

**Spongebob Squarepants**  
(Spongebob)

**Precision Research Limited**  
(PRL)

**MASTER RESEARCH SERVICES AND CO-FUNDING  
AGREEMENT**

Version 3.1  
February 2020

# MASTER RESEARCH SERVICES AND CO-FUNDING AGREEMENT

## PARTIES

Name:	<b>Spongebob Squarepants (“Spongebob”)</b>	Company no.	
Address:	X	NZBN:	X
Email:	X		
Name:	<b>Precision Research Limited (“PRL”)</b>	Company no.	5863408
Address:	181 Grafton Road, Auckland 1010	NZBN:	9429042108573
PRL Representative:	Kelly Atkinson	Phone:	+64 21 2109765
Email:	kelly@precisiondrivenhealth.com		

## INTRODUCTION

- A. PRL, Auckland UniServices Limited, Waitemata District Health Board and Orchestral Developments Limited (“**ODL**”) entered into the Precision Driven Health Joint Venture Agreement on 10 March 2016, as amended on 7 February 2018 (the “**PDH Agreement**”).
- B. PRL is a wholly owned subsidiary of ODL, incorporated for the purposes of administering the Precision Driven Health Joint Venture (“**PDH**”), which includes, amongst other matters, entering into agreements on behalf of, and as directed by, PDH in the furtherance of the objectives set out in the PDH Agreement. Legal title to all PDH assets is held by PRL on trust for the benefit of PDH.
- C. PDH has been established under the Ministry of Business, Innovation and Employment (“**MBIE**”) Research Partnership Programme to conduct research projects with the intended outcomes to promote knowledge driven healthcare in New Zealand.
- D. Spongebob has the expertise, Intellectual Property, Know-How and research networks that PDH believes can be usefully applied to manage and deliver a number of research projects within PDH’s research programme.
- E. Pursuant to clauses 5.2 and 7 of the PDH Agreement, PDH may, with the approval of the PDH Board, contract with Spongebob to provide certain research specific staff and contract with Spongebob with the object of undertaking jointly funded research projects.
- F. Accordingly, the parties have agreed that Spongebob shall provide the Services and the Co-funding in connection with specified PDH Board-approved research projects.
- G. This Agreement sets out the terms and conditions that will apply to the provision of the Services and Co-funding by Spongebob.

## AGREEMENT

The parties agree that Spongebob will provide the Services and the Co-funding in connection with specified Projects on the terms and conditions of this Agreement (which consists of this page, the attached General Terms and Conditions and the Schedules) and the terms of any agreed Project Statement of Work.

This Agreement will be effective from the date it is signed by the last of the parties to do so (“**Commencement Date**”).

Signed by **Spongebob Limited:**

Signed for and on behalf of  
**Precision Research Limited:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

X  
\_\_\_\_\_  
Name

X  
\_\_\_\_\_  
Name

X  
\_\_\_\_\_  
Capacity

X  
\_\_\_\_\_  
Capacity

X  
\_\_\_\_\_  
Date

X  
\_\_\_\_\_  
Date

SAMPLE

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. In this Agreement:

"**Agreement**" means this Master Research Services and Funding Agreement and includes these General Terms and Conditions, the Contract Details, Schedules and any attachments hereto, but excludes the Project Statements of Work.

"**Background IP**" means Intellectual Property or other materials developed outside of the Project belonging to or under the control of a party prior to the Start Date of a Project or acquired or created up to the end of that Project by either party independently of the Project. In respect of PRL this includes any Intellectual Property of any PDH Participant and any software, documentation, process data or other materials (and any modifications or derivative works of the same) made available to Spongebob under the relevant Project Statement of Work.

"**Budget**" means the budget for a particular Project as specified in the relevant Project Statement of Work.

"**Business Day**" means a day on which registered banks are open for business in Auckland, excluding Saturdays, Sundays and public holidays.

"**Co-funding**" means, if specified in a Project Statement of Work, the cash funding to be provided by Spongebob for that Project.

"**Co-funding Amount**" means the dollar amount of the Co-funding to be provided by Spongebob, as specified in the relevant Project Statement of Work.

"**Commercial Product**" means a product or service developed, used, sold, licensed or offered for sale which incorporates, to a material degree, Project IP or Background IP provided by Spongebob pursuant to this Agreement.

"**Commercial Terms**" means those terms generally offered by PRL or its affiliated companies, for the supply or licence (as the case may be), of a Commercial Product, which shall include that the supply or license shall be:

- (a) non-exclusive;
- (b) for non-commercial healthcare purposes; and
- (c) for consideration that is discounted to reflect the extent to which the Project IP (taking into account Spongebob's contribution to such Project IP or Background IP provided by Spongebob) added to the commercial value of the Commercial Product;

"**Confidential Information**" means the terms of this Agreement and any Project Statement of Work any Intellectual Property of a party (or PDH Participant) and any data or information in any format:

- (a) relating directly or indirectly to any Project and/or the Services, including the Results of any Research;
- (b) relating to the business or affairs or financial, commercial or professional arrangements of a party, its subsidiaries, customers, suppliers and business partners and/or any PDH Participant;
- (c) disclosed by either party to the other on the express basis that such information is confidential; or
- (d) which might reasonably be expected by the receiving party to be confidential in nature,

except: (i) where the information already is or becomes public knowledge, otherwise than as a result of a breach by the party receiving that information under this Agreement; (ii) where it can be shown in

written records that the information has been independently discovered by an agent or employee of the receiving party without access to the information disclosed by the disclosing party; or (iii) where it can be demonstrated from written records to have been in the receiving party's possession from a third party not under any confidentiality obligation contained in this Agreement. In respect of PRL, PRL's Confidential Information shall include all or any information supplied by or otherwise owned by or proprietary to any PDH Participant and/or its funding arrangements with MBIE.

**"Contract Details"** means the details set out on page 1 of this Agreement.

**"Costs"** means the costs to be reimbursed by PRL to Spongebob, if any, for the Services provided by Spongebob under a Project Statement of Work, as specified in the relevant Project Statement of Work.

**"Deliverables"** means the deliverables of each Project as specified in the relevant Project Statement of Work.

**"Spongebob Representative"** means the person named as such in the Contract Details together with any successor named by Spongebob by notice in writing to PRL from time to time.

**"End Date"** means the estimated completion date of a Project as specified in the relevant Project Statement of Work.

**"Fees"** means the fees to be paid by PRL to Spongebob for the Services provided by Spongebob under a Project Statement of Work, as specified in the relevant Project Statement of Work.

**"GST"** means Goods and Services Tax as defined in the Goods and Services Tax Act 1985, at the prevailing rate.

**"Health Sector PDH JV Participant"** includes any PDH Joint Venture Participant organisation that provides, as its main business function, healthcare services to the population of New Zealand, and for the avoidance of doubt includes any district health board;

**"healthcare"** means provision of health-related services and activities in the secondary care sector provided to a population, group, or individual.

**"Intellectual Property"** means any and all rights to and interests in, or protecting, any and all industrial or intellectual property of any kind, whether or not in a material form, including but not limited to:

- (a) copyrights, trademark rights, design rights, all rights relating to Confidential Information, patents (or equivalent in any jurisdiction), any right to apply for registration of any such intellectual property rights anywhere in the world, any right to claim priority under international convention for any such applications and all rights conferred by such industrial or intellectual property when registered or granted; and
- (b) all rights to and in any processes, formulae, designs, reports, drawings, specifications, layout designs, software, blueprints, Know How, experiences, characteristics, inventions, discoveries, improvements and research data.

**"Know How"** means any knowledge, propriety information or data which is not generally publicly known, including, without limitation, all manufacturing, formulation and scientific research information, whether or not capable of precise separate description.

**"MBIE Agreement"** means the partnership contract between MBIE and PRL.

**"non-commercial"** means not undertaken for a profit and/or not intended to produce any deliverables, services or data for commercial use, application or exploitation.

**"non-commercial healthcare"** means the provision of health-related services or activities defined as "healthcare" above, not undertaken for a profit and/or not intended to produce any deliverables, services or data for commercial use, application or exploitation.

**"PRL Representative"** means the person named as such in the Contract Details together with any successor named by PRL by notice in writing to PRL from time to time.

**"PDH Participants"** means Precision Research Limited, Orchestral Developments Limited, Waitemata District Health Board, and Auckland UniServices Limited as the participants in PDH. This is also extended to any new Participants (as defined in the PDH Agreement) that become a party to the PDH Agreement.

**"Project"** means the programme of research and development described in the relevant Project Statement of Work.

**"Project Contact"** means the contact people identified as the key contacts for each party in respect of a particular Project as specified in the relevant Project Statement of Work.

**"Project IP"** means the Intellectual Property arising, created, conceived or reduced to practice by either or both of the parties during the course of, and as a direct result of, the carrying out of a Project, including in respect of the creation of any Deliverables, but for the avoidance of doubt does not include any Background IP of a party.

**"Project Statement of Work"** means a document that is:

- (a) similar in form to the sample form set forth in Schedule 1 of this Agreement;
- (b) entitled "Project Statement of Work";
- (c) entered into by the parties on or after the Commencement Date; and
- (d) signed by the authorised representative of each of the parties.

**"Principal Investigator"** means in relation to a Project, the person named as such in the relevant Project Statement of Work, together with any successor appointed by agreement in writing between the parties.

**"Research"** means research carried out in relation to a Project, as specified in the relevant Project Statement of Work.

**"Services"** means the Research and any other services and/or obligations (including all Deliverables) to be provided by Spongebob and its Key Personnel in connection with a Project, as specified in the relevant project Statement of Work.

**"Results"** means all data, results, research findings, inventions, discoveries and reports arising from the Research and/or the performance of any Project.

**"Start Date"** means the estimated commencement date of a Project as specified in the relevant Project Statement of Work.

## 1.2. In this Agreement:

1.2.1. All monetary amounts are stated, in New Zealand dollars, unless provided otherwise.

1.2.2. Where the context permits, the singular includes the plural and vice versa.

1.2.3. References to any "party" means a party to this Agreement.

1.2.4. Upon any assignment of this Agreement by a party to a successor or permitted assignee, references to that party will thereafter mean such successor or permitted assignee (as the case may be).

1.2.5. References to a month or a year are references to a calendar month or calendar year.

1.2.6. All references to legislation are references to New Zealand legislation and include all subordinate legislation, any re-enactment of, or amendment to, that legislation and all legislation passed in substitution for that legislation.

- 1.2.7. References to a "person" include an individual, firm, company, corporation or un-incorporated body of persons, any public, territorial or regional authority, any government, and any agency of any government or of any such authority.
- 1.2.8. References to clauses, Project Statement of Works and attachments are to clauses in, and the Project Statement of Works and attachments to, this Agreement (unless stated otherwise). Each such Project Statement of Work and attachment forms part of this Agreement.
- 1.2.9. References to "written" and "in writing" includes any means of visible representation including email.
- 1.2.10. This Agreement shall not be interpreted against any party responsible for its preparation.
- 1.2.11. "including" in this Agreement means "including, without limitation".

## **2. TERM**

- 2.1. This Agreement shall commence on the Commencement Date and shall continue until the later of (i) the expiry of four (4) years from the Commencement Date; and (ii) one year after the expiry of the last of the Project Statements of Work, unless terminated earlier in accordance with this Agreement.

## **3. PROJECT STATEMENT OF WORKS**

- 3.1. The parties must execute a Project Statement of Work for each Project to be carried out under this Agreement prior to Spongebob commencing any Services or providing any Co-funding.
- 3.2. A Project may be initiated via the following mechanisms:
  - 3.2.1. PRL may request Spongebob to provide Services and/or Co-funding in connection with a new Project by written notice enclosing a proposed new Project Statement of Work substantially in the form set out in Schedule 1 (Project Statement of Work); or
  - 3.2.2. Spongebob may submit a written project proposal to the PDH to undertake specific research projects, in the form recommended by PDH in writing from time to time. The proposal will be assessed by PDH in alignment with the objectives and priorities of PDH. This proposal may, or may not, be approved to proceed by PDH.
- 3.3. Subject to the parties jointly agreeing to proceed with a Project, the parties will consult with each other to agree on and execute the new Project Statement of Work.
- 3.4. The new Project Statement of Work will take effect from the date it is signed by both parties.

## **4. SERVICES**

- 4.1. Spongebob shall carry out the Services in accordance with the terms and conditions of this Agreement, the relevant Project Statement of Work and all applicable laws.
- 4.2. In performing the Services, Spongebob shall ensure that the Services are performed in a proper, timely, honest, courteous and professional manner and shall exercise the degree of skill, care and diligence that would reasonably and ordinarily be expected from a skilled, reasonable and experienced service provider in the same or similar circumstances, with reference to good industry standards and practice.
- 4.3. Spongebob shall ensure that all of its personnel (including all Key Personnel) have appropriate skills, training and background to perform the Services and acknowledges the value to PRL of having consistency and continuity with respect to its personnel.
- 4.4. Spongebob shall be responsible for all employees and contractors (including all Key Personnel) performing Services pursuant to a Project Statement of Work, and all acts and omissions of such employees and contractors shall be deemed to be acts or omissions of Spongebob under this Agreement and the relevant Project Statement of Work.

- 4.5. The Project shall be performed under the direction and supervision of the Principal Investigator so long as he or she is available to Spongebob and otherwise in accordance with all reasonable directions of PRL. In the event that the Principal Investigator ceases to be available to Spongebob or becomes unable to continue the Project, the parties shall have one month to agree on a substitute failing which either party may terminate the relevant Project Statement of Work by notice in writing to the other.
- 4.6. Nothing in this Agreement shall be construed to limit the freedom of Spongebob or any personnel of Spongebob, whether a participant in the Project or not, from engaging in similar research carried out independently under other grants, contracts or agreements with parties other than PRL or the PDH Participants.

## 5. PAYMENT OF COSTS AND FEES FOR SERVICES

- 5.1. In consideration of the provision by Spongebob of the Services, PRL shall pay to Spongebob the Fees and Costs specified in the relevant Project Statement of Work.
- 5.2. Spongebob shall submit a valid GST invoice to PRL for the Fees and Costs (plus GST, if any) on the dates specified for payment in the relevant Project Statement of Work, or if no date(s) are specified, immediately following the Project End Date or such date(s).
- 5.3. PRL shall pay all invoices shall be paid on the 20th day of the month the invoice is dated, in the case of invoices dated on or before the 5th day of any calendar month, and, in all other cases, on the 20th day of the month following the month the invoice is dated.
- 5.4. The payments provided for in clause 5.1 are based on Spongebob's estimated Fees and Costs at the time the Budget was prepared. If Spongebob becomes aware that a Fee or Cost will or is likely to exceed the amount provided for when preparing the Budget then Spongebob may give notice to PRL ("**Budget Notice**"). A Budget Notice shall include details of the increase, a statement of the causes (which shall not include under-estimation of Fees and Costs by Spongebob), and a revised Budget. Where Spongebob can prove to PFL's satisfaction that the increase is not reasonably avoidable, and:
- 5.4.1. where the increase is not more than, the lesser of: (i) 10% of Spongebob's estimated Fees and Costs at the time the Budget was prepared (as applicable); or (ii) \$10,000, the payments specified in the relevant Project Statement of Work shall be increased to cover such increase; or
- 5.4.2. where the increase in the Budget Notice outlines an increase of greater than 10% of Spongebob's estimated Fees and Costs at the time the Budget was prepared and/or \$10,000, then PRL shall, in its absolute discretion and as directed by the PDH Board, either: (i) approve the increase; (ii) suggest an alternative work around (which may necessitate amending the relevant Project Statement of Work or entering into a new Project Statement of Work); or (iii) exercise its right to terminate the relevant Project Statement of Work in accordance with clause 12.1.
- 5.5. In the event of early termination of this Agreement or any Project Statement of Work by either party for any reason, PRL shall pay to Spongebob:
- 5.5.1. all Fees and Costs payable for Services provided by Spongebob in accordance with the Agreement and the relevant Project Statement of Work up to the effective date of termination; and
- 5.5.2. the amount of any non-cancellable obligations entered into by Spongebob in relation to the relevant Project(s), if such amounts and obligations have been specified in the relevant Project Statement of Work or otherwise as agreed in writing between the parties,
- provided that no amount shall be payable by PRL under clause 5.5.1 or 5.5.2 where PRL has terminated this Agreement pursuant to clauses 12.2.2, 12.2.3, 12.2.4, 12.2.5 or 12.2.6.
- 5.6. If any amount falls overdue for payment by PRL under this Agreement or any Project Statement of Work, the overdue amount shall (without prejudice to any other right or remedy under this Agreement) bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is made in full. Default interest shall be calculated daily at the rate of Spongebob's overdraft rate plus 1% per annum and shall be compounded monthly.

- 5.7. If PRL, in good faith, disputes the accuracy of any invoice issued by Spongebob under clause 5.2, PRL shall within ten (10) Business Days after receipt of the invoice, give notice of that fact to Spongebob. That notice shall state the basis of the dispute and give relevant supporting details. PRL shall pay the undisputed portion of the invoice and may withhold payment of the portion disputed. If the parties do not resolve the dispute within ten (10) Business Days of the date of the notice, the dispute shall be determined in accordance with clause 13.2.

## **6. CO-FUNDING**

- 6.1. If the parties have agreed in a Project Statement of Work that a Project shall be co-funded by Spongebob, without limiting any provision in this Agreement or the Project Statement of Work relating to the provision of Services by Spongebob in connection with such Project (and payment by PRL of the Fees and Costs associated with such Services), Spongebob shall make payment to PRL of all Co-funding Amounts in the Project Statement of Work on the date(s) specified in the Project Statement of Work.
- 6.2. If Spongebob fails to pay any Co-funding Amount on the due date specified in the Project Statement of Work, the overdue amount shall (without prejudice to any other right or remedy under this Agreement) bear default interest from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is made in full. Default interest shall be calculated daily at the rate of PRL's overdraft rate plus 1% per annum and shall be compounded monthly.
- 6.3. The parties agree to co-operate with each other in good faith and act in an open and transparent manner in connection with the funding of each such Project and the application of the Co-funding to the Project.
- 6.4. Spongebob warrants that all Co-Funding Amounts will be derived from a source other than central Government, local Government, not-for-profit organisations, Crown Research Institutes, Tertiary Education Institutes or MBIE.

## **7. REPORTING AND RECORDS**

- 7.1. Spongebob shall provide accurate, truthful and fulsome:
- 7.1.1. interim reports to PRL during the term of each Project (at the intervals specified in the relevant Project Statement of Work, or if not specified, at the intervals notified by PRL); and
  - 7.1.2. a final report to PRL at the completion of each Project,
- using the format and template for such reports, and containing such information, as requested by PRL from time to time. Spongebob acknowledges that such reports are imperative to PRL's ability to meet its ongoing stake holder reporting requirements and will be relied upon by PRL to inform MBIE and the PDH Board of any financial return made on their investment in the relevant Project.
- 7.2. Spongebob shall prepare and maintain accurate and up to date records of all Services and Co-funding provided under this Agreement, and shall retain such records for a period of seven (7) years following the termination or expiry of the MBIE Agreement (as notified by PRL).
- 7.3. Spongebob shall make any records maintained under clause 7.2 available to PRL (or PDH or MBIE, as applicable) upon request by PRL.

## **8. PUBLICITY**

- 8.1. Spongebob shall not use the name of PRL or ODL or "Orion" or "Precision Driven Health", or the name of any employee of PRL or ODL or the Affiliates of Orion Health Group Limited ("Orion"), in any publicity, advertising or news release in connection with this Agreement, without the prior written approval of PRL. For the purposes of this clause "Affiliates" means persons or entities that directly or indirectly are controlled by Orion or control Orion.
- 8.2. PRL shall not use the name of Spongebob in any publicity, advertising, or news release in connection with this Agreement, without the prior written approval of Spongebob.

## **9. CONFIDENTIALITY**

- 9.1. Subject to clause 10, each party shall maintain as confidential at all times, and shall not at any time, directly or indirectly:
- 9.1.1. disclose or permit to be disclosed to any person;
  - 9.1.2. use for itself; or
  - 9.1.3. use to the detriment of the other party,
- any Confidential Information except:
- 9.1.4. as required by law;
  - 9.1.5. as authorised in writing by the other party;
  - 9.1.6. in the case of PRL, as required by PDH or MBIE pursuant to PRL's contractual arrangements with such entities; or
  - 9.1.7. to the extent reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information only to such of its officers, employees or professional advisers, on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

## 10. PUBLICATIONS

- 10.1. Spongebob may not copy, reproduce, divulge, publish or circulate (or authorise or permit anyone else to copy, reproduce, divulge, publish or circulate) any information relating to a Project that incorporates the PRL Background IP, any PRL Confidential Information, without the prior written approval of PRL as PDH's agent (not to be unreasonably withheld).
- 10.2. PRL acknowledges that one of the aims of the PDH is to encourage the public dissemination of research generated through the PDH. As such, while the PDH Participants may restrict: (i) publication of the Research Results, (ii) information relating to the Project to protect the PRL Background IP, or (iii) PRL Confidential Information, PRL agrees that it will use its best endeavours to limit any restrictions imposed on publication. The parties agree without limitation that the following circumstances warrant restricting publication of information relating to the Research or any Project by the Principal Investigator:
- 10.2.1. where a PDH Participant is arranging patent or other Intellectual Property protection;
  - 10.2.2. where publication would breach an ethical standard or PRL's legal or regulatory requirements;
  - 10.2.3. where withholding information is necessary to protect the privacy of a person;
  - 10.2.4. where the information relating to the Research or any Project contains Background IP and/or Confidential Information of a PDH Participant that is an integral part of ongoing research and development in respect of that PDH Participant;
  - 10.2.5. where the information relating to the Research or any Project contains Background IP, Project IP or Confidential Information that could jeopardise or hinder the PDH's commercial activities if published; or
  - 10.2.6. where publication would be inconsistent with the terms of PRL's contractual arrangements with the PDH Participants or MBIE (including any principles or objectives contained in such contractual arrangements).
- 10.3. Notwithstanding clause 9.1 but subject to clauses 10.1 and 10.2, the Principal Investigator may make publications or presentations regarding the Research or any Project (collectively, a "**Publication**"), provided that:
- 10.3.1. the Principal Investigator shall first deliver the proposed text of the Publication to PRL for PRL's review at least thirty (30) days prior to the proposed date of submission of the same to any publisher or other third party;

10.3.2. PRL may within thirty (30) days of such delivery, (i) object to the Publication on the grounds set forth in clause 10.2 or other reasonable grounds, or (ii) approve the Publication, as directed by and on behalf of the relevant PDH Participant and the PDH. Where no objection or approval is received pursuant to this clause the Principal Investigator may publish the Publication.

## 11. INTELLECTUAL PROPERTY

- 11.1. The Intellectual Property rights and obligations in this clause 11 shall apply in respect of all Projects, unless expressly provided otherwise in a Project Statement of Work.
- 11.2. Despite any other provision in this Agreement and any Project Statement of Work, Spongebob acknowledges and agrees that it will use its best endeavours to undertake its dealings with any Project IP in a manner that maximises the benefits to New Zealand of such Intellectual Property and is strictly in the furtherance of the promotion of knowledge-driven healthcare in New Zealand.
- 11.3. Each party (and, its licensors, as applicable) retain all right, title and interest in and to any of its Background IP.
- 11.4. To the extent each party has the right to do so, each party grants to the other a non-exclusive, perpetual, irrevocable, transferable, royalty free licence to use its Background IP for the sole purpose of conducting each Project in accordance with this Agreement and the relevant Project Statement of Work. Except as expressly provided for in this clause 11, the parties make no warranties, express, implied or otherwise, regarding the accuracy, completeness, non-infringement of third party rights, or merchantability or fitness for a particular purpose in relation to each party's Background IP.

**NB: Please note that the clauses below apply only to projects in which PRL and Spongebob have agreed that Spongebob may own the Project IP, alongside a commitment that Spongebob provides significant co-funding for the project. 11.5-11.6 are replaced by other clauses in projects which do not have significant co-funding committed.**

- 11.5. All right, title and interest to and in all Project IP, Results and Deliverables shall solely vest in **Spongebob** upon creation, regardless of inventorship or authorship, unless expressly provided otherwise in the relevant Project Statement of Work, or agreed in accordance with clause 11.7.
- 11.6. Subject to clauses 9 and 11.2, Spongebob grants PRL the following licenses, with the understanding that Spongebob will be notified prior to any proposed use of the licenses:
- 11.6.1. a non-exclusive right and royalty-free license to use the Project IP and any Results solely for internal research and education purposes; and
- 11.6.2. the non-exclusive right to sublicense the Project IP and any Results to each Health Sector PDH JV Participant on a perpetual, royalty free, non-exclusive, non-transferable license basis solely for any non-commercial healthcare purposes of the Health Sector PDH JV Participant within such Health Sector PDH JV Participant's applicable district. For the avoidance of doubt, this license includes only the Project IP and Results, and does not negate or pre-empt any pre-existing or ongoing commercial agreements between Spongebob and the Health Sector PDH JV Participant; and
- 11.6.3. where a Health Sector PDH JV Participant has participated in the creation and/or trialling (such as clinical validation) of Project IP, grant or procure the grant, to such Health Sector PDH JV Participant, any license necessary to allow the Health Sector PDH JV Participant to use or obtain Commercial Products developed from such Project IP on Commercial Terms.
- 11.7. Any purported variation or change to the ownership of Intellectual Property rights in all or any Project IP, Results and Deliverables, in any Project Statement of Work (and licenses pertaining to the same), shall be null and void unless and until approved by the PDH Board. PRL is responsible for obtaining the approval of the PDH Board. The PRL Representative will confirm the decision of the PDH Board in writing to Spongebob and where approval is pursuant to a delegated authority, the PRL Representative shall provide Spongebob with an extract of the relevant PDH Board meeting minutes or resolution approving such delegation of authority. For the purposes of this clause 11.7, 'approved by the PDH Board' shall be

deemed to include any approval pursuant to a PDH Board delegation of authority, or any written confirmation from the PRL Representative that the approval of the PDH Board has been given pursuant to this clause 11.7.

- 11.8. The parties acknowledge and agree that any disputes arising between them in connection with their Intellectual Property rights or obligations shall be resolved in accordance with the dispute resolution procedure in clause 13.2.

## 12. TERMINATION

- 12.1. In addition to any other right of termination or remedy conferred on PRL under this Agreement, any Project Statement of Work or at law, PRL may terminate this Agreement or a Project Statement of Work on thirty (30) Business Days prior written notice to Spongebob.

- 12.2. In addition to any other right of termination or remedy conferred on the parties under this Agreement, any Project Statement of Work or at law, this Agreement or any Project Statement of Work may be terminated at any time and with immediate effect by written notice given by either party (referred to in this clause as the "**First Party**") to the other party (referred to in this clause as the "**Second Party**") if:

12.2.1. the Second Party receives written notice from the First Party that the PDH Agreement or the MBIE Agreement (or funding provided under it) has ended;

12.2.2. any amount payable by the Second Party under this Agreement is more than thirty (30) days overdue;

12.2.3. the Second Party has failed to comply with an earlier written notice given by the First Party specifying a material breach of this Agreement or a Project Statement of Work by the Second Party and, in the case of a breach which is capable of remedy, requiring that the Second Party remedy that breach within thirty (30) days after receipt of that earlier notice, provided that the First Party may not at any time give such a notice terminating this Agreement or Project Statement of Work if, at that time, the First Party is in default under this Agreement or relevant Project Statement of Work;

12.2.4. the Second Party goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the First Party (which approval may not be unreasonably withheld)) or is removed from the New Zealand Companies Register or if a receiver, statutory manager or administrator has been appointed in respect of the Second Party or any material part of its assets or if any event analogous in nature has occurred in respect of the Second Party under the laws of any relevant jurisdiction;

12.2.5. the Second Party makes any assignment to, or enters into an arrangement for the benefit of, its creditors (other than for the purposes of a solvent restructuring); or

12.2.6. the Second Party becomes unable to pay its debts as they fall due or is presumed pursuant to section 287 of the Companies Act 1993 to be unable to pay its debts.

- 12.3. Upon expiry or termination of this Agreement or any Project Statement of Work for whatever reason:

12.3.1. each party shall promptly provide to the other, all Confidential Information of the other party in its possession;

12.3.2. such termination shall be without prejudice to the rights and remedies of either party in respect of any breach of this Agreement or relevant Project Statement of Work by the other party, where such breach occurred prior to the termination of this Agreement or Project Statement of Work (as applicable);

12.3.3. the provisions of clauses 7, 8, 9, 10, 11, 11.8 and 16 together with those other provisions of this Agreement and any Project Statement of Work which are incidental to, and required in order to give effect to those clauses, shall remain in full force and effect.

12.4. Termination of this Agreement shall terminate every Project Statement of Work; however, termination of a Project Statement of Work shall not terminate any other Project Statement of Work or this Agreement.

### **13. RELATIONSHIP MANAGEMENT AND DISPUTES**

13.1. The PRL Representative and the Spongebob Representative will meet at least quarterly (or otherwise as agreed between them) to review the Projects underway and identify and resolve any potential issues or opportunities between them. The Spongebob Representative will convene the meeting.

13.2. Where any dispute arises between the parties ("**Dispute**"):

13.2.1. the parties shall ensure that the PRL Representative and the Spongebob Representative shall meet and discuss in good faith (and attempt to resolve) the Dispute.

13.2.2. where the Dispute is not resolved via the process in clause 13.2.1 within ten (10) Business Days of the commencement of such good faith discussions:

(a) the parties must immediately refer the Dispute to mediation;

(b) any mediation must be conducted in terms of the New Zealand Resolution Institute. Standard Mediation agreement. The mediation must be conducted by a mediator and at a fee agreed by the parties. Failing agreement by the parties as to appointment of a mediator within seven days of reference to mediation as set out above, the mediator will be selected and his/her fee determined by the President for the time being of New Zealand Resolution Institute (or any suitable replacement organisation);

(c) if the Dispute remains unresolved after mediation then either party may seek to resolve the dispute by way of arbitration or court proceedings in New Zealand.

13.2.3. Nothing in this clause will prevent any party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

13.2.4. To the extent reasonably practicable, in the event of any dispute or legal proceedings relating to this Agreement, Spongebob will continue to provide the Services and the Co-funding in accordance with this Agreement.

13.3. Spongebob will co-operate and provide such assistance and information as reasonably requested by PRL in connection with any dispute or issue arising out of the PDH Agreement or the MBIE funding agreement between MBIE and PRL.

### **14. MUTUAL REPRESENTATIONS AND WARRANTIES**

14.1. Each party hereby represents and warrants to the other as follows:

14.1.1. It has the full right, power and authority to execute and deliver this Agreement and to perform fully its obligations hereunder.

14.1.2. The execution, delivery and performance by it of this Agreement and its compliance with the terms and provisions hereof does not and will not conflict with or result in a breach of any of the terms and provisions of, or constitute a default under or a violation of:

(a) any agreement where such conflict, breach or default would impair in any material respect the ability of such party to perform its obligations hereunder; or

(b) the provisions of its constitution or equivalent rules; or

(c) any applicable law.

14.1.3. This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms subject, as to enforcement, to bankruptcy, insolvency, reorganisation and other laws of general applicability

relating to or affecting creditors' rights and to the availability of any particular remedy under general equitable principles.

## 15. INDEPENDENT CONTRACTOR

- 15.1. In the performance of all Services, Spongebob shall be deemed to be and shall be an independent contractor. Neither party is authorised or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither shall be bound by the acts or conduct of the other.

## 16. LIMITATIONS OF LIABILITY

- 16.1. To the maximum extent permitted by law, neither party shall be liable to the other party in any circumstances for any indirect, special, incidental, consequential, punitive or exemplary loss or damage arising out of this Agreement or any Project Statement of Work, howsoever caused, including without limitation, loss of profits, business, revenue, goodwill or anticipated savings. For the avoidance of doubt, any liability of PRL (or any PDH Participant) under the MBIE Funding Agreement is not excluded by virtue of this clause 16.1.
- 16.2. Subject to clauses 16.3 or 16.4 (as applicable), each party's ("**first party**") liability under or in connection with this Agreement and/or any Project Statement of Work shall be limited to direct losses of the other party (and, in the case of PRL, each of the PDH Participants) caused by or resulting from any breach of this Agreement by, or the negligent or unlawful acts or omissions, or wilful misconduct, of the first party (or any of its officers, agents or employees or contractors).
- 16.3. The total liability of Spongebob (and its employees, officers, contractors or agents) to PRL for all claims under or in connection with each Project Statement of Work (and all Services, Research and Results connected to such Project Statement of Work), including under clause 16.2, shall be limited in the aggregate to the Fees and Costs paid by PRL to Spongebob for the Services provided under the applicable Project Statement(s) of Work. However, this cap on liability shall not apply in respect of any loss or liability suffered or incurred PRL or any PDH Participant (including any liability arising under the MBIE Agreement) as a result of any fraud of Spongebob (or any of its employees, contractors, representatives or agents), or a breach by Spongebob (or any of its employees, contractors, representatives or agents) of any of the confidentiality or Intellectual Property provisions in this Agreement.
- 16.4. The total liability of PRL and the PDH Participants (and each of their employees, officers, contractors and agents) to Spongebob for all claims under or in connection with each Project Statement of Work (and all Services, Research and Results connected to such Project Statement of Work), including under clause 16.2, shall be limited in the aggregate to the Fees and Costs paid by PRL to Spongebob for the Services provided under the applicable Project Statement(s) of Work. However, this cap on liability shall not apply in respect of any loss or liability suffered or incurred by Spongebob as a result of any fraud of PDH or any PDH Participant (or any of its employees, contractors, representatives or agents), or a breach by PDH or any PDH Participant (or any of its employees, contractors, representatives or agents) of any of the confidentiality or Intellectual Property provisions of this Agreement.

## 17. GENERAL

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 17.2. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other.
- 17.3. **Agency.** PRL enters into this Agreement on behalf of PDH as agent for PDH and this Agreement will automatically be transferred or assigned to a new agent if PRL ceases its role as an agent for PDH and a new agent is appointed by PDH.
- 17.4. **Agreement Modification and Interpretation.**

- 17.4.1. Any agreement to change the terms of this Agreement or any Project Statement of Work in any way shall be valid only if made in writing and executed by an authorised representative of PRL and Spongebob.
- 17.4.2. Subject always to clause 11.7, where there is any inconsistency between these General Terms and Conditions and any Project Statement of Work, the terms of the Project Statement of Work shall prevail to the extent of the inconsistency.
- 17.5. **Notices.**
- 17.5.1. Any notice given under this Agreement or a Project Statement of Work shall be in writing and may be delivered in person, by courier service, facsimile (provided that the sender's facsimile machine confirms transmission to the intended recipient), or email (provided that the sender receives by email from the recipient, in the form of a return email or automatic confirmation message, confirmation of transmission to the intended recipient) to the address for that party as indicated at the front of this Agreement or to such other address for notices notified by that party by notice in writing to the other party from time to time.
- 17.5.2. For the purposes of this Agreement, any notice transmitted or delivered after 5.00pm on a Business Day, or at any time on a non-Business Day, shall be deemed received at 9.00am on the next Business Day.
- 17.6. **Entire Agreement.** This Agreement together with all Project Statements of Work entered into under it constitute the entire understanding between the parties and supersedes any prior oral or written agreement or understanding between the parties.
- 17.7. **Severance.** If any provision of this Agreement offends any law or is invalid or unenforceable then, where the provision can be read down so as to be valid and enforceable, it must be read down to that extent, or otherwise will be severed from the other provisions without affecting the enforceability or validity of any other provision of this Agreement.
- 17.8. **Non Waiver.** No waiver of any breach or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of that party to subsequently enforce and compel strict compliance with this Agreement.
- 17.9. **Unforeseen Circumstances.** Neither party shall be liable for any act, omission or failure under this Agreement if that act, omission or failure arises directly from a cause beyond the reasonable control of the party concerned, including (without limitation) extreme weather conditions, civil disruption or industrial action, provided that:
- 17.9.1. the party claiming the protection of this clause shall, as soon as possible after becoming aware of such cause or the likelihood of such cause, give the other party written notice accordingly;
- 17.9.2. notwithstanding the intervention of such cause, each party shall continue to use all reasonable endeavours to perform its obligations as required under this Agreement (excluding any obligations which have already been duly performed as at the date of the relevant cause) despite that cause;
- 17.9.3. in any such event, neither party shall be deemed to have accepted any extra costs which may be incurred or sustained by the other party through a delay resulting from that cause.
- 17.10. **Counterparts:** This Agreement may be executed in one or more counterpart copies which, when read together, shall constitute one and the same instrument. Any facsimile or electronic copy of this Agreement (including, but not limited to, any facsimile copy of any document evidencing the execution of this Agreement by either party) may be relied upon by the other party as though it were an original copy.

## SCHEDULE 1

### Form of “Project Statement of Work”

#### PROJECT STATEMENT OF WORK NO. [INSERT NO.]

Project Title: [insert project title]

*[A separate Project Statement of Work should be completed and executed for each Project in the form of this Statement of Work. Completed Project Statement of Works should be attached as annexures to this agreement.]*

This Project Statement of Work has been entered into in accordance with the Master Research Services and Co-funding Agreement between Spongebob Squarepants (“Spongebob”) and Precision Research Limited (PRL) dated [date of MRSA] 2018 (“Agreement”). This Project Statement of Work sets out the different, additional and particular terms and conditions applicable solely to the Project described herein and upon signature of the authorised representatives of each party shall form a contract between the parties incorporating the terms of this Project Statement of Work and the Agreement. Such different, additional and particular terms and conditions apply only to this Project Statement of Work and in no way alter the terms and conditions applicable to other Project Statement of Works entered into in accordance with the Agreement. This Project Statement of Work is effective on the date last executed below and shall continue until the Project End Date, unless terminated earlier in accordance with the terms of this Project Statement of Work or the Agreement.

<b>PRL Ref/Order No. (if any):</b>		<b>Spongebob Ref/Order No. (if any):</b>	
<b>PRL Project Contact:</b>		<b>Spongebob Project Contact:</b>	
<b>Project Start Date:</b>		<b>Project End Date:</b>	
<b>Project Title:</b>			
<b>Project Theme:</b>			
<b>Key Personnel:</b>	<b>Name:</b>	<b>Role:</b>	
	[if the Project relates to research]	Principal Investigator	
		Project Manager	
<b>Budget:</b>	[set out detail or attach as separate sheet]		
-Fees:			
-Costs:			
<b>PRL Materials:</b>	[set out any materials being contributed by PRL]		
<b>Background IP:</b>	[set out IP being contributed by each party for the duration/conduct of the Project and note any limitations to or conditions on the grant of the license to BIP]		
<b>Project and Services Description:</b>	[set out description of the Project and the Services to be provided by Spongebob in connection with the Project or attach as separate sheet the Proposal document, ensure all milestone dates are updated]		
<b>Deliverables / Outputs:</b> (including any reports)	Deliverable:		Due:
<b>Reporting Requirements:</b>	A final report summarising the findings of the Project will be due [90d from End Date]		
<b>Ownership and Rights attaching to Project IP:</b>	[if any]		
<b>Agreed Variations to General Terms and Conditions:</b>	[if any] [Note: PDH Board approval is required for any variation to intellectual property rights]/[Any proposed variations are subject to first obtaining each respective party’s legal approval/sign-off]		
<b>[any others]</b>			