

## PARTIES

**Between:** AgResearch Limited at Lincoln, New Zealand (**AgResearch**) through it's Business Unit the New Zealand Agricultural Greenhouse Gas Centre (NZAGRC)

**And:** **Limited** at **Place**, New Zealand (**Contractor**)

	AgResearch Details	Contractor Details
<b>Contact:</b>		
<b>Address:</b>		
<b>Phone:</b>		
<b>Email:</b>		
<b>Contract Ref:</b>		
<b>Administrative Contact:</b>		
<b>E-Mail:</b>		

## AGREEMENT

The Contractor will perform the Services (including providing the Deliverables) for AgResearch on the terms set out in this Agreement which includes the Contract Details and General Terms.

This contract is an integral part of the agreed project collaboration agreement titled: **Protocol for incorporating mitigation into carbon footprinting.**

## CONTRACT DETAILS

**Commencement Date:**

**Completion Date:**

**Key Personnel:**

**Services (including Deliverables and Milestones)** *Describe Services here*

Milestone Details	Milestone Completion Dates

### Deliverables, including reporting requirements:

*Specify all Deliverables to be provided by the Contractor to AgResearch including reports*

### Variations and additions to General Terms (if any):

*If there is conflict between these variations and additions and the General Terms, these variations and additions apply*

A. A new clause 10.3 is added with the following text:

"The parties acknowledge that this Agreement is entered into pursuant to a head collaboration contract between Aria Foods, FrieslandCampina B.V, Fonterra Limited, Societ  des Produit Nestl  SA, Dan Trade B.V and AgResearch ("the Head Agreement") dated on or about December 2022 and that AgResearch are the lead party under the Head Agreement. The parties agree that AgResearch may terminate this Agreement by giving 30 days notice in writing to the Contractor if the Head Agreement is terminated for whatever reason".

B. A new clause 13 is added with the following text:

"The Contractor agrees to be bound by the relevant terms of the Head Agreement which relate to communications, confidentiality and intellectual property in addition to the terms of this Agreement"

For the avoidance of doubt, the relevant clauses from the Head Agreement are shown in Appendix 1.

**Fees** –Invoices will be issued for the Services as set out below:

Invoice Date or Milestone:	Fee (plus GST, if any)
<b>TOTAL FEE</b> (plus GST, if any)	<b>NZ\$</b>

Signed by AgResearch Limited	Signed by the Contractor
Name:	Name:
Position:	Position:
Date:	Date:

## GENERAL TERMS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this agreement and includes the Contract Details and these General Terms.
- (b) **Existing IP** means IP which is owned by, or licensed to, a party at the Commencement Date or outside performance of the Services, whether or not it is used in, or contributed for use in connection with, the Services.
- (c) **IP** means all intellectual property rights existing anywhere in the world under statute, common law or equity including but not limited to patents, designs, copyright, plant variety rights, trade marks, and any rights of a similar nature whether registered or unregistered (and including applications, and the right to apply, for any of the foregoing), trade secrets, and rights in confidential information.
- (d) **New IP** means IP developed directly in the course of the Services (including IP in the Deliverables), excluding any Existing IP.
- (e) Other capitalised terms have the meaning set out in the Contract Details.

1.2 In the event of conflict between the Variations and additions in the Contract Details and General Terms, the Variations and additions prevail.

### 2. CONTRACTOR'S OBLIGATIONS

2.1 The Contractor will:

- (a) carry out the Services and provide the Deliverables in a proper, professional and timely manner, using all reasonable skill, diligence and care and to a professional standard;
- (b) carry out the Services using personnel with appropriate skill and experience, including the Key Personnel (if any);
- (c) comply with all applicable laws and AgResearch's reasonable directions;
- (d) supply all tangible Deliverables to AgResearch with clear title;
- (e) ensure all Deliverables are reasonably fit for the purpose for which AgResearch requires them;
- (f) not give any inaccurate or misleading information to AgResearch;
- (g) ensure that all relevant consents (including statutory consents, appropriate ethics committee approvals and Environmental Protection Agency approvals) have been obtained and immediately notify AgResearch if any consent is withdrawn or lapses; and
- (h) provide AgResearch with all reasonable assistance and access to enable AgResearch to confirm the Contractor has complied with this Agreement.

### 3. REPORTING AND PROGRESS

3.1 In addition to the obligations set out above:

- (a) the Contractor will keep accurate and systematic records in relation to the Services and make those records available to AgResearch as reasonably required;
- (b) the Contractor will provide AgResearch with regular written reports in relation to the Services and the results of the Services, on the due dates specified in the Contract Details and at any other times as reasonably required by AgResearch. The Contractor will ensure its reports include any information reasonably required by AgResearch from time to time including the Contractor's progress in respect of the Services and developing or providing the Deliverables; and
- (c) the parties will meet regularly as and when reasonably required by AgResearch to review the Contractor's progress in undertaking the

Services. The Contractor will make its personnel (including any Key Personnel) available at all reasonable times to discuss the Services, Deliverables, New IP, reports and results with AgResearch.

### 4. PRICE AND PAYMENT

4.1 The Contractor will issue valid GST invoices for each payment no earlier than the relevant Invoice Dates or Milestone dates shown in the Fees section of the Contract Details.

4.2 AgResearch will, subject to clause 4.3, pay valid invoices on or before the second last working day of the month following the date of the invoice.

4.3 In addition to any other remedies it may have, AgResearch may withhold payment of all or part of any invoice if the Services have not been carried out, or if the Deliverables have not been provided, in accordance with this Agreement to its reasonable satisfaction.

### 5. CONFIDENTIALITY

5.1 Without limitation, this Agreement and any research, business or other information provided by a party to the other in connection with this Agreement or the Services is confidential. Each party agrees not to use or disclose any confidential information of the other party without that other party's prior written consent. It will not be a breach of this clause for a party to use or disclose confidential information to the extent required to perform its obligations under this Agreement or to disclose information to the extent required by law (provided it has given the other party reasonable prior notice of the disclosure). Subject to clause 5.2, this clause does not apply to information which:

- (a) is or becomes publicly available without breach of the obligations under this clause;
- (b) a party can prove it independently created; or
- (c) a party already knew at the time it received the information.

5.2 The results of the Services, New IP and Deliverables are deemed the confidential information of AgResearch and must be maintained as such.

5.3 The Contractor will ensure its employees, agents and subcontractors (and their employees) are bound by obligations of confidentiality which are no less onerous than those contained in this Agreement. The Contractor is liable for all breaches of this clause caused by its employees, agents and subcontractors.

5.4 On termination or expiry of this Agreement, or at a party's request, all copies of a party's confidential information will be returned to it or destroyed (at the party's election). This clause will not prevent a party keeping a copy of any information it is required by law to retain.

### 6. DELIVERABLES, RESULTS AND IP

6.1 All New IP, Deliverables and all other results of the Services are owned by AgResearch on creation, and the Contractor hereby assigns ownership of all New IP, Deliverables and other results, to AgResearch.

6.2 If requested by AgResearch, the Contractor agrees to sign all documents, and procure its employees and subcontractors sign all documents, necessary to transfer all rights, title and interest in or to the New IP, Deliverables or other results to AgResearch.

6.3 The Contractor grants AgResearch a royalty free, non-exclusive, sub-licensable, transferable, perpetual licence under the Contractor's Existing IP to the extent necessary to use the New IP, Deliverables and other results of the Services for any purpose

6.4 The Contractor warrants that any copyright works included in the Deliverables are original and AgResearch will not be restricted in any way from using the New IP, Deliverables or any other results of the Services.

### 7. INSURANCE

- 7.1 While providing the Services, and for a period of at least 12 months after, the Contractor will hold Professional Indemnity and Public Liability Insurance with a reputable insurer on terms and in amounts that a reasonable and prudent contractor providing services similar to the Services would hold. The Contractor will promptly provide evidence of such insurance to AgResearch on request.
- 8. ADVERTISING AND PROMOTION**
- 8.1 The Contractor will not refer to AgResearch in any publication, advertisement, promotion, marketing material or media statement without AgResearch's prior written consent.
- 9. FORCE MAJEURE**
- 9.1 Neither party will be liable for any delay or failure to perform any of its obligations (excluding any payment obligation) that is caused or contributed to by any event beyond its reasonable control (including but not limited to an act of nature, environmental occurrence, biological occurrence, genetic variation, fire, discontinuity in power supply, court order, riot, war, strike or labour disturbance) provided that party:
- could not have avoided or overcome the event by exercising a standard of reasonable care at a reasonable cost;
  - notifies the other party in writing of the event on becoming aware of it; and
  - uses reasonable endeavours to mitigate the effects of the event and to perform its obligations not affected by the event.
- If the event materially affects a party's ability to meet its obligations under this Agreement for more than 30 days, the other party may terminate this Agreement by notice in writing.
- 10. TERMINATION**
- 10.1 Either party may terminate this Agreement by notice in writing if the other party:
- does not fulfil any one or more of its obligations under this Agreement and the breach:
    - is material and cannot be remedied; or
    - has not been remedied 14 days after notice is given requiring the breach to be remedied; or
  - commits an act of bankruptcy, is placed in liquidation, receivership, voluntary administration or statutory management, is insolvent or ceases to carry on a substantial part of its business or makes any composition or arrangement with its creditors or has execution levied upon all or any part of its assets.
- 10.2 AgResearch may terminate this Agreement by giving at least 30 days' notice in writing to the Contractor.
- 11. DISPUTE RESOLUTION**
- 11.1 A party will notify the other party if it considers a dispute has arisen in connection with this Agreement. The parties will attempt to resolve the dispute in good

faith. Either party may require the dispute to be resolved by mediation, to be conducted by a mediator appointed by the parties (or if they cannot agree, a mediator appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

**12. GENERAL**

- 12.1 **Variations:** No amendment to this Agreement will be effective unless made in writing and signed by both parties.
- 12.2 **No assignment or subcontracting:** The Contractor will not directly or indirectly transfer, assign or subcontract its rights, interests or obligations under this Agreement without AgResearch's prior written consent, which will not be unreasonably withheld. A change in the Contractor's effective ownership or control will be deemed to be an assignment for the purpose of this clause.
- 12.3 **No waiver:** No failure or delay by a party in insisting on the strict performance of this Agreement or to exercise any right under this Agreement will operate as a waiver of those matters. A waiver will not be effective unless it is in writing. A waiver of any breach will not be a waiver of any other breach.
- 12.4 **Further acts:** The parties will take all actions and sign all documents necessary to give effect to the provisions of this Agreement.
- 12.5 **Counterparts:** This Agreement may be signed in separate counterpart copies (including scanned and other electronic copies). When each party has signed at least one copy (including by electronic signature) and delivered it to the other party, the separately signed documents when brought together will constitute one and the same document and a binding and enforceable agreement between the parties. Any electronic signatures inserted in accordance with this clause may be relied on by the other party and will be deemed equivalent to original signatures.
- 12.6 **Governing law:** This Agreement is governed by New Zealand laws and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 12.7 **Survival:** Clauses 5 (Confidentiality), 6 (Deliverables, Results and IP), 7 (Insurance) 8 (Advertising and Promotion, 9 (Force Majeure), 11 (Dispute Resolution) and 12 (General), and any other obligations which by their nature are to continue beyond the expiry or termination of this Agreement, survive beyond the expiry or termination of this Agreement.
- 12.8 **No agency:** Nothing in this Agreement will be deemed to create a partnership, joint venture, employment relationship or agency between the parties. No party has any authority to bind another party, unless expressly permitted to in this Agreement.
- 12.9 **Severability:** Any unlawful or voidable provision in this Agreement will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions.

## **Appendix 1: Selected clauses from the Head Agreement referred to in Clause 13**

*Note the Parties to the Head Agreement are: Aria Foods, FrieslandCampina B.V, Fonterra Limited, Soci  t   des Produits Nestl   SA, Dan Trade B.V and AgResearch*

*The "Project Anti-Trust Statement referenced in Annexe 4" can be supplied on request.*

### **3. Decision-making structure & Organization**

The Parties will establish a core working team ("Core Working Team") made up of one representative nominated by each of the Parties. Each member will receive one vote.

The Core Working Team will be responsible for the overall progress of the Project.

All significant decisions (unless noted differently within this Agreement) regarding the collaboration will be by consensus. Significant decisions will include decisions regarding eligibility for contracting external services, methodological choices, the nature of the services to be provided, and decisions regarding seeking and using funding to carry out collaboration activities.

The Parties have agreed to appoint external consultant Mr. Brian Lindsay of B. Lindsay Ltd. As the Project Manager ("Project Manager") by way of a separate contract of engagement to be entered into between NZAGRC and B. Lindsay Ltd.

NZAGRC will be the only source of remuneration for any expenditure emanating from the Project including the costs of the Project Manager who will submit appropriately detailed invoices on a regular basis, supported by a Project finance (ledger) spreadsheet updated on a monthly basis. This document will be made available to all Parties upon their request.

The Core Working Team will work closely with the Project Manager in achieving the objectives, approach, tasks, and deliverables of the Project.

### **8. Communications**

The Parties will generate general project materials for the use in individual internal communication activities. Such internal communication is not subject to any limitations, save for the confidentiality obligations of clause 10.

Any external communications related directly to the Project review, protocol and developments must be cleared by the Parties, prior to release. The same decision protocol will be applied as detailed in clause 3 of this Agreement of this document. It is appreciated that this Project is a transparent process and that alignment in wider communications to relevant third parties is essential if the required outputs are to be achieved within the agreed timetable.

Such communications to relevant third parties will be aligned with the process described below in Clause 9.

### **9. Stakeholders & Sector consensus**

With the aim of achieving consensus in the proposed protocol, so that it can become an industry standard, activities will be undertaken during the Project lifetime to ensure a transparent approach to ensure that relevant external stakeholders that are agreed by the Parties are kept informed of developments at the appropriate time.

The Parties furthermore agree to (if appropriate) undertake a period of public consultation for the finalization of the protocol.

The Parties will make the protocol available to appropriate organizations for incorporation in to existing carbon footprinting calculation tools.

The Parties shall appropriately document the guidelines/methodology developed under the Project and make it publicly available via a scientific publication ("the Publication"), with an intention to develop an industry standard. The timing and procedures for the Publication will be agreed by the Parties.

### **10. No exchange of sensitive information or market coordination**

Any information exchanged between the Parties shall be strictly limited and directly related to the Project.

The Parties agree that during the Project that they will ensure that no exchange of confidential or competitively sensitive information will take place and will be in line with the Project Anti-Trust Statement referenced in Annexe 4. This includes but is not limited to discussions of markets, sales channels, marketing, customers, prices, costs, campaigns, strategy, margins, products, recipes, product positioning, other terms of trade or product developments on the markets in which the Parties operate.

At times for the benefit of the Project, some confidential information may be shared by the GRA or other parties in this project on a need-to-know basis and in compliance with the Project Anti-Trust requirements. The Parties agree that at the point of sharing, the recipients will be informed of the confidential nature of the material shared which will be respected. The receiving party agrees that it shall not disclose confidential information to any third party, and shall not use the confidential information other than for the Project, for a period of 5 (five) years after the end of this Agreement.

All meetings between the Parties shall be governed by an agenda (including the Anti-Trust Statement) and notes of agreed actions shall be taken, shared with the Parties in draft form for approval.

#### **11. Existing Intellectual Property and Intellectual Property emanating from the Project**

The Parties retain full ownership to any existing intellectual property IP, which the Parties have informed each other of or made available for the completion of the Project.

The Parties will also retain full ownership of all information, knowledge, know how, results, materials, product specifications, software, inventions, patent applications, patents and other intellectual property rights generated directly or indirectly or acquired by one Party in advance of Effective Date or during the Project in connection with work outside the Project that the Parties have informed each other of or made available for the completion of the Project (the "Background Information"). Background Information thus remains the property of the Party having provided such Background Information.

The results and any Intellectual Property emanating from this Project will be equally and jointly owned by the Parties, with the understanding that the Parties agree that the results will be made publicly available by way of the Publication, in order to have them as an industry standard.

#### **12. Use and exploitation of Intellectual Property**

Subject to agreeing to keep all results confidential until they are published, each Party shall have the right to use all Project results and related Intellectual Property freely, for any purpose

Should this Project result in any patentable invention(s), the Parties will enter in good faith into discussions as to the allocation of intellectual property rights pertaining to such patentable invention(s). Such patentable inventions will constitute and be considered Confidential Information. Until the Parties reach agreement on allocation, neither Party is authorized to disclose or use such patentable invention(s) without the consent of the other Parties.

Should the Parties choose to file for protection of such patentable invention(s), the associated costs (including any 3rd party consultant costs) will be shared across the Parties according to allocation.