipt of the Independent Expert's report notice (or, if no Independent Expert was appointed, following receipt of the notice given under clause 13.1(a)) the Parties shall meet to discuss and attempt to agree:

(a) the impact of the Change Event on the Programme, including with reference to the value for money and benefit to New Zealand of the Programme, and any impact of the Change Event on MPI's statutory duties and New Zealand's international obligations;

(b) whether the Programme remains capable of delivery in whole or part; and

(c) how to deal with or manage the Change Event, including any amendments to this Agreement made necessary or desirable by the Change Event.

13.3 Any failure to agree the matters set out in clause 13.1(b) within 30 Business Days from the date the Change Event notice was served or the Independent Expert's report is received (whichever is the later in time) will be a Dispute for the purposes of clause 16.

13.4 MPI may immediately by written notice to the Industry Party terminate this Agreement in whole or in part where the Parties agree or it is finally determined in accordance with clause 16, that, as a result of the Change Event, the Programme or the relevant part of it causes New Zealand to breach its international obligations, or provides minimal or no benefit to New Zealand, or would no longer be or is not likely to be deliverable.

## **14. TERMINATION**

### **Grounds for termination**

14.1 MPI may by written notice terminate this Agreement immediately in whole or in part where the Industry Party:

(a) commits a material breach of this Agreement that cannot be remedied;

(b) commits a breach of this Agreement that can be remedied, but the breach is not remedied to MPI's satisfaction following written notice from MPI specifying the breach and the period within which it must be remedied (which period may not be less than 20 Business Days).

(c) becomes subject to an Insolvency Event;

(d) commits fraud or deliberately misleads MPI;

(e) uses the Funding otherwise than in accordance with this Agreement.

14.2 The Industry Party may by written notice terminate this Agreement immediately where MPI:

- (a) commits a material breach of this Agreement that cannot be remedied;
- (b) commits a breach of this Agreement that can be remedied and where that breach is not remedied to the Industry Party's reasonable satisfaction following written notice from the Industry Party specifying the breach and the period within which it must be remedied (which period may not be less than 20 Business Days).

14.3 If the Funding is withdrawn in full, or is reduced and no variation is agreed pursuant to clause 7.6, then either Party may immediately terminate this Agreement in whole or in part by written notice to the other Party.

#### **Consequences of termination**

14.4 If MPI terminates this Agreement in whole or in part under clause 14.1, then:

- (a) MPI is not liable to pay any further Funding to the Industry Party in respect of the Programme (or the part or parts of the Programme in respect of which this Agreement is terminated); and
- (b) the Industry Party will repay to MPI all Funding received up to the end of the Term in respect of the Programme (or the part or parts of the Programme in respect of which this Agreement is terminated).

**Explanatory note:** MPI is sometimes asked whether clause 14.4(b) is negotiable, since the repayment of all funds at first glance appears to be a potentially harsh remedy. However, this clause is a necessary part of the PGP programme. There are two reasons for this:

- the first is due to contract law – the PGP programme is not a normal commercial arrangement where a breach would allow the usual contractual assessment of damages (putting the non-breaching party in the position it would have been if the contract had been properly performed). Rather: (a) there would be no loss to MPI itself – any loss would be to NZ as a whole, (b) that loss would be nearly impossible to quantify, being a failure to realise expected long-term benefits to the economy, and (c) questions of remoteness (if even possible) would likely mean that no recovery could be made by MPI, given the speculative nature of the PGP generally.
- the second reason is related, but goes to the nature of the PGP – being government funding, it is more akin to an investment towards a set of agreed goals. If a breach of this agreement by the Industry Party (note – not other failures inherent in the programme) means that the agreed programme is not performed and the goals are therefore not achieved, then MPI does not see the rationale for the Industry Party to retain the funding.

14.5 If the Industry Party terminates this Agreement under clause 14.2, or if either Party terminates this Agreement under clause 14.3, MPI will pay to the Industry Party:

- (a) any Funding not already paid in respect of Programme Costs incurred by the Industry Party up to the end of the Term; and
- (b) any Funding not already paid in respect of Programme Costs the Industry Party has not incurred by the end of the Term but is contractually committed to incur and incurs in the 3 months after the end of the Term, provided that the Industry Party submits all claims for such Funding within 10 Business Days of the Industry Party incurring the costs; and

- (c) any reasonable actual costs (excluding damages) that are incurred as a result of the termination of any leases or contracts for employment, goods, or services, in any case which was entered into by the Industry Party solely for the purpose of fulfilling the Programme.

14.6 If this Agreement expires, or if this Agreement is terminated but neither clauses 14.4 nor 14.5 above apply:

- (a) MPI will pay all Funding not already paid in respect of all Programme Costs that the Industry Party has incurred prior to the end of the Term in relation to the Programme or the part or parts of the Programme in respect of which this Agreement is terminated;
- (b) the Industry Party will repay to MPI any Funding received but not spent or contractually committed to pay for Programme Costs in relation to the Programme or the part or parts of the Programme in respect of which this Agreement is terminated; and
- (c) if the amounts of Funding and Co-funding in relation to the Programme or the part or parts of the Programme in respect of which this Agreement is terminated are unequal after taking into account the payments set out above, the Party having paid the lesser amount shall make a balancing payment.

14.7 The Parties agree that the payments provided for under this clause 14:

- (a) shall be calculated as soon as reasonably practicable following the end of the Term and without double counting;
- (b) shall be paid no later than 20 Business Days following the end of the Term or the determination of the amounts due, whichever is the later; and
- (c) are without prejudice to each Party's right to fully recover its actual damages (if any, and if different) in accordance with this Agreement, but are subject to the limits on liability set out in clause 15.

## **15. LIABILITY, INDEMNITIES, AND INSURANCE**

15.1 Neither Party shall be liable to the other for any consequential or indirect losses of any nature, nor for any loss of profits or loss of business, in either case sustained by the other Party howsoever arising including by reason of breach of contract, breach of statutory duty, in tort (including negligence), at common law, in equity or otherwise.

15.2 The liability of each Party in respect of any single claim or any series of related claims at common law, in equity, for breach of contract or statutory duty, in tort (including negligence) or otherwise, howsoever arising under or in relation to this Agreement shall not exceed the maximum amount set out in Schedule 1.

15.3 The limitations and restrictions set out in clause 15.1 and 15.2 do not apply in respect of the Industry Party's liability to MPI for:

- (a) any loss MPI incurs as a result of the infringement of any third party's Intellectual Property Rights used in connection with this Agreement;
- (b) damage to property or personal injury;
- (c) fraud, gross negligence or malicious wrongdoing;
- (d) breach of clause 12; or
- (e) a repayment made under clause 14.4.

15.4 The Industry Party shall indemnify and keep MPI indemnified from and against any claim, liability, damage, loss or expense, including legal fees, costs, and disbursements ("**Loss**") brought or threatened against or incurred by MPI, arising from or in connection with this Agreement except to the extent that the Loss was caused by an act or omission of MPI (other than the provision of Funding by MPI). Subject to MPI obtaining the Solicitor-General's consent, MPI shall permit the Industry Party to control and conduct the defence or settlement of the claim at its cost and in MPI's name.

15.5 The Industry Party must ensure that its risks of performing its obligations under this Agreement are adequately covered, including by insurance where possible. Without limiting or necessarily satisfying that obligation, the Industry Party must at least take out any insurance cover agreed in Schedule 1, and maintain it during the Term and for a period of three years thereafter. Within 10 Business Days of a request from MPI, the Industry Party must provide a certificate to MPI proving that such insurance is current.

## 16. DISPUTE RESOLUTION

16.1 Either party may give notice to the other specifying any dispute or difference of opinion arising out of or in connection with this Agreement, including any dispute as to the validity of this Agreement ("**Dispute**").

16.2 A Party claiming that a Dispute has arisen shall give written notice to the other Party setting out its view of the Dispute in reasonable detail and its view as to whether expert determination, mediation, arbitration, or some other forum or process is the most appropriate method for resolving the dispute. The parties will endeavour to agree a forum or process to resolve the Dispute. To the extent practicable, each Party shall continue to comply with its obligations under this Agreement notwithstanding any Dispute.

16.3 Notwithstanding any other provision of this clause 16, either Party may apply to the courts in respect of any Dispute at any time. The Parties acknowledge and agree that damages may not always be a sufficient remedy for the other Party in respect of certain breaches of this Agreement and that any Party shall be entitled to pursue interim and equitable remedies from appropriate courts.

## 17. NOTICES

- 17.1 Any notice or other communication under this Agreement will be deemed to be validly given if in writing and delivered by hand, registered mail, national post or international post, facsimile, or email (subject to the remainder of this clause 17) to the address specified in Schedule 1 (or any other address notified by the relevant Party from time to time).
- 17.2 Any notice will be deemed to have been given on the date when actually delivered personally or by registered mail, on the second Business Day following posting, on the seventh Business Day following international posting, on the date sent by facsimile transmission if transmitted before 5:00 pm or on the next Business Day if transmitted after 5:00 pm, and on the date that receipt of an emailed notice is acknowledged by the recipient personally (that is, not by any automatically generated system email).
- 17.3 The Parties agree that no notice required or permitted to be given pursuant to clause 14 (Termination) or clause 16 (Dispute Resolution) may be given by email.

## 18. HEALTH & SAFETY

**Explanatory note:** MPI uses a risk based approach to health and safety. An appropriate health and safety clause shall be inserted following a health and safety risk assessment of the particular PGP proposal.

## 19. GENERAL

### Entire agreement

- 19.1 The Parties agree that this Agreement, including the schedules and any documents incorporated by reference (as amended from time to time), represents the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

### Survival of clauses

- 19.2 Expiry or termination of this Agreement for any reason does not affect the validity and enforceability of this clause and clauses 10 to 12 and 14 to 18. Those provisions shall survive termination of this Agreement, together with any other provisions which are expressed or are by their nature designed to survive termination, which give effect to or relate to those provisions, or which are required to give effect to such termination or the consequences of such termination.

### Force majeure

- 19.3 Notwithstanding anything to the contrary in this Agreement, if any Party's performance of any of the obligations set out in this Agreement is prevented or delayed by any act or event of Force Majeure, then that Party will be excused from such performance for so long as the cause preventing or delaying performance persists, provided that:

- (a) such Party (i) notifies and keeps the PGG regularly informed of the status of such act or event of Force Majeure; (ii) uses all reasonable endeavours to avoid, remove and/or

mitigate such cause or non-performance or delay; and (iii) resumes performance whenever such cause is avoided or removed; and

- (b) either Party may terminate this agreement by notice to the other if the cause preventing or delaying performance persists for more than 180 Business Days.

#### **Nature of relationship**

- 19.4 This Agreement does not create a relationship between the Parties of employer and employee, principal and agent, partners, or joint ventures.

#### **Assignment**

- 19.5 Except as otherwise provided for in this Agreement, no Party shall directly or indirectly assign, transfer, mortgage, charge, pledge or otherwise dispose of any of its rights or interests in under or in connection with this Agreement, except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). Any change affecting Control of a Party will be deemed a transfer and an assignment, and will be a material breach of this Agreement if prior consent is not obtained.

#### **Waiver**

- 19.6 Failure or omission by any Party at any time to enforce or require strict or timely compliance with a term or condition of this Agreement will not affect or impair the term or condition in any way or any rights or remedies any Party may have in respect of any breach of the term or condition. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party giving such waiver. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

#### **Variations**

- 19.7 This Agreement may only be amended by the written agreement of the Parties. The Parties agree to provide all proposed amendments to the PGG for comment and to have regard to the PGG's comments before making the amendment.

#### **Partial invalidity**

- 19.8 If any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason then (a) it shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement and (b) the Parties shall seek to agree a new provision to replace such unenforceable, illegal or invalid provision that, as far as possible, accomplishes the original purpose.

#### **Counterparts**

19.9 This Agreement may be executed in two or more counterpart copies, including by email or facsimile, each of which will be deemed an original, and all of which together will constitute the same instrument.

**Governing law and jurisdiction**

19.10 This Agreement is governed by the laws of New Zealand and the Parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

**EXECUTION**

Executed as a deed for and on behalf of **Her Majesty the Queen in right of New Zealand** acting by and through the **Ministry for Primary Industries**

Executed as a deed by the **Industry Party** by its duly authorised officer:

Name:

---

---

Signature:

---

---

Title:

---

---

Date:

---

---

**Witness**

**Witness**

Name:

---

---

Signature:

---

---

Occupation:

---

---

Place of usual residence:

---

---

Date:

---

---

**SCHEDULE 1  
CONTRACT DETAILS**

<b>Name of Programme</b>	[insert]		
<b>Industry Party</b>	[insert]		
<b>Contract ID</b>	[insert]		
<b>Start Date</b>	[insert]		
<b>End Date</b>	[insert]		
<b>Total Funding</b>	[insert]		
<b>Total Co-funding</b>	[insert]		
<b>Maximum amount of re-directed funding</b>	[insert]		
<b>Invoicing Period</b>	[Monthly] or [Quarterly]		
<b>Maximum liability of the Industry Party</b>	[\$[insert]]		
<b>Maximum liability of MPI</b>	[\$[insert]]		
<b>Industry Party's insurance</b>	<i>Policy type</i>	<i>Minimum cover</i>	<i>Maximum excess</i>
	Professional indemnity	[\$[amount]]	[\$[amount]]
	Public liability	[\$[amount]]	[\$[amount]]
	Other	[\$[amount]]	[\$[amount]]
<b>Industry Party's contact and address for notices</b>	[insert]		
<b>MPI's contact and address for notices</b>	[insert]		
<b>Critical personnel</b> (clause 5.2(c))	[insert] <i>Drafting note: this is for listing any personnel critical to the success of the Programme, who can't be removed from the Programme without the PGG's approval.</i>		

**SCHEDULE 2**  
**PROGRAMME GOVERNANCE GROUP – TERMS OF REFERENCE**

(Clause 5.4)

**Additional defined terms**

"**Quorum**" means the quorum of the PGG and shall consist of at least 1 Member of each of the Parties and the chairperson of the PGG;

**PGG**

1. The Parties acknowledge and agree that they must undertake the governance of the Programme in recognition of the combined use of both private and public funds to achieve the Programme, which reflects the expectations of the PGP initiative.
2. The Parties agree that the PGG shall focus on the delivery of the Outcomes and ensure that the implementation of the Programme is consistent with the achievement of the Outcomes.
3. The Parties agree that the PGG will perform its function consistently with principles of transparency, recognition of public and private objectives of the Parties, auditability, accountability, flexibility, openness, advance notification of issues, good faith, and no surprises.
4. Whenever this Agreement requires the PGG to do anything, each Party shall take all steps reasonably available to it to ensure that its representatives on the PGG take all reasonably necessary steps to do that thing.

**Members**

5. The Industry Party recognises that the MPI Members have obligations under the Public Finance Act 1989 and the State Sector Act 1988 to ensure transparent use of public funds to meet identifiable outcomes, and are responsible for providing advice on the progress of the Programme to MPI.
6. MPI recognises that the Industry Party Members have reporting and performance obligations to the Industry Party's board, and have responsibility for monitoring and overseeing the performance of managers appointed by the Industry Party to assist with the delivery of the Programme.
7. The PGG shall comprise two Members from each of the Parties, and an independent chairperson. Each Party may also send an additional representative (as an observer, expert, or specialist) to attend any meetings of the PGG.
8. Each Party:
  - (a) shall notify the other Party of its Members of the PGG as soon as reasonably practicable following the Start Date;

- (b) may change its permanent Members of the PGG by notice to the other Party. Each Party acknowledges that the nature and stage of the Programme may require a Party to change its Member(s) from time to time to those with different skills and experience; and
- (c) may, where one of its permanent Members cannot attend a meeting, by notice to the other Party, send a substitute Member to the meeting, who shall have the same rights, powers and obligations as the permanent Member for whom they are substituting, provided that either Party may object to a Member for the other Party (including any substitute Member) being appointed to, or remaining a Member of, the PGG if it believes, on reasonable grounds, that:
  - (i) the reputation or delivery of the Programme may be jeopardised if the person in question becomes or remains a Member of the PGG; or
  - (ii) the person is not a fit and proper person to become or remain a Member of the PGG, including because the person in question is involved with, or is in some way linked to, a competitor organisation of the Industry Party.
- (d) ensure that each Member conducts him or herself in accordance with any guidance document reasonably notified by MPI from time to time.

### **PGG Obligations**

#### 9. The PGG will:

- (a) ensure that the Programme is managed in accordance with the annual work programme and forecast budget, as set out in the Annual Plan, with a focus on cumulative high level Milestones for the ultimate achievement and delivery of the Outcomes;
- (b) provide guidance to the Programme Manager, if requested, on the establishment of:
  - (i) reporting process and practices to the PGG, in accordance with clauses 11 (Reporting & Audit) and 18 (Health and Safety) of this Agreement; and
  - (ii) Programme operating systems and procedures.
- (c) include health and safety as a standard agenda item for discussion at PGG meetings;
- (d) approve the key indicators and data requirements needed to support evaluating the impact of the Programme;
- (e) seek advice from industry advisory bodies as the PGG considers appropriate;
- (f) maintain the Outcome Logic Model (and advise the parties when an amendment to this Agreement is required to update the Outcome Logic Model) to ensure it reflects up to date information and assumptions that may affect the delivery of the Programme;
- (g) review and approve each Annual Plan in accordance with clause 4.1 of this Agreement, and review annual audited accounts in relation to the Programme;

- (h) review and approve Quarterly Reports and provide them to MPI within 6 weeks of the end of the Quarter;
- (i) direct and re-direct Funding and Co-funding in accordance with clause 7.8 of this Agreement;
- (j) if requested by either Party, approve public communications relating to the Programme as a whole;
- (k) review budgets at least annually and expenditure against budget Quarterly and ensure that the Funding and Co-funding is used in accordance with this Agreement;
- (l) seek to help resolve any disagreements between the Parties;
- (m) procure, on such terms as may be agreed between the Parties, a progress review of the Programme, anticipated in year [insert year no earlier than mid-way through the programme] and determine the exact timing and terms of reference for such review;
- (n) maintain and regularly assess, monitor, and review a high level risk, issues and dependencies register and a register of critical personnel in relation to the Programme;
- (o) maintain an IP register, and update that register at the end of each Quarter, with any New Intellectual Property developed as advised by the Industry Party as being relevant to the Programme;
- (p) maintain a register of Commercial IP and Non-Commercialised IP, and update that register regularly as the Commercial IP becomes Commercialised.

#### **Discretion in relation to Intellectual Property Rights**

10. The PGG may, in relation to Intellectual Property Rights:

- (a) address any issues about the management of Intellectual Property Rights, and ensure that use and management of all Intellectual Property Rights is consistent with the aims of the Programme and this Agreement;
- (b) specify terms and conditions relating to Intellectual Property Rights that shall be part of (i) any agreement between the Industry Party and a third party engaged to perform part of the Programme, and (ii) any licence granted by the Industry Party in accordance with Schedule 3;
- (c) where satisfied that the final report provided by the Industry Party in accordance with Schedule 3 is acceptable, approve the final report, or where not acceptable, work with the Industry Party in order to make it acceptable for approval;
- (d) provide direction regarding the management of Intellectual Property Rights following the completion of the Programme in accordance with Schedule 3.

#### **Meeting frequency**

11. At the PGG's first meeting, the Members shall agree and set a schedule of subsequent meetings, no less frequently than once each Quarter, which will be based on the reporting and planning requirements of the Programme ("**Meeting Schedule**"). A written copy of the Meeting Schedule shall be forwarded to each Member promptly following the first meeting.
12. Notwithstanding the Meeting Schedule, any Member may ask the Chair to call a meeting of the PGG on reasonable notice to the other Members.

### **Chairperson**

13. The Parties shall appoint an independent chairperson of the PGG. The chairperson shall (i) preside at all meetings if he or she is present, and if not present then the Members present shall appoint one of their number to preside (ii) undertake such other duties as agreed by the PGG from time to time.
14. The chairperson shall not preside in any part of a PGG meeting that is considering a matter in which the chairperson has an interest. If the chairperson has an interest in any matter, he or she must notify the other Members before the PGG considers the matter. Upon receiving notification, the other Members present shall appoint an alternative Member to preside at that part of the meeting in which the chairperson cannot preside.

### **Chair Obligations**

15. The Chair will:
  - (a) act in the best interests of the Programme and be impartial to any diverging interests of the Parties;
  - (b) endeavour to manage conflicts of interests appropriately as they arise;
  - (c) conduct PGG meetings in accordance with the terms of this Schedule 2;
  - (d) ensure matters for decision are appropriately discussed, understood, and recorded by the PGG;
  - (e) agree PGG agendas (in consultation with the Programme Manager) to ensure appropriate matters are put to the PGG;
  - (f) initiate periodic self-review of the PGG's governance performance against its obligations as set out in this Schedule 2;
  - (g) lead representations and presentations to the Parties, and to external governance and advisory bodies, and seek collaboration with other industry parties in relation to other PGP programmes where appropriate;
  - (h) engage with the Parties in relation to the appointment of the Members and their performance;

- (i) periodically have meetings with the Parties outside the PGG as he or she deems necessary.

**Quorum**

- 16. The PGG must have a Quorum in order to undertake business and make decisions. A meeting of the PGG may be held by a Quorum:
  - (a) being assembled together at the time and place appointed for the meeting; or
  - (b) by means of audio, audio and visual, or electronic communication, provided that all of the Members who wish to participate in the meeting:
    - (i) have access to the technology needed to participate in the meeting; and
    - (ii) can simultaneously communicate with each other throughout the meeting.

**Consensus**

- 17. The PGG may only resolve matters and make decisions by consensus. If the Members are not able to reach a consensus in relation to any matter, then the Parties may instead attempt to agree the matter outside the forum of the PGG, including in accordance with clause 16 of this Agreement.

**SCHEDULE 3**  
**PRINCIPLES FOR IP MANAGEMENT**

(Clause 10)

**Definitions**

1. In this Schedule 3, unless the context requires otherwise:

"**Exclusive Period**" means [X] years after the point at which the Commercial IP begins to be Commercialised.

**Principles**

2. Where the Parties have any discretion about how to exercise their rights or carry out their obligations with respect to any Intellectual Property Rights, they agree to exercise that discretion in accordance with the following guiding principles (in descending order of priority):
- (a) the benefit to and/or within New Zealand (including any spillover benefits) should be maximised, in recognition of the origins of the Funding;
  - (b) the Parties should act consistently with the Objectives;
  - (c) in the case of MPI, MPI does not seek to own any New Intellectual Property Rights (except as otherwise provided for in this Agreement).

**Existing IP**

3. The Parties must make their Existing Intellectual Property Rights described in Attachment 1 to this Schedule 3 available for the purposes of the Programme.
4. Where a third party is engaged to perform part of the Programme and brings Existing Intellectual Property Rights to the Programme, the Industry Party shall negotiate terms and conditions with the third party that includes any terms and conditions required by the PGG in accordance with Schedule 2.

**New IP**

5. All New Intellectual Property Rights will be owned by the Industry Party.
6. The Industry Party will not deal with the New Intellectual Property Rights in a manner that materially reduces the benefit of the Programme to New Zealand.

**Commercialisation**

7. The Industry Party has the exclusive right to Commercialise Commercial IP during the Exclusive Period. The Industry Party will exercise its best endeavours to Commercialise as soon as practicable any Intellectual Property that the Industry Party is reasonably capable of Commercialising.
8. However, the Parties recognise that the Industry Party will not be reasonably capable of Commercialising all Intellectual Property and that the Programme may therefore result in Non-Commercialised IP. The Industry Party agrees that within 20 Business Days of the End Date, the Industry Party will provide MPI with a document describing all Non-Commercialised IP, for MPI to make publically available, which is sufficiently detailed for a well-informed third party to be able to assess the nature of the Non-Commercialised IP.

9. Following the Exclusive Period (for Commercial IP) and following the End Date (for Non-Commercialised IP):
  - (a) MPI may actively promote the Commercial IP and Non-Commercialised IP, and the Industry Party shall provide reasonable assistance to enable MPI to undertake such promotion; and
  - (b) the Industry Party shall actively seek to licence to third parties the right to use the Commercial IP and Non-Commercialised IP in New Zealand. The Industry Party shall ensure that:
    - (i) the license is non-exclusive;
    - (ii) the terms and conditions of the licence are reasonable and reflect normal commercial terms, provided that the licence must include any terms and conditions required by the PGG pursuant to Schedule 2;
    - (iii) the licence does not in any way prejudice the current or future supply of the products and services to New Zealand's primary sector;
    - (iv) the licence prevents the licensee from dealing with the Commercial IP or Non-Commercialised IP in any way that materially reduces the benefit of the Programme to New Zealand.
10. The Industry Party may grant licences to use the Commercial IP and Non-Commercialised IP overseas provided that the licence:
  - (a) does not in any way prejudice the current or future supply of the products and services to New Zealand farmers and growers; or
  - (b) prevents the licensee from dealing with the Commercial IP or Non-Commercialised IP in any way that materially reduces the benefit of the Programme to New Zealand.
11. The Industry Party may retain all royalties and other payments made by licensees under any licence issued by the Industry Party.

#### **Management of Intellectual Property Rights**

12. The Industry Party will be responsible for the protection, enforcement and defence of its Existing Intellectual Property Rights and New Intellectual Property Rights, and MPI acknowledges that the exact manner in which that occurs is a matter for the Industry Party's sole discretion (however, if MPI expresses a view as to that manner, then the Industry Party shall reasonably consider those views).

#### **IP reporting**

13. The Industry Party will present an annual report to the PGG, containing an annual review of all IP outputs, including but not limited to any patents or licences, resulting from the Programme.
14. Where MPI has any concerns about the report:
  - (a) MPI will raise those concerns with the Industry Party
  - (b) the Industry Party must address MPI's reasonable concerns so that the PGG can approve the report; and

(c) where the PGG does not approve the report, the Industry Party shall work with the PGG until such approval is provided.

15. This Schedule 3 survives the expiry or termination of this Agreement.

**SCHEDULE 4**  
**PRINCIPLES FOR COMMUNICATIONS PLAN**

(Clause 12)

1. This Schedule is subject to anything to the contrary elsewhere in this Agreement.

**Principles relating to MPI's holding of Information**

2. The following principles will guide MPI's treatment of Confidential Information:
  - (a) access to Confidential Information will be limited to authorised individuals with a need to know that information;
  - (b) authorised individuals shall not include any person employed by or associated with a competitor organisation of the Industry Party; and
  - (c) all employees, contractors and third parties operating on behalf of MPI shall be apprised of their responsibilities in protecting the Industry Party's information.

**Principles in relation to Parliamentary Questions**

3. Government departments including MPI can be called upon by Ministers to inform answers to Parliamentary questions. Twelve questions for oral answer are presented to Ministers on most days that Parliament sits. In addition, members may pose questions to Ministers for written answer. Occasionally, an urgent question may be asked.
4. Where MPI receives a request for information to inform an answer to a Parliamentary question in relation to the Programme, if MPI determines it is not possible or practical to consult the Industry Party on the response, then MPI will take reasonable steps to ensure that:
  - (a) the Industry Party receives a copy of the response as soon as practicable;
  - (b) commercially sensitive information is protected to the maximum extent practicable;
  - (c) the release makes use of publicly available information to avoid or mitigate the need to disclose Confidential Information; and
  - (d) the information provided in the response is within the scope of the question.
5. Circumstances under which it may not be possible or practical to consult prior to responding to the request for information to inform an answer to a Parliamentary question include where:
  - (a) the time available to respond to the request does not allow for consultation; or
  - (b) MPI is under instruction not to consult.

**Principles in relation to requests under the Official Information Act 1982**

6. The Official Information Act 1982 (“**OIA**”) provides that all information held by MPI (including information provided by the Industry Party relating to the Programme) must be made publicly available on request, unless good reason exists under the OIA for withholding it.
7. Any person in New Zealand may make such a request. Where MPI has received a request under the OIA, MPI will process the request in accordance with its obligations under the OIA and will give due consideration to whether good reason exists to refuse the request in whole or in part. MPI will provide the Industry Party with copies of the material finally released.

**Principles for release of information in other circumstances**

8. If paragraphs 3 to 7 above do not apply, then the following principles will guide MPI when it receives a request for information other than Confidential Information:
  - (a) Where possible and practical MPI will inform the Industry Party’s Members of the PGG, and provide at least 48 hours from the time of notification by MPI for the Industry Party to submit representations on why the relevant information should not be released.
  - (b) MPI will keep the Industry Party’s members of the PGG reasonably informed in respect of any communications or releases of the information by MPI.
  - (c) MPI will not release the relevant information to any third party without the prior written consent (which may be given by email) of the Industry Party.

**SCHEDULE 5  
THE PROGRAMME**

**Outcome Logic Model**

[insert]

**Outcomes**

[insert]

**Milestones and Objectives**

[insert]

**SCHEDULE 6**  
**GO-EARLY FUNDING**

(clause 7.2(c))

The following Funding is specified for the purposes of clause 7.2(c):

- [insert]
- [insert]
- [insert]

**SCHEDULE 7**  
**REPORTING and TEMPLATES**

- 7.1 Milestone Template**
- 7.2 Risks Register Template**
- 7.3 Key Performance Indicator Template**
- 7.4 Intellectual Property Template**
- 7.5 Annual Plan Template**
- 7.6 Quarterly Report Template**
- 7.7 Final Report Template**
- 7.7 Post Programme Report Template**

**APPENDIX A  
BUSINESS CASE**

**APPENDIX B**  
**ATTESTATION LETTER**

[Insert Date]

[Insert Investment Manager]  
Investment Manager,  
Ministry for Primary Industries  
Pastoral House, 25 the Terrace,  
PO Box 2525 Wellington  
New Zealand

---

**Subject: Attestation – Programme Costs Incurred**

---

Dear [insert Investment Manager],

The Ministry for Primary Industries (MPI) and [insert Industry Party] (the “Industry Party”) have entered into a Primary Growth Partnership Agreement for [insert programme name], dated XXXX (the “Agreement”). Clause 8.1 of the Agreement requires the Industry Party to attest that the Programme Costs were incurred in accordance with the Agreement.

Now therefore I hereby confirm on behalf of the Industry Party that:

1. the Industry Party has contributed funding (“Co-funding”) to the Programme in accordance with the Agreement, and as notified and approved in quarterly reporting;
2. the funds claimed by the Industry Party from MPI, and the Co-funding, have been used solely and specifically to undertake and meet the costs of the Programme;
3. such funding and the Co-funding have been managed through specific accounts and ledgers so as to remain identifiable from other operational or general funds;
4. all reports provided to MPI are true and representative of the Programme; and
5. the Industry Party has informed MPI of any information, circumstances, or events that have arisen or are likely to arise that have or will likely have a material effect on the delivery of the Programme (or any material Objective or Milestone of the Programme) such that the value for money or benefit to New Zealand from the Programme is, or is likely to be, materially reduced.

[Insert Signatory]