



Pacific  
Community  
Communauté  
du Pacifique

[insert Partner's logo]

Agreement n° [insert Ref number issued by Legal]

## COLLABORATION AGREEMENT

BETWEEN

**The Pacific Community,**

AND

**[Insert name of the Partner]**

**THIS AGREEMENT** is made between the Parties on the date that the last of the Parties executes this Agreement.

**BETWEEN:** **The Pacific Community (SPC)**, an intergovernmental organisation founded by treaty (the Canberra Agreement) in 1947, and owned and governed by 27 member countries and territories to serve the development, scientific and technical needs of the Pacific region;

**AND:** **[INSERT PARTNER DETAILS] (Collaborating Organisation)**

*Individually referred to as a 'Party' and together referred to as 'the Parties'.*

### RECITALS

- A.** **SPC and the Collaborating Organisation** wish to carry out the project, details of which are set out in **Schedule 1** ("the Project").
- B.** The Project will be supported by a grant from the New Zealand Ministry of Foreign Affairs and Trade (MFAT) with the Grant Funding Arrangement for the Activity Number: ACT-0103048 for "*Climate Science for Ensuring Pacific Tuna Access*" ("Grant Arrangement").
- C.** SPC and the Collaborating Organisation have each agreed to enter into this Agreement in compliance with the relevant conditions of the Grant Arrangement which are encompassed in this Agreement.
- D.** The Parties have agreed to perform the Project subject to the terms and conditions of this Agreement.

**NOW THEREFORE**, the Parties have agreed as follows:

Initials SPC:

Initials Partner:

## 1. DEFINITIONS AND INTERPRETATION

### Definitions

1.1. Unless otherwise stated in this Agreement, it will be construed in accordance with the definitions provided in the Grant Arrangement, a copy of which is provided in **Schedule 5**.

1.2. In this Agreement the following definitions apply:

**Agreement** means this Agreement, including any Schedules, and any amendment to it, agreed to in writing by the Parties.

**Background IP** means pre-existing or independently developed Intellectual Property which a Party makes available for the purposes of the Project.

**Collaboration Committee** means the committee responsible for setting collaboration priorities, timescales and overall costs.

**Collaborator Materials** means information, materials or data necessary to carry out the Project, including any Collaborator Materials listed in **Schedule 6**.

**Commencement Date** means the date the Project commences.

**Completion Date** means the completion date as set out in **Schedule 1**.

**Confidential Information** means the confidential subject matter of financial information and other commercially valuable or private or secret or protected information in whatever form, unpatented inventions, trade secrets, formulae, know-how, drawings, works, improvements, concepts, ideas, designs, a Party's data, biological materials, chemical compounds and formulae, samples and other materials of whatever description or form, whether written or oral which a Party claims is confidential to itself or protected and excludes information which:

- (a) is already legally in the public domain, or after the date of this Agreement becomes part of the public domain otherwise than as a result of unauthorised disclosure by the recipient Party;
- (b) is or which becomes available to the recipient Party from a third party lawfully in possession of such information and who has the lawful power to disclose such information to the recipient Party;
- (c) is rightfully known by the recipient Party (as proven by its written record) prior to the date of disclosure to it pursuant to the terms of this Agreement; or
- (d) which is independently developed by an employee of the recipient Party who has no knowledge of the disclosure of it pursuant to the terms of this Agreement.

**Contributions** means each Party's contributions to the Project, including the cash, information, Collaborator Materials or data necessary to carry out the Project as identified in the Schedules.

**Data** means the qualitative and quantitative information collected during research and surveys and compiled in electronic formats for analysis (e.g., datasets), all of which qualifies as "low risk".

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**Grant Arrangement** means the grant funding arrangement between the New Zealand Ministry of Foreign Affairs and Trade (MFAT) and SPC regarding funding for the Project.

**Improvement** means modification, enhancement, adaptation or improvements of Background IP or Project IP that cannot be used without infringing the intellectual property rights in the underlying Background IP or Project IP.

**Intellectual Property or IP** means statutory and other rights in respect of inventions, patents, registered and unregistered designs, registered and unregistered trademarks or applications thereof, circuit layouts, copyright, scientific discoveries, know-how, and all other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation, 1967.

**Party** means SPC or the Collaborating Organisation, and **Parties** means SPC and the Collaborating Organisation.

**Project** means the activities to be carried out in accordance with this Agreement as specified in the Project Proposal provided under **Schedule 1**.

**Project IP** means all Intellectual Property created, resulting from or arising directly in the course of carrying out the Project.

**Project Start Date** means the date on which the Project commences and Funds are distributed.

**Schedule** means a schedule to this Agreement.

**Services** means the services and/or supply of any report to be provided by the Collaborating Organisation arising from the Project as mutually agreed in writing between the Parties from time to time and includes the deliverables in the Schedules.

**Term** means the period set out in clause 2.

### 1.3. INTERPRETATION

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.3.1. written notice may be sent to a Party at their address to the contact details set out in **Schedule 4**;
- 1.3.2. a reference in this Agreement or to any other agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- 1.3.3. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after this Agreement;
- 1.3.4. the word 'person' includes an individual, a body corporate, a trust, an agency and other body;
- 1.3.5. a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns;
- 1.3.6. this Agreement is not to be construed against a Party merely because that Party was responsible for preparing it;
- 1.3.7. words importing the singular shall include the plural (and vice versa) and words denoting a given gender shall include all other genders;

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- 1.3.8. any schedules and attachments referenced in this Agreement, form part of this Agreement; and
- 1.3.9. headings are for convenience only and shall not affect the interpretation of the Agreement.

## **2. TERM**

- 2.1.** This Agreement is made between the Parties on the date that the last of the Party executes this Agreement, and continues until the Completion Date, unless terminated earlier in accordance with clause 14.

## **3. PERFORMANCE OF THE PROJECT**

- 3.1.** Each Party agrees to:
  - 3.1.1. carry out the Project in a diligent and competent manner in accordance with this Agreement including as set out in the Schedules; and
  - 3.1.2. use all reasonable efforts to achieve the deliverables set out in the Schedules.
- 3.2.** The Collaborating Organisation agrees to make available to SPC the Collaborator Materials. In making available the Collaborator Materials, the Collaborating Organisation will use reasonable endeavours to ensure that to the best of its knowledge at the time of providing the Collaborator Materials to SPC:
  - 3.2.1. it is entitled to supply the Collaborator Materials to SPC for the purpose of this Agreement; and
  - 3.2.2. the use of the Collaborator Materials in connection with this Agreement is lawful and all required consents, permissions or authorisations relating to such use have been obtained.
- 3.3.** Where approval of an appropriate ethics and/or biosafety or any other body is required by either Party, or there are other applicable regulations or policy governing the Project, no work shall commence until the required approvals have been granted.
- 3.4.** The Collaborating Organisation agrees that:
  - 3.4.1. it shall undertake its roles and responsibilities in full compliance with this Agreement; and
  - 3.4.2. it shall assist SPC to comply with the terms of the Grant Arrangement and will not do anything which will cause SPC to be in breach of SPC's obligations under the Grant Arrangement.
- 3.5.** Unless otherwise agreed in writing, the Parties acknowledge and agree that should the Grant Arrangement expire or be terminated, this Agreement will remain in force and effect on the basis that immediately prior to expiration or termination of the Grant Arrangement, such parts thereof which are relevant to this Agreement, are incorporated into this Agreement.

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- 3.6.** A Party may subcontract the performance of any part of the Project only with the prior written consent of the other Party, such consent not to be unreasonably withheld, and the Party subcontracting remains fully responsible for fulfilling its obligations under this Agreement.
- 3.7.** Each Party will:
- 3.7.1. make decisions that are required to be made in good faith and in the best interest of each of the Parties and the Project; and
  - 3.7.2. use its best endeavours to ensure that its employees, officers, and/or agents, while on the premises or under the supervision of another Party comply in all respects with the host organisation's regulations, requirements, codes or instructions including those relating to health, safety and security.
- 3.8.** The Collaborating Organisation warrant that there is no Conflict of Interest that exists at the date of signing this Agreement. The Collaborating Organisation will promptly disclose in writing to SPC any Conflict of Interest which may arise during the Project and take such steps as SPC may reasonably require to resolve or otherwise deal with the Conflict of Interest.

#### **4. CONTRIBUTIONS**

- 4.1.** In consideration for the conduct of the Project, each Party agrees to provide the Contributions to the Project in the time and manner set out in **Schedules 2 and 3**.
- 4.2.** If applicable, the Collaborating Organisation will be paid the amount set out in **Schedules 2 and 3** within thirty (30) days of receipt by SPC of a valid invoice, subject always to SPC receiving the relevant funding in relation to the Project under the Grant Arrangement.
- 4.3.** If requested by SPC, the Collaborating Organisation will provide to SPC a statement in an agreed form certifying its Contributions made with respect to the Project.
- 4.4.** Funds shall be expended in accordance with this Agreement and the Grant Arrangement. If there is any inconsistency between this Agreement and the Grant Arrangement, the provisions of this Agreement shall prevail to the extent of that inconsistency.
- 4.5.** Each Party must maintain reasonable, up to date and accurate records regarding the conduct and conclusions of its part of the Project and its respective Contributions, and if requested by SPC, permit those records to be examined and copies or extracts to be taken by SPC for the purpose of verifying the records, including for audit purposes, and shall supply such other information as may be reasonably necessary or proper to enable the Contributions to be ascertained and verified.
- 4.6.** The Collaborating Organisation will provide a financial acquittal, addressed to the SPC contact (contact details in **Schedule 4**) to enable SPC to meet its reporting and financial management obligations under the Grant Arrangement.
- 4.7.** In making available its Contribution, each Party will use reasonable endeavours to ensure that to the best of its knowledge at the time of making its Contribution:

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- 4.7.1. it is entitled to supply the Contributions to the other Party for the purpose of this Agreement; and
- 4.7.2. the use of the Contributions in connection with this Agreement is lawful and all required consents, permissions or authorisations relating to such use have been obtained.

## **5. BACKGROUND INTELLECTUAL PROPERTY**

- 5.1. The ownership of Background IP remains with the Party which made the Background IP available to the Project.
- 5.2. Ownership of any Improvement of Background IP shall always belong to the owner of the Background IP unless the Improvement is the Project IP which will then vest as specified in clause 6.
- 5.3. The Parties each grant to each other a royalty free, non-exclusive licence to use the Background IP solely for the purposes of carrying out the Project or for non-commercial use.
- 5.4. A Party disclosing Background IP under this clause 5 warrants or represents that the Background IP:
  - 5.4.1. is suitable for its use or application;
  - 5.4.2. has certain qualities of accuracy, or precision; or
  - 5.4.3. does not infringe any third party's Intellectual Property rights.

## **6. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 6.1. The Parties agree that all rights, title and interest in the Project IP, including but not limited to patents, copyrights and trademarks will be jointly owned by SPC and the Collaborating Organisation. Each Party may make use of the above-mentioned rights without the agreement of the other Party, except in case of an exclusive or non-exclusive license to a third party, for which the agreement of both SPC and the Collaborating Organisation shall be needed.
- 6.2. The Collaborating Organisation acknowledge and agree:
  - 6.2.1. that SPC may enter into separate agreements with other organisations for the purpose of implementing the Project; and
  - 6.2.2. SPC may grant to those organisations exclusive or non-exclusive license subject to clause 6.1.
- 6.3. To the extent information contained in a report is required to be provided under the Grant Arrangement, the Collaborating Organisation hereby grants the necessary consents sufficient to allow SPC under the Grant Arrangement to deal with the information or the relevant report in accordance with the Grant Arrangement (including, without limitation, ensuring its employees, contractors and agent do the same).
- 6.4. In the event that Project IP has commercial potential, in good faith and using best endeavours SPC will negotiate with the Collaborating Organisation and any other organisation, so as to agree to the terms of any agreement to fairly protect the commercialisation of the Project IP.

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## **7. THIRD PARTY INTELLECTUAL PROPERTY TO BE IDENTIFIED**

- 7.1.** Each Party shall use reasonable efforts to ensure that any reports, all Data, Background IP or Project IP do not contain Intellectual Property rights belonging to third parties.
- 7.2.** If it is known or suspected by a Party that third party Intellectual Property rights are used or incorporated into the Background IP or Project IP, then that Party shall notify the other Party of the full extent of that knowledge or suspicion and will negotiate in good faith with the affected Party(ies) to manage any implications arising from that incorporation.

## **8. CONFIDENTIAL INFORMATION**

- 8.1.** Each Party hereby undertakes to treat all Confidential Information in confidence and will use such information only for the purposes of the Project and will not disclose the same, without the written consent of the owner of the Confidential Information.
- 8.2.** Notwithstanding clause 8.1 a Party will not be in breach of this Agreement if the Confidential Information is required to be disclosed by a court, rule or governmental law or regulation; or is required to be disclosed pursuant to this Agreement or the Grant Arrangement, provided that the Party making the disclosure provides prompt notice to the affected Party of any such requirement.
- 8.3.** Each Party shall assume responsibility for the actions of its employees, officers, agents and consultants, who have access to the Confidential Information, from time to time. Further, the receiving Party releases and indemnifies the disclosing Party from and against all damage, loss and expenses arising from or in relation to the actions or omissions of its employees, officers, agents, consultants, and other third parties to whom it discloses Confidential Information as if those actions or omissions were its own.
- 8.4.** Each Party's obligations under this clause 8 shall survive the termination of this Agreement.

## **9. PUBLICATION**

- 9.1.** Where a proposed publication or presentation contains Confidential Information of another Party, the Party wishing to publish, must provide a copy of all proposed publication material for the approval of the other Party at least thirty (30) days prior to the proposed publication.
- 9.2.** The Party to which the Confidential Information belongs shall notify the publishing Party in writing of their required amendments within twenty-one (21) days of receipt of the proposed publication or abstract and shall not act unreasonably in requiring amendments or in withholding or delaying their approval for publication or presentation.
- 9.3.** If any Party fails to respond to the publishing Party within the said twenty-one (21) days' period, that Party's approval will be taken to have been given to the relevant publication or presentation.

## **10. WARRANTIES AND INDEMNITIES**

- 10.1.** Each Party warrants that:
  - 10.1.1.** it has full legal capacity and power to enter into this Agreement and to carry out the

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transactions that this Agreement contemplates; and

- 10.1.2. all corporate action has been taken that is necessary or desirable to authorise its entry into this Agreement and its carrying out of the transactions that this Agreement contemplates.
- 10.2.** The Collaborating Organisation shall indemnify, hold and save harmless, and defend, at its own expense, SPC, its officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Collaborating Organisation, or the Collaborating Organisation's employees, officers, agents or consultants in the performance of this Agreement. This obligation does not extend to actions and omissions of SPC.
- 10.3.** This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Collaborating Organisation, its employees, officers, agents or consultants.
- 10.4.** The obligations under this clause 10 do not lapse upon termination of this Agreement.

## **11. LIABILITY**

**11.1.** Each Party acknowledges that:

- 11.1.1. it uses the results of the Project and any advice, opinions or information supplied by the other Party or its consultants at its own risk; and
- 11.1.2. it is the responsibility of each Party to make its own assessment of the suitability of the Services and any advice or information generated from the Services.

**11.2.** The Parties acknowledge that the liability of either Party for any material breach of term, condition or warranty shall be limited, at the option of the defaulting Party to performing the Project and/or Services again.

**11.3.** The limitation of liability under clause 11.2 does not apply in respect of liability or loss which is caused by a breach of a term or condition of this Agreement which is attributable to a wilful or negligent act or omission of a Party in respect of performance of the Project.

## **12. INSURANCE**

**12.1.** The Collaborating Organisation must during the Term (including any extension of the Term) and for any relevant period when a claim may be made; effect and maintain adequate insurance to cover potential liability arising as a result of the performance of this Agreement and the Project, and if requested, provide to SPC a copy of applicable certificates of currency of such insurance.

## **13. PUBLICITY**

**13.1.** A Party must not use the name or logo of any other Party, nor the name of any of the other Party's employees or agents, in any publicity, advertising, or news release without the prior written approval of an authorised representative of that Party.

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#### **14. FORCE MAJEURE**

- 14.1.** A Party to this Agreement shall not be responsible or liable for any non-performance or delay in performance of any of its obligations under this Agreement that is caused by an act or event that is beyond the reasonable control of that Party ('**Force Majeure Event**'), provided that it promptly notifies the other Party in writing with appropriate details and takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.
- 14.2.** If a Force Majeure Event continues for more than thirty (30) days:
- 14.2.1 SPC may terminate the Agreement with immediate effect, by written notice to the Collaborating Organisation; and
  - 14.2.2 any such notice shall not relieve the Collaborating Organisation from their obligations that survive the termination of this Agreement.

#### **15. TERMINATION AND EXPIRY**

- 15.1.** Notwithstanding clause 15.2, either party may terminate this Agreement by providing sixty (60) days' notice in writing at any time.
- 15.2.** SPC may terminate this Agreement if it ceases to receive funding for the Project under the Grant Arrangement, or if the Grant Arrangement is terminated for any reason. SPC will immediately notify the Collaborating Organization in writing of such an event, and all Parties will review in good faith to consider available options.
- 15.3.** If the Collaborating Organisation materially breaches this Agreement, SPC, may by notice to the Collaborating Organisation specify the breach, and may terminate the Collaborating Organization's involvement in the Project. Termination will be effective:
- 15.3.1. on the day of the receipt of such notice of termination in the case of a material breach that is unable to be rectified; or
  - 15.3.2. otherwise, fourteen (14) days after the day of the receipt of such notice unless within that period the Party rectify the breach identified in the notice.
- 15.4.** Termination under this Agreement will:
- 15.4.1. not affect the rights and obligations of the Parties that are accrued prior to the effective date of termination of this Agreement; and
  - 15.4.2. be in addition to any other remedies the Party may have at law or equity.
- 15.5.** If the Collaborating Organisation's involvement in the Project is terminated in accordance with this clause 15, the Collaborating Organisation must provide all assistance SPC may reasonably require to enable SPC to continue the performance of the Project, including in collaboration with a replacement Party.
- 15.6.** Upon termination of the Agreement, a Party will return to the other Party all property in their custody and possession which belongs to the other Party including Confidential Information. A

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Party will not be in breach of this requirement if it keeps a copy of that property for its usual record-keeping requirements.

**15.7.** Clauses 6, 6, 8, 9, 10, 11, 15.5, 15.6, and 16, and such other parts of this Agreement as may be relevant to its interpretation will survive the expiration or earlier termination of this Agreement.

## **16. DISPUTE RESOLUTION**

**16.1.** The Parties agree to co-operate and in good faith attempt to resolve any disputes or differences ('Dispute') between them in relation to this Agreement in accordance with the succeeding provisions of this clause 16 or otherwise agreed in writing.

**16.2.** The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to the Agreement or the breach, termination or invalidity thereof.

**16.3.** A Party claiming that a Dispute exists shall notify the other Party and within twenty-one (21) days and submit such written Dispute to the relevant officers of each Party for resolution.

**16.4.** If a dispute is not settled within sixty (60) days of one Party notifying the other of a request for amicable settlement, the dispute may be referred by either Party to arbitration in accordance with the general principles of international law. The arbitration will be governed by the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as at present in force. The arbitral tribunal shall have no authority to award punitive damages. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

## **17. CORRUPTION AND MODERN SLAVERY**

**17.1.** Each Party must obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws, statutes, regulations and codes relating to anti-bribery, improper payments and modern slavery. For the avoidance of doubt, the Parties are required to comply with applicable anti-bribery, improper payments and modern slavery laws irrespective of their annual turnover.

## **18. REFUNDS**

**18.1.** SPC may require the Collaborating Organisation to immediately refund to SPC any disbursement of the funds in the currency in which it was disbursed in any of the following circumstances:

18.1.1 the Agreement has been terminated;

18.1.2 there has been a breach of any provision of this Agreement by the Collaborating Organisation;

18.1.3 SPC has disbursed an amount in error;

18.1.4 the Collaborating Organisation has made a material misrepresentation with respect to any matter related to this Agreement; and/or

18.1.5 if funds have been used for any purpose other than those agreed to in this Agreement including the Schedules.

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**18.2.** At the conclusion of the Agreement, if the accepted acquittal report indicates that there was a surplus of funds after meeting all the expenses under this Agreement, the Collaborating Organisation shall reimburse all such surplus funds to SPC.

## **19. REPORTING AND ACQUITTALS**

**19.1.** The financial acquittal shall be sent to SPC by the Collaborating Organisation after the expenditure has been incurred for the funds contributed by SPC. No further funding shall be remitted until the acquittal for the previous tranche paid, is received by SPC. In the event the full report and reconciliation is not submitted by the Collaborating Organisation, SPC may, at its discretion, withhold contribution of any part of the funds until such time as the report and acquittal are submitted to SPC's satisfaction. The acquittals must include:

19.1.1 original signed financial report signed off by **[insert signatory designation]**;

19.1.2 certified copies of suppliers' quotation, purchase orders, delivery documents and procurement related and documents relevant to the Project activity;

19.1.3 certified copies of acquittal reports for advance (where applicable); and

19.1.4 certified copies of payment vouchers and receipts of funds for any expenditure paid.

**19.2.** All documents and records relating to the Project activities and the implementation of the Project shall be kept electronically and securely and made available and/or accessible to SPC for the purposes of SPC's audits and legal formalities.

**19.3.** The Collaborating Organisation shall keep all documents relating to the Project for a period of seven (7) years from the closure of the Project, for the purpose of SPC audits.

## **20. AGREEMENT DOCUMENTS**

**20.1.** The Agreement documents shall consist of:

20.1.1 The present Agreement;

20.1.2 Schedule 1: Project Details and Proposal;

20.1.3 Schedule 2: SPC and Collaborating Organisation's Contributions;

20.1.4 Schedule 3: Distributions of contributions;

20.1.5 Schedule 4: Contacts;

20.1.6 Schedule 5: Definitions (Grant Agreement); and

20.1.7 Schedule 6: Collaborator Materials.

**20.2.** In the event of a conflict between the provisions of the present Agreement and any Schedules thereto, the provisions of this Agreement shall take precedence.

**20.3.** The Agreement documents shall include all modifications or changes agreed upon in writing between the Parties and issued during the term of this Agreement.

## **21. PRIVILEGES AND IMMUNITIES AND LEGAL STATUS OF SPC**

**21.1.** The Collaborating Organisation recognises and respects the status of SPC as an intergovernmental organisation under the 1947 Canberra Agreement.

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**21.2.** Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of SPC.

## **22. SOURCE OF INSTRUCTIONS**

**22.1.** The Collaborating Organisation will only accept instructions from SPC in the performance of this Agreement. The Collaborating Organisation will refrain from any action that may adversely affect SPC and will fulfil its commitments with the fullest regard to the interest of SPC. Should any authority external to SPC seek to impose any instructions concerning or restricting the Collaborating Organisations performance under this Agreement, the Collaborating Organisation shall promptly notify SPC and provide all reasonable assistance required by SPC.

## **23. COLLABORATING ORGANISATION'S RESPONSIBILITY FOR EMPLOYEES**

**23.1.** The Collaborating Organisation shall be responsible for the professional and technical competence of its employees and will select, for work under this Agreement, reliable individuals who will perform effectively in the implementation of this Agreement, respect the local customs, and conform to a high standard of moral and ethical conduct. The Collaborating Organisation shall not discriminate against any performance because of race, gender, sexual orientation, impairment, or disability, religious or political beliefs, age, marital or relationship status, pregnancy, breastfeeding or other family responsibilities.

## **24. SUB-CONTRACTING**

**24.1.** The Collaborating Organisation may enter into contracts (for the purchasing of goods, works or services), sub-contracts and other agreements necessary for the implementation of this Agreement.

**24.2.** However, it is understood that the Collaborating Organisation shall at all times remain accountable to SPC for the fulfillment of its responsibilities under this Agreement, and for ensuring the successful achievement of the objectives of the Project.

**24.3.** The Collaborating Organisation shall be responsible for ensuring that all contracts and subcontracts shall be fully consistent with this Agreement and shall not in any way prejudice the implementation of any of its provisions.

**24.4.** Prior to employing individuals or engaging contractors or subcontractors to perform services under this Agreement, the Collaborating Organisation agrees, at its own expense to perform due diligence necessary to ensure compliance with the terms of this Agreement.

## **25. ASSIGNMENT**

**25.1.** Except with the prior written consent of SPC, the Collaborating Organisation may not assign, transfer, pledge or make other disposition of this Agreement or any part thereof, or any of the Collaborating Organisation's rights, claims or obligations under this Agreement.

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## **26. FRAUD AND CORRUPTION**

- 26.1.** SPC requires the Collaborating Organisation to adhere to the highest standard of ethical conduct and not engage in corrupt, fraudulent, collusive, coercive or obstructive practices.
- 26.2.** The Collaborating Organisation agrees to bring allegations of corrupt, fraudulent, collusive, coercive or obstructive practices arising in relation to this Agreement, of which the Collaborating Organisation has been informed or has otherwise become aware, promptly to the attention of SPC. For purposes of this contract, the following definitions shall apply:
- 26.2.1 "*corruption*" means the abuse of entrusted power for private gain. It may include improperly influencing the actions of another party or causing harm to another party. The gain or benefit may be for the person doing the act or for others.
- 26.2.2 "*fraud*" means any dishonest act or omission that causes loss or detriment to SPC or results in an unauthorised benefit or advantage to either the person(s) acting or omitting or to a third party. The act or omission can be either deliberate or reckless in relation to the harm caused or the benefit or advantage obtained.
- 26.3.** Any breach of this representation and warranty shall entitle SPC to terminate this Agreement immediately upon notice to the Collaborating Organisation, at no cost to SPC.

## **27. SOCIAL AND ENVIRONMENTAL RESPONSIBILITY**

- 27.1.** SPC has committed to ethically and sustainably managing social and environmental risks and impacts of its activities through its [Social and Environmental Responsibility Policy](#). Accordingly, SPC requires the Collaborating Organisation to comply with the following obligations.

### ***Child protection***

- 27.2.** The Collaborating Organisation represents and warrants that neither it, nor any of its suppliers is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child. This includes, among other things, Article 3 which requires the best interests of the child to be a primary consideration in all actions concerning children; Article 32 which protects children from economic exploitation and child labour; and Article 34 which protects children from sexual exploitation and abuse.
- 27.3.** Where the Collaborating Organisation is providing services directly related to or involving children, the Collaborating Organisation will either have its own Child protection policy in place or use its best endeavours to act in accordance with the principles of SPC's Child Protection Policy.
- 27.4.** The Collaborating Organisation agrees to bring allegations of any abuse or exploitation of children arising in relation to this Agreement, of which the Collaborating Organisation has been informed or has otherwise become aware, promptly to the attention of SPC.
- 27.5.** Any breach of this representation and warranty shall entitle SPC to terminate this Agreement immediately upon notice to the Collaborating Organisation, at no cost to SPC.

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### **Human rights**

**27.6.** The Collaborating Organisation is committed to respecting, and acting in a manner which avoids infringing on, human rights, and ensures that they are not complicit in human rights abuses committed by others.

**27.7.** Any breach of this representation and warranty shall entitle SPC to terminate this Agreement immediately upon notice to the Collaborating Organisation, at no cost to SPC.

### **Gender equality and social inclusion**

**27.8.** SPC is committed to progress gender equality and social inclusion in all areas of its work. The Collaborating Organisation is expected to respect gender equality and diversity in the workplace.

**27.9.** The Collaborating Organisation is expected to have measures in place to ensure equal pay for work of equal value, to prevent bullying and any forms discrimination; and to ensure a safe workplace environment for women and men of all diversities.

### **Sexual harassment, sexual abuse or sexual exploitation**

**27.10.** SPC will not tolerate any form of sexual harassment, abuse or exploitation. The Collaborating Organisation shall refrain from and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from engaging in sexual harassment, sexual abuse and sexual exploitation.

**27.11.** The Collaborating Organisation agrees to bring allegations of sexual harassment, sexual abuse or sexual exploitation arising in relation to this Agreement, of which the Collaborating Organisation has been informed or has otherwise become aware, promptly to the attention of SPC.

**27.12.** For purposes of this Agreement, the following definitions shall apply:

27.12.1 "*sexual harassment*" means behaviour that is unwelcome, unsolicited, unreciprocated of a sexual nature. It is behaviour that is likely to offend, humiliate or intimidate.

27.12.2 "*sexual abuse*" means actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.

27.12.3 "*sexual exploitation*" means any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes. It includes profiting monetarily, socially, or politically from sexual exploitation of another.

**27.13.** Any breach of this representation and warranty shall entitle SPC to terminate this Agreement immediately upon notice to the Collaborating Organisation, at no cost to SPC.

### **Environmental responsibility**

**27.14.** The Collaborating Organisation must ensure a rational use and management of natural resources and ecosystems.

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**27.15.** The Collaborating Organisation shall use all efforts to prevent or, where not possible, to minimise the impact of their activities towards climate change and damage to the environment.

## **28. ANTI-MONEY LAUNDERING/COUNTER TERRORISM FINANCING**

**28.1.** The Collaborating Organisation agrees to take all reasonable efforts to ensure that none of the funds received under this Agreement are used for money laundering or for terrorism financing.

**28.2.** The Collaborating Organisation agrees that the recipients of any amounts provided by SPC hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via: <https://scsanctions.un.org/fop/fop?xml=htdocs/resources/xml/en/consolidated.xml&xslt=htdocs/resources/xsl/en/consolidated.xsl>

**28.3.** For purposes of this Agreement, the following definitions shall apply:

28.3.1 "*money laundering*" means the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions, or the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.

28.3.2 "*terrorism financing*" means directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out acts of terrorism.

**28.4.** Any breach of this representation and warranty shall entitle SPC to terminate this Agreement immediately upon notice to the Collaborating Organisation, at no cost to SPC.

## **29. FRAUD AND CORRUPTION**

**29.1** The Collaborating Organisation shall adhere to the highest standards of ethical conduct and not engage in corrupt, fraudulent, collusive, coercive or obstructive practices.

**29.2** The Collaborating Organisation agrees to bring allegations of corrupt, fraudulent, collusive, coercive, or obstructive practices arising in relation to the Agreement, of which the Collaborating Organisation has been informed or has otherwise become aware, promptly to the attention of SPC.

**29.3** For the purposes of these General Terms and Conditions, the following definitions shall apply:

29.3.1 "*corruption*" means the abuse of entrusted power for private gain. It may include improperly influencing the actions of another party or causing harm to another party. The gain or benefit may be for the person doing the act or for others.

29.3.1 "*fraud*" means any dishonest act or omission that causes loss or detriment to SPC or results in an unauthorised benefit or advantage to either the person(s) acting or omitting

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or to a third party. The act or omission can be either deliberate or reckless in relation to the harm caused or the benefit or advantage obtained.

### **30. PROJECT MANAGEMENT AND GOVERNANCE**

**30.1** The day-to-day management and operation of the Project, including the management of expenditure against Project funding will be the responsibility of the Collaboration Committee.

**30.2** The Collaboration Committee will outline the development programme, priorities, timescales and overall costs.

**30.3** The Collaboration Committee will be made up of:

30.3.1 [INSERT]

30.3.2 [INSERT]

30.3.3 [INSERT]

### **31. GENERAL**

**31.1. Entire Agreement** - This Agreement constitutes the entire agreement between the Parties in relation to the subject matter of this Agreement and unless otherwise agreed in writing, any prior arrangements, agreements, representations or undertakings are superseded.

**31.2. Formalities** - Each Party to this Agreement will enter into and execute all documents and deeds and do all acts as may be reasonably required by the other Party to effectively carry out the terms and intentions of this Agreement.

**31.3. Illegal/unenforceable provisions** - If any provision of this Agreement is held unenforceable or void, the remaining provisions will be enforced in accordance with their terms.

**31.4. Waiver of rights** - Any failure by a Party to compel performance by the Party of any of the terms and conditions of this Agreement will not constitute a waiver of those terms or conditions, or any other terms and conditions.

**31.5. No agency** - Nothing in this Agreement will be construed so as to make any Party an employee, agent or partner of another, or create any relationship of partnership, agency, fiduciary or trust or other relationship whatsoever.

**31.6. Severability** - Each Party's obligations and liabilities under this Agreement will be several, and not joint or joint and several.

**31.7. Counterparts** - This Agreement may be signed in counterparts which together will constitute one (1) agreement. A copy of a counterpart may effectively be communicated to the other Party as an electronic document in permanent form, including with electronic signatures.

**31.8. Governing law** - This Agreement shall be construed and governed in accordance with the general principles of international law to the exclusion of any single national system of law. General principles of law shall be deemed to include the UNIDROIT Principles of International Commercial

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Contracts 2016. The Parties must comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of the Contract.

**31.9. Amendments** - No modification or change, nor waiver of any of the provisions of this Agreement will be valid and enforceable against SPC unless provided by an amendment to the Agreement signed by the authorised official of SPC and the Collaborating Organisation.

**EXECUTED AS AN AGREEMENT BY THE PARTIES:**

**For SPC**

\_\_\_\_\_

Name: *[insert name]*  
Title: Deputy Director General *[insert title]*  
Date:

**For Collaborating Organisation**

\_\_\_\_\_

Name: *[insert name]*  
Title: *[insert title]*  
Date:

Initials SPC:

Initials Collaborating Organisation:

## SCHEDULE I: PROJECT DETAILS

<b>Project Title</b>	[INSERT]
<b>Commencement Date</b>	Date the last party signs this Agreement or as otherwise agreed in writing by the Parties
<b>Completion Date</b>	[INSERT]

**PROJECT PROPOSAL – See attached.**

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## SCHEDULE 2: SPC AND COLLABORATING ORGANISATION'S CONTRIBUTIONS

1. The maximum amount of contribution to be made by SPC under this Agreement shall be **[INSERT AMOUNT AND CURRENCY]** and is exclusively for the implementation of the Project as outlined in the Project Proposal under Schedule 1.
2. The Collaborating Organisation undertakes to manage all funds provided under this Agreement prudently and in accordance with the terms and conditions of this Agreement and SPC [Procurement](#) and [Grant](#) Policies and Procedures.
3. The Collaborating Organisation will make the following contribution to the Project: **[INSERT AMOUNT AND CURRENCY]**

Initials SPC:

Initials Collaborating Organisation:

## SCHEDULE 3: DISTRIBUTION OF CONTRIBUTIONS

1. SPC will make contribution to the Collaborating Organisation for execution of the Project as follows:

<b><i>Milestones/outputs</i></b>	<b><i>Deadline (date)</i></b>	<b><i>% Payment</i></b>	<b><i>Amount in (Currency)</i></b>
	<b>TOTAL</b>		

2. The Collaborating Organisation will make contribution to the Project as follows:  
**[INSERT]**

Initials SPC:

Initials Collaborating Organisation:

## SCHEDULE 4: CONTACTS

### (A) SPC

<b>Focal Point:</b>	<b>Administrative Contact:</b>
Name:	Name:
Telephone:	Telephone:
Email:	Email:
Mailing address for invoices:	

### (B) COLLABORATING ORGANISATION

<b>Focal Point</b>	<b>Representative</b>
Name:	Name:
Telephone:	Telephone:
Email:	Email:
Mailing address for invoices:	

Initials SPC:

Initials Collaborating Organisation:

## SCHEDULE 5: DEFINITIONS (GRANT AGREEMENT)

The following terms have the meaning beside them.

**Asset** All tangible items of property, plant, equipment which are created or purchased in pursuit of the Activity, with an individual value of over NZ\$1,000 and whose economic benefits or service potential is expected to be used over more than one reporting period during this Arrangement or beyond.

**Asset Register** A record of all Assets that will include:

- a. each individual Asset;
- b. purchase price;
- c. date of purchase; and
- d. location held.

**Business Day** A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. A Business Day starts at 8.30am and ends at 5pm.

**Change of Control** In relation to a person (the "first person"), where a person acquires Control of the first person or where a person who Controls the first person ceases to do so

**Confidential Information** Information that:

- a. is by its nature confidential;
- b. is marked by either Partner as 'confidential', 'in confidence', 'restricted' or 'commercial in confidence';
- c. is provided by either Partner, or a third party 'in confidence';
- d. either Partner knows or reasonably ought to know is confidential.

**Control In** relation to a person (the first person), means the ability of a person (the second person) to ensure that the activities and business of the first person are conducted in accordance with the wishes of the second person, whether through ownership of voting shares, contract or otherwise. Without limitation, the direct or indirect beneficial ownership of more than 50% of the voting shares of a person is deemed to constitute Control.

**Crown** MFAT also described as the Sovereign His Majesty the King in right of New Zealand and includes a Minister, a government department and an Office of Parliament, but does not include a Crown entity, or state owned enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986.

**Fraud** A deliberate deceit by Personnel, done in order to obtain a benefit for themselves and/or someone else. This includes such acts as theft, conspiracy, bribery, corruption, misappropriation, falsification of documents, non-authorized release of information, collusion and influencing decisions that will result in a personal benefit. **Fraudulent Practice** has a corresponding meaning.

**Intellectual Property Rights** All intellectual property rights and interests, including copyright, and all rights conferred under statute, common law or equity in relation to inventions (including patents), trademarks, designs, circuit layouts, domain names, rights in databases, confidential information, trade secrets, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing.

**Inventories** Any materials or supplies which are created or purchased in pursuit of the Activity and are intended to be consumed, sold or distributed under the Activity.

**Maximum Funding Amount** The maximum amount payable by MFAT to the Partner under or in connection with this Arrangement as stated in Schedule 1.

**Monitoring, Evaluation, Research and Learning (MERL) Framework** A MERL framework relating to this Arrangement that is submitted by the Partner to, and approved in writing by, MFAT (following any iterations of a revised MERLs Framework due under this Arrangement, MFAT will email the final version to the Partner confirming that it is the version for use).

**New Intellectual Property Rights** Any Intellectual Property Rights that are developed, commissioned or created under or in connection with this Arrangement (including those incorporated into the Outputs).

**Notice** A formal communication from one Partner to the other that meets the requirements of condition 10 (Notices).

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**Outputs** The products (including reports), tasks and key requirements that the Partner will perform or deliver under this Arrangement as set out in Schedule 1.

**Payment Disruption** means, in respect of a Claim, a circumstance which has a disruptive effect. In that definition, *circumstance* includes the application, effect or consequence of an applicable law (including an international obligation), regulation or other binding obligation; (without limiting the preceding point) a tax or sanction; the order of a court; the disruption or unavailability of a recognised domestic or international payments system; or another act, omission, event or circumstance (together, and any one or more of them separately); and a *disruptive effect* means, in respect of a Claim, that their payment, transmission or transfer via a recognised domestic or international payments system, conversion from one currency to another, or debiting or crediting to an account, is prevented, interfered with, delayed, or made subject to a condition (in any case, in whole or part) or that the amount is reduced.

**Personnel** All individuals engaged by either Partner in relation to this Arrangement or the implementation of the Activity or delivery of Outputs, included any Approved Personnel, but excluding any Contractors.

**Pre-existing Intellectual Property Rights** Intellectual Property Rights developed before the date of this Arrangement or outside the scope of this Arrangement. It does not cover later modifications, adaptations or additions.

**Personal Information** Any information about an identified individual, or an individual who is reasonably identifiable by virtue of that information, including information relating to a death.

**Privacy Breach** Any unauthorised or accidental access to or use of, or disclosure, alteration, loss, or destruction of any Personal Information.

**Records** All information and data relating to the management of this Arrangement, implementation of the Activity and the delivery of Outputs. Records include reports, Claims, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically.

**Contractor** A person, business, company or organisation contracted by the Partner to deliver or perform part of the Partner's duties under this Arrangement.

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## SCHEDULE 6: COLLABORATOR MATERIALS

Initials SPC:

Initials Collaborating Organisation:

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