



Superu Children and Families Research Fund – Funding Agreement

DATED 2017

BETWEEN THE FAMILIES COMMISSION Operating as Superu (Superu”)

AND **[FULL LEGAL NAME OR FULL NAME OF NATURAL PERSON]** of [address] (“the Recipient”)

BACKGROUND

Superu is responsible for administering the Superu Children’s and Families Research Fund (the Fund). The Recipient has submitted a proposal for a piece of research, utilising the Growing Up in New Zealand (GUINZ) external data, which has been approved by Superu and the GUINZ Data Access Committee (DAC).

AGREEMENT

Superu will pay the Funding to the Recipient, and the Recipient accepts the Funding, on the terms and conditions set out in Schedule 1 (Details) and Schedule 2 (Standard Terms and Conditions).

Signed for and on behalf of **THE FAMILIES COMMISSION** (operating as Superu)

_____ Name and Title

_____ Signature

Date: _____

Signed for and on behalf of **[FULL NAME OF RECIPIENT]** by

_____ Name and Title

_____ Signature

Date: _____

Schedule 1 – Details

1. Project (Clause 1.1, Schedule 2)

The Recipient will carry out the following Project:

[insert short title], as further described in the Recipient's proposal for funding, as attached at Appendix 1 to this Schedule 1, including any updates or amendments agreed with Superu (the "Proposal").

2. Start Date (Clause 1.1, Schedule 2)

[Insert date]

3. End date (Clause 1.1, Schedule 2)

[insert date]

4. Funding (Clause 1.1 and 2, Schedule 2)

The sum of **[insert total amount]**, payable in instalments on the payment dates set out below, subject to completion of the relevant Project deliverables to Superu's satisfaction:

Amount (GST exclusive)	Project deliverables	Expected date
\$ [Insert amount of instalment (50% of total)]	Agreement signed by both parties and received by Superu.	By the last day of the month following the date this Agreement is signed by both parties and received by Superu.
\$ [Insert amount of instalment (25% of total)]	Satisfactory Project progress as indicated in the Recipient's progress report, as set out in clause 6 of Schedule 1.	By the last day of the month following the date the Recipient's progress report is approved by Superu.
\$ [Insert amount of instalment (25% of total)]	Satisfactory Project completion as indicated by Superu's acceptance of the Recipient's final report, and its publication on the Superu website as set out in clause 6.3 of Schedule 1.	By the last day of the month following the date the Recipient's final report is approved by Superu.

5. Additional Terms (Clause 2.3, Schedule 2)

In addition to carrying out the Project in accordance with the conditions in Schedule 2 of this Agreement, the Recipient must:

- (a) ensure they carry out the Project in accordance with the DAC protocols as set out at http://cdn.auckland.ac.nz/assets/growingup/access-to-data/in_guinz_data_access_protocol_en_v10.0.pdf
- (b) all staff working on the project have received approval and are listed in Schedule 3. Non approved personnel of the recipient may not be involved with the project.
- (c) all staff working on the project are familiar with the data, have attended data workshops and are familiar with the DAC protocols.

6. Data and Reporting (Clauses 2.3 and 5, Schedule 2)

Data

6.1 The only data to be utilised in the project is that collected by the UoA as part of the GUiNZ longitudinal study. The data is owned by the UoA.

Reports to be provided by the Recipient Progress Reports

6.2 The Recipient must provide progress report as per the following table and in the agreed format.

Date	Report Type	Reporting method

Final Report

6.4 The final report should have completed the following:

- (a) A review by Superu
- (b) A review by DAC (Application to Publish)
- (c) Peer review completed with the review being more substantive than a focus on proof reading
- (d) Comply with Superu branding
- (e) Carry the full acknowledgement: "This [title of report/product] was made possible with funding by Superu, using GUiNZ data collected by UoA and in accordance with the Data Access Protocol. The crown funding of GUiNZ is managed by Superu".
- (f) Will not be published by the recipient before it is published on the Superu website.

7. Publicity (Clause 8, Schedule 2)

Superu and the recipient will work together to develop a series of joint and key messages that can be used to make public statements about the Project, and following reference to the Recipient may make public statements about the progress and results of the Project provided in the Recipient's reporting.

8. Address for Notices (clause 12.5, Schedule 2)

Superu:	Recipient:
<p>Notices</p> <p>Superu Level 7, 110 Featherston Street PO Box 2839 WELLINGTON</p> <p>Email: name@superu.govt.nz Attention: [insert contract manager]</p>	<p>[Insert name] [Insert physical and postal address]</p> <p>E-mail: [Insert details] Attention: [Insert details]</p>
<p>Invoices:</p> <p>Email: finance@superu.govt.nz</p>	

Appendix 1 - Proposal

Schedule 2 – Standard Terms and Conditions

1. Interpretation

1.1 In this Agreement, the following terms have the following meanings:

“**Agreement**” means this agreement, including the cover page and Schedules 1 and 2.

“**Business Day**” means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003;

“**Co-funding**” means cash and in-kind co-funding to be invested by the Recipient or third party to assist with the costs of the Project, as detailed in the Recipient’s Proposal attached as Appendix 1 to Schedule 1.

“**Start Date**” means the commencement date of the Project, as set out in Schedule 1 or, if no commencement date is set out, the date of this Agreement.

“**End Date**” means the date the Project ends, as set out in Schedule 1.

“**Confidential Information**” includes all information and data (in any form) concerning the organisation, administration, operation, business, clients, finance, and methods of Superu, including any information provided by Superu under or in connection with this Agreement;

“**Funding**” means the total funding amount payable by Superu to the Recipient as set out in Schedule 1;

“**GST**” means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity;

“**Parties**” means Superu and the Recipient and their respective successors and permitted assigns;

“**Project**” means the project described in Schedule 1;

“**Project Deliverables**” means the project deliverables (if any) set out in Schedule 1 which must be completed by the Recipient before a Funding payment is made by Superu.

1.2 References to clauses and Schedules are to clauses and Schedules of this Agreement and references to persons include bodies corporate, unincorporated associations or partnerships.

1.3 The headings in this Agreement are for convenience only and have no legal effect.

1.4 The singular includes the plural and vice versa.

1.5 “Including” and similar words do not imply any limitation.

1.6 References to a statute include references to that statute as amended or replaced from time to time.

1.7 Monetary references are references to New Zealand currency.

1.8 If there is any conflict of meaning between the Details Section and these Standard Terms and Conditions, these terms will prevail.

2. Funding

2.1 Superu must pay the Funding at the rate and in the manner set out in Schedule 1. The Funding is the total amount payable by Superu for the Project.

2.2 The Recipient must use the Funding only to carry out the Project in accordance with this Agreement and its proposal submitted to Superu.

2.3 In consideration of the Funding, the Recipient must:

(a) complete each Project Deliverable (if any) by the relevant date set out in clause 4, Schedule 1;

(b) complete the Project to Superu’s satisfaction by the End Date;

(c) carry out the Project

(i) in accordance with the best currently accepted principles and practice applicable to the field(s) of expertise relating to the Project; and

(ii) in accordance with all applicable laws (including the Employment Relations Act 2000, the Immigration Act 2009 and the Health and Safety in Employment Act 1992), ethics approvals (where applicable), regulations, rules and professional codes of conduct or practice; and

(iii) to meet the objective and outcomes and applicable criteria of the Superu Children and Families Research Fund;

(iv) in compliance with any additional terms set out in Schedule 1;

(d) refund any unspent Funding to Superu within 10 Business Days of the End Date.

2.4 Where all of the monies received by the Recipient to carry out the Project (including the Funding) exceeds the total cost of the Project,

the Recipient must refund to Superu the excess amount of the monies received by the Recipient to carry out the Project. However, the Recipient is not required to refund, under this clause 2.4, any amount that exceeds the total amount of Funding.

3. Project Progress

3.1 If:

- (a) Superu is not satisfied with the progress of the Project;
 - (b) Superu believes on reasonable grounds that the project is not being carried out in accordance with this Agreement or the Recipient's Proposal;
 - (c) the Recipient does or omits to do something, or any matter concerning the Recipient comes to Superu's attention, which, in Superu's opinion, may damage the business or reputation of Superu; or
 - (d) the Recipient breaches any of its obligations under this Agreement,
- Superu may (without limiting its other remedies):
- (e) renegotiate this Agreement with the Recipient; or
 - (f) terminate this Agreement immediately by notice to the Recipient, and clause 4.5 will apply.

4. Term and Termination

4.1 Subject to clauses 4.2 and 4.3, this Agreement will commence on the Start Date and expire when:

- (a) the final report is completed and provided to Superu; and
- (b) the Project is completed, to the satisfaction of Superu.

4.2 If the government reduces, stops, or freezes funding to Superu relating to this Agreement (including through a change in Government policy or reprioritisation or change in appropriation approved by the Government, Minister or Superu), Superu may, on giving at least 20 Business Days' written notice to the Recipient, terminate all or any part of this Agreement.

4.3 Superu may terminate this Agreement immediately by giving notice to the Recipient, if the Recipient:

- (a) is in breach of any of its obligations under this Agreement and that breach is not capable of being remedied;
- (b) fails to remedy any breach of its obligations under this Agreement within 5 Business Days of receipt of notice of the breach from Superu;

- (c) does or omits to do something, or any matter concerning the Recipient comes to Superu's attention, which in Superu's opinion may cause damage to the business or reputation of Superu or of the Government of New Zealand;

- (d) has given or gives any information to Superu which is misleading or inaccurate in any material respect; or

- (e) becomes insolvent, bankrupt or subject to any form of insolvency action or administration.

4.4 Termination of this Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

4.5 On termination of this Agreement, Superu may (without limiting any of its other rights or remedies):

- (a) require the Recipient to provide evidence of how the Funding has been spent; and/or

- (b) require the Recipient to refund to Superu:

- (i) any of the Funding that has not been spent or committed by the Recipient. For the purposes of this clause, Funding is committed where it has been provided or promised to a third party for the purpose of carrying out the Project and the Recipient, after using reasonable endeavours, is unable to secure a refund or release from that promise (as the case may be); or
 - (ii) the proportion of the Funding that equates to the uncompleted part of the Project, as reasonably determined by Superu; and/or
 - (c) if the Funding has been misused, or misappropriated, by the Recipient, require the Recipient to refund all Funding paid up to the date of termination, together with interest at the rate of 10% per annum from the date the Recipient was paid the money to the date the Recipient returns the money.
- 4.6 The provisions of this Agreement relating to termination (clause 4), audit and record-keeping (clause 5.2(b), (c) and (d)), warranties (clause 6), intellectual property (clause 7), confidentiality (clause 8), and liability and insurance (clause 9) will continue after the expiry or termination of this Agreement.

5. Reporting Requirements and Audit

- 5.1 The Recipient must report on the progress of the Project to Superu:
- (a) as set out in Schedule 1;
 - (b) as otherwise reasonably required by Superu; and
 - (c) in any format and on any medium reasonably required by Superu.
- 5.2 The Recipient must:
- (a) maintain true and accurate records in connection with the use of the Funding and the carrying out of the Project sufficient to enable Superu to meet its obligations under the Public Finance Act 1989 and retain such records for at least 7 years after termination or expiry of this Agreement;
 - (b) permit Superu, at Superu's expense, to inspect or audit (using an auditor nominated by Superu), from time to time until 7 years after termination or expiry of this Agreement, all records relevant to this Agreement, including audit of the Recipient's financial statements, its receipt of any Funding, allocation, use and distribution of any Funding, and associated processes;

- (c) allow Superu reasonable access to the Recipient's premises or other premises where the Project is being carried out; and
- (d) if an audit under clause 5.2(b) reveals any material non-compliance with this Agreement, bear all of Superu's costs in carrying out that audit, in addition to any other rights and remedies Superu may have in respect of the non-compliance.

6. Warranties

- 6.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.
- 6.2 The Recipient warrants that:
- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Recipient;
 - (b) all information provided by it to Superu in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
 - (c) it is not aware of any material information that has not been disclosed to Superu which may, if disclosed, materially adversely affect the decision of Superu whether to provide the Funding.

7. Intellectual Property

- 7.1 The Intellectual Property Rights of the parties in the following materials (including any modification, enhancement or derivative work of those materials) remain the property of the current owner, regardless of its use in anything created or provided by the Recipient in carrying out its obligations under this Agreement:
- (a) materials that existed prior to the date of this Agreement; and
 - (b) materials that were developed independently of this Agreement.
- 7.2 New Intellectual Property. All Intellectual Property Rights in relation to anything created or provided to Superu by the Recipient in carrying out its obligations under this Agreement (including any reports the Recipient is required to provide to Superu under this Agreement) will be owned by Superu from the date the Intellectual Property Rights are created or developed.

- 7.3 Superu grants to the Recipient, at no charge, a non-exclusive, transferable, perpetual, royalty-free, irrevocable worldwide licence for use (which includes copying, modifying, developing, disseminating, marketing, assigning or licensing) relating to the research project, any Intellectual Property Rights in anything created or provided to Superu by the Recipient in carrying out its obligations under this Agreement (including any third party's Intellectual Property Rights incorporated in anything provided to Superu by the Recipient under this Agreement).
- 7.4 The Recipient must ensure that the rights, including the Intellectual Property Rights, of any person are not infringed by the Recipient in the course of performing this Agreement or by the Recipient's provision of anything under this Agreement or by Superu's use of anything provided under this Agreement in accordance with the licence at clause 7.3 of this Schedule.
- 8. Confidentiality, no surprises and media statements**
- 8.1 The Recipient must:
- (a) keep the Confidential Information confidential at all times;
 - (b) not disclose any Confidential Information to any person other than its employees or contractors to whom disclosure is necessary for purposes of the Project or this Agreement;
 - (c) effect and maintain adequate security measures to safeguard the Confidential Information from access or use by unauthorised persons; and
 - (d) ensure that any employees or contractors to whom it discloses the Confidential information are aware of, and comply with, the provisions of this clause 8.
- 8.2 The obligations of confidentiality in clause 8.1 do not apply to any disclosure of Confidential Information:
- (a) to the extent that such disclosure is necessary for the purposes of completing the Project;
 - (b) required by law; or
 - (c) where the information has become public other than through a breach of the obligation of confidentiality in this clause 8 by the Recipient, or its employees or contractors, or was disclosed to a Party on a non-confidential basis by a third party.
- 8.3 In addition to the specific reporting requirements under this Agreement, the Recipient must, to the extent practicable, ensure that Superu is adequately advised in advance about:
- a) any issue affecting the Recipient relating to this Agreement, or the Project that is likely to attract external attention or represent potential reputational or other risk to the Government; and
 - b) the content of any significant public communication relating to this Agreement.
- 8.4 Superu may (without further reference to or consultation with the Recipient) make public the following information: the name of any Recipient, the names of others participating in the Project, the title and description of the Project as set out in clause 1 of Schedule 1, the total amount of funding applied for; the total amount of Funding, the timing of the Project, and the fact that the Project has been funded.
- 8.5 The Recipient will comply with any guidance issued by Superu when making public statements about the Project, the Funding, or any aspect related to the Project or Funding.
- 8.6 The Recipient will acknowledge, as appropriate, provision of Funding by Superu.
- 8.7 Regardless of any other provision of this Agreement, the Recipient acknowledges that information contained in, provided under or relating to this Agreement may be official information under the Official Information Act 1982 and, in accordance with that Act, such information may be released to the public. The Recipient will provide timely advice and assistance to Superu to enable it to respond to any Official Information Act requests relating to this Agreement.
- 9 Liability and Insurance**
- 9.1 Superu is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement.
- 9.2 The maximum liability of Superu under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is the total amount which would be payable under this Agreement if the Project had been carried out in accordance with this Agreement.

9.3 The Recipient (including its employees, agents, and contractors, if any) is not an employee, agent or partner of Superu or of the Chief Executive of Superu. At no time will Superu have any liability to meet any of the Recipient's obligations under the Health and Safety in Employment Act 1992 or to pay to the Recipient:

- (a) holiday pay, sick pay or any other payment under the Holidays Act 2003; or
- (b) redundancy or any other form of severance pay; or
- (c) taxes or levies, including any levies under the Injury Prevention, Rehabilitation and Compensation Act 2001.

9.4 The Recipient indemnifies Superu against:

- (a) any taxes, levies, penalties, damages or compensation which Superu may be liable to deduct, withhold or pay by reason of the Recipient, or any person used by the Recipient to carry out the Project, being held to be an employee of Superu or of the Chief Executive of Superu; and
- (b) any claim, liability, loss or expense (including legal fees on a solicitor own client basis) ("loss") brought or threatened against, or incurred by Superu, arising from or in connection with a breach of this Agreement by the Recipient or the Project, or from the negligence or wilful misconduct of the Recipient, its employees or contractors.

9.5 Where the Recipient is a trustee, Superu acknowledges that the Recipient has entered into this Agreement as a trustee of the trust named in Schedule 1 in an independent capacity without any interest in any of the assets of the trust other than as trustee. Except where the Recipient acts fraudulently, the Recipient is liable under this Agreement only to the extent of the value of the assets of the trust available to meet the Recipient's liability, plus any amount by which the value of those assets has been diminished by any breach of trust caused by the Recipient's wilful default or dishonesty.

9.6 The Recipient must effect and maintain for the term of this Agreement:

- (a) adequate insurance to cover standard commercial risks; and
- (b) other insurance reasonably required by Superu.

The Recipient must, upon request by Superu, provide Superu with evidence of its compliance with this clause.

10. Dispute Resolution

10.1 The Parties must use their best efforts to resolve any dispute under, or in connection with, this Agreement through good faith negotiations and informal dispute resolution techniques such as mediation, expert determination or similar techniques agreed by them.

10.2 If any dispute arising between the Parties under, or in connection with, this Agreement, cannot be settled under clause 10.1 within 20 business days, then the following process will apply:

- (a) Party must notify the other if it considers a matter is in dispute;
- (b) the Parties will attempt to resolve the dispute through direct negotiation;
- (c) if the Parties have not resolved the dispute within 10 Business Days of notification, they will refer it to the Parties' senior managers for resolution; and
- (d) if the senior managers have not resolved the dispute within 10 Business Days of it being referred to them, the Parties may refer the dispute to mediation.

10.3 If a dispute is referred to mediation, the mediation will be conducted:

- (a) by a single mediator agreed by the Parties or if they cannot agree, appointed by the Chair of LEADR NZ Inc;
- (b) on the terms of the LEADR NZ Inc. standard mediation agreement; and
- (c) at a fee to be agreed by the Parties or if they cannot agree, at a fee determined by the Chair of LEADR NZ Inc.

Each Party will pay its own costs under this clause.

10.4 The Parties must continue to perform their obligations under this Agreement as far as possible as if no dispute had arisen pending the final settlement of any matter.

10.5 Nothing in this clause shall preclude either Party from taking immediate steps to seek urgent relief before a New Zealand Court.

11 Force Majeure

11.1 Neither Party will be liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance beyond the Party's reasonable control including, acts of God, communication line failures, power failures, riots, strikes, lock-outs, labour disputes, fires, war, flood, earthquake or other disaster, or governmental action after the date of this Agreement ("Force Majeure Event"). The Party affected must:

- (a) notify the other Party as soon as practicable after the Force Majeure Event occurs and provide full information concerning the Force Majeure Event including an estimate of the time likely to be required to overcome it;
- (b) use its best endeavours to overcome the Force Majeure Event; and
- (c) continue to perform its obligations as far as practicable.

- (b) if posted, three Business Days after posting;
- (c) if emailed, three Business days after dispatch (provided that a valid email address has been used and no delivery failure notice has been received by the sender)

provided that any notice received after 5pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

12 General

12.1 A waiver by either Party of any rights arising from any breach of any term of this Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of this Agreement. No failure or delay on the part of either Party in the exercise of any right or remedy in this Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

12.2 Assignment:

- (a) The Recipient must not assign, delegate, subcontract or transfer any or all of its rights and obligations under this Agreement without approval from Superu. The Recipient remains liable for performance of its obligations under this Agreement despite any subcontracting or assignment approved by Superu.
- (b) If the Recipient is a company, any transfer of shares, or other arrangement affecting the Recipient or its holding company which results in a change in the effective control of the Recipient is deemed to be an assignment subject to clause 12.2(a).

12.3 This Agreement may only be varied by agreement in writing signed by the Parties.

12.4 If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Agreement will be binding on the Parties.

12.5 Any notice to be given under this Agreement must be in writing and hand delivered or sent by registered post to the Parties' respective addresses (including email addresses) as set out in Schedule 1. Notices given by email will be followed by a hard copy sent by post. A notice is deemed to be received:

- (a) if personally delivered, when delivered;

12.6 This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

12.7 This Agreement may be signed in any number of counterparts (including electronic pdf copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

12.8 This Agreement will be governed by and construed in accordance with the laws of New Zealand.