



SUSTAINABLE LAND MANAGEMENT AND CLIMATE CHANGE FUNDING AGREEMENT

BETWEEN

MINISTRY FOR PRIMARY INDUSTRIES

AND

Insert Organisation Name

PROJECT NAME:

AGREEMENT NUMBER: MPI TO provide

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FUNDING AGREEMENT

PARTIES

HER MAJESTY THE QUEEN in right of New Zealand acting by and through the Minister for Primary Industries and his authorised delegates at the Ministry for Primary Industries ("**MPI**")

and

, ("**Recipient**").

AGREEMENT

The Recipient will perform the Activities in accordance with the terms and conditions set out in the following Schedules:

Schedule 1: Specific Terms

Schedule 2: General Terms

Schedule 3: Intellectual Property Terms

SIGNATURE

SIGNED for and on behalf of **MPI** by the person named below, being a person duly authorised to enter into obligations on behalf of MPI:

SIGNED for and on behalf of the **Recipient** by the person named below, being a person duly authorised to enter into obligations on behalf of the Recipient:

Signature

Name:

Title:

Date:

in the presence of:

Signature

Name:

Title:

Date:

in the presence of:

Witness Signature

Name:

Occupation:

Address:

Witness Signature

Name:

Occupation:

Address:

SCHEDULE 1: SPECIFIC TERMS

1 BACKGROUND

- a) Part of the New Zealand Government's response to climate change is the Sustainable Land Management and Climate Change Plan of Action ("**Plan of Action**"). The Plan of Action includes a provision for new research funding, which has been allocated to MPI.
- b) MPI has accepted the Recipient's proposal to perform the Activities set out in this Schedule 1.
- c) The purpose of this Agreement is to:
 - i. set out the basis on which MPI will provide funding to the Recipient;
 - ii. set out the expectations of each Party as to the way they will deal with each other; and
 - iii. acknowledge that the Parties have a mutual interest in:
 - ensuring, and being able to demonstrate, that the Activities provide value for money, are aligned to the Government's priorities, and deliver benefits to New Zealand; and
 - the delivery of the Research Aims and the achievement of the Impacts of the Activities.

2 DEFINITIONS

In this Schedule, unless the context requires otherwise:

- a) **General definitions.** The definitions in clause 1 (Definitions) of Schedule 2 apply.
- b) **Specific definitions.** In addition to the general definitions, in this Agreement:

"**Default Interest Rate**" means an interest rate per annum equal to the floating rate usually charged by MPI's bank for first mortgages secured over commercial properties plus 5 percentage points.

"**Independent Expert**" means an individual independent of those conducting the Activities and with the skills and experience to undertake the relevant reporting or assessment required. For the purposes of clarity the Independent Expert may be an employee of the Recipient.

3 TERM

(Clause 4 (Term) of Schedule 2)

Commencement Date:

End Date:

4 CONTACT DETAILS

The initial contact persons for each Party are below. If a Party's contact persons or their details change, it must notify the other Party in writing in advance in accordance with clause 23.4 (Contact Persons) of Schedule 2.

	Contract Manager	Technical Contact
MPI	Janine Alfeld Private Bag 4765 Burnside, Christchurch janine.alfeld@mpi.govt.nz 03 9433 802	Gerald Rys PO Box 2526 Wellington 6011 gerald.rys@mpi.govt.nz 04 894 0711
Recipient		

5 MILESTONES

The Milestones are set out in Appendix 2 to this Schedule.

6 FUNDING

6.1 MPI Funding

- a) Regardless of anything else in this Agreement, the total Funding will not exceed \$ (plus GST if any).
- b) The Recipient may issue a Tax Invoice to MPI for each portion of Funding once the relevant Milestone for that portion of the Funding has been achieved (including that it has been achieved by the relevant due date, and that any invoicing criteria set out in Appendix 2 have been met) in both cases to MPI's satisfaction, acting reasonably.

7 USE OF FUNDING

7.1 Eligible Expenditure

The Recipient must apply the Funding only to the following expenditure (together "Eligible Expenditure")

- a) Expenditure that:
 - i. was incurred by the Recipient for the purpose of the Activities;
 - ii. was incurred in delivering Milestones due after the Commencement Date; and
 - iii. meets the following eligibility or exclusion criteria:
 - opportunity costs (that is, expenditure related to foregone production and downtime arising from the allocation of resources to the Activities) are not eligible expenditure; and
 - work performed by parties not at "arm's length" must be assessed at reasonable market value and contain no unacceptable overhead and no element of "in group profit"; and
- b) Expenditure that MPI otherwise approves in writing (in its absolute discretion) as eligible expenditure for the purposes of this Agreement.

7.2 Financial Management

The Recipient must:

- a) ensure that the individual primarily responsible for the performance of the Activities is not also the person primarily responsible for management of the Funding;
- b) ensure that any payments of Funding made to third parties in connection with this Agreement (including to subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities;
- c) maintain an appropriate financial management system to ensure that the Funding is separately identified and managed within its accounts;
- d) appoint a reputable firm of chartered accountants as auditors to audit its financial statements in relation to the use of the Funding; and
- e) not use the Funding for the purposes of guaranteeing, or as security for, any loan, credit, payment or other interest, or in the context of any litigation, except with MPI's prior written approval.

7.3 Stop/Go Points For Funding

The Activities may identify STOP / GO points where further Funding is dependent on specified criteria being met or Milestones being completed. Where any such criteria are not met or Milestones not completed, MPI is not obliged to provide the further Funding dependent on those criteria or Milestones.

7.4 Repayment

Without limiting any other right or remedy, MPI may recover Funding from the Recipient as follows:

- a) **Misspent Funding.** At any time MPI may recover the amount of any Funding that has been spent or used other than in accordance with this Agreement, together with interest on all such amounts calculated at the Default Interest Rate from the date of the misspending to the date the money is repaid.
- b) **Activities Abandoned.** If the Recipient has abandoned the Activities or stated an intention to abandon the Activities, and does not within 10 Business Days of being requested to do so by MPI demonstrate to MPI's satisfaction that the Recipient will proceed with the Activities, MPI may recover an amount up to the total value of

the Funding paid to date. MPI may not recover under this sub-clause if the Recipient satisfies MPI that it acted on reasonable grounds in deciding to abandon the Activities. This does not apply where the abandonment is due to an 'Extraordinary Event' within the meaning of clause 27.

- c) **Repayment notice.** MPI may give the Recipient a notice requiring the Recipient to pay to MPI an amount which MPI is entitled to recover under this clause 7.4. If MPI gives a notice under this clause, the Recipient must pay the amount specified in the notice in full within one month after the date of the notice.
- d) **Interest.** If the Recipient fails to make payment as required by this clause, the Recipient must pay MPI interest calculated at the Default Interest Rate from the date payment is due until the date the money is repaid.

8 ACTIVITIES

8.1 Activities Description

The Recipient will use the Funding to perform the Activities set out in Appendix 1 to complete the Milestones as set out in Appendix 2.

8.2 Progress Reports

- a) The Recipient will report to MPI as set out in the table below. Subject to the specification below, each report will be consistent with relevant industry standards and best practice for the relevant type of report and be provided in any format reasonably required by MPI. Each report submitted to MPI must be duly authorised by the Recipient.

Report Specification	Due Date
<p>MILESTONE REPORT</p> <p>A report must be submitted to MPI upon completion of each Milestone, and must include:</p> <ul style="list-style-type: none"> • A Milestone Management Report (template provided by MPI). This report includes a description of any risks and issues being faced by the parties and the methods of mitigating or resolving the risks and issues ; • A technical report as outlined below that provides evidence that the milestone has been completed; • A summary of any Activity Intellectual Property created or produced, and any other matter anticipated to be reported on in Schedule 3; • any other information reasonably requested, including that related to health and safety, by MPI concerning the Milestone or Activities; and • an Invoice for that Milestone as referred to in clause 6.1 	By the date stipulated for that Milestone in Appendix 2.
<p>TECHNICAL REPORT</p> <p>A technical report must be submitted to MPI upon completion of the Milestone, and must include:</p> <ul style="list-style-type: none"> • a technical report of the Activities, including: <ul style="list-style-type: none"> – the key outputs of the Activities; – conclusions or recommendations (if any) arising from the Activities; and – details of the extent to which the Activities achieved the Research Aims and Impacts of the study; • copies of any published reports, promotional material, media publicity, pamphlets or other documentation relevant to the Activities; and • any other information reasonably requested by MPI concerning the Activities. 	As set out in Appendix 2.
<p>FINAL REPORT (MPI to supply template)</p> <p>A draft version of the Final Report must be submitted to MPI.</p> <p>Changes to the draft report submitted to MPI must be identified in the Final Report.</p> <p>A plain English summary of the Final Report which is suitable for publication must be submitted to MPI with the Final Report.</p>	As set out in Appendix 2.

- b) The Recipient must, at its cost, appoint an Independent Expert to undertake an independent review of the accuracy and completeness of the draft final report described as such in the table above (“**Draft Final Report**”) and produce a report on its findings (“**Expert’s Report**”). The Recipient must:
 - i. obtain MPI’s prior written approval to the appointment of the Independent Expert such approval not to be unreasonably withheld or delayed; and
 - ii. procure the Independent Expert to take into consideration any criteria specified by MPI when undertaking the review.
- c) The Expert’s Report must be completed prior to the Recipient providing the Draft Final Report to MPI.
- d) In preparing the Final Report for MPI’s consideration, the Recipient must take into account any reasonable comments included in the Expert’s Report and (where reasonably practicable) implement any recommendations in the Expert’s Report. Any changes to the Draft Final Report submitted to the Independent Expert must be identified in the Final Report submitted to MPI.
- e) The Recipient must provide MPI with a copy of the Expert’s Report together with the Draft Final Report.
- f) In preparing the final report described as such in the table above (“**Final Report**”), the Recipient must take into account any reasonable comments provided by MPI to the Recipient on the Draft Final Report and (where reasonably practicable) implement any recommendations, changes, or further areas to be addressed suggested by MPI, in the Final Report. MPI must provide these comments to the Recipient within a reasonable period after receipt of the Draft Final Report by MPI.
- g) MPI may request documentary evidence from the Recipient in relation to any item reported against. The Recipient must provide such evidence to MPI as soon as reasonably practicable following MPI’s request.
- h) The Recipient must, at its cost, provide a plain English summary of the Final Report to MPI, that is suitable for publication, at the request of MPI.
- i) The Recipient must, at its cost, summarise the Final Report in a podcast, other multi-media or in any other manner, at the request of MPI.

8.3 Key Personnel

(clause 9 (Personnel) of Schedule 2)

Name	Title	Role or Specialisation

9 GENERAL

9.1 Approved Subcontractors

(clause 10 of Schedule 2)

MPI approves the Recipient’s use of subcontractors as follows:

Subcontractor	Service	Conditions (if any)	Amount payable (plus GST if any)

Subcontractor	Service	Conditions (if any)	Amount payable (plus GST if any)

9.2 Required Insurance

(clause 19 of Schedule 2)

The Recipient must ensure it has the following insurance policies in place at all times during, and for at least three years after, the term of this Agreement:

Policy Type	Minimum Cover	Maximum Excess

10 HEALTH & SAFETY

10.1 DEFINITIONS

10.1.1 In the following clause 10, unless the context requires otherwise:

“**Agreement**” means this agreement including all schedules and attachments, and (if this is a master or panel agreement) includes all Statements of Work entered into under this agreement;

“**Control measures**” has the same meaning as in regulation 3 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016;

“**HSW Act**” means the Health and Safety at Work Act 2015;

“**HSW Legislation**” means the Health and Safety at Work Act 2015 and includes all regulations made under that Act (including but not limited to the Health and Safety at Work (General Risk and Workplace Management Regulations 2016), and any other health and safety-related legislation relevant to the Contractor’s supply of services to MPI;

“**HSW Act**” means the Health and Safety at Work Act 2015;

“**HSW (GR&WM) Regulations 2016**” means the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

“**Serious health and safety incident**” means a notifiable event within the meaning of the HSW Act that is:

- (a) The death of a person; or
- (b) A notifiable injury or illness

“**Term**” (if a one-off agreement) means the term of that agreement, and in the case of a Master or Panel Agreement, means the term of that Master or Panel Agreement.

10.1.2 Other terms used but not defined in this clause 10 have the same meaning as in the HSW Act. References to clauses are to clauses in this Schedule, unless otherwise stated.

10.2 HEALTH AND SAFETY REQUIREMENTS

Compliance with Health and Safety Legislation and Directions

10.2.1 During the Term the Contractor will:

- a) Consult, cooperate and coordinate with MPI to ensure that the Parties each comply with their respective obligations under HSW Legislation as they relate to this Agreement;
- b) Perform its, and ensure that its Personnel perform their, obligations under this Agreement in compliance with the HSW Legislation, including but not limited to:
 - (i) Obligations of a PCBU under ss36–43 of the HSW Act;
 - (ii) Obligations relating to the identification of hazards and implementation of control measures under the HSW(GR&WM) Regulations;
- c) Comply with all reasonable directions of MPI relating to health and safety as notified to the Contractor from time to time;

Maintenance of Health and Safety Policies and Practices

10.2.2 During the Term the Contractor will:

- a) Maintain a general health and safety policy and practices that are appropriate to the nature of the Services provided to MPI;
- b) Comply with its own health and safety policy and practices, and ensure its Personnel and subcontractors so comply.

Notifiable Events

10.2.3 During the Term the Contractor will notify all notifiable events occurring during delivery of the Services to MPI to Worksafe within the timeframe and in accordance with the requirements of the HSW Act.

10.2.4 Where a notifiable event has been notified to Worksafe, but not reported to MPI under sub-clause 10.2.6, the Contractor will ensure it includes a summary of that notifiable event in the next available progress report submitted by the Contractor to MPI. This clause applies only if the Contractor is required under Schedule 1 to submit progress reports to MPI.

Health and Safety Reporting

10.2.5 During the Term the Contractor will comply with any health and safety reporting requirements outlined in Schedule 1.

10.2.6 Without limiting sub-clause 10.2.4, the Contractor will, within 2 Business Days of becoming aware of the occurrence of a serious health and safety incident arising from the supply of the Services to MPI, report details of that incident to MPI in writing (including the name and position of any Personnel and/or subcontractors involved, the nature and location of the incident, and the type and extent of the health and safety risk raised by the incident).

Health and Safety Audit and Inspection

10.2.7 MPI may, at any time during the Term:

- (a) Require information or documentation from the Contractor in relation to any matter concerning the Contractor's health and safety performance or compliance in relation to the Services, or relating to a health and safety incident or risk; or
- (b) Carry out a paper-based audit of the Contractor's health and safety system as it relates to the Services;

10.2.8 At any reasonable time during Business Hours, MPI may carry out a physical inspection of any place of work that the Contractor is using or intends to use in connection with the supply of Services to MPI.

APPENDIX 1: ACTIVITIES

From Application Form

APPENDIX 2: MILESTONES

(refer to Clause 8 of Schedule 2 of this Agreement)

No.	Milestone Description	Milestone completion date	Evidence of milestone completion	SLMACC funding

SCHEDULE 2: GENERAL TERMS

1 DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise:

Activities means the activities performed or to be performed by the Recipient as described in Appendix 1 of Schedule 1.

Activity Intellectual Property has the meaning given in clause 1 (Definitions) of Schedule 3.

Agreement means this Funding Agreement, including Schedule 1, this Schedule 2, Schedule 3 and any attachment.

Business Day means any day not being a Saturday or Sunday, a public holiday observed in Wellington, or the period from 26 to 31 December each year.

Co-Funding has the meaning given in clause 6.2(a) (Co-Funding) of Schedule 1.

Commencement Date means the date this Agreement commences as set out in clause 3 (Term) of Schedule 1.

Confidential Information includes the terms of this Agreement and any information exchanged during the negotiation of this Agreement, and, in relation to each Party, means information provided by, obtained from, or relating to that Party, that becomes known to the other Party under or in connection with this Agreement, which:

- a) is by its nature confidential;
- b) is marked as 'confidential', 'in confidence', 'restricted', 'commercial in confidence' or with a similar designation;
- c) is provided in confidence;
- d) the other party knows or ought to know is confidential;
- e) is commercially sensitive to that party; or
- f) is Confidential Activity Information as defined in clause 1 (Definitions) of Schedule 3.

Conflict of Interest in relation to the Recipient means any conflict of the Recipient's interests or obligations with its responsibilities under this Agreement. A conflict of interest means that the Recipient's independence, objectivity or impartiality can be called into question. A conflict of interest may be:

- a) actual: where the conflict currently exists;
- b) potential: where the conflict is about to happen, or could happen; or
- c) perceived: where other people may reasonably think that a person is compromised.

Contract Manager means the Recipient's contract manager or MPI's contract manager, as the case may be, identified as such in clause 4 (Contact Details) of Schedule 1.

Control means the power to directly or indirectly manage the operation of the Recipient's business or control the composition of the Recipient's board of directors or board of management.

End Date means (subject to clause 4.1) the earlier of the end date set out in clause 3 (Term) of Schedule 1, or if applicable the date of effective termination of this Agreement.

Extraordinary Event means an event beyond the reasonable control of the Party immediately affected by the event, including:

- a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- c) acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and
- d) contamination by radio-activity from nuclear substances or germ warfare or any other such hazardous properties.

Funding means the amounts paid or to be paid to the Recipient by MPI under clause 6.1 (Funding) of Schedule 1.

GST means goods and services tax payable at the applicable rate pursuant to the Goods and Services Tax Act 1985.

Impacts means the impacts of the Research Aims and the Activities as described in the impact statements in Appendix 1 of Schedule 1.

Key Personnel means the people identified in clause 8.3 (Key Personnel) of Schedule 1.

MBIE means the Ministry of Business Innovation and Employment.

Milestone means the milestones of the Activities, which the Recipient is obliged to complete by a specified date or within a specified period, as described in Appendix 2 to Schedule 1.

Milestone Report means the report described as such in clause 8.2 (Progress Reports) of Schedule 1.

Parties means MPI and the Recipient.

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

Research Aims means the research aims of the Activities as described in Appendix 1 of Schedule 1.

Tax Invoice means a tax invoice as defined in the Goods and Services Tax Act 1985.

Term has the meaning given in clause 4 (Term).

2 INTERPRETATION

2.1 In this Agreement, unless the context requires otherwise:

- a. to the extent that there is any conflict or ambiguity between Schedule 2 and any other Schedule, Schedule 2 will take priority unless expressly stated otherwise. If there is any conflict or ambiguity between Schedule 1 and Schedule 3, Schedule 3 will take priority unless expressly stated otherwise.
- b. headings are for guidance only and do not affect interpretation;
- c. the singular includes the plural and vice versa;
- d. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- e. any references:
 - i. to this Agreement, means this Agreement as amended from time to time and includes all attachments to this Agreement and any document incorporated into this Agreement by reference;
 - ii. to a clause or Appendix, is a reference to a clause or Appendix of the Schedule in which the reference is contained; and
 - iii. to a Schedule or attachment, are references to a Schedule or attachment of this Agreement;
- f. subject to clause 26 (Notices), anything that this Agreement requires to be done in writing, may be done by email;
- g. references to Dollars or \$ are references to New Zealand dollars;
- h. references to monetary amounts are exclusive of GST (if any);
- i. a reference to any statute, regulation, or expression of government policy includes any amendments, re-enactments or replacements of that statute, regulation, or expression of government policy from time to time;
- j. reference to a person includes:
 - i. a company, body of persons (corporate or unincorporate) or any state, regional or local government body or agency; and
 - ii. that person's representatives, successors and assigns;
- k) "including", "includes", "in particular", "for example" or similar words do not imply any limitations;
- l) no rule of construction applies to the disadvantage of MPI on the basis that MPI put forward this Agreement or any part of it; and
- m) references to time mean New Zealand standard time.

3 ENTERING THIS AGREEMENT

3.1 Each Party represents and warrants that it is authorised to enter into and perform its obligations under this Agreement.

3.2 The Recipient warrants on its execution of this Agreement that:

- a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency or administration in relation to the Recipient;
- b) except as specified in Schedule 1, all information relating to the Activities that was provided by the Recipient to MPI and MBIE prior to MPI's execution of this Agreement, including in any proposal or presentation by the Recipient, is accurate, complete and true. The Recipient acknowledges that MPI is entering into this Agreement in reliance on such information;
- c) it has not entered into any contractual arrangements or negotiations for additional funding (except for the Co-Funding), or for any exploitation, development or other similar arrangements, in respect of the Activities, any Activity Intellectual Property, products, processes, goods or services that may arise from the Activities, except as disclosed in this Agreement; and
- d) it is not aware of any information that has not been disclosed to MPI or MBIE which may, if disclosed, materially adversely affect the decision of MPI whether to provide the Funding.

4 TERM

4.1 This Agreement commences on the Commencement Date and, unless terminated or extended in accordance with this Agreement, will remain in force until the close of the End Date at which time it shall automatically expire, provided that:

- a) if the Activities have not been performed to the satisfaction of MPI by that date; and
- b) MPI requests the continuation of this Agreement,
- c) then this Agreement will continue, at no charge to MPI, until the Activities have been performed to the satisfaction of MPI acting reasonably ("**Term**").

5 RELATIONSHIP

5.1 The Parties agree to:

- a) act in good faith in all matters relating to this Agreement and, without abandoning their own interests, to demonstrate honesty, integrity, openness, reasonableness, and accountability in their dealings with each other; and
- b) discuss matters affecting this Agreement or the delivery of the Activities, whenever necessary and in a timely manner.

6 PAYMENT

6.1 In consideration of the Recipient completing the Milestones, MPI will pay the Funding to the Recipient in accordance with the following clauses.

6.2 The Recipient will invoice the Funding in accordance with Schedule 1. If the Recipient fails to provide MPI with a Tax Invoice within six months of the agreed date for invoicing, then the Recipient is deemed to have waived any right to that payment by MPI.

6.3 In applying for a payment of Funding, the Recipient will submit to MPI:

- a) a Milestone Report; and
- b) a Tax Invoice which includes:
 - i. sufficient details to enable MPI to identify:
 - the Agreement;
 - the particular Milestone which is the subject of the invoice; and
 - the amount of Funding payable; and
 - ii. any other details requested by MPI.

6.4 Subject to clauses 6.5 to 6.9 (inclusive), MPI will pay the Recipient's Tax Invoices by the 20th day of the month following the month in which MPI receives the Recipient's application under clause 6.3, provided the invoice is compliant with

clause 6.3 and the Milestone Report is satisfactory to MPI acting reasonably. Payment of Funding by MPI is not evidence that the Milestone or Activities to which the invoice relates have been provided in accordance with this Agreement.

- 6.5** MPI will only make the payment due under clause 6.4 if:
- a) MPI is reasonably satisfied that the Milestone to which the payment relates has been completed by the due date; or
 - b) MPI considers in its sole discretion that sufficient progress has been made toward completing the Milestone to which the payment relates by the due date.
- 6.6** MPI may not withhold a payment due under clause 6.4 to the extent that:
- a) a Milestone has not been completed as a result of MPI's breach of this Agreement; or
 - b) a Milestone has not been completed as a result of (i) MPI's express instruction in writing, or (ii) voluntary termination under clause 21.3, but only in relation to payments in respect of the time prior to the End Date.
- 6.7** Each payment of Funding will be in the amount specified in clause 5 (Milestones) of Schedule 1 which corresponds to the relevant Milestone completed, but MPI has the discretion to pay a lesser amount where clause 6.5(b) applies. Where a lesser amount is paid, the balance withheld may be paid by MPI to the Recipient, in its sole discretion, on the date of a future payment of Funding or another date determined by MPI.
- 6.8** Despite this clause 6, MPI's obligation to pay the Funding is subject to:
- a) there being no un-remedied breach of this Agreement by the Recipient; and
 - b) MPI being satisfied on reasonable grounds that the Funding is being appropriately expended on the Activities, in accordance with this Agreement.
- 6.9** If MPI has a bona fide dispute in relation to all or any portion of any Tax Invoice, whether in relation to the Milestones invoiced, the accuracy of the Tax Invoice, Milestone Report or otherwise, MPI may withhold payment of the amount subject to the dispute, provided that:
- a) MPI will pay any undisputed amount when it becomes due and payable; and
 - b) the Recipient will continue to perform its obligations under this Agreement while the dispute is resolved.

7 ACTIVITIES

Performance Standards

- 7.1** The Recipient will use reasonable endeavours to:
- a) deliver the Research Aims;
 - b) achieve or contribute to the achievement of the Impacts; and
 - c) otherwise perform the Activities in accordance with the terms of this Agreement.
- 7.2** The Recipient will ensure that the Activities are performed:
- a) promptly with due diligence, care and skill;
 - b) by appropriately trained, qualified, experienced and supervised persons;
 - c) in accordance with all Government and MPI internal policies and procedures relevant to this Agreement, and annexed to this Agreement as Appendix 3 and
 - d) to MPI's satisfaction as reasonably specified by MPI in writing from time to time.
- 7.3** The Recipient will ensure that:
- a) it has effective project management tools, processes and systems in place, including in relation to the assignment of roles and responsibilities, performance monitoring and reporting, and financial, intellectual property and risk management procedures, to perform the Activities in accordance with the terms of this Agreement;
 - b) it has appropriate and effective systems, processes and structures to manage its obligations and responsibilities under the Activities and this Agreement;
 - c) the purposes of the Activities and the terms of this Agreement are, to the extent reasonably possible, clear and understood by staff and other persons involved in the Activities;

- d) it appropriately monitors the Activities to ensure the Activities are being carried out in accordance with this Agreement; and
- e) it appropriately monitors and manages the performance and cost of third parties involved in the Activities.

7.4 The Recipient will:

- a) achieve reasonable performance and science quality standards for the Activities that would be expected of any skilled and experienced research organisation, and comply with any relevant codes of professional standards and ethics relevant to the research being undertaken as part of the Activities; and
- b) achieve reasonable productivity standards for the Activities in the delivery of research, science and technology outputs that would be expected of any skilled and experienced research organisation.

Publicity

7.5 The Recipient will acknowledge the MPI Sustainable Land Management and Climate Change Research Programme as a source of funding in all publications and publicity regarding the Activities, subject to approval of the form of the acknowledgement by MPI.

Information

7.6 The Recipient will:

- a) promptly provide MPI with all information relating to the Activities as requested by MPI from time to time, and provide that information as soon as possible if requested by MPI to comply with its statutory, parliamentary or other reporting obligations; and
- b) ensure that all information it provides under this Agreement is to the best of its knowledge factually correct and contains no material omissions.

Issues

7.7 The Recipient will promptly notify MPI of any:

- a) actual or anticipated matter that could:
 - i. receive media attention; or
 - ii. materially impact on the Activities or the Funding, including:
 - a) loss of critical resources (including loss of Key Personnel, Co-Funding or infrastructure);
 - b) changes in the scientific or technical approach to the Activities;
 - c) consents, approvals, licences and permits required to perform the Activities that cannot be obtained, have expired or are revoked;
 - d) significant issues with, or changes to, end-user engagement;
 - e) any matter that materially reduces the Activities' benefit to New Zealand (for example contracts or arrangements with third parties offshore);
 - f) scientific, technical or financial fraud;
 - g) material changes to the Recipient's organisation, including changes to the Recipient's organisation's core strategy or direction; or
 - h) any matter that puts the Recipient's ability to perform the Activities or complete the Milestones at risk; or
- b) change in the Recipient's status.

Sourcing

7.8 Subject to clause 10 (Subcontractors), the Recipient will use reasonable endeavours to enter into any arrangements with third parties, including government agencies, sector organisations, research organisations, third party research contractors, education institutes, students, third party investors, end-users or other persons, that are necessary to:

- a) perform the Activities;
- b) deliver the Research Aims, and achieve, or contribute to the achievement of, the Impacts for the benefit of New Zealand; and

- c) address intellectual property ownership, confidentiality, access to resources or facilities with other parties involved in the Activities.

8 MILESTONES

- 8.1** The Recipient will use all reasonable endeavours to complete the Milestones, unless it is:
- a) unable to do so due to an Extraordinary Event or MPI's breach of this Agreement; or
 - b) expressly instructed to do otherwise in writing by MPI.
- 8.2** If the Recipient anticipates any delay (for any reason) in the completion of any Milestone, it will give written notice to MPI of the anticipated delay as soon as is reasonably practicable.
- 8.3** If MPI reasonably believes that the progress of the Recipient has slipped significantly from the timetable required to complete any Milestone, MPI may give written notice to that effect to the Recipient.
- 8.4** If:
- a) the completion of any Milestone is delayed; or
 - b) a notice is served under clauses 8.2 or 8.3,
- then the Parties will, as soon as reasonably practicable, discuss and seek to agree the changes necessary to achieve an expeditious return to meeting the Milestone (including changes to the timetable or any Personnel or other resources provided by either Party under this Agreement). Any failure to agree the matters discussed will be a dispute for the purposes of clause 20 (Dispute Resolution).
- 8.5** Despite clause 8.4, if the completion of any Milestone is delayed other than as permitted under clause 8.1, then (without prejudice to any other right of or remedy available to MPI):
- a) MPI may withhold any payment due on completion of that Milestone until such time as the Recipient has completed that Milestone; and
 - b) the provisions of clause 21.2(a) (Termination) will apply.
- 8.6** Any changes to the Activities or Agreement agreed under clause 8.4 will be documented as a variation under clause 13 (Variations).

9 PERSONNEL

- 9.1** The Recipient must ensure that the "Key Personnel", if any, listed in Schedule 1 undertake such roles in respect of the Activities as may be specified in that Schedule.
- 9.2** Where any Key Personnel are unable to perform their specified roles, the Recipient must notify MPI immediately. The Recipient must, if requested by MPI, provide replacement Personnel acceptable to MPI without additional payment and at the earliest opportunity. Approval of replacement Personnel by MPI shall not be unreasonably withheld.
- 9.3** MPI may give notice, on reasonable grounds related to the performance of the Activities, requiring the Recipient to remove one or more Personnel (including any "Key Personnel" specified in Schedule 1) from involvement in the Activities. The Recipient must, at its own cost, promptly arrange for such removal and the provision of replacement Personnel reasonably acceptable to MPI.
- 9.4** The Recipient's Personnel are not employees or agents of MPI. At no time will MPI have any liability to:
- a) meet any of the Recipient's obligations under the Health and Safety at Work Act 2015; or
 - b) pay any of the following in respect of the Recipient's Personnel:
 - i. holiday pay, sick pay or any other payment under the Holidays Act 2003;
 - ii. redundancy or any other form of severance pay; or
 - iii. taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.

10 SUBCONTRACTORS

- 10.1** The Recipient may not subcontract any of its obligations under this Agreement except where:

- a) it has MPI's prior written approval (MPI will not unreasonably withhold its approval for the use of subcontractors); or
- b) MPI has approved the subcontractors and/or particular activities to be subcontracted as specified in Schedule 1.

10.2 The Recipient must ensure that:

- a) each subcontractor is fully aware of the Recipient's obligations under this Agreement to the extent necessary for the subcontractor to properly perform its obligations;
- b) each subcontract it enters into is either approved by MPI in writing or is on terms that are consistent with this Agreement, to the extent relevant and material for the performance of the subcontractor's obligations; and
- c) each subcontract restricts the ability of the subcontractor to further subcontract its obligations without first obtaining MPI's consent.

10.3 The Recipient will not be relieved of any of its liabilities or obligations under this Agreement by entering into any subcontract.

10.4 If a subcontractor has failed to deliver any aspect of the Activities being subcontracted as approved under this Agreement and the failure cannot be remedied, MPI may, by notice to the Recipient, require the Recipient to terminate that subcontract immediately. MPI will not be liable for any losses or costs of the Recipient associated with such termination.

10.5 The Recipient will ensure that its contract with each approved subcontractor will contain the same rights as found in clause 25 (Recordkeeping and Audit), and that those rights are directly enforceable by MPI against the subcontractor pursuant to the Contracts (Privity) Act 1982.

11 CONFLICT OF INTEREST

11.1 The Recipient:

- a) warrants that as at the Commencement Date, it has no Conflict of Interest; and
- b) must do its best to avoid situations that may lead to any Conflict of Interest arising during the Term.

11.2 The Recipient must immediately notify MPI in writing of any matter, event or circumstance that gives rise to any Conflict of Interest. If a Conflict of Interest does arise the Parties must discuss, agree, and record in writing how it will be managed.

11.3 The Recipient will use reasonable endeavours to minimise the impact on MPI of any Conflict of Interest. Each Party must pay their own costs in relation to managing a Conflict of Interest.

11.4 If the Recipient fails to notify MPI of a Conflict of Interest, or is unable or unwilling to resolve or deal with the Conflict of Interest as required, MPI may terminate this Agreement in accordance with clause 21 (Termination).

12 COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

12.1 The Recipient will ensure that in performing its obligations under this Agreement it complies with all relevant laws, regulations, and codes and standards of practice in New Zealand and any other relevant jurisdiction, including ethical requirements.

12.2 Except as specified in Schedule 1 or agreed in writing by MPI, the Recipient is responsible for ensuring that every necessary and prudent authorisation (including consents, permits, licences, and informed consents (if a person is the subject of any research undertaken)) is obtained to allow the Recipient to perform its obligations under this Agreement, including in relation to performance carried out on MPI premises.

13 VARIATIONS

13.1 Except as expressly provided otherwise in Schedule 1, no variation to this Agreement (each a "Variation") is effective unless it is agreed in writing and signed by a duly authorised representative of both Parties.

13.2 MPI will have no liability for any changes to the Activities or Milestones that are not agreed in a Variation.

13.3 Unless expressly agreed in writing to the contrary, it will be an implied term in every Variation that the Variation will not prejudice any rights or obligations under this Agreement except to the extent that such rights or obligations are expressly amended by the Variation.

14 CONFIDENTIALITY

- 14.1** Each Party will keep confidential and secure and not use or disclose to any third party any of the other Party's Confidential Information except:
- a) to its professional advisers or Personnel directly concerned with the implementation or operation of this Agreement and to the extent necessary for performing its obligations under this Agreement;
 - b) as required by law, court order, other legal obligation, or parliamentary rules or convention;
 - c) under the Official Information Act 1982;
 - d) to the extent necessary to subcontract to parties as approved by MPI in accordance with this Agreement;
 - e) where the information subsequently becomes part of the public domain through no fault of the Party receiving the information;
 - f) with the prior written consent of the other Party; or
 - g) as required by Schedule 3.
- 14.2** Except as expressly agreed by MPI in writing, the Recipient must retain all of MPI's Confidential Information in New Zealand.
- 14.3** Should a request be made to either Party for information that is confidential to the other Party in accordance with clause 14.1(c), the Party to whom the request is made will notify the other Party as soon as practicable. Such notice will outline the information subject to the request, and allow the Party being notified a reasonable opportunity to provide comment on whether, in its opinion, there are good (or conclusive) reasons for withholding any or all of the information sought.
- 14.4** Without limiting any specific privacy obligations specified in Schedule 1, the Recipient will comply with the Privacy Act 1993 when performing the Activities under this Agreement, and will not disclose any personal information acquired in the course of performing this Agreement to any person other than MPI, or the individual to whom the information relates, except with MPI's consent or in accordance with the Privacy Act 1993.
- 14.5** Subject to clause 14.1, the Recipient must not disclose any data, results, research papers, conference papers, reports, promotional material, pamphlets or other documentation relating to the Activities without the prior written consent of MPI.
- 14.6** Each Party acknowledges that a breach of any obligation of confidence under this Agreement may cause the other Party irreparable damage for which monetary damages would not be an adequate remedy. Accordingly, in addition to any claim for damages and any other remedies available at law or equity, the non-breaching Party may seek specific performance or injunctive relief against any breach or threatened breach by the other Party, its Personnel, agents or contractors of this clause 14. Each Party undertakes to provide the other Party with any assistance possible in any such action against any of that first Party's Personnel, agents or contractors.

15 MEDIA RELATIONS

- 15.1** MPI may publicise and report on the awarding of the Funding, including the Recipient's and any of its subcontractor's names, the amount of the Funding and a brief description of the Activities on websites and in media releases, general announcements and annual reports.
- 15.2** No Party may post on websites, social networking sites or publicly display objectionable or derogatory comments about the Activities, this Agreement, each other, or any of their Personnel.
- 15.3** The Recipient will refer any enquiries from the media or any other person about the terms or performance of this Agreement to MPI.

16 EVALUATION

- 16.1** MPI may at any time during the Term, or within seven years after the End Date, undertake, or engage an expert to undertake, a review or evaluation of the Activities, including any progress reports provided by the Recipient in accordance with Schedule 1.
- 16.2** In relation to any review or evaluation of the Activities, the Recipient must at its cost within 15 Business Days after a request by MPI or the expert:
- a) provide all reasonable assistance to MPI and the expert;
 - b) respond to all reasonable requests from MPI or the expert; and
 - c) provide any information reasonably required by MPI or the expert.

17 INTELLECTUAL PROPERTY

- 17.1** The provisions of Schedule 3 apply to ownership and use of Activity Intellectual Property (both commercialisable and non-commercialisable) and Background Intellectual Property (as defined in Schedule 3).
- 17.2** The Recipient must implement appropriate intellectual property management practices and procedures to maximise the potential for the Activities to deliver the Research Aims and achieve, or contribute to the achievement of, the Impacts for the benefit of New Zealand.

18 LIABILITY

- 18.1** The Recipient will be liable to MPI for the acts, defaults and omissions of its Personnel, agents and subcontractors, as fully as if they were the acts, defaults or omissions of the Recipient.
- 18.2** Neither Party will be liable to the other Party for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 18.3** The maximum liability of each party under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of Funding paid and payable under this Agreement.
- 18.4** The Recipient indemnifies MPI against:
- a) any taxes, levies, penalties, damages or compensation which MPI may be liable to deduct, withhold or pay by reason of the Recipient, or any person used by the Recipient to carry out the Activities, being held to be an employee of MPI; and
 - b) any claim, liability, loss or expense (including legal fees on a solicitor own client basis) brought or threatened against, or incurred by MPI, arising from or in connection with a breach of this Agreement by the Recipient, or from the negligence or misconduct of the Recipient.

19 INSURANCE

- 19.1** The Recipient must effect and maintain:
- a) insurance sufficient to cover its obligations under this Agreement during the Term; and
 - b) without limiting subclause (a) above, insurance of the type and to the level specified in Schedule 1.
- 19.2** The Recipient must, on request, provide MPI with sufficient evidence of its insurance cover in relation to this Agreement.

20 DISPUTE RESOLUTION

- 20.1** Except where a Party seeks urgent interlocutory relief, injunction, or specific performance, or has terminated this Agreement, neither Party may commence court proceedings against the other without the relevant Party using reasonable endeavours to comply with clauses 20.2 to 20.6 inclusive.
- 20.2** Where any dispute, disagreement, question or difference ("Dispute") arises between the Parties on any matter arising out of this Agreement, either Party ("Initiator") may notify the other Party ("Recipient") in writing of the Dispute ("Dispute Notice"). The Dispute Notice must specify the Initiator's:
- a) view of the facts of the Dispute;
 - b) legal position on the Dispute;
 - c) its suggestion for resolving the Dispute; and
 - d) representative authorised to resolve the Dispute.
- 20.3** The Recipient must respond to the Dispute Notice within five Business Days of receiving it. The Recipient's response must specify its:
- a) view of the facts of the Dispute;
 - b) legal position on the Dispute;
 - c) its suggestion for resolving the Dispute; and
 - d) representative authorised to resolve the Dispute.

- 20.4** The Parties will enter into negotiations to resolve the Dispute within five Business Days of the Initiator receiving the Recipient's response.
- 20.5** Where the Parties are unable to negotiate a resolution to the Dispute within 20 Business Days of the Recipient's receipt of the Dispute Notice (or such other time as the Parties agree in writing), then clause 20.6 will apply.
- 20.6** The Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if the Parties cannot agree within five Business Days of the expiry of the timeframe referred to in clause 20.5, the mediator will be selected, and the mediator's fee determined, by the Chair for the time being of the organisation known as LEADR New Zealand Inc (or his/her nominee). Mediation will be conducted in all respects in accordance with the LEADR New Zealand Inc. standard mediation agreement, and the Parties will use their best efforts to ensure that mediation is commenced and conducted expeditiously.
- 20.7** Where mediation does not resolve the Dispute within 10 Business Days of mediation commencing then without prejudice to each Party's right to commence court proceedings the Parties may agree to commence arbitration proceedings in accordance with the provisions of the Arbitration Act 1996.
- 20.8** The Parties agree that any mediation or arbitration which the Parties are required to attend shall be conducted in Wellington, New Zealand.
- 20.9** Pending settlement of the Dispute, the Parties will continue to perform their obligations under this Agreement as far as is practicable as if the Dispute had not arisen. This does not limit either Party's right to terminate this Agreement.

21 TERMINATION

- 21.1** Either Party may terminate this Agreement, immediately on written notice to the other Party, where the other Party commits a breach of this Agreement that:
- a) is not capable of being remedied and has a material adverse effect on the terminating Party (in the reasonable opinion of the terminating Party); or
 - b) is capable of being remedied, but has not been remedied to the terminating Party's reasonable satisfaction within 10 Business Days (or such longer period as the terminating Party may allow in writing) of the terminating Party giving the other Party written notice:
 - i. stating the nature of the breach, what is required to remedy it and the time and date by which it must be remedied; and
 - ii. which must be given within three months after the terminating Party became aware of the breach.
- 21.2** MPI may terminate this Agreement immediately by giving written notice to the Recipient, if the Recipient:
- a) fails to complete a Milestone within 20 Business Days after the relevant due date, other than as permitted under clause 8.1 (Milestones);
 - b) becomes insolvent or bankrupt;
 - c) has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed;
 - d) becomes subject to any form of external administration;
 - e) becomes unable to pay its debts as they become due or is presumed to be unable to pay its debts under section 287 of the Companies Act 1993;
 - f) is unable to perform its obligations under this Agreement for more than 20 Business Days due to an Extraordinary Event;
 - g) ceases to carry on business of the type or within the scope of which the Activities fall, or if MPI is not satisfied that the Recipient's business or any aspect of it remains compatible with performance of the Activities;
 - h) fails or is unable to rectify any deficiency in the Activities uncovered by MPI as a result of an audit conducted under clause 25 (Recordkeeping and Audit);
 - i) does not secure or use Co-Funding in accordance with clause 6.2 (Co-Funding) of Schedule 1;
 - j) does something, or fails to do something, that, in MPI's opinion, results in damage to MPI's reputation or business, or the reputation or business of the New Zealand Government;
 - k) has any Conflict of Interest that:

- i. in MPI's opinion is so material as to impact adversely on the delivery of the Activities, MPI or the New Zealand Government;
 - ii. the Recipient failed to notify MPI of; or
 - iii. in MPI's opinion, the Recipient is unable or unwilling to resolve or deal with as required by MPI acting reasonably;
- l) fails or is unable to provide acceptable replacement Personnel within 20 Business Days of being requested to do so by MPI under clause 9 (Personnel);
 - m) assigns this Agreement other than in accordance with clause 28.6 (Assignment); or
 - n) has provided or provides information to MPI or MBIE that is misleading or inaccurate in any material respect.

21.3 MPI may terminate this Agreement immediately by giving written notice to the Recipient if MPI has insufficient funding within its budget for the Activities.

22 EFFECT OF EXPIRY OR TERMINATION

22.1 On expiry or termination of this Agreement:

- a) MPI may require the Recipient to provide evidence of how the Funding has been spent;
- b) subject to payment of Funding in respect of the period prior to the End Date, any Funding that has not yet been paid by MPI will not be paid; and
- c) the Recipient will provide MPI with a copy of the register of Background Intellectual Property required to be kept in accordance with Schedule 3.

22.2 Expiry or termination of this Agreement will not:

- a) prejudice any other rights and remedies of the Parties under this Agreement or otherwise provided by law; or
- b) affect any part of this Agreement which expressly, or by its nature, survives termination or expiry, including clauses 14 (Confidentiality), 15 (Media Relations), 16 (Evaluation), 17 (Intellectual Property), 18 (Liability), 20 (Dispute Resolution), 22 (Effect of Expiry or Termination), 23 (Contact Persons), 24 (Inspection), 25 (Recordkeeping and Audit), 26 (Notices), 27 (Extraordinary Events), 28 (Miscellaneous) and Schedule 3.

23 CONTACT PERSONS

23.1 All matters relating to this Agreement (including but not limited to matters concerning interpretation of this Agreement) will be directed to MPI's Contract Manager or the Recipient's Contract Manager, unless provided otherwise in this Agreement.

23.2 If a reasonable attempt to contact MPI's Contract Manager in accordance with clause 23.1 is unsuccessful, enquiries can be directed to the person for the time being holding the office of MPI Grants' Coordinator.

23.3 If a reasonable attempt to contact the Recipient's Contract Manager in accordance with clause 23.1 is unsuccessful, enquiries can be directed to the chief executive or a general manager of the Recipient.

23.4 Each Party may from time to time change the person designated as its Contract Manager on 10 Business Days' written notice to the other Party.

24 INSPECTION

24.1 The Recipient will ensure that MPI Personnel, agents, and contractors, have access, at any reasonable time and for any reasonable purpose in connection with the Activities, free of charge, to any of the Recipient's property or premises relevant to this Agreement, and will ensure that any subcontracts confer on MPI an equivalent right of access for inspection.

25 RECORDKEEPING AND AUDIT

25.1 The Recipient must keep and maintain full, accurate and up to date records, including financial records, in relation to the provision of Activities, the Co-Funding and all money paid and payable by MPI under or in relation to this Agreement sufficient to enable MPI:

- a) to meet its obligations under the Public Finance Act 1989;

- b) to carry out an audit for the purposes specified in clause 25.2;
- c) to carry out a review or evaluation in accordance with clause 16 (Evaluation); and
- d) to make any Protective Application (as defined in Schedule 3) or to commercially exploit Activity Intellectual Property in accordance with Schedule 3.

25.2 The Recipient must retain such records for at least seven years after termination or expiry of this Agreement.

25.3 At any time during the Term, or after the End Date where the Parties are in dispute, any Personnel or authorised agent of MPI may conduct an audit for the purpose of:

- a) determining the Recipient's level of compliance with this Agreement (including whether there has been a breach of this Agreement);
- b) determining whether Activities and Milestones invoiced for by the Recipient have been performed according to this Agreement; or
- c) assisting in resolving a matter in Dispute between the Parties.

25.4 During an audit conducted under this clause 25, MPI may:

- a) enter any premises of the Recipient or its subcontractors used in connection with provision of the Activities at any reasonable time during usual business hours;
- b) inspect any records held under clause 25.1 in relation to the provision of Activities or any matter in dispute between the Parties; and
- c) meet with and/or contact and speak to any or all Personnel involved with provision of the Activities.

25.5 The Recipient will, at its expense, provide appropriately qualified staff to assist MPI perform the tasks in clause 25.3 to conduct the audit under clause 25.2. MPI will pay all other reasonable costs incurred by the Recipient that are directly associated with the audit.

25.6 At least five Business Days prior to commencing an audit, MPI will notify the Recipient in writing of its intention to conduct an audit and of the intended scope and timing of the audit.

25.7 Where an audit conducted under clause 25.2 identifies any serious concern or material non-compliance with the terms of this Agreement, MPI may require an additional audit or audits or other reasonable inquiries to be carried out at the Recipient's expense (such expenses including MPI Personnel costs at external charge-out rates).

25.8 MPI will advise the Recipient in writing of the scope and timing of any additional audit or inquiries required under clause 25.6.

25.9 MPI will promptly notify the Recipient of the results of any audit conducted under clause 25.2 and/or clause 25.6. Where any deficiencies are identified in such an audit, the Recipient will promptly take steps to remedy the deficiencies.

26 NOTICES

26.1 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 26) to the receiving Party's Contract Manager.

26.2 Unless the contrary is shown, 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 to a national address, 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).

26.3 The Parties agree that no notice required or permitted to be given pursuant to clause 20 (Dispute Resolution) or clause 21 (Termination) may be given by email.

27 EXTRAORDINARY EVENTS

27.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of an Extraordinary Event. The benefit of this clause 27.1 does not extend to any Extraordinary Event if and to the extent that:

- a) the effects of the event could have reasonably been prevented, avoided, overcome or mitigated by implementing reasonable precautions against the event;

- b) the affected Party is or was directly responsible for the event;
- c) the event is caused by:
 - i. any failure of a contractor of the affected Party, except to the extent the contractor was itself affected by an event which, if it occurred in relation to a Party, would have been an Extraordinary Event;
 - ii. a lack of funds for any reason;
 - iii. the affected Party's own breach or negligence; or
 - iv. strikes, lockouts, or any other form of labour dispute or delay caused by contractual or labour relations between either Party and any of its Personnel, agents, contractors or suppliers.

27.2 The Party affected by an Extraordinary Event must:

- a) notify the other Party, as soon as practicable after the Extraordinary Event occurs, of:
 - i. the nature of the circumstances giving rise to the Extraordinary Event;
 - ii. the extent of the affected Party's inability to perform under this Agreement;
 - iii. the likely duration of that non-performance; and
 - iv. the steps being taken to remedy, or reduce the impact of the Extraordinary Event;
- b) use its best endeavours to avoid or remove the Extraordinary Event and to minimise and mitigate its effects on that Party's obligations; and
- c) continue to perform its obligations under this Agreement as far as practicable.

27.3 MPI is not obliged to pay any Funding for so long as an Extraordinary Event prevents the Recipient from performing its obligations under this Agreement.

28 MISCELLANEOUS

Entire agreement

28.1 This Agreement (including its Schedules, attachments, all other documents specified in Schedule 1 as forming part of it and all variations in accordance with clause 13) constitutes the entire agreement between the Parties and supersedes all prior agreements, representations, understandings and negotiations, whether written or oral of the Parties. The Parties acknowledge that they are not relying on any term, condition, representation or agreement that is not set out in this Agreement, unless such term or condition is implied by law.

Costs

28.2 Subject to any express provision in this Agreement to the contrary, each Party is to pay its own legal and other costs and expenses relating directly or indirectly to the negotiation and preparation of this Agreement.

Privity

28.3 This Agreement confers benefits on public service agencies (as defined in the State Sector Act 1988) which may be relied on and enforced by them under the Contracts (Privity) Act 1982).

Relationship

28.4 Nothing in this Agreement creates an employment, fiduciary, partnership, agency or joint venture relationship between MPI and the Recipient. Neither Party has authority to bind or represent the other Party in any way or for any purpose. This Agreement is not an exclusive arrangement between the Parties, and MPI may enter into contracts with third parties in respect of the same or similar Activities.

Waivers

28.5 No waiver of any rights or benefits arising under this Agreement is effective unless it is in writing and signed by the Party waiving. A waiver of a breach does not prejudice the waiving Party's rights in respect of any other breach. No delay, failure or forbearance by the Parties to exercise (in whole or in part) any right, power or remedy under this Agreement will operate as a waiver.

Assignment

28.6 The Recipient may not assign, transfer or otherwise deal with any of its rights or obligations under this Agreement without MPI's prior written approval. MPI may withhold its approval in its sole discretion.

Change of Control

28.7 The Recipient will notify MPI as soon as reasonably practicable of any expected change of Control of the Recipient, and notify promptly of any actual change of Control of the Recipient. Any change in Control of the Recipient is deemed to be an assignment of this Agreement and the provisions of clause 28.6 will apply.

Severability

28.8 If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision will be severed and the remainder of this Agreement will remain in full force and effect.

Counterparts

28.9 This Agreement may be executed in counterparts, meaning that execution will be complete when each Party holds a copy (which can be a faxed or emailed copy) of this Agreement signed by the other Party, even though the signatures of both Parties do not appear on the same copy.

Joint and Several Liability

28.10 Any provision of this Agreement to be performed or observed by two or more persons binds those persons jointly and severally.

Governing law

28.11 This Agreement and its formation are governed by New Zealand law. Both Parties submit to the non-exclusive jurisdiction of the New Zealand courts.

SCHEDULE 3: INTELLECTUAL PROPERTY TERMS

1 DEFINITIONS

Activity Intellectual Property means Intellectual Property arising from or created during the performance of the Activities, which has been funded in whole or in part using Sustainable Land Management And Climate Change funding, which may incorporate Intellectual Property derived from Background Intellectual Property or developments or modifications of or improvements to Background Intellectual Property, but excludes Background Intellectual Property or any other Intellectual Property over which MPI has Rights of Disposal but shall not include information or data in raw or processed form that has been gathered and recorded in the course of the Activities by way of interviews with third parties.

Background Intellectual Property or BIP means:

- a) Intellectual Property over which the Recipient has Rights of Disposal, developed independently of an Activity, and which is:
 - (i) used in the Activities; or which
 - (ii) might reasonably be expected to be directly relevant to the Activities as identified by the Recipient having periodically made reasonable internal enquiries within the Recipient's organisation as to the existence of such Intellectual Property, and which exists at the commencement of the Activities or is developed during the term of the Activities; and
- b) Intellectual Property over which a third party or third party research contractor involved in the Activities has Rights of Disposal, developed independently of the Activities by that third party or third party research contractor but which is directly relevant to the Activities in which the third party or third party research contractor is involved and which exists at the commencement of the Activities or is developed during the term of that third party's or third party research contractor's involvement in the Activities.

Commercialisable Activity Intellectual Property means Activity Intellectual Property that in the Recipient's reasonable opinion MPI may wish to commercially exploit.

Confidential Activity Information means:

- a) information arising from or created or developed during the Activities that directly relates to Activity Intellectual Property that has not been identified or classified as Non-Commercialisable Activity Intellectual Property;
- b) financial documents relating to the Activities; and
- c) any other Confidential Information,

unless MPI determines that such Confidential Activity Information (with the exception of any information relating to the Background Intellectual Property covered by clause 3.5) is not confidential.

Confidential Information has the meaning given to it in clause 1.1 (Definitions) of Schedule 2.

Intellectual Property means all statutory, common law and other proprietary rights in respect of data, information, patents, patent applications, inventions, designs, trademarks, business names, copyright works, know-how, trade secrets, plant varieties, layout designs, results, outcomes, conclusions, products, systems, genetic material, experimental methods, processes, databases, notes, drawings, records, memoranda and other writings, computer programmes (including source code), graphics and data (in whatever form or format), whether registrable or not in any country (including New Zealand).

Nationally Significant Databases or Collections means the databases and collections that are listed on MBIE's website as nationally significant and such other nationally important databases, collections, and capabilities as may be agreed by MPI from time to time.

Non-Commercialisable Activity Intellectual Property means Activity Intellectual Property that is not Commercialisable Activity Intellectual Property or which MPI has classified as Non-Commercialisable Activity Intellectual Property pursuant to clause 4.3.

Protective Application means:

- a) any application for patents, plant variety rights, designs or registrable intellectual property protection concerning Activity Intellectual Property; or
- b) any application to maintain or protect Activity Intellectual Property as a trade secret.

Records means any tangible data, results and reporting arising from the Activities including a Researcher's lab books.

Researcher means an employee of the Recipient or a third party research contractor involved in undertaking research for the Activities.

Rights of Disposal in relation to Intellectual Property means having an unfettered right to enter into agreements with any third party in respect to the use, licence or sale of that Intellectual Property. Where the Recipient or third party research contractor uses or contributes Background Intellectual Property for use in the Activities without notification of any conditions or restrictions relating to that Background Intellectual Property (in relation to its Rights of Disposal or lack thereof), it will be deemed to have Rights of Disposal of that Background Intellectual Property (subject to clause 3.5).

2 ACTIVITY INTELLECTUAL PROPERTY

- 2.1 Unless otherwise agreed in this Agreement, legal and beneficial ownership of the Activity Intellectual Property will vest in the Crown from its creation, with MPI being the administrator of such property for practical purposes (notwithstanding the provision of any co-funding by the Recipient).
- 2.2 The Recipient agrees that the Recipient has no claim over the Activity Intellectual Property, will not challenge the Crown's ownership of the Activity Intellectual Property or make any claim to such Activity Intellectual Property, and acknowledges that the Recipient has no licence to use the Activity Intellectual Property, except as provided in this Agreement.
- 2.3 The Recipient will at any time, including following expiry or termination of this Agreement for any reason, at MPI's reasonable request and at the Recipient's expense sign all documents and ensure all relevant Researchers sign all documents required to vest ownership of Activity Intellectual Property in the Crown where it has rights of ownership pursuant to this Agreement.
- 2.4 Subject to clause 2.7 MPI hereby grants to the Recipient an irrevocable, royalty-free, non-exclusive, worldwide, transferrable, license for all Non-Commercialisable Activity Intellectual Property, for the purposes of research, publication, dissemination and use by the Recipient and third party research contractors, including a right for the Recipient to grant sublicenses to third party research contractors to any or all such Non-Commercialisable Activity Intellectual Property on those same terms (provided however that no further sublicensing is permitted).
- 2.5 The Recipient will use its best endeavours to promptly publish, disseminate and ensure the use of (or, where more appropriate, require any third party research contractor to promptly publish, disseminate or ensure the use of) Non-Commercialisable Activity Intellectual Property for which a licence has been granted under clause 2.4 for the benefit of New Zealand.
- 2.6 The Recipient will use its best endeavours to ensure that any third party research contractor involved in the Activities will comply with the provisions of this clause 2, in respect of Activity Intellectual Property developed by that third party research contractor, as if they had signed this Agreement in the Recipient's place.
- 2.7 The licence granted by MPI under clause 2.4 shall not apply to Confidential Activity Information and Activity Intellectual Property that MPI had determined pursuant to clause 2.8 would pose a threat to national or other security. In exercising the licence granted by MPI under clause 2.4, neither the Recipient nor any third party research contractor shall disclose or permit the disclosure of Confidential Activity Information.
- 2.8 For the purpose of clause 2.7, the Recipient will regularly report to MPI on developments of Activity Intellectual Property. Within two (2) months of disclosure of Activity Intellectual Property by the Recipient to MPI:
 - a) MPI must give written notice to the Recipient if in MPI's reasonable opinion use of the relevant Activity Intellectual Property by the Recipient or a third party research contractor pursuant to clause 2.4 would pose a threat to national or other security; and
 - b) in the absence of such notice, MPI will be deemed to have determined that use of the relevant Activity Intellectual Property by the Recipient or a third party research contractor pursuant to clause 2.4 would not pose a threat to national or other security.

3 BACKGROUND INTELLECTUAL PROPERTY

- 3.1 MPI and the Recipient agree not to have any claim as to ownership over the other's Background Intellectual Property.
- 3.2 Subject to clause 3.5 the Recipient will make available the Recipient's Background Intellectual Property for research use in the Activities on a non-exclusive, royalty-free basis.

- 3.3 Where MPI or any other public service agency (as defined in the State Sector Act 1988) requires the use of or access to any Background Intellectual Property used in the Activities in order to use, disseminate or exploit Activity Intellectual Property, then:
- a) the Recipient grants to MPI and all public service agencies an irrevocable, royalty-free, non-exclusive, transferable, sub-licensable, worldwide licence for the Recipient's Background Intellectual Property to use insofar as is necessary for MPI (or any other public service agency) to use, disseminate or exploit Activity Intellectual Property;
 - b) the Recipient will ensure that third parties and third party research contractors grant to MPI and all public service agencies an irrevocable, royalty-free, non-exclusive, transferable, sub-licensable, worldwide licence for their Background Intellectual Property to use insofar as is necessary for MPI (or other public service agency) to use, disseminate or exploit Activity Intellectual Property; and
 - c) under such licences MPI may file, prosecute or defend Protective Applications for the Activity Intellectual Property derived from Background Intellectual Property in the name of MPI (but for the avoidance of doubt not Protective Applications for the Background Intellectual Property).
- 3.4 The Recipient will procure that any third party research contractor or subcontractor involved in the Activities will comply with the provisions of this clause 3 as if they had signed this Agreement in the Recipient's place, in respect of the Background Intellectual Property of that third party research contractor or subcontractor.
- 3.5 The Recipient will keep a register of Background Intellectual Property in accordance with Appendix 2 of this Schedule.

4 COMMERCIALISABLE ACTIVITY INTELLECTUAL PROPERTY

- 4.1 The Recipient will promptly give MPI notice of any Commercialisable Activity Intellectual Property and shall make recommendations to MPI on the types of Protective Application that should be sought and how commercial exploitation should best occur for that Commercialisable Activity Intellectual Property. In making such recommendations the Recipient will take into account the criteria provided by MPI for such recommendations provided as Appendix 1 of this Schedule 3.
- 4.2 MPI shall at its sole discretion determine, on a case by case basis, the types of Protective Applications that should be sought for Commercialisable Activity Intellectual Property and how to commercially exploit Commercialisable Activity Intellectual Property.
- 4.3 MPI may at its sole discretion determine on a case by case basis, that:
- a) Protective Applications should not be sought for Commercialisable Activity Intellectual Property;
 - b) Commercialisable Activity Intellectual Property should not be commercially exploited; or
 - c) Commercialisable Activity Intellectual Property should not be Commercialisable Activity Intellectual Property and should be classified as Non-Commercialisable Activity Intellectual Property, and shall advise the Recipient of such determinations by notice.
- 4.4 The Recipient will at any time, including following expiry or termination of this Agreement for any reason at MPI's reasonable request and at MPI's cost:
- a) provide MPI with any assistance and data reasonably required in order to file and prosecute the Protective Applications, and in order to maintain, defend or enforce any registrations arising from such Protective Applications;
 - b) without limiting the generality of this clause 4.4, prepare a culture and deposit it in a culture collection nominated by MPI to support any Protective Application; and
 - c) assist MPI to successfully transfer any Activity Intellectual Property to a third party for commercial exploitation or use.
- 4.5 MPI grants to the Recipient a royalty-free, non-exclusive licence to use the Commercialisable Activity Intellectual Property for research purposes only, and only in the Activities, during the term of this Agreement. The Recipient may sub-licence this license to any third party research contractor involved in the Activities, for the duration of that third party's involvement in the Activities upon the same terms that the Recipient is licensed to use the Commercialisable Activity Intellectual Property, except that no further sublicensing is permitted.
- 4.6 The Recipient will:
- a) keep all Records secure; and

- b) provide MPI with a copy of or access to (as the case may be) any Records (including, as necessary, any source data) to make any Protective Application or to commercially exploit Activity Intellectual Property.

5 INTELLECTUAL PROPERTY WARRANTIES

5.1 The Recipient warrants to MPI that:

- a) the Recipient will procure from Researchers involved in the Activities an acknowledgement of and agreement to comply with the provisions as set out in this Schedule (in relation to the transfer of ownership of Activity Intellectual Property to MPI);
- b) neither the Recipient nor any Researcher involved in the Activities are under any obligation to third parties other than MPI (through their employer, as applicable) to assign or license to use any Activity Intellectual Property;
- c) any Activity Intellectual Property created by a Researcher is the Researcher's own original work undertaken within the Activities;
- d) the use of any of the Background Intellectual Property by MPI (where permitted pursuant to this Agreement) will not infringe the Intellectual Property of any third party (for the purpose of this clause, to the best of the Recipient's knowledge does not include having carried out freedom to operate searches);
- e) the Recipient has full right, power and authority to use the Background Intellectual Property (including, but not limited to, any research methodology, research process, research protocol or research tool) used in undertaking the Activities, and the Recipient is either the licensee or owner of any such material not in the public domain;
- f) the Recipient will carry out the Activities without breaching any obligations the Recipient may owe to a third party now or as far as the Recipient is at present aware, in the future and the Recipient hereby undertakes to carry out the Activities without breaching any such obligations and further undertakes not to assume any obligations to any third party which would be inconsistent with such undertaking; and
- g) Activity Intellectual Property does not and will not infringe the rights of third parties, and further should the Recipient come to believe during the Term that the use of any of the Activity Intellectual Property by MPI will or is likely to infringe the Intellectual Property of any third party in New Zealand then the Recipient will immediately notify MPI.

5.2 The warranties contained in this clause 5 shall apply to the Recipient in respect of Researchers who are the Recipient's employees, the Recipient's Background Intellectual Property, and Activity Intellectual Property developed by the Recipient. The Recipient will procure that any third party research contractor involved in the Activities will comply with and give similar warranties to those contained in this clause 5 as if they had signed this Agreement in the Recipient's place, in respect of Researchers employed by them or their subcontractors, Background Intellectual Property of them or their subcontractors, and Activity Intellectual Property developed by or on behalf of them or their subcontractors.

6 NATIONALLY SIGNIFICANT DATABASES AND COLLECTIONS

6.1 If the Recipient is responsible for a Nationally Significant Database or Collection, the Recipient will add any relevant information arising from the Activities and Confidential Activity Information to that Nationally Significant Database or Collection.

6.2 The Recipient must provide to the requester information from the Nationally Significant Database or Collection, excluding Confidential Activity Information or Commercialisable Activity Intellectual Property, in its least aggregated form.

7 CONSEQUENCES OF TERMINATION

7.1 In the event that this Agreement is terminated then any licence granted pursuant to clauses 2.4, 3 and 4.5 shall continue.

APPENDIX 1

Framework for determining whether Activity Intellectual Property should be recommended as Commercialisable Activity Intellectual Property

The following framework assists in determining whether a recommendation should be made to MPI that Activity Intellectual Property should be Commercialisable Activity Intellectual Property. In making recommendations consideration should be given separately to New Zealand and international opportunities, characteristics and requirements.

The framework is that:

- a) unless there are strong reasons to withhold, protect, or commercialise Activity Intellectual Property (AIP), it should be made public and freely available;
- b) MPI will advise the Recipient when there are international obligations that require AIP to be publicly released;
- c) MPI will advise the Recipient of any national security matters that require that the AIP be maintained confidential;
- d) all AIP will have some benefit to New Zealand and agricultural sectors;
- e) achieving benefit to New Zealand and the agricultural sectors has a greater priority to MPI than achieving commercial returns on the research investment;
- f) a process is in place to ensure that AIP is not released pending any recommendation by the Recipient as to whether AIP should be commercialised and MPI's decision on this;
- g) in the event MPI determines that AIP is Commercialisable Activity Intellectual Property MPI shall discuss with the Recipient potential publication of information at an appropriate time relating to the Commercialisable Activity Intellectual Property; and
- h) the Recipient should determine as early as possible in the Activities whether AIP is likely to have the potential to be commercialised.

APPENDIX 2

1. BACKGROUND INTELLECTUAL PROPERTY REGISTER

1.1 Introduction

For the effective management of this Schedule 3 a registry of intellectual property will be maintained.

To satisfy this requirement, the Recipient and any third party research contractors involved in Activities will identify the status of their Background Intellectual Property that will be used in undertaking the Activities.

The Recipient will liaise with any third party research contractors involved in the Activities to identify the information required for the tables in this Appendix or the like. Explanatory descriptions of some of the terms and phrases used in the table are provided in Section III. In Section IV a sample completed table is provided.

1.2 Register of Background Intellectual Property to be used in the Activities

Description of BIP What is it?	Source of BIP If developed elsewhere	Owner of BIP Who owns it? Does institution share with discoverer?	IP Rights What kind of IP rights does the owner expect to exert?	Status of BIP Does the Recipient have a legal and unrestricted right to use it?	Commercially, strategically, culturally sensitive?	Activity
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Tangible Property – “Things”

N/A						
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Methods of Doing Something

N/A						
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Written Text and Computer Code

1.3 Explanatory descriptions of terms and phrases used in the table

Description of Background Intellectual Property. Please provide a written description/explanation of the Recipient's Background Intellectual Property under the appropriate category provided in the table. See Section IV for a sample completed table.

Tangible Property – “Things” includes but is not limited to the following:

- Plants and animals (e.g., genotypes, varieties, strains, segregating populations, inbreds, hybrids, clones).
- Microorganisms (e.g., bacteria, yeast, viruses, fungi).
- Equipment (e.g., mass spectrometers, gene sequencers, chromatography, global positioning/geospatial apparatus, DNA chips, apparatus for catching fish, apparatus for sampling water).
- Nucleic acids (e.g., DNA, RNA, genetic constructs; vectors; isolated genes; promoters; Expressed Sequence Tags (ESTs), primers, tags).
- Proteins (e.g., antibodies, isolated enzymes, genetically modified enzymes).
- Chemicals (e.g., reagents, fungicides, insecticides, buffers).

Methods of Doing Something includes but is not limited to the following:

- Genetic transformation/genetic engineering/gene introduction (e.g., Whiskers®, biolistics/gene gun/microprojectile bombardment, agrobacterium-mediated transformation).
- Assays (e.g., polymerase chain reaction (“PCR”); isolation and quantification of nucleic acids (RNA, DNA) and amino acids (proteins, peptides, polypeptides); methods of assaying for the presence of chemicals).
- Marker-assisted selection.
- Any other method of accomplishing a task.

Written Text and Computer Code includes but is not limited to the following:

- Algorithms.
- Computer code/programs.
- Data sets (e.g., geospatial data, rainfall data, temperature data).
- Nucleic acid sequences.

Source of Background Intellectual Property. Please provide the best information the Recipient has about where and from whom the Recipient obtained the Background Intellectual Property. See Section IV for a sample completed table.

Owner of the Background Intellectual Property. Please provide the best information the Recipient has about who actually owns the Background Intellectual Property. The owner may be different than the person/entity from whom the Recipient received the Background Intellectual Property. See Section IV for a sample completed table.

Background Intellectual Property. Please provide the best information the Recipient has about what kind of Intellectual Property rights are possessed by the owner. Examples of the most commonly used types of IP rights include the following:

- a) Patents and Patent Applications – e.g., utility/regular patents, provisional patent applications, Plant Patents, Design Patents, International Patent Applications filed under the Patent Cooperation Treaty (“**a PCT application**”).
- b) Plant Breeder's Rights/Plant Breeders Certificates and applications therefore – patent-like rights to plant varieties under UPOV.
- c) Sui Generis Protection – national, unconventional legal protections for plant varieties.
- d) Trademarks and Service Marks and applications thereof – e.g., new products/services, packaging/advertising materials, advertising slogans, icons, logos, graphics, building designs, domain names.
- e) Trade Secrets – confidential information held by a Third Party. Defined as items not generally known or ascertainable by proper means, having economic value and the subject of reasonable precautions for the secrecy thereof. Examples include software, customer lists, employee knowledge, production processes and survey/research data.

- f) Copyrights and Copyright Applications – e.g., writings, pictures, computer programs, data sets.
- g) None or Unknown.

Status of Background Intellectual Property. Please explain whether and how the Recipient obtained the rights to use the Background Intellectual Property. Examples of ways that such rights can be obtained include but are not limited to the following:

- a) Licenses – a contract which allows the licensee (the one obtaining the license) to use the Third Party IP. Please include important conditions in a license such as but not limited to the following:
 - i. Whether the license is exclusive or non-exclusive;
 - ii. Whether the license is worldwide or, alternatively, limited to specific geographic areas, such as being limited to specific territories (e.g., “New Zealand”) or nations (e.g., “the United States”); and
 - iii. Whether the license is limited to specific uses or applications (e.g., “only for non-commercial purposes”, “only for the transformation of Zea Mays”) – these types of conditions are often called “field of use restrictions”.
- b) Material Transfer Agreements (“MTA”) – where the transfer of material to the Recipient from the Third Party included certain restrictions or conditions for its use (e.g., “can only be used in accordance with FAO guidelines on designated germplasm”, “recipient must make any research results freely available to the public everywhere”). Please include information on any restrictions or conditions that may impact the Program’s ability to either make the research results freely available everywhere or its ability to protect the research results using IP.
- c) Assignment – a legal document which transfers title/ownership in the IP from the Third Party to the Recipient.
- d) Joint Ownership – in this situation, the Recipient co-owns the IP with the Third Party, with such co-ownership often arising by co-discovery or by a contract establishing co-ownership of any IP developed as part of an agreement.
- e) Confidentiality Disclosure Agreement – where the use of information from the Third Party includes limitations and restrictions on whether or how that information can be shared with others.
- f) None or Unknown.

1.4 Sample Table of Background Intellectual Property

Description of BIP What is it?	Source of BIP If developed elsewhere	Owner of BIP Who owns it? Does institution share with discoverer?	IP Rights What kind of IP rights does the owner expect to exert?	Status of BIP Does the Recipient have a legal and unrestricted right to use it?	Commercially, strategically, culturally sensitive?	Activity
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Tangible Property – “Things”

Rice variety designated XXXX	University of XXXX	Same	Covered by MTA	Can only be used for research results that will be freely available to all. Must recognize the University's contribution in all public disclosures.		Rice variety designated XXXX
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Methods of Doing Something

Method of introducing a gene into rice. Method is called XXXX	Dr. XXXX	XXXX Seed Company	U.S. Patent No. XXXX and EP Patent No. XXXX; could be additional patents and patent applications?	We have a license to use this method for non-commercial purposes in XXXX only.		
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Written Text and Computer Code

Temperature data base for country XXXX from 19XX to 19XX. The data set is dated XX/XX/XX	Colleague XXXX at the XXXX Research Centre	Unknown	Unknown	He just gave me the data set with no conditions.		
Algorithm for identifying XXXX genes in rice	From the following publication: XXXX	Author XXXX	Copyright	I did not ask for permission to use it.		

APPENDIX 3

Ministry for Primary Industries
Manatū Ahu Matua



SUSTAINABLE LAND MANAGEMENT AND CLIMATE CHANGE MILESTONE REPORT

A. Project Details			
Project Manager:		Project Code:	
Project Title:			
B. Reporting Milestone Details			
Milestone Number:		MPI Milestone Value (\$)	
Date Due:		Date Completed:	
Deliverables:			
Evidence of achievement:			
C. General Comments			
<i>Any comments on the overall progress of the project. E.G “Overall, the programme is progressing well and is on track.” Also list any achievements to date that are noteworthy. Use this section also to report on any IP issues or developments.</i>			
D. Risks / Issues			
<i>Any risks or issues that may or will delay the delivery of future milestones and /or the project itself. Also need to comment on its impact on the delivery of specific milestones and the project overall. Please state ways of mitigating the risk /issue.</i>			
E. Other Milestones			
<i>(Comment on the status of the remaining milestones currently being worked on by the project team)</i>			
Milestone number	Status	Comments	
F. Milestone Variation			
<i>[complete if you require a variation to any milestone(s) yet to be delivered. Please state in the comments panel below a reason/cause for a change needed]</i>			
Milestone Number	Date Due	Comment: <i>Place the Status Code in brackets at the beginning of the comment.</i>	New proposed due date

Key for completing the milestone reporting template in section E.

R	The milestone is experiencing critical problems and a plan review is required immediately.
O	Delay in delivery of the milestone – change or alteration to the plan is needed
Y	Possible delay in the delivery of the milestone – may affect the delivery of the milestone
G	On target