**RESEARCH SERVICES AGREEMENT**

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| Parties |
| **Between:** | *<If Company:* [Company A],having its registered offices at [Insert registered offices]> <*if Individual* [Insert Full Name], residing at [Insert residential address]>, (“Contractor”); |
| **And:** | *<If Company:* [Company B],having its registered offices at [Insert registered offices]> <*if Individual* [Insert Full Name], residing at [Insert residential address]>, (“ the KiwiNet Partner”). |

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| Background: |
| 1. The Contractor is [*brief description of the Contractor’s area of expertise*].
2. The KiwiNet Partner is undertaking research on [*description of the research programme*] (Research Programme).
3. The Contractor has agreed to assist in the Research Programme by providing Services to the KiwiNet Partner on the terms below.
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| Specific terms |
| **Services** | [d*escription of services*] |
| **Deliverables and deliverable dates**  | [*list of deliverables and dates*] |
| **Fees (NZD)**  | [*hourly rate*] plus GST for a maximum of [      ] hours or [*fixed price*] plus GST] |
| **Expenses** | [*itemise and price* *e.g. travel, accommodation, materials*] plus GST |
| **Location** | [*if relevant,* *street address where work to be undertaken*] |
| **Start date**  |  [*if applicable*] |
| **End date**  | [*if applicable*] |
| **Reports** | [*type of report, information to be included and frequency of report i.e. due dates*] |
| **Insurance** | [*type and level of insurance required of Contractor*] |
| **Liability** | [*maximum amount of the KiwiNet Partner’s liability if different to the total fees payable by the KiwiNet Partner under this contract*] |
| **Nominated Personnel**  |  [*name, email address and phone number of Contractor’s key personnel*] |
| **Contractor address for notices**  | [*street address and or fax number – not PO Box*] |
| **KiwiNet Partner contact person** |  [*name, email address and phone number of the KiwiNet Partner staff member* *dealing with the Contractor*] |
| **KiwiNet Partner address for notices** | C/- WaikatoLink Limited, Level One, Core Facilities Building, Waikato Innovation Park, Hamilton, New Zealand  |
| **Head Contract** | [*insert details if there is one*] |
| **Variations** | The General Terms below are varied as follows: [*Any amendments to the General Terms must be identified in this section, not in the body of the General Terms*] |

**GENERAL TERMS**

Except as varied by the Specific Terms above, the following General Terms apply to the Services provided by the Contractor to the KiwiNet Partner under this contract.

1. **DEFINITIONS AND INTERPRETATION**
	1. In this contract the following terms have the following meanings:

BACKGROUND IPR means all IPR owned by a party at the date of this contract or developed or acquired by a party after the date of this contract that is outside the terms of this contract.

CONFIDENTIAL INFORMATION means:

1. all information and materials relating to or arising from the Services in any form whatsoever;
2. information which is by its nature confidential or which the discloser advises the recipient is confidential and includes the terms of this contract; and
3. anything disclosed before the date of this contract that relates to paragraphs (a) or (b);

but does not include:

1. information which at the date of this contract is in the public domain or subsequently enters the public domain without fault on the part of the recipient;
2. information that is received in good faith by the recipient from a third party not owing (directly or indirectly) any obligation of confidentiality to the disclosing party; or
3. information which is at the date of this contract, independently acquired or developed by, or already properly in the possession of, the recipient and which the recipient can demonstrate by written record to be previously known to the recipient.

IPR means all intellectual property rights and industrial property rights of any nature whether conferred by statute, common law or equity, including without limitation, all rights in any patent, copyright, trade mark, design, database, circuit lay-out, know-how, trade secret, Confidential Information, or right of confidence including all such rights or similar rights in any invention, device, material, data, drawing, sample, method, process, text, algorithm, schematic, software, hardware, firmware, get-up, any other original works or materials, or any component of the same, and any application to register the same, whether or not registered or capable of registration.

NEW IPR means IPR produced by the Contractor or its personnel in the course of undertaking the Services.

WORKING DAY means any day other than a Saturday, Sunday, public holiday in Wellington, Auckland or Christchurch, New Zealand, and any day from 24 December to 5 January inclusive in any year.

* 1. In this contract:
1. in addition to the definitions in clause 1.1, unless the context otherwise requires, terms given a meaning in the Specific Terms have that meaning.
2. a reference to a person includes any other entity or association recognised by law and the reverse.
3. words referring to the singular include the plural and the reverse.
4. a reference to a paragraph, section, clause or a party is a reference to that paragraph, section, clause or party in this contract.
5. where two or more persons are listed as a party to this contract, their liability is joint and several.
6. all monetary amounts are in New Zealand dollars unless stated otherwise.
7. clause headings are for reference purposes only.
8. time is of the essence.
9. **SERVICES**
	1. The Contractor will:
10. use its best efforts to perform the Services in accordance with this contract and do everything necessary and proper for the provision of the Services;
11. provide to the KiwiNet Partner all Deliverables to a standard acceptable to the KiwiNet Partner upon the due dates;
12. perform the Services at the Location and provide the KiwiNet Partner with access to its premises (if the Location is in whole or in part at the Contractor’s premises);
13. if at the KiwiNet Partner’s premises, observe all the KiwiNet Partner’s policies, procedures and directives relating to health, safety and security;
14. ensure that its personnel have the necessary skills, experience, training, equipment and resources to successfully perform the Services and deliver the Deliverables;
15. keep all property belonging to the KiwiNet Partner safe and secure and not release any such property without the prior written authority of the KiwiNet Partner;
16. comply with any Head Contract as required by the KiwiNet Partner;
17. deal with the KiwiNet Partner in good faith and follow all directions of the KiwiNet Partner; and
18. exercise reasonable care and skill in performing the Services consistent with standards generally accepted in the applicable industry or profession in New Zealand and so as to promote and further the interests of the KiwiNet Partner.
19. **NOMINATED PERSONNEL AND SUBCONTRACTORS**
	1. The Contractor shall:
20. not delegate or replace or have any other person other than the Nominated Personnel specified in the Specific Terms perform its obligations under this contract, or appoint any subcontractor to perform any part of the Services without the KiwiNet Partner’s prior written consent;
21. ensure that the Nominated Personnel or any approved subcontractors are bound by obligations at least as protective of the KiwiNet Partner as the terms of this contract, and will do all things necessary to enforce such obligations; and
22. be liable to the KiwiNet Partner for any loss suffered by the KiwiNet Partner due to the actions or omissions of the Nominated Personnel, or any approved subcontractor.
23. **REPORTING AND PROGRESS**
	1. The Contractor will keep accurate and systematic records in relation to the Services and make them available to the KiwiNet Partner as reasonably required.
	2. The Contractor will provide the KiwiNet Partner with regular written Reports on the due dates specified and at any other times as reasonably required by the KiwiNet Partner. The Reports shall include any information required by the KiwiNet Partner from time to time including the Contractor’s progress in respect of the Services and Deliverables.
	3. The parties will meet regularly as and when reasonably required by the KiwiNet Partner to review the Contractor’s progress in undertaking the Services. The Contractor will make its personnel available at all reasonable times to discuss the Services, Deliverables, reports and any results with the KiwiNet Partner.
24. **CHANGES**
	1. The Contractor will promptly advise the KiwiNet Partner of any matters that may materially affect the Contractor’s ability to complete the Services, provide the Deliverables or fulfil any of its obligations under this contract. the KiwiNet Partner is in no way obliged to accept any variation to this contract and in the absence of agreement, the KiwiNet Partner may terminate this contract on 10 Working Days notice.
	2. If the KiwiNet Partner requires any variation to the Serv*i*ces the parties will discuss such proposed variation and any amendments required to the Fees, Services and Deliverables. If such variation and/or consequential amendments to the Fees, Services and Deliverables cannot be agreed, the KiwiNet Partner may terminate this contract on 10 Working Days notice.
25. **PAYMENT**
	1. the KiwiNet Partner shall pay the Contractor the Fees for Services that are properly completed to the KiwiNet Partner’s satisfaction.
	2. The Contractor shall invoice the KiwiNet Partner on the last day of each month for Services provided by the Contractor during that month, which invoice must include an itemised account of the time spent by the Contractor providing those Services. The Contractor may only invoice for any Expenses itemised in the specific terms or with the prior written agreement of the KiwiNet Partner.
	3. Any correctly rendered invoice shall be paid by the KiwiNet Partner by the 20th day of the month following the month in which the Contractor’s invoice was provided to the KiwiNet Partner unless a dispute arises in connection with that invoice. In that case, the KiwiNet Partner may withhold the disputed amount (but not any amount which is not in dispute).
	4. the KiwiNet Partner will, on receipt of a complying tax invoice including evidence of GST registration, pay the Contractor GST incurred for Services.
	5. Notwithstanding clauses 6.1 to 6.4:
26. if the Contractor fails to meet any of the Deliverables by their due date, the KiwiNet Partner may withhold any payments due until the relevant Deliverable has been provided.
27. the KiwiNet Partner may set off any amount that is or may become payable by it to the Contractor against any amount that is or may become payable by the Contractor to the KiwiNet Partner.
28. **INTELLECTUAL PROPERTY RIGHTS**
	1. Background IPR owned by a party will remain with that party. Except to the extent necessary to complete the Services or expressly stated otherwise, the KiwiNet Partner grants no rights in its Background IPR to the Contractor.
	2. All New IPR will vest in the KiwiNet Partner.
	3. The Contractor agrees:
29. that the KiwiNet Partner is not obliged to exercise its rights and ownership set out in this clause during the term of this contract or after its termination, nor will the KiwiNet Partner be obliged to compensate the Contractor for perfecting or transferring such rights and ownership;
30. at the KiwiNet Partner’s request, to do all acts and things and to execute all documents necessary to give effect to clause 7.2. The Contractor warrants that it has appropriate arrangements in place with all of its employees, contractors, and any of its other personnel involved in the Services to give effect to clause 7.2;
31. to refrain from challenging or disputing (or assisting or encouraging any third party to challenge or dispute) the KiwiNet Partner’s rights and ownership set out in this clause 7, both during and after the term of this contract;
32. not to disclose, publish or do anything which may adversely affect the KiwiNet Partner’s ability to obtain legal protection for the New IPR;
33. to immediately notify the KiwiNet Partner if it:
34. develops any New IPR and shall inform the KiwiNet Partner of the specific nature of that New IPR in such level of detail as reasonably required by the KiwiNet Partner and advise the KiwiNet Partner of any potential impediment to the securing or protecting
35. of the New IPR; or
36. becomes aware of or suspects that any third party’s IPR infringes any of the New IPR.
	1. If the KiwiNet Partner requires access to the Contractor’s Background IPR for the purpose of making any commercial use of any New IPR, the Contractor grants the KiwiNet Partner a perpetual, transferable, non-exclusive, worldwide and royalty–free license to use its relevant Background IPR.
37. **TERM AND TERMINATION**
	1. This contract will commence on the Start Date and terminate on the earlier of:
38. the End Date (if any) provided all Deliverables have been provided to the KiwiNet Partner to its satisfaction or in any event upon the provision of the Deliverables to the KiwiNet Partner to the KiwiNet Partner’s satisfaction;
39. 10 Working Days written notice given by the KiwiNet Partner to the Contractor;
40. delivery of written notice by the KiwiNet Partner that it has become apparent to the KiwiNet Partner that the objectives of the Research Programme are unlikely to be achieved;
41. the Ministry of Science and Innovation cease providing funding to the KiwiNet Partner in connection with the Research Programme;
42. the termination or expiry of any Head Contract;
43. delivery of written notice by the KiwiNet Partner to the Contractor that the Contractor is in breach of any of the terms of this contract; or
44. immediately if the Contractor ceases trading, commences winding up (otherwise than for the purposes of a solvent reconstruction) or a receiver, or similar is appointed over any of the assets of the Contractor, or any action is taken to have the Contractor declared insolvent or bankrupt.
	1. On termination of this contract for any reason, the Contractor shall:
45. immediately deliver to the KiwiNet Partner all Confidential Information, New IPR, records, materials, equipment, devices and other items belonging to the KiwiNet Partner and/or relating to the Services, in the Contractor’s possession or under its control, at the time of termination;
46. not retain possession or control of any copies or extracts of anything specified in clause 8.2(a) without the written consent of the KiwiNet Partner; and
47. provide all reasonable assistance and cooperation necessary to facilitate a smooth transition of any uncompleted Services to the KiwiNet Partner or to any other person appointed by the KiwiNet Partner

## Termination of this contract will be without prejudice to the rights and remedies of the parties that have accrued prior to termination, including for any prior breach of this contract.

1. **NON SOLICITATION**
	1. The Contractor must not at any time during the period of this contract or for a period of 12 months after termination of this contract for any reason, either on the Contractor’s own account or for any other person, firm, organisation or company:
2. solicit, endeavour to entice away from or discourage from being employed by or contracted to the KiwiNet Partner, any employee, contractor, client or customer of the KiwiNet Partner; or
3. approach, undertake, canvass, solicit, or entice the business of clients of the KiwiNet Partner for or with whom the Contractor has worked while engaged by the KiwiNet Partner.
4. **CONFIDENTIALITY**
	1. The recipient of Confidential Information shall:
5. keep it in the recipient’s possession and treat it as confidential regardless of when disclosed;
6. not use any Confidential Information belonging to the other party for any purpose other than as required in terms of this contract; and
7. only disclose Confidential Information to employees, officers, approved subcontractors or professional advisers on a need to know basis and shall be liable to the discloser for any breach by those persons of these confidentiality obligations.
	1. The restrictions in this clause 10 do not apply where disclosure is required by law or by a government agency or government authority.
	2. The recipient shall, on demand by the disclosing party, or where the purpose of this contract has been served, at the option of the disclosing party promptly:
8. return to the disclosing party Confidential Information which is reasonably capable of being returned; and/or
9. destroy Confidential Information;

(including copies or reproductions of the same) which is in the possession or control of the recipient.

* 1. The parties acknowledge that any breach of these confidentiality obligation may result in damages for which monetary compensation would not be an adequate remedy and that the affected party is entitled to specific performance or injunctive relief in addition to any other remedies at law or in equity.
	2. No party gives any representation or warranty with respect to any information other than that it has the right to disclose such information.
1. **DISPUTE RESOLUTION**
	1. If any dispute arises as to the terms of this contract, then any party may give notice to the other party of that dispute. The parties will endeavour to resolve it quickly and fairly in good faith.
	2. If the dispute or difference cannot be settled by good faith negotiation between the parties within five (5) Working Days of the dispute or difference arising, such dispute or difference may be referred by either party to the mediation of a single mediator agreed to by both parties, or failing that, appointed by the President for the time being of the New Zealand Law Society or his/her nominee.
	3. If the dispute or difference cannot be settled within 15 Working Days of the dispute or difference being referred to mediation pursuant to clause 11.2, either party may commence court proceedings and shall be entitled to exercise all rights and remedies available to it at law.
	4. Nothing in this clause 11 shall prevent either party from commencing court proceedings for the purposes of seeking urgent interlocutory relief.
2. **LIABILITY**
	1. The Contractor shall ensure it has sufficient customary insurances to cover its potential liabilities under this contract together with any Insurance specified in the specific terms.
	2. If any Background IPR is provided by the KiwiNet Partner under this contract for the purpose of enabling the Contractor to provide the Services, it is provided as-is with all faults and the KiwiNet Partner gives no warranties regarding its Background IPR.
	3. Neither party shall not be liable for any consequential or indirect loss, liability or damage of the other.
	4. Notwithstanding any other provision in this contract, the liability of the KiwiNet Partner (whether in contract, tort including negligence, or otherwise) to the Contractor for any loss, liability or damage suffered by the Contractor (howsoever arising) will not, exceed the total Fees (exclusive of GST) payable by the KiwiNet Partner under this contract, or such other amount specified in the specific terms (if any).
	5. The Contractor indemnifies the KiwiNet Partner, its subsidiaries, officers, employees and subcontractors against any claim, proceeding, liability, damage, loss or cost (including legal costs on a solicitor/own client basis), incurred by the KiwiNet Partner arising directly or indirectly in connection with any breach of this contract.
3. **GENERAL**
	1. No amendment to this contract is binding unless in writing and signed by an authorised representative of both parties.
	2. Nothing in this contract will create, constitute or evidence any partnership, joint venture, agency, trust or employer/employee relationship between the parties.
	3. A failure by a party to enforce a provision of this contract will not constitute a waiver of any right to future enforcement of that or any other provision.
	4. If any part of this contract is unenforceable, invalid or illegal, the other terms will remain in force.
	5. No party shall be liable for any default in its obligations under this contract if that default arises from any cause reasonably beyond its control but does not include any circumstance which that party could have prevented, or overcome by reasonable care.
	6. All clauses of this contract that are intended to continue after termination, including clauses 7 (Intellectual Property Rights), 9 (Non Solicitation), 10 (Confidentiality), 11 (Dispute Resolution), 12 (Liability) and 13 (Miscellaneous) will continue in full force and effect.
	7. Any notice to a party under this contract will be deemed to have been delivered immediately upon hand delivery to the address of that party in the specific terms, three (3) Working Days after posting within New Zealand to the address of that party in the specific terms, 10 Working Days after posting overseas to the address of that party in the specific terms, or immediately on receipt by the sender of evidence the notice has been successfully faxed to the number of that party in the specific terms.
	8. The Contractor may not transfer, subcontract or assign any of its liabilities or rights under this contract to any other person without the prior written consent of the KiwiNet Partner. the KiwiNet Partner and its successors or assigns may, on notice, transfer, subcontract or assign all or any of its rights or obligations under this contract to any other person without the consent of the Contractor.
	9. This contract records the entire understanding and agreement between the parties regarding its subject matter and supersedes and extinguishes all prior agreements, statements, correspondence and undertakings, whether written, oral or both made between the parties relating to the same subject matter. The parties agree that in entering this contract, they have not relied on any representation (including pre-contractual representations) other than those which are set out in this contract.
	10. This contract may be signed in counterparts, including by facsimile or email, all of which, when taken together, will constitute one and the same document.
	11. This contract will be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

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| Signed by*[Insert Contractor name]*  |  | Signed by*[Insert KiwiNet Partner name]* |
| Signature |  | Signature |
| Name of authorised signatory |  | Name of authorised signatory |
| Position |  | Position |
| Date |  | Date |