

PARTNERING AGREEMENT FOR THE OPERATION OF A RESEARCH  
PLATFORM

for

NATURAL HAZARDS

between the

**INSTITUTE OF GEOLOGICAL AND**

**NUCLEAR SCIENCES LTD**

and

**NATIONAL INSTITUTE OF WATER AND ATMOSPHERIC RESEARCH LTD**

and

**MASSEY UNIVERSITY**

and

**OPUS INTERNATIONAL CONSULTANTS LTD**

and

**UNIVERSITY OF AUCKLAND**

and

**UNIVERSITY OF CANTERBURY**

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## **Parties to this Agreement**

INSTITUTE OF GEOLOGICAL AND NUCLEAR SCIENCES LIMITED, a company duly incorporated pursuant to the Crown Research Institutes Act 1992 and having its principal place of business at 1 Fairway Drive, Avalon, Lower Hutt (“GNS Science”),  
and

NATIONAL INSTITUTE OF WATER AND ATMOSPHERIC RESEARCH LIMITED, a company duly incorporated pursuant to the Crown Research Institutes Act 1992 and having its principal place of business at 41 Market Place, Auckland Central 1010, (“NIWA”),  
and

MASSEY UNIVERSITY, a body corporate of Palmerston North,  
and

OPUS INTERNATIONAL CONSULTANTS LIMITED, a company duly incorporated pursuant to the Companies Act 1993 and having its principal place of business at Level 9, Majestic Centre, 100 Willis Street, Wellington ("Opus"),  
and

UNIVERSITY OF AUCKLAND, The University of Auckland, a body corporate established under the University of Auckland Act 1961, of Princes Street, Auckland, New Zealand, including its employees and agents,  
and

UNIVERSITY OF CANTERBURY, a tertiary education institution established under [section 162 of the Education Act 1989] University of Canterbury Act 1961 at Christchurch.

## **PART A: INTRODUCTION**

### **1. Purpose**

This Agreement defines the investment expectations, roles, delegations, accountabilities and decision processes associated with the management of the Platform by the Parties. The Parties acknowledge that the research projects funded through the Platform Contract must be designed to underpin and integrate, rather than replicate, research and associated activities of relevant key stakeholders.

### **2. Guiding Principles**

As a consequence of New Zealand's physical setting, our society is exposed to a wide range of geological and weather hazards ranging from events with frequent, but modest impact, through to rare, but devastating events. This 'natural laboratory' has created a strong research culture that has delivered many benefits to society through contributing to a significant level of resilience to the impacts of these hazards. On-going hazard impacts, changing risk due to increasing development and climate change, and the realisation that national exposure to some more infrequent impacts is extremely high, demonstrates that there is much more that can be done to develop a more resilient society.

For some time a more stable funding environment has been recognised as essential for nurturing long-term research and providing the collaborative and coordinated environment necessary to answer complex research questions that deliver beneficial national Outcomes. To this end, the Foundation for Research, Science and Technology ("the Foundation") has developed the concept of Research Platforms to provide long-term, stable funding for core areas of science that are important to New Zealand.

Natural Hazards research had been identified as a research area of critical strategic importance to New Zealand, with Outcomes that directly support the achievement of government endorsed strategies. Thus, it was selected to be the pilot Platform. The Platform will be highly collaborative, so as to provide the framework for integrating research and funding across agencies and disciplines, together with research users to achieve our aim of a New Zealand society that is more resilient to natural hazards.

The direction of research within the platform will be guided by a Research Strategy that is closely linked with the National Civil Defence Emergency Management (CDEM) Strategy, which has been identified as providing the government's strategic direction for the Platform.

To this end:

- A. GNS Science and its partner Anchor Research Organisation NIWA have entered a multi-party contract with the Foundation ("Platform Contract") for a natural hazards research Platform to progress the delivery of specific Intermediate

Outcomes for New Zealand. GNS Science and NIWA will both be responsible for meeting the Platform contractual requirements of the Foundation. The Host Research Organisation GNS Science has been invited by the Foundation to manage the Platform.

- B. The Platform contract with the Foundation is long-term and devolves detailed project decision making to the Party research organisations to enable research organisations and stakeholders to set the strategic direction of the research and invest in the required research capability. Reviews to assess contract performance and determine research priorities will be used by the Platform and the Foundation to set future Platform funding levels.
- C. The research funded through the Platform Contract will be basic targeted, applied and experimental or product development research that will support the achievement of government endorsed strategies relevant to natural hazards. The focus of the research (consistent with the Platform outcome statement) will be to increase national resilience to natural hazards within the scope outlined in Schedule 3. Research will be based on a Platform Research Strategy, to be developed by the Parties, which will prioritise the research outcomes and capability to be delivered over the term of the Platform in response to the National Hazard Strategy. A Strategic Advisory Group of key research users will provide guidance and endorsement of the research priorities of the Platform.A.
- D. The primary function of the Platform is to integrate New Zealand natural hazard research, and actively foster a collective approach to achieving national Outcomes. Progress towards the Intermediate Outcomes identified in the Platform contract with the Foundation requires:
  - a. that national benefits supersede individual organisational benefits;
  - b. that appropriate research capability is actively developed to a high standard;
  - c. that all Parties to this Agreement commit to a genuine, enduring collaboration built on mutual trust and a sense of collective responsibility;
  - d. that there is strong, transparent management by all Parties;
  - e. that effective relationships with research users are developed; and
  - f. that the Strategic Advisory Group is actively engaged and provides well-considered guidance.

### 3. Definitions

Agreement	this agreement, including all schedules attached to it or added in accordance with Section 25 of this Agreement.
Anchor CEO Group	the Chief Executive Officers of the Anchor Research Organisations and the Foundation.
Anchor Research Organisations	NIWA and GNS Science, being the research organisations contracted by the Foundation for delivery of defined Intermediate Outcomes through a Platform for natural hazards research.
Background Intellectual Property	Intellectual Property owned, or licensed, by a Party prior to execution of this Agreement or subsequently created or acquired independently of a Project over which the Party has rights of disposal.
CEO	Chief Executive Officer
Commencement Date	Date of signing of this agreement by the Parties.
Commercialisation	in relation to Platform Intellectual Property means any exploitation, disposition or use of Platform Intellectual Property. “Commercialise” and “Commercialised” has a corresponding meaning. For the avoidance of doubt, use of Platform Intellectual Property as part of a Party’s Platform research activities shall not be deemed to be Commercialisation.
Commercialisation Plan	the plan by the Owners, to exploit or dispose of Platform Intellectual Property for the benefit of New Zealand and/or purpose of obtaining benefits to the Parties and Owners of that Platform Intellectual Property.
Foundation	Foundation for Research, Science and Technology.
Funding Period	the funding period for which the Foundation has agreed to commit funds to the Platform. The Funding Period for this Platform is expected to be 10 years from the Commencement Date, with right of renewal dependent on performance.

Host Research Organisation	GNS Science, being the Anchor Research Organisation chosen by the Foundation to take contractual responsibility for the management of the Platform Partnership.
Intellectual Property Rights	includes patentable inventions, non-patentable processes, know-how, designs, trade marks, copyright (for the avoidance of doubt this includes data) and the like, and any and all rights to and interests in any and all industrial and intellectual property of any kind.
Intermediate Outcome	the direct result of successful implementation or uptake of the research outputs and results from the Platform by a relevant research user. An Intermediate Outcome is contracted with the Foundation and measurable and time-bound.
Management Group	the group of representatives from each of the parties responsible for the management of the Platform in accordance with Section 8 of this Agreement.
National Hazard Strategy	the National Civil Defence Emergency Management Strategy 2008.
Observer	a stakeholder representative invited to attend meetings of either the Strategic Advisory Group or Management Group that is able to make contributions but have no voting rights.
Outcomes	mean the change that a Project will make to a condition or state of society, the economy or the environment, which, in effect, is the result a Project will achieve for New Zealanders.
Owner	means a Party obtaining an ownership interest in any Platform Intellectual Property arising from a Project, pursuant to clauses 18.2 to 18.4 (inclusive).
Parties	research organisations that are signatories to this Agreement and any new Parties that join the Platform in accordance with Clause 24.1 of this Agreement.
PIP Manager	means the manager of Platform Intellectual Property and the Commercialisation Plan, as determined in accordance with clauses 18.11 and/or 18.12 below.



Platform	a research partnership contracted by the Foundation with long term funding for a core area of science of strategic importance to New Zealand. It will have enduring capabilities in its core area of science, clear accountabilities for the delivery of Intermediate Outcomes, explore new science areas and employ the best national research teams.
Platform Contract	multi-party contract between the Anchor Research Organisations and the Foundation for the delivery of the Intermediate Outcomes.
Platform Intellectual Property	means any Intellectual Property created as part of, or arising, from a Project.
Platform Manager	the person appointed by the Host Research Organisation to lead and facilitate the operations of the Platform through the Platform Management Group in accordance with Section 7 of this Agreement.
Platform Research	research funded through the Platform Contract.
Platform Research Strategy	a documented strategy for the prioritised research and capability within the Platform based on key national natural hazard strategies in accordance with Clause 5.7 of this Agreement.
Project	means a discrete unit of Platform Research that contributes to the Intermediate Outcomes of the Platform.
Strategic Advisory Group	a group of research users appointed, as per the Foundation Platform negotiation agreement, to provide strategic advice to the Platform in accordance with the responsibilities listed in Clause 6.4 of this Agreement.
Theme Leader	the person or persons appointed to lead the research that contributes to an Intermediate Outcome(s) of the Platform in accordance with Section 9 of this Agreement.

**PART B: ESTABLISHMENT AND MANAGEMENT OF THE RESREARCH PLATFORM**

**4. Term of the Agreement and Transition from Present Funding Arrangements**

- 4.1. This agreement shall commence operation on the Commencement Date and shall remain in force until one of the following occurs:
  - a. the Parties by unanimous written resolution agree to terminate this Agreement;
  - b. the Foundation terminates the Platform contract with the Anchor Research Organisations; or
  - c. the Platform Contract expires without renewal.
- 4.2. As the transition arrangement, from the Commencement Date, each Party will retain the research funds and a set of projects to manage based on current Foundation contracts until 30 September 2010 and then will retain at least that level of funding and an associated set of agreed new projects to manage until 30 September 2011.

**5. Management of the Platform**

- 5.1. The Host Research Organisation is responsible for the Platform management as specified in this Agreement.
- 5.2. The Anchor Research Organisations are each responsible for the delivery of Intermediate Outcomes of the Platform as specified in the multi-party Foundation Contract.
- 5.3. The role of the Management Group in the operation of the Platform is as defined in Section 8.
- 5.4. The functioning of the Management Group will be the responsibility of the Host Research Organisation and the Management Group will report to the Anchor Research Organisation CEOs through the Platform Manager.
- 5.5. Lines of delegation and communication within the Management Group shall be as depicted in the chart shown in Schedule 1.
- 5.6. A representative of the Foundation will be an Observer on the Management Group.

- 5.7. The activities of the Platform shall be guided by the Platform Research Strategy. This strategy will include:
- a. the research priorities required to meet Intermediate Outcomes identified from key government and related natural hazards strategies;
  - b. the research capability and infrastructure required to deliver the research priorities of the Platform Research Strategy;
  - c. alignment and relationships with international research strategies and programmes;
  - d. methods for the transfer of information and tools to the research users to enable them to achieve Outcomes.

## **6. Strategic Advisory Group**

- 6.1. The Strategic Advisory Group will consist of the following members:
- a. *ex officio* members:
    - i. the Platform Manager;
    - ii. one representative from the senior management team of each Anchor Research Organisation as non-voting members;
    - iii. a representative of the Foundation as an Observer;
    - iv. a representative of the Ministry of Civil Defence and Emergency Management (as custodian of the National Hazards Strategy);
    - v. a representative of the Earthquake Commission.
  - b. up to six representatives of key research users, including the custodians of other endorsed national strategies, selected on the basis of their expertise, strategic knowledge of the sector and ability to contribute to the responsibilities outlined in Clause 6.4. The Anchor CEO Group will invite members to the Strategic Advisory Group based on recommendations from the Management Group in consultation with the Strategic Advisory Group. A named proxy can attend meetings when the named member is unable to attend;
  - c. representatives from stakeholders external to the members, as agreed by the Strategic Advisory Group from time to time, to sit as Observers.

- 6.2. A Chair will be elected from within the Strategic Advisory Group. The initial term of the Chair will be two years. The members may re-elect the Chair or appoint a replacement at the end of each term.
- 6.3. The Strategic Advisory Group will remain in place for the Funding Period, and each stakeholder or Anchor Research Organisation may replace its member nominated to the Strategic Advisory Group, in accordance with Clause 6.1.
- 6.4. Responsibilities of the Strategic Advisory Group will be to:
- a. guide the strategic directions and endorse the Platform Research Strategy and research required to achieve the Intermediate Outcomes;
  - b. endorse Requests for Proposals for any contestable funding associated with the Platform;
  - c. facilitate and assist with the uptake of research to advance the Intermediate Outcomes, to the extent possible, through alignment and planning of stakeholder work programmes with the Platform research;
  - d. actively champion the Platform and its research and assist links between the Platform and other stakeholders; and
  - e. participate in Platform reviews, as appropriate, and stakeholder workshops.
- 6.5. The Strategic Advisory Group will advise the Management Group on:
- a. reprioritisation (as outlined in Schedule 2) of Intermediate Outcomes and/or research required to advance the Intermediate Outcomes, as required; and
  - b. delivery of the Research Strategy, especially in relation to progress towards the Intermediate Outcomes.
- 6.6. The Strategic Advisory Group will meet at least twice per year and will be guided by the applicable provisions of this Section 6, and assisted in its operations by the Platform Manager. The Strategic Advisory Group may attend other Platform stakeholder events as appropriate.
- 6.7. At least 30 days notice of a meeting of the Strategic Advisory Group must be given to all the members. A schedule of meetings will be set one year in advance, and written material for any ensuing meeting will be sent 7 days in advance.
- 6.8. Meetings of the Strategic Advisory Group will be held in Wellington. members shall normally meet in person or by some or all members participating by teleconferencing or videoconferencing.
- 6.9. A quorum of the Strategic Advisory Group will be at least 60% of the members, as well as the Platform Manager and the Ministry of Civil

Defence and Emergency Management (as custodian of the National Hazards Strategy) and Foundation representatives.

- 6.10. The Chair may request that voting members hold an in-committee session of the Strategic Advisory Group.
- 6.11. The Strategic Advisory Group will strive for consensus on all its recommendations and decisions. Where consensus is not achieved the majority decision will be regarded as the recommendation of the Strategic Advisory Group, but the dissenting opinions will be noted.
- 6.12. A written record of recommendations made at each meeting of the Strategic Advisory Group shall be kept by the Platform Manager who shall distribute copies of the record to each member and to the Management Group.

## **7. Platform Manager**

- 7.1. The Host Research Organisation, with the approval of the Anchor CEO Group, will appoint the Platform Manager, who will be a respected scientist with demonstrated leadership and managerial skills. The Platform Manager will be an employee of the Host Research Organisation reporting to the Chief Executive Officer.
- 7.2. The Platform Manager will facilitate the operation of the Platform and will have accountability for the delivery of the Platform Contract, supported by the Management Group. The Platform Manager shall exercise the following functions:
  - a. provide Platform leadership as Chair of the Management Group and guide the Platform in accordance with this Agreement;
  - b. coordinate on-going development of the Research Strategy;
  - c. Prepare an annual management budget, including anticipated costs for technical reviews, for approval by the Management Group;
  - d. facilitate and organise meetings of the Management Group and Strategic Advisory Group, including distribution of relevant material and minutes. The Platform Manager will be the primary point of contact for the Management Group and the Strategic Advisory Group;
  - e. oversee organisation of Platform stakeholder meetings and workshops;

- f. ensure that the allocation of resources, within the Platform Contract, related Partner co-funding and contestable funds, is consistent with the priorities of the Platform Research Strategy;
- g. foster integrated research across the Platform to ensure the delivery of comprehensive tools and information to stakeholders;
- h. act as the Management Group contact point for the team of Theme Leaders and coordinate their activities and responses in relation to the directions of the Management Group, including addressing research performance issues with Theme Leaders and the relevant Party;
- i. undertake regular reporting of the Platform performance to the Management Group to ensure delivery against the Platform Research Strategy and associated Intermediate Outcomes;
- j. ensure coordination of the material required for Foundation contracts, reports and reviews for submission via the Research Managers of the Anchor Research Organisations;
- k. represent Platform level media and publicity on behalf of the Management Group.

## **8. Management Group**

- 8.1. The Management Group shall consist of a senior science manager responsible for natural hazards research from each of the Parties, the Platform Manager and a representative from the Foundation, as an Observer.
- 8.2. Each Party must ensure its representative is vested with the appropriate technical qualifications and necessary authority to enable it to carry out its duties as a member. The Anchor CEO Group will invite CEOs of the other Parties to nominate a representative to the Management Group and appointment will be made by mutual agreement.
- 8.3. The Platform Manager will Chair the Management Group.
- 8.4. The Management Group will meet at least quarterly to review and plan Platform activities. Should a Party's representative be unable to attend a monthly meeting, then that Party will nominate a proxy representative in accordance with Clause 8.2, in that the CEO concerned will nominate the proxy and the nomination will be approved by mutual agreement

- 8.5. The Management Group will operate through a consensus process and seek to agree through consensus on all decisions. Decisions will always be made with full regard to the Guiding Principles of the Platform set out in this Agreement. Where consensus can not be reached, the matter will follow the dispute resolution process described in PART C. Should the issue of consensus relate to research strategy, the matter will be referred to the Strategic Advisory Group, prior to elevation to the dispute resolution process described in PART C.
- 8.6. Meetings of the Management Group will normally be held in Wellington. Representatives shall meet in person or by some or all representatives participating by teleconferencing or videoconferencing.
- 8.7. A written record of decisions made at each meeting of the Management Group shall be kept by the Platform Manager who shall distribute confidential copies of the record to each Party's representative. On acceptance of the written record by the Management Group and being signed by the Platform Manager, it shall be deemed prima facie evidence of the decisions and proceedings of the meetings to which it relates. All copies of the written record shall remain confidential to the Parties.
- 8.8. The Management Group will be responsible for:
- a. management of the Platform in accordance with this Agreement;
  - b. ensuring development and on-going review of a Platform Research Strategy, compiling and reviewing input from the Parties and the Strategic Advisory Group, and completing the final Platform Research Strategy by 31 July 2010;
  - c. development of any Request for Proposals for contestable funds in the Platform;
  - d. identification and coordination of Platform stakeholder meetings and workshops;
  - e. allocation and monitoring of resources within the Platform Contract and monitoring related Partner co-funding, consistent with the priorities of the Platform Research Strategy, and approval of the Platform management budget;
  - f. integration of the research across the Platform to ensure the delivery of comprehensive tools and information to stakeholders;
  - g. ensuring that the Parties and other subcontractors maintain and commit the appropriate capability, and have adequate project management

systems in place to enable planning, monitoring and evaluation of quality research and technology transfer relevant to the Intermediate Outcomes and IP Management (as described in PART D);

- h. monitoring Platform performance in relation to the progress towards Intermediate Outcomes, and initiate international-level technical or other reviews as appropriate;
- i. identifying and assisting, as appropriate, with issues of research delivery by any of the Parties or their subcontractors;
- j. coordinating and advancing relationships with iwi as appropriate;
- k. review of material required for the Platform Contract reports and reviews for submission via the Research Manager of the applicable Anchor Organisation ;
- l. the reprioritisation process outlined in Schedule 2, within the Platform Contract parameters, in response to any change event that would affect the ability of the Platform to contribute to the Intermediate Outcomes. Change events will include, but not be limited to, review results, significant changes to national strategy, changes to Foundation funding levels, capability needs, or significant changes to co-funding;
- m. any redistribution of funding required as a result of the reprioritisation process or the loss of a key researcher by taking the following steps:
  - i. subcontracting one of the Parties to provide the capability (when those capabilities are present in one of the Party organisations). If this is not achievable; then
  - ii. subcontracting an external organisation to provide the capability, but only when the capabilities do not reside within any of the Parties. If this is not achievable; then
  - iii. identifying the best Party or Parties to undertake the capability development should the reprioritisation process require the building of new capability or enhancement of existing capability.

Support for students and fellows (M.Sc, PhDs and fixed term employees/Post-Docs) attached to the original research project or key researcher will be guaranteed for the duration of their project unless there is a performance issue when the process to resolve issues (PART C) will be followed.

- n. ensuring that the Parties have in place adequate mechanisms for regular external scientific advice and the maintenance and development of research capability;



- o. the recommendation to the Anchor CEO Group of any changes to the membership of the Platform partnership and the level of contestability under Clause 12.2;
- p. the development of a communications strategy to guide the dissemination and promotion of Platform activities through appropriate Platform level communication media and publicity.

## **9. Theme Leader**

- 9.1. The Theme Leaders will be assigned by the Management Group and will be responsible within their Theme for:
  - a. providing input to the Platform Manager for the Research Strategy and priorities;
  - b. leadership and coordination of the research, in the spirit of the Platform principles, including the development of the research projects necessary to achieve the Intermediate Outcome(s);
  - c. annual reporting to the Platform Manager of the publications, new products and services, collaborations, co-funding, key research achievements and progress towards the Intermediate Outcome(s);
  - d. advising the Platform Manager, of any issues associated with the research and related activities that will affect achievement of the Intermediate Outcome(s), and seek approval from the Management Group for any changes or reprioritisation;
  - e. advising the Platform Manager of any performance issues that require redress through dialogue with the relevant Partner organisation;
  - f. advising the Platform Manager of capability needs to meet the needs of the research;
  - g. preparation of material required for Foundation contracts, reports and reviews for submission via the Research Managers of the Anchor Research Organisations;
  - h. maintenance of science quality, including appropriate use of other Party's data.

## **10. Anchor Research Organisations and Anchor CEO Group**

- 10.1. The Chief Executive Officers of the Anchor Research Organisations will be responsible for delivery on the Platform Contract.
- 10.2. The Anchor Research Organisations will be responsible for contracting all other Parties.
- 10.3. The Anchor CEO Group will be responsible for dispute resolution as described in PART C.
- 10.4. Any changes to the membership of the Platform partnership will require the approval of the Anchor CEO Group.
- 10.5. Any changes in funding to the Parties will require the approval of the Anchor CEO Group.
- 10.6. Any changes to the membership of the Anchor CEO Group will require the approval of the Foundation.
- 10.7. Payment of funds to the Parties will be in accordance with the payment clauses of the Platform Contract.

## **11. Party Responsibilities**

- 11.1. Each of the Parties will:
  - a. develop the research projects and research-related activities required to implement the priorities set and approved by the Management Group;
  - b. provide day to day management of the research project activities for which each Party is contracted to deliver;
  - c. where appropriate, coordinate and strongly encourage alignment between the Platform research and other relevant Foundation and non-Foundation funded research activities, such as but not limited to Capability Fund, internal University funds and EQC research fund.
- 11.2. Each Party will be responsible for keeping separate financial accounts that will include the time commitment of key staff and all operational expenses on any Platform project.
- 11.3. Each of the Parties will be responsible for maintaining and enhancing their capability, both in terms of expertise and infrastructure, required to undertake the Platform research. The capabilities provided by the Parties

will be defined in the Research Strategy to be revised annually by the Management Group.

- 11.4. The Parties will be responsible for non-Party organisations involved in the research within the Platform through an appropriate subcontract. Each Party will ensure that any such subcontract is consistent with the requirements of this Agreement, including but not limited to intellectual property (PART D) and confidentiality and publication (PART E), and the requirements of the Platform Contract.
- 11.5. The Parties will be responsible for their own administrative costs for participation in the Platform.
- 11.6. Each of the Parties will use all reasonable endeavours to meet their obligations within the Platform and also to ensure that the research they undertake within the Platform is of high quality and meets stakeholder needs.
- 11.7. If, as a result of the reprioritization process, a Party is identified as being the best Party to undertake capability development (Clause 8.8), that Party will seek to build that capability.
- 11.8. Each Party will be responsible for obtaining relevant ethical or regulatory approvals and managing iwi or hapu relationships for their activities funded through the Platform.
- 11.9. The Parties will adhere to the Guiding Principles described at the beginning of this Agreement

## **12. Contestable Funds**

- 12.1. The Management Group will develop a process by 30 June 2010 to invest a proportion of its funds through an open contestable process, to be agreed with the Foundation.
- 12.2. The Management Group will make a recommendation to the Foundation on the level of contestability.
- 12.3. The Management Group, with the endorsement of the Strategic Advisory Group, will set the research priorities and scope in any request for proposals issued for contestable funds.
- 12.4. The Management Group will approve funding for contestable projects. Should the Management Group not be able to reach consensus over

approving funding a particular project, the matter will follow the dispute resolution process described in PART C.

## **PART C: PROCESS TO RESOLVE ISSUES**

### **13. Process for Resolution of Issues Under this Agreement Other than when Issue Arises from Failure of the Management Group to Reach Consensus**

- 13.1. (i) The Parties to any disagreement in relation to the provisions of this Agreement will without delay try to resolve the issue at the level at which it arises within 2 weeks;
- (ii) If (i) fails then, the issue shall be elevated to next level of management responsibility for each disputing Party (individual organizations are to determine an appropriate representative) and to include the Platform Manager, to resolve the issue within 2 weeks;
- (iii). If (ii) fails then, the issue shall be elevated to Chief Executives or Vice Chancellor in the case of the University Parties of the disagreeing Parties to resolve the issue within 2 weeks;
- (iv). If (iii) fails then, the issue shall be elevated to the Anchor CEO Group to resolve the issue within 2 weeks. In reaching its decision the Anchor CEO Group will have due regard to the Guiding Principles of the Platform. Representatives of the disagreeing Parties will be entitled to present their views on the issue at the meeting of the Anchor CEO's before any decision is made and to be provided reasons for the decision.

### **14. Process for Finding Agreement when Management Group is Unable to Reach Consensus**

- 14.1 The issue will be referred to the Anchor CEO Group to resolve. In reaching its decision the Anchor CEO Group will have due regard to the Guiding Principles of the Platform.

### **15. Process Where There is a Dispute Under a Contract Between any of the Parties for Undertaking Platform Funded Research**

- 15.1. (i) The Parties that are party to the contract giving rise to the dispute will without delay try to resolve the issue at the level at which it arises within 2 weeks;
- (ii) If (i) fails then, the dispute shall be elevated to next level of management responsibility for each disputing Party (individual organizations are to determine an appropriate representative) and to include the Platform Manager, to resolve the issue within 2 weeks;

- (iii) If (ii) fails then, the dispute shall be elevated to Chief Executives or Vice Chancellor in the case of the University Parties of the disagreeing Parties to resolve the issue within 2 weeks;
- (iv) If (iii) fails then the Parties to the dispute may seek to have the matter resolved in accordance with the terms of the contract concerned.

## **PART D: INTELLECTUAL PROPERTY MANAGEMENT**

### **16. Ownership and use of Background Intellectual Property in a Project**

- 16.1. Background Intellectual Property belonging to any Party and used in the conduct of any Project will remain vested in, and the exclusive property of, that Party. Each other Party acknowledges that it will not obtain any interest in, or right to, Background Intellectual Property, unless granted pursuant to this Agreement, or otherwise in writing by the owner.
- 16.2. For the duration of this Agreement each Party shall provide to all other Parties (provided the Party remains a Party) on a non-exclusive, non transferable and royalty free basis use of their Background Intellectual Property but only to the extent necessary to enable the other Parties to use the Background Intellectual Property as part of a Project.
- 16.3. Where a Party ceases to be a party to the Agreement it shall offer to the continuing Parties a licence to use its Background Intellectual Property on reasonable business terms and conditions.

### **17. Use of a Party's Background Intellectual Property in Commercialising Platform Intellectual Property**

- 17.1. Where a Party wants to use the Background Intellectual Property of another Party to Commercialise Platform Intellectual Property, it shall first obtain a licence from the owner of that Background Intellectual Property, which shall not be unreasonably withheld. The terms of such licence shall be reasonable business terms and conditions.
- 17.2. The obligation to provide a licence under clause 17.1 shall continue whilst the licensor Party of the Background Intellectual Property has ownership of or disposal rights in respect of the Background Intellectual Property concerned and notwithstanding that the Party has ceased to be a Party to this Agreement.

## **18. Ownership and Protection of Platform Intellectual Property**

- 18.1. To ensure inventorship of Platform Intellectual Property can be demonstrated the Parties shall keep all such records, including log-books by those of their staff undertaking Projects, as are necessary.
- 18.2. Ownership of Platform Intellectual Property will vest in the Party or Parties that creates the Intellectual Property.
- 18.3. With respect to jointly owned Platform Intellectual Property ownership will reflect a Party's relative contributions including financial and non-financial contributions, as agreed between the Owners.
- 18.4. Where the Owners disagree on the ownership (or shares thereof) of Platform Intellectual Property such disagreement shall be resolved in accordance with Part C of the Agreement
- 18.5. The Parties acknowledge that where a Project involves Maori traditional knowledge it shall obtain such approvals necessary from the relevant iwi or hapu.
- 18.6. The Parties acknowledge the confidentiality provisions of the Agreement apply. If, for whatever reason, those confidentiality provisions do not apply, then the following shall apply:

Where an Owner considers that any particular development arising from Platform Intellectual Property may be patentable or subject to other forms of Intellectual Property protection, that Party or where the Intellectual Property has been jointly created the PIP Manager shall communicate details to the Platform Manager. In that event, the Platform Intellectual Property shall be kept confidential and not subject to license or otherwise Commercialised until appropriate applications for protection of that Project Intellectual Property have been properly filed. The Party, or PIP Manager, shall notify the Platform Manager when the protection has been put into place, however, if such notification has not been received within six months (or such extended time as may be agreed by the Platform Manager in consultation with the Owners) that Platform Intellectual Property may be Commercialised in accordance with the terms of the Agreement and this Part D. The Parties seeking to obtain Intellectual Property Rights must prepare and file applications for protection diligently and as soon as reasonably possible.

- 18.7. Protection of Platform Intellectual Property, including by seeking to obtain Intellectual Property Rights, will be as determined by the Owner or Owners of the relevant Platform Intellectual Property. Any

decision to obtain Intellectual Property Rights will be taken in the context of maximising the benefit to New Zealand of the Platform Intellectual Property and value for money of any Intellectual Property Rights.

- 18.8. Where the Owners disagree on the protection to be obtained for that Platform Intellectual Property such disagreement shall be resolved in accordance with the Disputes procedures of this Partnering Agreement
- 18.9. The costs of obtaining any Intellectual Property Rights or commercialising Platform Intellectual Property shall be shared by the Owners in accordance with ownership proportions.
- 18.10. Where an Owner determines that it does not wish to contribute to the costs of obtaining Intellectual Property Rights or Commercialisation, either in whole or in part (for the avoidance of doubt an Owner is entitled to elect not to seek Intellectual Property Rights or Commercialise on individual countries or regions) it shall forfeit ownership to the other Owner or Owners, for the regions or areas it has declined to contribute costs, in the ratios of their ownership of that Platform Intellectual Property and shall do all things necessary to assign its right to the other Owners.
- 18.11. The majority Owner of Platform Intellectual Property shall be the PIP Manager who will be responsible for obtaining and managing any agreed Intellectual Property Rights. Where there is no majority Owner the Owners shall agree which of them shall be the PIP Manager.
- 18.12. Where, in the event of equal joint ownership of Platform Intellectual Property the Owners disagree on who shall be the PIP Manager such disagreement shall be resolved in accordance with Part C of this Partnering Agreement.
- 18.13. Owners shall provide the PIP Manager such reasonable and necessary assistance as is required to obtain and manage the Intellectual Property Rights.
- 18.14. A Party shall notify the Platform Manager of any infringement of Platform Intellectual Property that comes to their attention. The Platform Manager will advise the Owners and PIP Manager of the infringement and the owners shall determine an appropriate course of action.

## **19. Use of Platform Intellectual Property for Projects**

Each Owner hereby provides to all other Parties a non-exclusive, non-terminating, non-transferable and royalty free licence to use their Platform Intellectual Property to the extent necessary for the Parties to undertake, and provide services as part of, Projects, any such use to be subject to the confidentiality restrictions in clause 18.6.

## **20. Records**

- 20.1. The PIP Managers will report all Platform Intellectual Property to the Platform Manager who will maintain a log of all such reports. The report will identify the invention, design, software or other Intellectual Property Rights in sufficient detail for the Platform Manager to understand its relevance to the achievement of Platform Outcomes and its ownership.
- 20.2. The Platform Manager will also be responsible for recording the licences to and use of Platform Intellectual Property by Research Users and other parties upon the advice of the PIP Managers
- 20.3. Each of the Parties shall be entitled to see, and correct, any such records.

## **21. Commercialisation of Platform Intellectual Property**

- 21.1. The overarching objective of the Platform is to Commercialise Platform Intellectual Property to third parties so as to ensure that Platform Intellectual Property is used to maximise achievement of the Outcomes for the benefit of New Zealand and the Owners.
- 21.2. The relevant PIP Manager will develop a Commercialisation Plan for Platform Intellectual Property, which shall include the use by third parties. Any such Commercialisation Plan will require the approval of the Owners.
- 21.3. Where the Owners disagree on the Commercialisation Plan such disagreement shall be resolved in accordance with the Disputes procedures of the Agreement.
- 21.4. The PIP Manager shall implement and manage any Commercialisation Plan and commercialise the Platform Intellectual Property on terms and conditions determined by the PIP Manager taking into account the provisions of this Agreement and the interest of the Owners. Any dispute or disagreement over the implementation and management



shall be resolved in accordance with the Disputes procedures of the Agreement.

- 21.5. The Owners of Platform Intellectual Property shall retain any benefits from any Commercialisation, after deduction of costs of the PIP Manager associated with Intellectual Property protection and commercialisation, in accordance with their ownership (and any other contributions the Owners may make) without accounting to any other Party.

## **22. Use of a Party's Platform Intellectual Property in Commercialising Platform Intellectual Property**

- 22.1 Where a Party wishes to use Platform Intellectual Property of another Party to Commercialise Platform Intellectual Property it shall first obtain a licence (or other suitable agreement) from the Owner or relevant PIP Manager, which shall not be unreasonably withheld. The terms of any such licence (or agreement) shall be on reasonable business terms and conditions.
- 22.2 The obligation to provide a licence under clause 22.1 shall continue whilst the licensor Party of the Platform Intellectual Property has ownership of or disposal rights in respect of the Platform Intellectual Property concerned, and notwithstanding that the licensor Party has ceased to be a party to this Agreement.

## **23. Survival**

- 23.1 The terms and conditions of this Part D will survive termination or expiry of this Agreement

# **PART E: CONFIDENTIALITY AND PUBLICATION**

## **24. Confidentiality**

- 24.1. Each Party will, during the course of this Agreement, learn and have access to confidential information about the other Parties and the Platform research or related activities. Such information could relate to personnel, structures, finances, business strategies or arrangements, research activities or plans. All Parties agree to keep such information about the others confidential and not to disclose or use it in any way, until such time as the information enters the public domain through no fault of the disclosing Party or the relevant Party or Parties provide

consent, but in relation to Platform Intellectual Property the information will cease to be confidential in accordance with the provisions of clause 18.6.

- 24.2. No Party will use another Party's organisation name, the name of any part of that organisation, organisation location or organisation employee, products or services, to promote itself or its products in any manner without the prior written consent of the organisation.
- 24.3. No Party will make a statement on behalf of any of the other Parties, or by any action, statement or omission do anything that may cause the organisation of any of the Parties to be brought into disrepute.
- 24.4. Notwithstanding Clause 22.2, all Parties agree to the use of their organisation's name to promote the research and activities of the Platform.
- 24.5. The obligations of confidentiality contained in this Agreement will survive the termination or expiration of this Agreement.

## **25. Publications and Public Announcements**

- 25.1. All Parties will promote the sharing of information generated by the Platform, and will participate in joint initiatives to publish, present and disseminate research results.
- 25.2. No Party may publish or disclose any material (including that contained in student theses) derived from the Platform research and activities within the Platform undertaken by another Party without the consent of that Party. So that the Intermediate Outcomes and maintenance of science quality can be achieved, as acknowledged by the Parties in clause 25.3 below, such consent shall not to be unreasonable withheld or delayed, and where the consent is necessary for Commercialisation, such consent may not be withheld beyond the time allowed for Intellectual Property Protection in clause 18.6
- 25.3. The Parties acknowledge that the dissemination of knowledge generated through the research and activities of the Platform will be important for achievement of the Intermediate Outcomes and maintenance of science quality, and that publication of books, papers, theses and other forms of dissemination of information is encouraged.
- 25.4. Each Party will be encouraged to publicise their Platform research but will need to acknowledge all collaborators and the Platform in any public announcement.

- 25.5. General Platform announcements by any Party must be approved by the Platform Manager.

## **PART F: OTHER MATTERS**

### **26. Membership of the Platform**

- 26.1. New Parties will join the Platform by invitation from the Anchor CEO Group, who will review Party membership to the Platform, based on recommendations from the Management Group in accordance with Foundation criteria, annually or in conjunction with any Foundation Platform review.
- 26.2. Parties wishing to exit the Platform will give three months notice in writing to the Anchor CEO Group.

### **27. Amendments**

- 27.1. No agreement or understanding varying or extending this Agreement shall be in effect unless it is in writing in a variation signed by all the Parties.
- 27.2. Any material change to this Agreement will require the prior approval of the Foundation.

### **28. Severability**

- 28.1. Any unlawful or voidable provision in this Agreement shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Agreement, as the case may be.
- 28.2. If any Party, in its sole discretion, considers that the unlawful or voidable provision is an essential term or condition of this Agreement and its reading down or severing would materially affect the purpose of or frustrate this Agreement, then any Party may, without prejudice to any of its rights or remedies, terminate this Agreement by Notice to the other Parties.

## **29. Waiver**

- 29.1. No failure or delay on the part of any Party in exercising any power or right under this Agreement will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same or any other right or power under this Agreement.
- 29.2. No waiver by a Party of any provision of this Agreement will be binding unless expressly made and confirmed in writing by the Party and all other Parties to this Agreement. Further, any such waiver will relate only to such matter, non-compliance or breach to which it expressly relates and will not apply to any subsequent non-compliance, breach or other matter.

## **30. Termination**

- 30.1. Unless the Parties otherwise agree, this Agreement shall terminate should the Platform research contract with the Foundation be terminated or not renewed.
- 30.2. Termination of this Agreement for any reason shall be without prejudice to the continuing enforceability of any rights or obligations of the Parties that have accrued at the time of termination or survive termination.

## **31. Force Majeure**

- 31.1. Where a Party is unable, wholly or in part, by reason of *force majeure*, to carry out any obligation under this Agreement, and that Party:
  - a. gives each other Party notice of that *force majeure* including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
  - b. uses all possible diligence to remove that *force majeure* as quickly as possible,that obligation is suspended so far as it is affected by *force majeure* during continuance of that *force majeure* and that Party shall be allowed a reasonable extension of time to perform its obligations.

- 31.2. If, after thirty (30) days, the *force majeure* has not ceased, the Parties shall meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.
- 31.3. In this clause, *force majeure* means an act of God, strike, lockout or other interference of work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, volcanic activity, tsunami, storm, flood, explosion, governmental or quasi-governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, and any other cause, whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Party affected.

## **32. Entire Agreement**

- 32.1. This Agreement together with the Schedules constitutes the entire Agreement between the Parties for the management of the Platform.

## **33. Exclusion of Partnership and Agency**

- 33.1. Despite reference in this Agreement to ‘partnering’, nothing in this Agreement shall create, or constitute or be deemed to create or constitute a partnership between the Parties, nor to constitute or create or be deemed to create or constitute a Party as an agent of any other Party for any purpose whatsoever. No Party shall have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit another Party or Parties to any obligations. The rights, duties, obligations and liabilities of the Parties shall be several and not joint or collective.

## **34. Agreement Non-Binding on Parties**

- 34.1. Except for the Intellectual Property Management obligations and other restrictions in PART D and the confidentiality obligations and other restrictions in Section 23, this Agreement does not create legally binding rights or obligations between the Parties, but it is nevertheless expected that the Parties will act according to the Guiding Principles of the Platform set out in this Agreement so as to achieve the anticipated benefits for the public of New Zealand.

Signed for and on behalf of )  
THE INSTITUTE OF GEOLOGICAL )  
AND NUCLEAR SCIENCES LTD by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name of witness*  
on:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Signed for and on behalf of the )  
NATIONAL INSTITUTE )  
OF WATER AND ATMOSPHERIC )  
RESEARCH LTD by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name of witness*  
on:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Signed for and on behalf of )  
MASSEY UNIVERSITY by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name of witness*  
on:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Signed for and on behalf of )  
OPUS INTERNATIONAL )  
CONSULTANTS LTD by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name of witness*  
on:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Signed for and on behalf of the )  
UNIVERSITY OF AUCKLAND by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name of witness*  
on:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Signed for and on behalf of the )  
UNIVERSITY OF CANTERBURY by )

\_\_\_\_\_  
*Name of signatory*  
in the presence of:

\_\_\_\_\_  
*Signature*

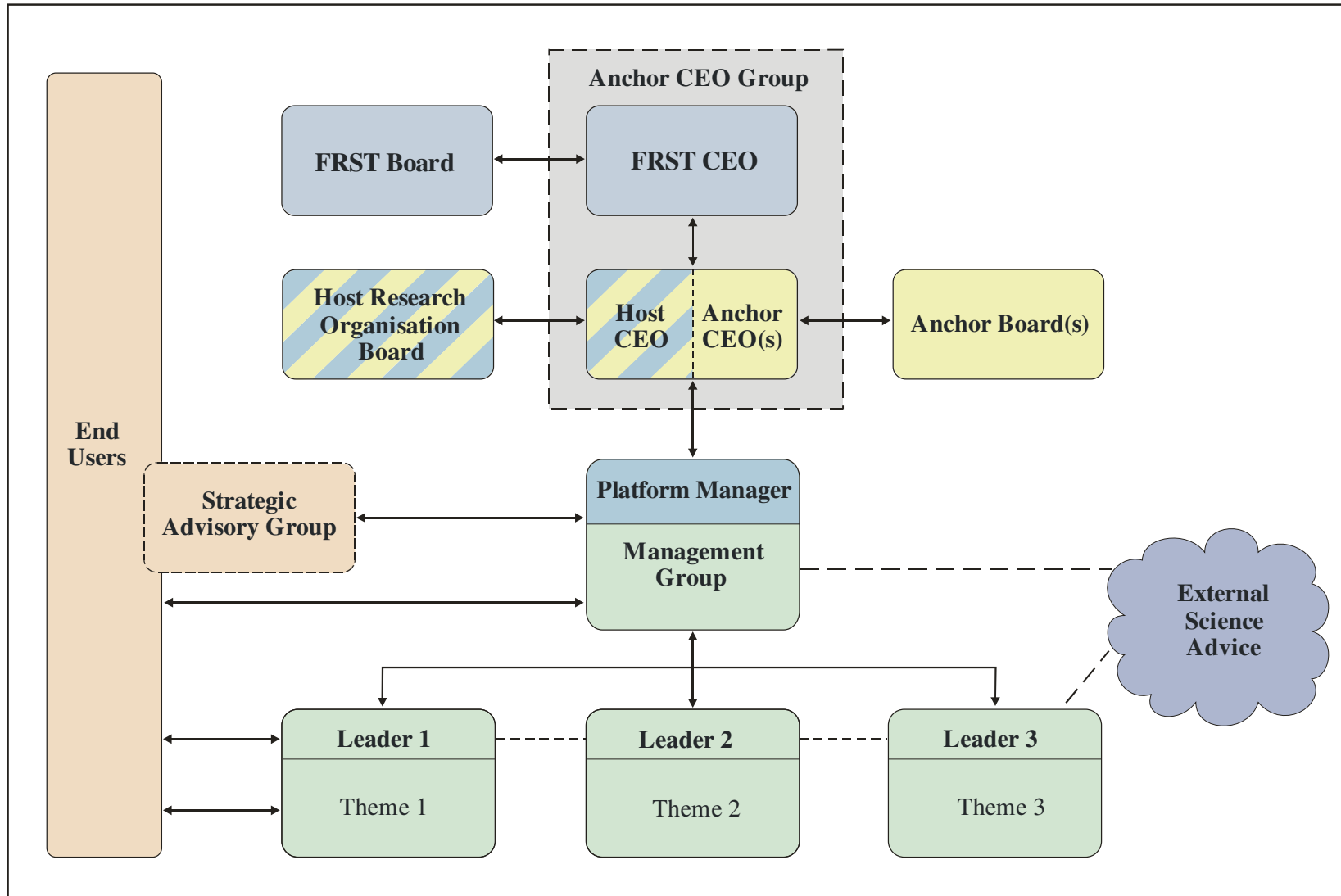
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on:

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*Signature*

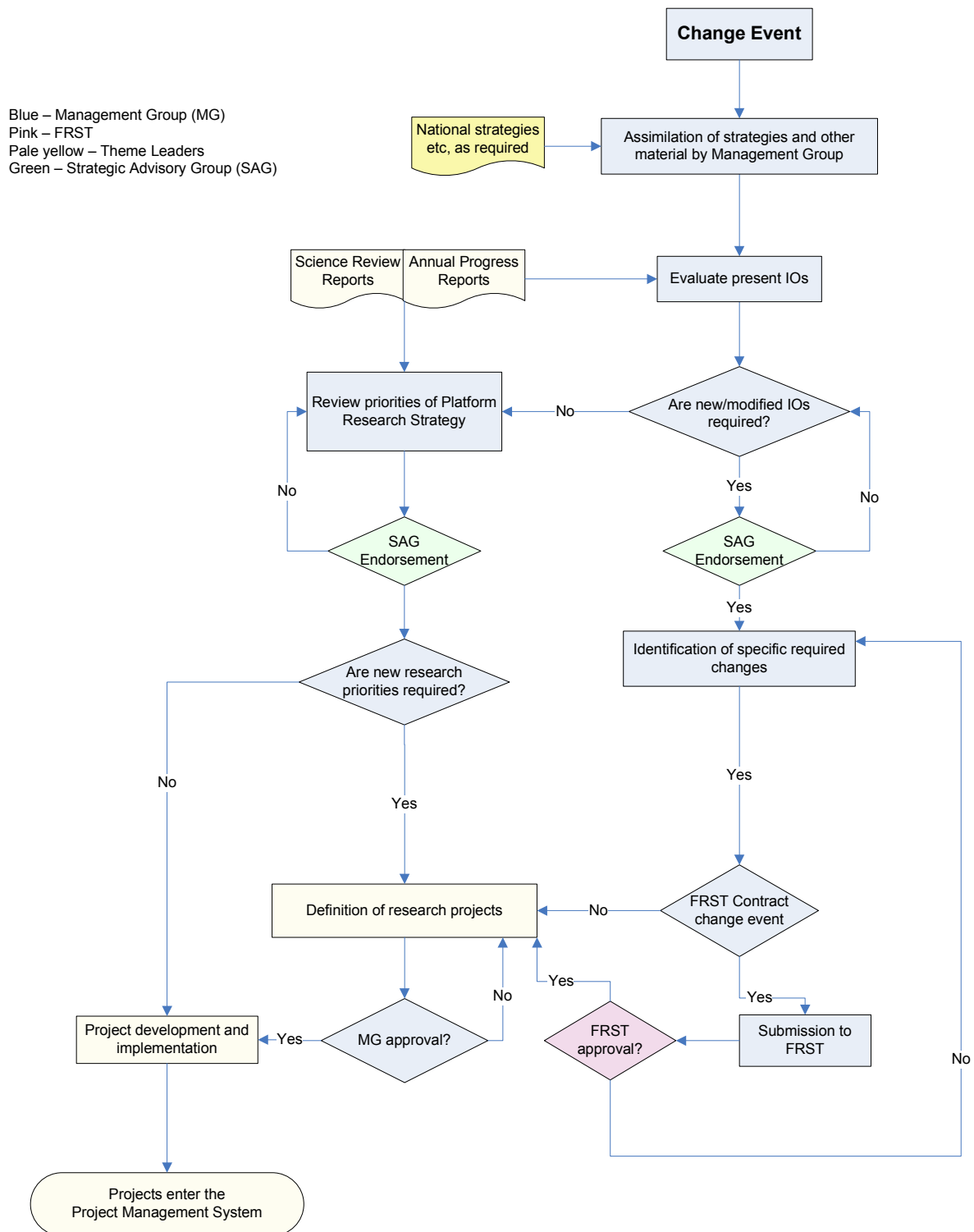
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*Date*



## SCHEDULE 1: Platform Structure



## SCHEDULE 2: Reprioritisation Process and Consequent Funding Changes for Parties



- The Management group may agree to additional funding being allocated through a contestable process.

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- In the event that the Platform funding decreases/increases without concomitant changes in priorities, the funding to each of the Parties will decrease/increase on a pro-rata basis.
- In the event that the Platform funding decreases/increases with concomitant changes in priorities, the funding to each of the Parties will be determined in accordance with the Platform Research Strategy and/or outcomes of reviews and follow the reprioritisation process in this Schedule.
- Should Platform funding remain static, funding to each of the Parties will be determined in accordance with the Platform Research Strategy and/or outcomes of reviews and follow the reprioritisation process in this Schedule.

### **SCHEDULE 3: Platform Scope**

#### **Introduction**

The Platform scope has been developed following consultation with key research users as part of the process for establishing the Natural Hazards Research Platform. A requirement for the formation of a Platform is a nationally endorsed strategy; for this Platform the government endorsed strategy is the National Civil Defence Emergency Management Strategy administered by the Ministry of Civil Defence & Emergency Management.

The Platform will support enduring research capabilities that provide an ability to understand, identify, avoid or mitigate potential, well defined catastrophic<sup>1</sup> or cumulative risks (significant economic, social and/or environmental impacts) to New Zealand, (specifically physical hazards stemming from coastal erosion, earthquakes, floods, landslides, severe winds, snow, tsunamis, and volcanic eruptions) and social, economic and infrastructure resilience relating to natural hazards. The capability in the Platform will also be available to assist decision makers during significant hazard events as appropriate.

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<sup>1</sup> Catastrophic event - for the purpose of this Scope a catastrophic event is not defined solely on damage caused but includes economic, environmental and social impact for New Zealand.

## Scope of Platform

In consultation with relevant government agencies and taking into consideration the vision of the National Civil Defence Emergency Management Strategy the scope of the Natural Hazards Platform will include research<sup>2</sup> and capability building which aligns with identified user needs. The Platform research activities will include basic targeted, applied, experimental development and product development research with a focus on:

1. Avoiding or mitigation of natural hazard risks that could potentially cause catastrophic impacts on New Zealand's environment, economic or social well-being.
2. Community, organisational and infrastructure resilience to natural hazard events;

The Platform research will be aligned with national strategies responsible for reduction, readiness, response and recovery from natural hazard events.

Both the end and capability outcomes resulting from the research undertaken must clearly link to supporting the achievement of the nationally endorsed strategy.

## Out of Scope

Although recognised as important national risks, the following research activities are out of scope for the Natural Hazards Platform:

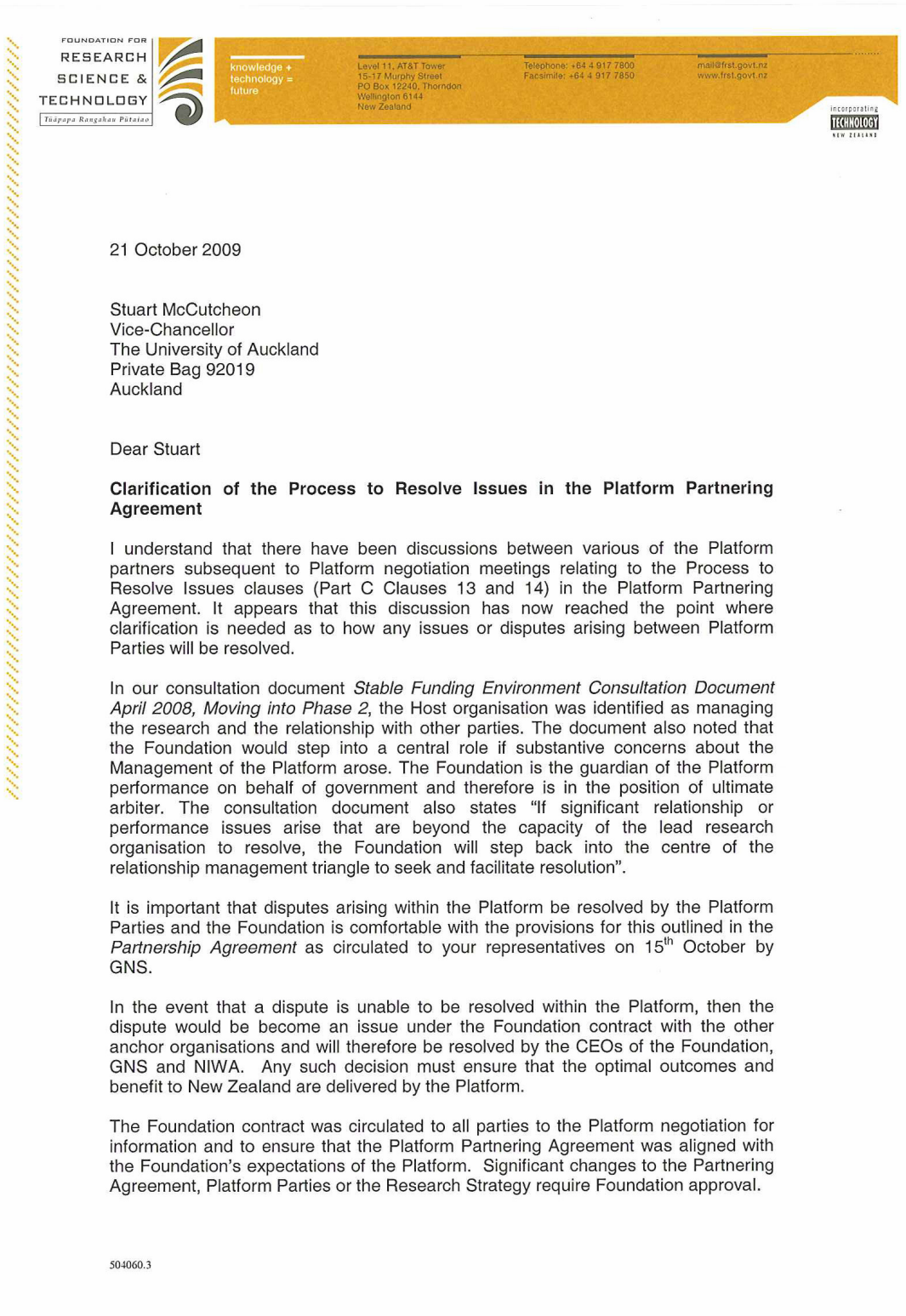
1. Research relating to man-made hazards such as technological or social hazards including major transport accidents, major infrastructure failures, terrorism and biological hazards.
2. Bio-security research, as this research is covered in other Foundation investment themes
3. Climate variability and change research funded outside the Resilient Infrastructure and Communities (RIC) portfolio, recognising that the outputs from that research could be inputs to the Natural Hazards Platform.
4. Initially, other natural hazards related research that is funded from Foundation portfolios other than the Resilient Infrastructure and Communities portfolio.
5. Infrastructure research, including new building solutions, that does not specifically relate to mitigating impacts from a natural hazard event and better aligns with other Foundation investment themes
6. Research where the benefits are specific to a discrete sector, rather than widespread national benefits
7. Hazards related research and translation of hazards research outputs that are expected to be funded by other public sector or private sector agencies to meet local needs or immediate operational requirements.

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<sup>2</sup> For the definition of research refer to the *Frascati definitions – Limits to Experimental Development* <http://www.frst.govt.nz/files/Frascati%20Definitions.pdf>

## SCHEDULE 4: Role of FRST in Process to Resolve Issues

The letter appended was sent by the CEO of FRST to negotiating parties on 21 October 2009, to clarify processes around dispute resolution.



As a member of the CEO Anchor Group I will be aware of any issues that are raised through the Platform's process to resolve issues. I can assure you that I will take disputes seriously and will ensure that they are dealt with appropriately.

The Platform must have the control to resolve its own disputes and it is not appropriate for third parties to be introduced outside of this process. Therefore a Platform process that encourages Platform Parties to endeavour to resolve issues outside of the Platform is not acceptable.

The Foundation expects GNS Science and NIWA as Platform Host and Anchor organisations and all Platform Parties to put benefit to New Zealand ahead of organisational benefit when considering how to deliver Platform outcomes..

I understand from my staff that the process to agree the founding documents of the Platform has generally been one of collaboration and constructive participation with parties acting in good faith and with a focus on agreeing outcomes that will deliver national benefit.

I trust this alleviates your concerns regarding the role of the Foundation in the Platform decision making process and look forward to seeing the signed contract and partnership documents very shortly.

Yours sincerely

A handwritten signature in black ink, appearing to read 'MB', with a stylized flourish at the end.

Murray Bain  
**Chief Executive**

cc: Alex Malahoff, Chief Executive - GNS  
John Morgan, Chief Executive - NIWA