COLLABORATION AGREEMENT FOR THE

NEW ZEALAND'S BIOLOGICAL HERITAGE NATIONAL SCIENCE CHALLENGE
NGĀ KOIORA TUKU IHO

between

LANDCARE RESEARCH NEW ZEALAND LIMITED (AS CHALLENGE CONTRACTOR)
and
THE NEW ZEALAND INSTITUTE FOR PLANT AND FOOD RESEARCH LIMITED
and
AGRESEARCH LIMITED
and
INSTITUTE OF ENVIRONMENTAL SCIENCE AND RESEARCH LIMITED
and
INSTITUTE OF GEOLOGICAL AND NUCLEAR SCIENCES LIMITED
and
NATIONAL INSTITUTE OF WATER AND ATMOSPHERIC RESEARCH LIMITED
and
NEW ZEALAND FOREST RESEARCH INSTITUTE LIMITED
and
THE UNIVERSITY OF AUCKLAND
and
AUCKLAND UNIVERSITY OF TECHNOLOGY
and
UNIVERSITY OF CANTERBURY
and
LINCOLN UNIVERSITY
and
MASSEY UNIVERSITY
and
UNIVERSITY OF OTAGO
and
RESEARCH TRUST OF VICTORIA UNIVERSITY OF WELLINGTON
and
UNIVERSITY OF WAIKATO
and
DEPARTMENT OF CONSERVATION
and
MINISTRY FOR PRIMARY INDUSTRIES
and
CAWTHRON INSTITUTE

*"*The Cawthron Institute became a Challenge Party on 4th April 2018 with the execution of a Deed of Accession"*

TABLE OF CONTENTS

1. Background ... 3
2. Mission, Objective and Aim ... 4
3. Purpose and Status of Agreement ... 4
4. Statement of Intent ... 5
5. Principles ... 5
6. Challenge Contractor's Obligations ... 6
7. Collaborating Organisations' Obligations ... 7
8. Use of Facilities ... 7
9. Warranties, Liabilities and Indemnities ... 8
10. Operation of the Challenge ... 8
11. Governance and Management Review and Amendment of Related Provisions ... 12
12. Challenge Parties Group ... 12
13. Aligned Research ... 13
14. Project Funding ... 14
15. Financial Management ... 15
16. Subcontracting ... 16
17. Intellectual Property Rights and Commercialisation ... 17
18. Publication and Communication ... 17
19. Use of Challenge Branding ... 17
20. Audit ... 17
21. Relationship of Parties ... 17
22. Confidentiality ... 18
23. Variation ... 19
24. Assignment or Subcontracting ... 19
25. Entry of New Parties ... 20
26. Exit of Parties ... 20
27. Term of Agreement / Termination / Disengagement Provisions / Surviving Clauses ... 20
28. Disputes ... 21
29. General ... 22
30. Definitions Applicable to this Agreement ... 23
31. Status of Agreements ... 25
32. Execution ... 26

SCHEDULE 1 – Contact Details of the Parties ... 29
SCHEDULE 2 – Operation of the Challenge – Detailed Provisions ... 33
SCHEDULE 3 – NZBH Governance Group Terms of Reference ... 35
SCHEDULE 4 - Terms of Reference for Observers ... 37
SCHEDULE 5 – Conflicts of Interest Policy ... 38
Appendix A – Copy of the executed NSC Investment Contract ... 40
Appendix B - Copy of the executed Challenge Programme Agreement ... 81

AGREEMENT FOR COLLABORATION ON NZBH NATIONAL SCIENCE CHALLENGE

[Note: Capitalised terms are defined in clause 30 of this Agreement]

PART 1 – STRATEGIC

1. Background

1.1 The Government has led development of National Science Challenges for New Zealand that will drive significant public research investment towards specific goals over the next 10 years. One of these is the New Zealand's Biological Heritage (**NZBH**) National Science Challenge *Ngā Koiora Tuku Iho* the objectives of which are to protect and manage our biodiversity, improve our biosecurity, and enhance our resilience to harmful organisms.

1.2 The Parties have complementary research expertise and related capabilities in biological heritage and, wishing to work together collaboratively to establish the NZBH Challenge an initial group, being those Parties that had signed to the Heads of Agreement dated on or about 24 April 2014, developed and submitted an investment proposal to the Ministry of Business, Innovation and Employment (the **Ministry**) in response to a Request for Proposals (Tranche 2) issued by the Ministry in February 2014. Landcare Research New Zealand Limited (**Landcare Research**) submitted the initial Proposal for the NZBH Challenge to the Ministry on behalf of the Parties, all of whom were co-signatories to (or otherwise endorsed) the initial Proposal.

1.3 The initial Proposal was accepted and on 9 October 2014 Landcare Research, as the Challenge Contractor, and the Ministry executed the NSC Investment Contract for the NZBH Challenge (see Appendix A).

1.4 The Science Board (as defined in clause 30) has agreed to provide funding of up to $25.8 million (exclusive of GST) for the period ending 30 June 2019 subject to:

(a) with respect to Challenge Funding for a period subsequent to the period covered by the first Challenge Programme Agreement, the revised research and business plans being submitted to the Ministry by 9 April 2015 and, following independent review, the Ministry being satisfied that those revised research and business plans adequately address feedback given to the Challenge Contractor by the Science Board; and

(b) the Challenge Contractor and the Collaborating Organisations listed in Schedule 1 of the NSC Investment Contract committing to work together to deliver the NZBH Challenge including any related Challenge Programme Agreements including agreeing the terms of this Collaboration Agreement by 9 April 2015.

1.5 Subject to the review referred to in clause 1.4 (a), if the Ministry approves a further Proposal for additional National Science Challenge funding for Research and/or Related Activities and the Challenge Contractor and the Ministry agree to enter into an agreement in respect of that further Proposal, the Challenge Contractor and the Ministry will enter into a new Challenge Programme Agreement.

1.6 The Challenge Contractor will act as 'host' for the Challenge, with this role conferring no advantage or disadvantage with respect to the Challenge Research and/or Related Activities.

The Challenge Contractor will be accountable for overall delivery of the Challenge goals through the NSC Investment Contract with the Ministry. The Challenge Contractor has delegated functions to the Governance Group which will then be responsible for oversight of the strategic development, risk management, and delivery of the Challenge. Decisions relating to matters which require the negotiation or renegotiation of the NSC Investment Contract or Challenge Programme Agreements with the Ministry remain with the Challenge Contractor. While the Governance Group remains accountable to the Challenge Contractor, its focus will be on ensuring the Challenge achieves its stated objectives in line with the NSC Investment Contract.

1.7 The NSC Investment Contract envisages the work programme being carried out in part by all of the Parties and Other Parties.

1.8 The Challenge is restricted in scope to such research, science or technology or related activities as may be required to give effect to the obligations of the NSC Investment Contract and as may be permitted under the Research, Science, and Technology Act 2010. To avoid doubt, it is not within scope to establish an ongoing revenue generating business for the Challenge from the Research and/or Related Activities funded from the NSC Investment Contract, other than that required to perform the NSC Investment Contract.

The Parties further agree as follows:

2. Mission, Objective and Aim

2.1 The Mission of the NZBH Challenge is to:

Reverse the decline of New Zealand's biological heritage, through a national partnership to deliver a step change in research innovation, globally leading technologies and community and sector action.

2.2 This Mission addresses the overarching objective of the NZBH Challenge, which is to protect and manage New Zealand's biodiversity, improve biosecurity and enhance New Zealand's resilience to harmful organisms.

2.3 The Parties agree that their collective aim is to align relevant research activities with those funded directly by the Challenge to create a research landscape that is focused on the following priority areas:

(a) Real-time biological heritage assessment
(b) Reducing risks and threats across landscapes
(c) Sustaining natural capital through resilient ecosystems

3. Purpose and Status of Agreement

3.1 This Agreement records the intention of the Parties to collaborate in delivering the Challenge and sets out the terms under which the Parties will establish and operate the Challenge and perform the NSC Investment Contract and any related Challenge Programme Agreements.

3.2 The Parties intend that this Agreement be legally binding and enforceable.

3.3 This Agreement is conditional on the Challenge Contractor confirming that conditions specified in clause 1.4 have been met to the satisfaction of the Ministry or have been waived.

4. Statement of Intent

4.1 The Parties acknowledge and agree that the following are critical to the success of the Challenge:

(a) **Commitment** – The Parties recognise that they have a common interest in the Challenge Mission, outcomes and targets and that the Challenge is the key mechanism for aligning and integrating interests across multiple organisations to achieve additionality – nationally significant outcomes that are greater than would be possible if the Parties acted independently;

(b) **Collaboration** improves each Party's ability to effectively achieve their own goals within the scope of the Challenge. A key benefit is that 'additionality' is only possible through being part of a wider initiative that provides improved alignment of research, gives increased confidence that there is no unnecessary duplication of research, and enables connections to the specialist facilities, resources and expertise of all the Parties;

(c) **Alignment** – By aligning biological heritage interests to the Challenge Mission and priority areas, the Parties will collectively contribute substantial capacity to the Challenge while respecting each Party's autonomous authority to decide to align interests;

(d) **Direction** –All Parties will respect the strategic direction defined for the Challenge by aligning research and applying their aligned interests in a manner that complements other Challenge activity and contributes to the goals of the Challenge; and

(e) **Governance** – Each Party recognises the role and authority of the Governance Group to facilitate and oversee strategic direction, which will include taking into account the entire landscape of relevant investment, including Challenge envelope investment and Aligned Research, decision-making on direct Challenge funding and influence on Aligned Research.

5. Principles

5.1 The Parties agree that they will operate the Challenge in accordance with the following principles (**Principles**):

(a) Act in the best interests of the research collaboration to achieve the objective, as referred to in clause 2.2, and deliver on the NSC Investment Contract;

(b) Involve relevant research capability available nationally to ensure best teams are developed that can make a positive and significant contribution to the Challenge;

(c) Have clear research leadership and accountability;

(d) Endeavour to respect and meet reasonable needs and expectations of the Ministry and all Parties, including valuing all contributions on merit;

(e) Create an environment where researchers can collaborate to respond to the Challenge's Mission;

(f) As appropriate, use independent, expert scientific advisors and reviewers to ensure the Challenge delivers excellent quality research;

(g) Involve key sector and other stakeholders within the Challenge to ensure the research is focused on delivering impact;

(h) Embed Vision Mātauranga principles and concepts throughout the Challenge, recognising Māori world views, tikanga, mātauranga and language, as well as Māori research priorities and methodologies, through meaningful Māori involvement in governance and management of the Challenge;

(i) Implement governance, management and financial arrangements that are sound and enduring, including use of a standard operating/financial model based on full-cost funding of research; and

(j) Provide the Challenge Director with appropriate management and administration support.

PART 2 – OPERATIONAL

6. Challenge Contractor's Obligations

6.1 The Parties have agreed that Landcare Research will, as the Challenge Contractor, provide a management office from its Lincoln campus and establish the Operations Support Unit. The Challenge Contractor will also establish the initial business support processes and such other administrative matters to be used by the Governance Group and the Management Groups as are contemplated by this Agreement, including:

(a) The Challenge Contractor will establish separate accounts for the Challenge within its standard financial management system and will apply good financial management and reporting practices to the use and monitoring of the Challenge Funding.

(b) To avoid doubt, the Challenge Contractor is not required to establish a separate bank account for the Challenge Funding. Challenge Funding allocated to support governance and management costs and discretionary funding (as described in clause 15.2) will be maintained in a single separate project account while Project Funding allocated to support specific Research and/or Related Activities within the Challenge Contractor will be allocated via separate internal project accounts which will be operated similarly to external subcontracts.

(c) The Challenge Contractor will use its best endeavours to ensure compliance with the NSC Investment Contract and will apply the Challenge Funding only in accordance with the NSC Investment Contract.

6.2 The Challenge Contractor will take sufficient action as reasonably required to avoid or address any breach of the NSC Investment Contract provided that, if there is sufficient time, the Challenge Contractor will consult with and seek agreement with the Governance Group, and if necessary the Collaborating Organisations, to any action required to avoid or address any such breach.

6.3 Provided it is not inconsistent with the NSC Investment Contract, the Challenge Contractor will operate the Challenge in a manner consistent with this Agreement. Where unable to do so, the Challenge Contractor will consult with and seek agreement from the Collaborating Organisations and the Governance Group to any divergence from this Agreement.

6.4 The Challenge Contractor will provide the Governance Group (either via the Challenge Director or directly if requested) with all information as is reasonably required by the Governance Group, including with respect to the Research and/or Related Activities of the Challenge Contractor.

7. Collaborating Organisations' Obligations

7.1 The Collaborating Organisations hereby acknowledge the terms of the NSC Investment Contract (Appendix A) and the first Challenge Programme Agreement (Appendix B). Any subsequent Challenge Programme Agreements or variations to the NSC Investment Contract negotiated with the Ministry by the Challenge Contractor following recommendations by the Governance Group will, where possible, be copied to the Collaborating Organisations. If a Collaborating Organisation does not endorse a change or variation, that dissenting Party will use all reasonable endeavours, in utmost good faith, to resolve the issue concerning the proposed change or variation with the other Parties before invoking any rights that it may have under this Agreement. The dissenting Party will give the Challenge Contractor at least 10 Business Days' notice of any action it proposes to take to allow the Challenge Contractor time to inform or seek approval from the Ministry as appropriate.

7.2 The Collaborating Organisations will use all reasonable endeavours to support the Challenge Contractor to fulfil its obligations to the Ministry under the NSC Investment Contract and Research Plans and any approved variations to them.

7.3 Subcontracts negotiated between the Challenge Contractor and a Collaborating Organisation will include any requirements on the use of Challenge Funding specified in the NSC Investment Contract and will not be inconsistent with it. Such requirements may include but are not limited to ethical consents, professional standards, record keeping, reports, access to information and audit requirements.

7.4 The Collaborating Organisations agree not to take any action which is inconsistent with the NSC Investment Contract or which would be likely to result in the Challenge Contractor breaching the NSC Investment Contract. Any act or omission of a Collaborating Organisation which causes the Challenge Contractor to materially breach the terms of the NSC Investment Contract is a material breach of this Agreement.

7.5 Where a Research Plan or other Challenge document (including the NSC Investment Contract) describes any measures or reporting requirements, the Collaborating Organisations agree to record and to provide such information to the Challenge Contractor as is needed to meet these requirements.

7.6 A Collaborating Organisation will, as soon as reasonably possible, notify the Challenge Contractor of any issues that may impact on that Party's ability to comply with its obligations under this Agreement or to contribute to a Research Plan.

8. Use of Facilities

8.1 Where it is required by a Subcontract, the Parties will use all reasonable endeavours to provide access, at full cost, to their equipment and facilities to the fullest extent practicable (subject to internal priorities) at reasonable times, on reasonable notice for research staff from all Parties working on Challenge-funded research.

8.2 A Party accessing equipment and facilities under this clause will comply with the health and safety and all other regulatory requirements and policies (for example bio-safety rules) of the Party providing access.

8.3 Each Party will give positive consideration to the equipment and facilities needs of the Challenge in making capital expenditure investments.

9. Warranties, Liabilities and Indemnities

9.1 Each Party warrants that:

(a) It has the necessary authority to enter into and perform its obligations under this Agreement;

(b) It will, if applicable, maintain what would reasonably be considered to be adequate public liability and professional indemnity insurance and such other reasonable insurances required to cover all research, operations and actions undertaken and all liabilities arising as a result of this Agreement;

(c) It will comply as required with any obligations it may have under any relevant health and safety legislation.

(d) To the best of its knowledge, all information provided to the Challenge Contractor or any Collaborating Organisation in connection with this Agreement was, at the time it was provided true, complete and accurate in all material respects;

(e) To the best of its knowledge, it is not aware of any material information that has not been disclosed to the Challenge Contractor which may, if disclosed, materially adversely affect the decision of the Science Board, the Ministry or the Challenge Contractor whether to provide or allocate Funding.

9.2 Except in the case of liability for death, personal injury, fraud or wilful default, no Party will be liable to another Party for any indirect, consequential or incidental loss or damage or loss of profit or loss of opportunity arising out of or in connection with this Agreement.

9.3 All Parties hereby agree, subject to their internal policy or governance rules and insurance arrangements, to support the Challenge Contractor in defending any legal actions taken against it under the NSC Investment Contract (including any Challenge Programme Agreement) or this Agreement where the action involves that Party and conversely, the Challenge Contractor agrees to involve any Party in defending any actions which could result in a financial or other liability against that Party. Where any Party is unable to fully support the Challenge Contractor in such legal actions it will provide what support it is free and able to in good faith.

10. Operation of the Challenge

10.1 The intent of the Parties is to operate the Challenge as a mission-led science investment initiative in keeping with the Mission and the development of the National Science Challenges. The Challenge research priorities and their implementation will be approved by the Governance Group following the recommendation of the Challenge Director in close consultation with the Management Group with decisions made by consensus whenever possible. The Challenge Director and Management Group will report to the Governance Group and have input as applicable from a Challenge Parties Group, an End-User Advisory Panel , a Kāhui Māori and ad hoc science advisory panels, as convened. The Challenge

Director will be supported by professional management and administration provided by the Challenge Contractor including without limitation the services of the Operations Support Unit. A diagrammatic model of the overall Challenge structure is shown in Schedule 2. The various roles and responsibilities of the different components of it are outlined in clauses 10.2-10.6 and in Schedules 2 and 3. The governance/management model seeks to balance the need to support the Management Group with strategic, performance and risk management oversight on behalf of the Parties.

10.2 **Challenge Director**:

(a) The Challenge Director will be engaged by the Challenge Contractor and appointed on the recommendation of the Governance Group following consultation with the Challenge Parties Group. The Challenge Contractor agrees that, to the extent that it does not conflict with its obligations under the NSC Investment Contract, it will instruct the Challenge Director to work to the instruction of the Governance Group for those aspects of the Challenge Director's role which involve the Challenge. The Challenge Director's responsibilities are set out in Schedule 2.

(b) In addition to managing the Challenge the Challenge Director may, subject to the same assessment/due diligence applied to all Challenge-funded projects, actively lead an aspect of the Challenge research provided this does not adversely impact their Challenge management role. The Challenge Director will be supported by other staff either as detailed in the initial Proposal or subsequently agreed in a business plan. These appointments and related administration costs will be met from the Challenge Funding.

(c) Oversight of the Challenge Director will be carried out by the Governance Group in respect of delivery of the NZBH Challenge.

10.3 **Governance Group**:

(a) The Governance Group will be skills-based to carry out its functions and responsibilities as outlined in Schedule 3. The initial Governance Group members are appointed for a term that will continue until the recommendations from the Review are approved by the Challenge Contractor and implemented. Any changes to the composition of the Governance Group must be notified to the Ministry within 7 days of the Governance Group and/or the Challenge Contractor being advised of them, whether arising from expiry of a term, resignation or removal (and if removal the reason for such). Any vacancies on the Governance Group may be filled by the Challenge Contractor by consensus of the Challenge Parties Group or, if consensus cannot be reached, following agreement by no less than 75% of the members of the Challenge Parties Group who are entitled to vote and who vote on the question. Voting may be in person or by proxy.

(b) The Governance Group will ensure Research and/or Related Activities are of a high standard and meet the expectations of the Ministry, the Science Board and the requirements of the NSC Investment Contract. Functions and responsibilities of the Governance Group are set out in Schedule 3.

(c) The composition of the Governance Group for any period subsequent to the Review will reflect the outcome of the Review and any requirements of the NSC Investment Contract. The Parties agree that the Governance Group should continue to reflect the need to contain members with strong experience in areas pertaining to science,

industry, Māori, regulatory and must continue to be led by an independent chair approved by the Ministry.

(d) The Challenge Contractor remains accountable for overall delivery of the Challenge goals and has entered this Agreement with the Collaborating Organisations to deliver Challenge Programme Agreements under the NSC Investment Contract. Through this Collaboration Agreement the Parties acknowledge that day-to-day responsibility for the performance of the Challenge has been delegated by the Challenge Contractor, acting on behalf of the Parties, to the Governance Group.

(e) Terms of reference for the Governance Group, in the form set out in Schedule 3, are hereby agreed by the Parties and these terms of reference will act as the Governance Group's guiding document. Any changes to these terms of reference will be approved by the Challenge Contractor following agreement by consensus or, if consensus cannot be reached, no less than 75% of the members of the Challenge Parties Group who are entitled to vote and who vote on the question. Voting may be in person or by proxy and will be notified to the Ministry.

(f) The Challenge Contractor, through the Challenge Director, will support the Governance Group processes consistent with the terms of reference and support the requirements of the Challenge in terms of timing.

(g) Should the Challenge Contractor reasonably believe the Governance Group may be about to take a decision on a matter related to a Party that would place the Challenge Contractor in breach of the NSC Investment Contract, the Challenge Contractor may, acting reasonably, veto the decision and negotiate an alternative with the Governance Group. Any such veto or unilateral action by the Challenge Contractor may be referred by an affected Party or Parties to the dispute resolution procedures, which in this case will commence at clause 28.4.

(h) Where actions of the Governance Group breach or pose a serious and immediate risk of causing a material breach of the NSC Investment Contract or any other substantial contract under the Challenge, the Challenge Contractor can take all actions necessary to remedy or remove the risk.

(i) The Challenge Contractor, following consultation with the Challenge Parties Group, may remove and/or replace the members of the Governance Group, the Management Group and, subject to the prior approval of the Ministry, the Chair and Director.

10.4 Governance Group Observers

Non-voting observers (without decision or voting rights) may sit in on Governance Group processes. These may consist of:

(a) Two observers appointed by the Challenge Parties Group;

(b) One observer appointed by the Challenge Contractor board; and

(c) A representative appointed by the Ministry.

The Governance Group may from, time to time, admit further observers. All observers will operate in accordance with the terms of reference set out in Schedule 4.

10.5 **Management Group**

(a) The Challenge Director will convene and chair the Management Group to support him or her in achieving the contractual goals of the NZBH Challenge consistent with the Mission. The interim Management Group members will be the Challenge Director plus researchers approved by the Challenge Contractor on the recommendation of the Governance Group. The Management Group's responsibilities are set out in Schedule 2 and members of the Management Group will abide by the Conflicts of Interest Policy set out in Schedule 5.

10.6 **Kāhui Māori, End-User Advisory Panel and Science Advisory Panels**

(a) The Challenge Director will consult with the Management Group on and recommend to the Governance Group the composition and purpose of a Kāhui Māori and End-User Advisory Panel. To avoid doubt, these panels will provide advice to the Challenge, or perform other functions agreed with the Director, and are not decision-making bodies.

(b) The Kāhui Māori's role will be to provide advice to the Challenge on implementation of Vision Mātauranga and wider cultural matters including intellectual property issues where relevant to Māori as specified in the Intellectual Property Management Plan. It will advise the Director, Governance and Management Groups on events in Te Ao Māori that may affect the Challenge. The Kāhui Māori may also facilitate engagement with Māori stakeholders and support consultation between the Challenge and Māori interests. A terms of reference for the Kāhui Māori will be developed in consultation with Māori and approved by the Governance Group.

(c) The End-User Advisory Panel will provide advice to the Director, Governance and Management Groups to ensure sectors and agencies with an interest in New Zealand's biological heritage are understood and able to influence the research priorities of the Challenge. The End-User Advisory Panel may facilitate engagement with a stakeholder network of agencies operating in relevant sectors. Any advice from the End-User Advisory Panel to the Governance Group will include any responses and recommendations arising from the Director and Management Group. A terms of reference for the End-User Advisory Panel will be developed in consultation with relevant stakeholders and approved by the Governance Group.

(d) Other ad hoc advisory panels, including any science advisory panels, may be established at any time to advise the Challenge on quality of science and related matters under a terms of reference developed by the Director and approved by the Governance Group. An independent review of the Challenge is proposed early in Year 5 focusing on achievements and impacts and progress toward key performance indicators. The review team will engage with the Kāhui Māori, End-User Advisory Panel, Challenge Parties Group, and other stakeholders, and incorporate reports from ad hoc science advisory panels. This science review will inform the investment Proposal for Phase 2 of the Challenge.

10.7 Meetings of the Governance Group, Management Group, Challenge Parties Group, End-User Advisory Panel or any science advisory groups established for the Challenge may, in addition to taking place where the members are physically present together, take place by telephone link up or such other audio or audio-visual telecommunication link-up provided that each attendee can simultaneously hear, and be heard by, other attendees with adequate clarity.

11. Governance and Management Review and Amendment of Related Provisions

11.1 The Parties propose to conduct an internal Review of the governance and management arrangements for the Challenge before 30 June 2016, in a process led by the Challenge Parties Group, with any changes recommended to the Challenge Contractor and Governance Group for consideration, approval and implementation. If unable to implement the recommendations, the Challenge Contractor will advise the Challenge Parties Group and negotiate an agreed alternative.

11.2 The Challenge Contractor, following advice from the Governance Group, will approve the terms of reference for the Review. The Ministry, the Challenge Contractor, Governance and Management Groups, Kāhui Māori and End-User Advisory Panel will contribute to the Review. The Challenge Parties Group will produce a consensus report following the review, with any recommendations to improve governance or management submitted to the Challenge Contractor and Governance Group for implementation.

11.3 The following components of this Agreement may be amended by agreement of no less than 75% of the Challenge Parties Group voting in person or by proxy if consensus cannot be reached, following the outcome of the Review and at any other time the Parties consider appropriate, provided the prior consent of the Ministry has been obtained and the amendments are consistent with the requirements of the NSC Investment Contract:

(a) Clauses 10 and 12 (subject to Ministry prior approval of any removal/replacement of the Chair and the Director); and

(b) Schedules 2-5.

11.4 All amendments to this Agreement which are agreed pursuant to clause 11.3 will be compiled and provided to all of the Parties by notice from the Challenge Contractor or Director pursuant to clause 29(a).

12. Challenge Parties Group

12.1 The Challenge is supported by the Parties who are committed to contributing to the strategic direction of the Challenge by aligning staff, infrastructure and other resources to Challenge research programmes.

12.2 In order to better support and advise the Governance and Management Groups there will be a representative group of all Parties to this Agreement which will be known as the Challenge Parties Group. The Challenge Parties Group will support the Challenge using the Principles in clause 5 as a guide to the direction that the Challenge should take. The Challenge Parties Group will act as a forum for the Parties.

12.3 The Challenge Parties Group will meet at least annually, with the Chair of the Governance Group attending for all or part of such meetings. The Challenge Parties Group may also be called upon to provide additional support or guidance to the Governance Group as reasonably required from time to time or, if at least 50% of the Party representatives seek a special meeting with the Chair of the Governance Group, at any other time. The Parties agree to each make one representative with authority to make decisions on behalf of that Party available to join the Challenge Parties Group and to reasonably support that representative's active contribution and involvement. Although continuity of the representative is preferred, the Parties may, at any time, replace the representative and/or send an alternate in the place of such representative.

12.4 A particular task given to the Challenge Parties Group will be to lead the Review of the governance and management arrangements of the Challenge including Governance Group composition.

12.5 The Challenge Parties Group will elect its own chair and establish the terms of reference that will govern its operation. Given the number and diversity of the members of the Challenge Parties Group, if the Challenge Parties Group fails to agree by consensus on an issue, a 75% majority of all Parties voting in person or by proxy will apply to all recommendations to the Governance Group that are a change to the status quo.

13. Aligned Research

13.1 **Aligned Research** is essential to the success and long term sustainability of the Challenge:

All Parties agree to align research (and related activities) funded from non-Challenge sources to the Challenge programmes to complement Research and Related Activities funded directly by the Challenge and thereby expand the scale and/or scope of total activity supporting the Challenge programmes and Mission. The Parties acknowledge that the scale of Aligned Research may change over time.

(a) Such research may already be aligned to the intent of the Challenge programmes and hence the Challenge Mission.

(b) Such Aligned Research may already be contributing, and should continue to contribute, to the goals and objectives of individual Parties. Alignment to the Challenge should enhance the value of such research for individual Parties, while also contributing to the Challenge programmes and Mission.

(c) New Research and Related Activities, funded directly by the Challenge, may therefore complement such Aligned Research (although shall not be limited by any individual Party's Aligned Research) in order to maximise a Party's overall contribution to the Challenge programmes and Mission.

13.2 **Direction of Aligned Research**

(a) Aligned Research will remain under the authority of individual Challenge Parties and the obligations they may have to the funding sources that support it.

(b) Challenge Parties will report their Aligned Research contributions to the Challenge Director, for the purposes of reporting progress and achievements from the Challenge as a whole. The Challenge Director will oversee an integrated reporting process to enable this.

(c) As the Challenge develops, Aligned Research should contribute to Challenge priorities approved by the Governance Group. The Governance Group will provide all Challenge Parties with such Challenge priorities from time-to-time so Challenge Parties can in turn strengthen the effectiveness (and hence value) of their Aligned Research. The contribution of Challenge Parties to Challenge priorities approved by the Governance Group will be included in the regular reporting of Aligned Research contributions to the Challenge.

13.3 **Valuation of Aligned Research**

(a) The Parties may represent the value of such Aligned Research in different ways, depending on their respective financial management systems. The Parties acknowledge that the valuation of Aligned Research may be determined on an annual basis for each financial year in advance or in arrears. Accordingly, Parties' commitments to contribute financial and other resources may vary from year to year.

(b) For clarity, each Party should provide a 'best estimate' of the total value of the research they are aligning to the Challenge to enable more effective prioritisation for the research landscape and selection of research projects directly funded by the Challenge.

(c) To avoid doubt, there is no requirement for Parties to align any specific level of research activity or funding, and no Party is intended to receive more or less Challenge Funding solely due to the level of Aligned Research attributed to that Party.

13.4 **Other Party Co-funding**

All Parties will use reasonable endeavours to secure funding from Other Parties for work related to the objectives of the Challenge. This may be recognised as Co-funding by the Governance Group but they acknowledge that they have no role in directing or managing such funding. Subject to confidentiality obligations, Parties receiving such Co-funding are required to report on it in sufficient detail to allow the Challenge Contractor to fulfil its reporting obligations to the Ministry under the NSC Investment Contract.

13.5 **Mapped Ministry Contracts**

The Ministry has indicated six research contracts it has with New Zealand research organisations which it has mapped to the Challenge. These contracts are unaffected by being mapped and remain in place until their end dates. The Governance Group has no role in directing nor managing these mapped contracts. The Challenge Director will engage with the research organisations who hold these mapped contracts and seek their agreement to report the activities of the mapped contracts including the end-user relationships as part of the Challenge for the remainder of their terms. The Parties acknowledge that the research capabilities working on the mapped contracts are likely to be relevant to the research activities of the Challenge.

14. Project Funding

14.1 All research funded by the Challenge will be explicitly approved by the Governance Group on the recommendation of the Director (as Chair of the Management Group), subject at all times to the requirements of the NSC Investment Contract.

14.2 Project Funding will be prioritised to the research of highest quality and strategic alignment in accordance with the objectives of the Challenge as determined by the Management Group and approved by the Governance Group.

14.3 The initial research programme will derive from the revised Research Plan prepared as an output from the first Challenge Programme Agreement. Subcontracts or internal projects will be established to implement the NSC Investment Contract as per clause 16.

14.4 If provided for in a Challenge Programme Agreement, the Director, with the agreement of the Governance Group, may hold Project Funding aside in a contingency fund to fund

research or related activities not identified in the initial application nor specified in the NSC Investment Contract that is important to achieving the Mission and contracted objectives. The Director may either recommend tendering (or otherwise contracting by a process approved by the Governance Group) such research to suitably qualified researchers and research organisations and the Governance Group may approve such Project Funding (including to research organisations that are not Party to this agreement) or to issue an open call for research project funding as outlined in clause 14.5.

14.5 The Governance Group will put aside approximately 20% of the available Challenge research funding received from the Ministry which will be open to contest by all New Zealand based researchers/research organisations with capability relevant to the Challenge with the aim to facilitate the introduction of new ideas and/or new researchers into the Challenge. The Governance Group will work with the Director and Management Group to establish a robust contestable process which meets the criteria set by the Ministry. The calls may be fully open within the overall constraints of the Mission, objectives and scope of the Challenge or may target specific aspects of the Challenge's research priorities at the Governance Group's sole discretion. To avoid doubt, the individual Parties and/or any combination of the Parties (including any Other Parties) may contest for such funding and any conflicts of interest will be managed according to the Conflicts of Interest Policy outlined in Schedule 5.

15. Financial Management

15.1 The Challenge Contractor will administer all Challenge Funding according to its standard financial practices and policies and disburse them according to an approved annual budget consistent with the NSC Investment Contract. The Challenge Funding will be subject to the standard auditing practices of the Challenge Contractor and any specific audit requirements agreed in the NSC Investment Contract.

15.2 Prior to each Financial Year the Director will prepare, and submit to the Governance Group for approval, a budget for that Financial Year for the use of Challenge Funding. The budget will provide for:

(a) Governance costs associated with operating the Governance Group.

(b) Management costs associated with managing and administering the Challenge as a vehicle for research and related activities.

(c) Discretionary funding, which is any other funding administered centrally by the Challenge Contractor for supporting activities not included in research projects or governance and management costs.

(d) Project Funding will include:
   (i) Research funding for approved research activities by way of internal research projects within the Challenge Contractor.
   (ii) Research funding for approved research by other Collaborating Organisations or Other Parties by way of Subcontracts.
   (iii) Uncommitted funds for use in outsourcing specific research, supporting the call for contestable funding or for responding to unplanned opportunities
   (iv) To avoid doubt the Challenge will pay the full cost of conducting the research in Subcontracts or internal projects including indirect costs at the standard overhead rate of each Party according to its internal policies and practices (which may be applied to the salary costs of the staff involved or however else overheads are applied by each Party).

15.3 The Challenge Contractor will provide access to reports on expenditure against budget to the Director who will report not less than quarterly to the Governance Group at its scheduled meetings including identifying any variances against budget and providing sufficient explanations as the Governance Group requires.

15.4 The Governance Group may seek further detailed expenditure reports from the Challenge Contractor if required and the Challenge Contractor will provide such reports if it is able.

15.5 Allocation of Project Funding to Collaborating Organisations and Other Parties will be via Subcontracts as outlined in clause 16. Payments under any Subcontracts will be made on submission of an invoice according to standard practice in the sector.

15.6 The Parties agree that the Challenge Contractor will not be obliged to make any payments in connection with this Agreement, the NSC Investment Contract and any Subcontracts unless there is sufficient Challenge Funding made available and paid to the Challenge Contractor. The Challenge Contractor will immediately advise the Parties of any circumstances that have or might give rise to such shortfall and the Challenge Contractor will take all reasonable steps to rectify the shortfall without delay.

15.7 The Parties acknowledge that, in the event of the suspension, termination or partial withdrawal of Challenge Funding by the Ministry (including the termination of the NSC Investment Contract and/or a termination of a Challenge Programme Agreement by the Challenge Contractor under clause 9.10 of the NSC Investment Contract) then the Challenge Contractor will not be obliged to make any payments to any Parties in relation to that Challenge Funding and will not be required to perform any other obligation under this Agreement except in accordance with clause 27.5.

15.8 Unspent Project Funding will be handled according to that Party's internal policies but subject to clause 6.8(d) of the NSC Investment Contract. Where possible the Parties are encouraged to use such funds to further the Mission.

16. Subcontracting

16.1 Subcontracts will be issued by the Challenge Contractor to any Collaborating Organisation for a term consistent with any Research Plan approved by the Ministry and embedded within any Challenge Programme Agreement. Subcontracts will be consistent with this Agreement and the NSCIC and any research funding decisions of the Governance Group. Funding for any research not defined within a Challenge Programme Agreement will result from a process approved by the Governance Group and will be dependent on performance to date plus any changes in priorities for the Challenge as recommended by the Director and Management Group. It will also involve inputs from any independent science advisory panel on the quality of the proposed research and its alignment with the Mission and any Research Plan. Before the Challenge Contractor issues any Subcontract the terms of the Subcontract template must be reviewed and approved by the Governance Group with input from the Collaborating Organisations.

16.2 A Collaborating Organisation, acting reasonably, may decline any Subcontract offered under this Agreement and may seek to renegotiate the details of any Subcontract offered, including but not limited to the fee and the statement of work, with the Challenge Contractor. If unable to agree the details of a Subcontract the parties may seek guidance from the Governance Group or use the dispute resolution provisions of this Agreement.

17. Intellectual Property Rights and Commercialisation

17.1 Unless specified otherwise in a Subcontract, Intellectual Property will be managed in accordance with the Intellectual Property Management Plan at Schedule 4 of the first Challenge Programme Agreement (Appendix B) and any subsequent Challenge Programme Agreements.

18. Publication and Communication

18.1 Publication of results and data from Research and/or Related Activities is encouraged but subject to confidentiality requirements of the Parties (including any requirements necessary to protect students' work), any Other Parties (e.g. co-funders and end users), and the provisions of clause 6.22 of the NSC Investment Contract (Appendix A). Following protection of any potentially commercialisable Intellectual Property Rights where appropriate. Publications should acknowledge any funding contribution from Challenge Funding and the Ministry and be reported to the Director as requested to enable timely reporting to the Ministry.

18.2 The Parties will ensure that appropriate processes are in place for approval of publications and public statements, including appropriate management of potentially sensitive information.

19. Use of Challenge Branding

19.1 The Parties agree that the Challenge may establish a suitable brand based on the brand guidelines provided by the Ministry for use on all Challenge communications.

19.2 On the recommendation of the Management Group, the Parties will agree a suitable brand usage procedure for individual Parties wishing to use or make reference to the Challenge brand consistent with the brand guidelines provided by the Ministry.

20. Audit

20.1 The Collaborating Organisations agree to provide reasonable access, information and reports to the Challenge Contractor, its authorised agents, or any auditors, reviewers or evaluators appointed under the NSC Investment Contract, as is reasonably required and requested by the Challenge Contractor to enable it to comply with any audit, review or evaluation undertaken by or on behalf of the Ministry under the NSC Investment Contract.

20.2 Collaborating Organisations will meet their own costs incurred in complying with this clause provided that the Challenge Contractor will endeavour to minimise such costs so far as is reasonably possible.

PART 3 – LEGAL

21. Relationship of Parties

21.1 The Collaborating Organisations have agreed that the Challenge Contractor will host and manage the Challenge in accordance with all of its relevant internal policies and procedures and within its organisational structure.

21.2 The relationship between the Parties is that of a participant in a research challenge with all Parties working to a common purpose (the Mission) supported by a legal arrangement of a head contractor (the Challenge Contractor) and a subcontractor (the Collaborating Organisations) all of whom acknowledge the mutual and specific obligations that flow from the NSC Investment Contract, the Proposal and this Agreement.

21.3 The Parties agree to collaborate to implement the Mission, including fulfilling the obligations of the NSC Investment Contract and delivering Challenge Programme Agreements.

21.4 Nothing in this Agreement or in the relationship between the Parties will be deemed or construed as creating a partnership, agency, joint venture, trust or employment relationship between the Parties. No Party has any authority to incur any obligations or liabilities for or on behalf of or otherwise to bind or to act on behalf of another Party, unless such authority is explicitly set out in this Agreement, the NSC Investment Contract, any Subcontract or other agreement.

21.5 Although the Ministry is not a Party to this Agreement, promises in it which confer, and are intended to confer, a benefit on the Ministry may be enforced by the Ministry under section 4 of the Contracts Privity Act 1982.

22. Confidentiality

22.1 **Confidential Information** means "any information which is by its nature confidential or which a Party (**Disclosing Party**) advices another Party (**Receiving Party**) is confidential relating to the business, property, employees, contractors, members, clients and agents of a Party, which is obtained by, disclosed to or otherwise made available to another Party in connection with this Agreement. Where a party's (**First Party**) information is disclosed by another Party, the First Party is deemed to be the Disclosing Party in respect of that Confidential Information.

22.2 Confidential Information does not include information to the extent that such information:

(a) is or becomes public through no act or omission of the Receiving Party; or

(b) is already known by the Receiving Party or is in its lawful possession prior to disclosure; or

(c) is received by the Receiving Party from a third party without similar duties of confidentiality; or

(d) is agreed by the Disclosing Party in writing to be information which is not regarded as confidential; or

(e) is required to be disclosed by any law; or

(f) is required to be disclosed to comply with the listing rules of any stock exchange on which any securities of any Party are listed.

22.3 Each Receiving Party must:

(a) treat as confidential, and take all action necessary to maintain the confidential nature of, the Confidential Information of the Disclosing Party; and

(b) not use or disclose such Confidential Information other than:

(i) as agreed in writing by the Disclosing Party;

(ii) as reasonably required to carry out the Challenge; and

(iii) to its professional advisers where such advisers have been requested to keep such information confidential; and

(c) take full responsibility for use and disclosure by any third party receiving such Confidential Information from the Receiving Party, as if that third party were the Receiving Party.

22.4 If a Receiving Party is required to disclose Confidential Information by law including, without limitation as required under the Official Information Act, that Party will

(a) immediately notify the disclosing Party and, if appropriate, transfer the request to that Party; and

(b) furnish only that portion of Confidential information which it is legally required to disclose.

22.5 To avoid doubt, the Parties agree that nothing in this Agreement prevent a Party from using or disclosing its own Confidential Information.

22.6 This clause 22 will survive expiry of this Agreement.

23. Variation

23.1 Except as may be expressly provided elsewhere in this Agreement, for example, clauses 11.2, 11.3, 12.5 and 25.1, any other material variation to this Agreement must be agreed by all Parties, approved by the Governance Group, and recorded in writing signed by the authorised signatories of all Parties.

23.2 The Parties agree that they will do anything necessary to give effect to any variation required under the NSC Investment Contract.

23.3 The Parties acknowledge that, in accordance with the NSC Investment Contract, the Challenge Contractor is required to obtain the approval of the Ministry before agreeing to any variation to this Agreement and that no purported variation to this Agreement will have effect until such Ministry approval has been obtained.

24. Assignment or Subcontracting

24.1 No Parties may assign their rights and obligations under this Agreement without the prior written consent of the other Parties and the approval of the Governance Group. In agreeing any assignment the Challenge Contractor may consult with the Ministry to ensure the assignment does not comprise a breach of the NSC Investment Contract.

24.2 Except as expressly provided in clause 16.1, no Collaborating Organisation may subcontract their rights and obligations under this Agreement without the prior written consent of the Challenge Contractor.

25. Entry of New Parties

25.1 A new party may be added to this Agreement by consent of all existing Parties voting in person or by proxy and by agreement with the Ministry. Any new party to this Agreement will be required by deed of accession to acknowledge receipt of a copy of this Agreement and will agree to be bound by the terms of this Agreement. Each Collaborating Organisation hereby appoints the Challenge Contractor as its agent for the purpose of entering into the deed of accession with the new party on its behalf. The new party's representative on the Challenge Parties Group will be specified in the deed of accession.

26. Exit of Parties

26.1 Regardless of circumstances, a Party that wishes to exit from this Agreement will use all reasonable endeavours to:

(a) give six months' notice in writing (the "Notice Period") to all other Parties, and the Governance Group, of its intention to exit and setting out reasons for this intention;

(b) provide other Parties a reasonable opportunity, within the Notice Period, to address the reasons given for intending to exit, before confirming that Party's decision to exit;

(c) continue to discharge commitments to any Subcontract then in effect and to participate in the Challenge Parties Group during the Notice Period.

26.2 If a Party exits this Agreement, the rights and obligations of that Party under this Agreement will terminate on the effective date of that Party's exit, except that that Party will continue to be bound by all clauses which by their nature are intended to survive termination, including this clause and clauses 17 and 22.

27. Term of Agreement / Termination / Disengagement Provisions / Surviving Clauses

27.1 This Agreement will remain in force for the Term and may be renewed for a further term by agreement in writing of all Parties wishing to renew the Agreement.

27.2 The Challenge Contractor may terminate the participation of a Collaborating Organisation as a Party to this Agreement on 10 Business Days' notice in the event that:

(a) the Collaborating Organisation is in material breach of this Agreement or a Subcontract with the Challenge Contractor; or

(b) an act or omission of the Collaborating Organisation causes the Challenge Contractor to materially breach the terms of the NSC Investment Contract;

and where the Collaborating Organisation has failed to take all reasonable actions to remedy such breach.

27.3 The Challenge Contractor may terminate this Agreement, or any Subcontract entered into under a Challenge Programme Agreement, in the event that the NSC Investment Contract is terminated, or the payment of Challenge Funding is suspended by the Ministry or in any other circumstances permitted under the NSC Investment Contract.

27.4 In the event that a Collaborating Organisation withdraws or their participation is terminated or this Agreement is terminated under clause 27.2 or 27.3, or not renewed under clause 27.1:

(a) The Collaborating Organisation will deliver to the Challenge Contractor a copy of all information in its possession as reasonably requested relating to the Challenge to enable it to fulfil any obligations it has to the Ministry under the NSC Investment Contract.

(b) The Collaborating Organisation and the Challenge Contractor will comply with any disengagement plan agreed with the Ministry. The Challenge Contractor will consult with and have due regard for the views of the Collaborating Organisations prior to agreeing any disengagement plan with the Ministry. Unless otherwise agreed, any Subcontract will continue in effect until terminated in accordance with its own terms.

27.5 On termination or expiry of this Agreement, each of the Parties will continue to be bound by all clauses which by their nature are intended to survive termination, including clauses 17 and 22.

28. Disputes

28.1 Any dispute, or potential dispute, between two or more of the Parties arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, (**Dispute**) will be notified to the Director and genuine attempts made by the affected Parties to resolve the dispute by mutual agreement.

28.2 If the Director is unable to resolve the Dispute either Party may seek the involvement of the Governance Group Chair who will work with the Parties to resolve it.

28.3 If any Party feels the Dispute is not going to be resolved satisfactorily by mutual agreement then they will (if they have not already done so) escalate the Dispute to senior management (up to VC/CEO level) of the affected Parties.

28.4 If the Parties are unable to resolve the Dispute within 20 Business Days of notifying the Director and having followed the above steps, any Party may refer the Dispute to mediation.

28.5 The mediation procedure will be as follows:

(a) The disputing Parties will appoint a mediator. If they fail to agree a mediator within 10 Business Days from the date of one Party advising the other Party or Parties in the dispute of the referral to mediation, the Chair of LEADR NZ or nominee will appoint a mediator.

(b) The disputing Parties will cooperate with the mediator in an effort to resolve the dispute.

(c) If the Dispute is settled, the disputing Parties will sign a copy of the terms of settlement which will include the awarding of costs of the mediation.

(d) If the Dispute is not resolved within 15 Business Days after the mediator has been appointed, or within any other mutually agreed time period, the mediation will cease and the Dispute may be referred to arbitration in New Zealand in accordance with New Zealand law. The arbitration will be agreed on by the disputing Parties and, should they fail to agree within 15 Business Days of the mediation ceasing, the arbitrator will be appointed by the Chair of LEADR NZ or nominee.

28.6 Nothing in this clause will prevent a Party from seeking urgent injunctive relief in respect of a breach or threatened breach of this Agreement..

29. General

(a) **Notices** under this Agreement will be given by email or by post to a Party's address for notices as stated in Schedule 1 or as notified by that Party to the Challenge Contractor. Notices given by email will be deemed to have been delivered on the date of transmission. Notices sent by post will be deemed to have been given three days after dispatch.

(b) **Force Majeure:** No Party will be liable for any delay or default due to natural calamities, acts or demands of government or any government agency, wars, riots, strikes, floods, earthquakes, accidents or any other unforeseen cause beyond its control and not due to that Party's or those Parties' fault or neglect. A Party will resume performing its obligations under this Agreement as soon as reasonably possible or, if an event referred to in this clause prevents compliance with the obligations of a Party for more than 60 Business Days, the other Parties may terminate the participation of that defaulting Party by giving written notice (with the approval of the Ministry where required).

(c) **Entire Agreement:** This Agreement and, to the extent applicable, the NSC Investment Contract constitutes the entire agreement between the Parties relating to the NZBH Challenge and replaces all prior negotiations, agreements, arrangements or understandings, whether oral or written. No oral representations or information will alter the meaning or interpretation of this Agreement.

(d) **Costs:** Each Party will bear its own costs incurred in relation to the preparation of this Agreement and any subsequent agreements relating to the NZBH Challenge, including without limitation all legal costs.

(e) **Counterparts:** This Agreement may be executed in any number of counterparts (including a facsimile or scanned PDF copy), each of which will be deemed an original and all of which together will constitute a single instrument.

(f) **Severability:** If any provision of this Agreement is illegal, invalid or otherwise unenforceable, it will be severed from this Agreement without affecting the remaining provisions, and the Parties will negotiate in good faith and reasonably in an endeavour to agree on one or more replacement provisions which achieve, to the extent possible, the intent of the severed provision in a manner which is legal, valid and enforceable.

(g) **Waiver:** No Party will be deemed to have waived any right under this Agreement unless such waiver is in writing and signed by such Party. Any such waiver by a Party of a breach of any provision of this Agreement will not constitute a waiver of any subsequent or continuing breach of such provision or of the breach of any other provision of this Agreement by that Party.

(h) **Governing Law:** This Agreement will be governed by and construed in accordance with New Zealand law and the Parties submit to the exclusive jurisdiction of New Zealand's courts.

30. Definitions Applicable to this Agreement

30.1 The following terms and expressions will have the following meanings in this Agreement unless the context requires otherwise:

Agreement means this Agreement, including the background and any schedules and appendices, as it may be varied or supplemented from time to time in writing signed by the Parties or in accordance with provisions specified in this Agreement.

Aligned Research includes current research by the Parties focused on biodiversity and biosecurity impacts and outcomes relevant to the Challenge Mission, and which can be informed and influenced over time as it is integrated into an overall portfolio addressing the Challenge Mission. Aligned Research may:

(a) involve staff, students, infrastructure and operational expenditure

(b) include research directly funded by a Party from its own, discretionary resources.

(c) include research funded by the Ministry and other government departments , and other funding sources who are potential users of Challenge research, where such research directly supports the Challenge programmes and Mission.

Business Day means a day other than a Saturday, Sunday or public holiday.

CEO/ VC means a Party's Chief Executive, Director-General or Vice Chancellor

Challenge or NZBH Challenge means the collaboration of the Parties, established by this Agreement to conduct the NZBH Challenge and to deliver the NSC Investment Contract.

Challenge Contractor means Landcare Research New Zealand Limited, which is the Party named as such in the NSC Investment Contract with the Ministry and hosting and managing the Challenge on behalf of the Parties.

Challenge Director or **Director** means the Director of the Challenge appointed under clause 10.2(a).

Challenge Funding means all funds paid or payable to the Challenge Contractor under the NSC Investment Contract from the Ministry.

Challenge Parties Group means a group made up of representatives from every Party to this Agreement as described in clause 12.

Challenge Programme Agreement means a Challenge Programme Agreement in the form appended to the NSC Investment Contract and entered into between the Ministry and the Challenge Contractor and includes without limitation the first Challenge Programme Agreement dated 9 October 2014 attached as Appendix B.

Co-funding means funding committed by an Other Party for research and related activities aligned to the Challenge.

Collaborating Organisation means a Party that is not the Challenge Contractor.

End-User Advisory Panel means the group described in clause 10.6(c).

Financial Year means the period 1 July to 30 June, or such other period as may be required by the Ministry.

Governance Group or **NZBH Governance Group** means the Governance Group established under clause 10.3 with the duties and roles described in this Agreement. The NZBH Governance Group means the body to which the Parties, acting through the Challenge Contractor, delegate a set of functions to facilitate the day-to-day oversight of the strategic development, risk management, and delivery of the NZBH Challenge.

Independent Chair or **Chair** means the independent chair of the NZBH Governance Group appointed in accordance with clause 10.3 and, where the context permits, includes any subsequent chair of the NZBH Governance Group.

Intellectual Property Rights includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trade marks, registered and unregistered designs, circuit layouts, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, together with all right, interest, or licence in or to any of the foregoing.

Kāhui Māori means the Māori advisory group whose role is described in clause 10.6(b).

Management Group means the Challenge Director plus research programme leaders and Māori Kaihautū approved by the Challenge Contractor following recommendation by the Governance Group.

Ministry means the Ministry of Business, Innovation and Employment (or any successor that replaces the Ministry as a party to the NSC Investment Contract).

Mission means the mission approved by the Science Board in the initial Proposal and described in clause 2.

NSC Investment Contract means the legally binding contract between the Challenge Contractor and the Ministry dated 9 October 2014 which sets out the terms under which Challenge Funding is provided for the NZBH Challenge and, to avoid doubt, except where the context requires otherwise, all references in this Agreement to the NSC Investment Contract includes any Challenge Programme Agreement issued under it.

Operations Support Unit means the internal body established within the Challenge Contractor comprising the Challenge Director and any other management or administration roles agreed by the Governance Group.

Other Party or **Other Parties** means any legal entity that is not a Party to this Agreement but which funds or carries out work related to the objectives of the Challenge.

Party means a Party to this Agreement (being the parties named that also execute this Agreement or any subsequent deed of accession) and Parties has the corresponding meaning.

Project Funding means Challenge Funding paid to any Collaborating Organisation or Other Party under Subcontracts or, in respect of the Challenge Contractor equivalent internal projects to perform aspects of the Research Plan as envisaged under clause 14.

Proposal means the proposal for the NZBH Challenge submitted to the Ministry on 28 April 2014 and includes any subsequent proposals submitted in accordance with a Challenge Programme Agreement or the NSC Investment Contract.

Research and/or Related Activities means the activities the Parties have agreed to undertake to deliver the NSC Investment Contract and/or those aspects that a Party has agreed to undertake under the terms of a Subcontract. To avoid doubt, in the case of the Challenge Contractor **Research and/or Related Activities** has the same meaning despite the absence of a Subcontract.

Research Plan means the research plan prepared under the first Challenge Programme Agreement and any subsequent research plan set out in the Schedule to a Challenge Programme Agreement and (where relevant) as varied or supplemented from time to time.

Review means the internal governance and management review undertaken by the Challenge Parties under clause 11.

Science Board means the board established by the Minister of Science and Innovation under the Research, Science, and Technology Act 2010 to, amongst other things, make decisions in respect of proposals for funding for research, science and technology.

Subcontract means an agreement as described in clause 16.1 between the Challenge Contractor and a Party for Project Funding to carry out Research and/or Related Activities.

Term means the period commencing on the date of signing by the last Party to sign and expiring on 30 June 2024 unless terminated earlier in accordance with clause 27.

30.2 In this Agreement unless the context requires otherwise:

(a) clause and other headings are for ease of reference only and are not to be deemed to form part of the context, or to affect the interpretation, of the Agreement; and

(b) words importing the singular include the plural and vice versa, unless the context otherwise requires.

31. Status of Agreements

31.1 This Agreement replaces all prior agreements between the Parties in relation to the NZBH Challenge including the Heads of Agreement dated on or about 24 April 2014.

31.2 The Challenge Contractor attaches a copy of the executed NSC Investment Contract as Appendix A and a copy of the executed Challenge Programme Agreement as Appendix B and will provide the Collaborating Organisations with copies of any amendment to either document or subsequent Challenge Programme Agreement as soon as reasonably practicable after such amendment or agreement is executed.

31.3 If there is any conflict between the NSC Investment Contract, this Agreement or a Subcontract, the descending order of precedence indicated below will apply:

(a) NSC Investment Contract (including any Challenge Programme Agreements); and then

(b) This Agreement; and then

(c) Any Subcontract.

32. Execution

Signed on behalf of
Landcare Research New Zealand Limited
by Richard Gordon
Chief Executive

[redacted]

Signature

25/3/2015

Date

Signed on behalf of **The New Zealand Institute for Plant and Food Research Limited**
by Peter Landon-Lane
Chief Executive

[redacted]

Signature

7 April 2015

Date

Signed on behalf of **AgResearch Limited**
by Tom Richardson
Chief Executive

[redacted]

Signature

30/3/15

Date

Signed on behalf of **Institute of Environmental Science and Research Limited**
by Keith McLea
Chief Executive

[redacted]

Signature

7/4/15

Date

Signed on behalf of **Institute of Geological and Nuclear Sciences Limited**
by Mike McWilliams
Chief Executive

[redacted]

Signature

30/3/2015

Date

Signed on behalf of **National Institute of Water and Atmospheric Research Limited**
by John Morgan
Chief Executive

[redacted]
Signature

2/4/15
Date

Signed on behalf of **New Zealand Forest Research Institute Limited**
by Warren Parker
Chief Executive

[redacted]
Signature

27 March 2015
Date

Signed on behalf of **University of Auckland**
by Jane Harding
Deputy Vice-Chancellor (Research)
STUART N McCUTCHEON
VICE-CHANCELLOR
THE UNIVERSITY OF AUCKLAND

[redacted]
Signature

30.03.2015
Date

Signed on behalf of
Auckland University of Technology
by John Raine
Pro Vice-Chancellor – Research and Innovation

[redacted]
Signature

30/03/2015
Date

Signed on behalf of **University of Canterbury**
by Steve Weaver
Deputy Vice-Chancellor (Research)

[redacted]
Signature

30 March 2015
Date

Signed on behalf of **Lincoln University**
by Stefanie Rixecker
Assistanct Vice-Chancellor, Scholarships and Research

[redacted]
Signature

31/03/2015
Date

Signed on behalf of **Massey University**
by Brigid Heywood, Assistant Vice-Chancellor
Research, Academic and Enterprise

[redacted]
Signature

30/03/2015
Date

Signed on behalf of **University of Otago**
by Richard Blaikie
Deputy Vice-Chancellor (Research and Enterprise)

[redacted]
Signature

26/3/15
Date

Signed on behalf of **Research Trust of Victoria University of Wellington**
by Kate McGrath
Vice-Provost (Research)

[redacted]
Signature

26/03/2015
Date

Signed on behalf of **University of Waikato**
by Alexander Gillespie
Pro Vice-Chancellor Research

[redacted]
Signature

30/3/2015
Date

Signed on behalf of **Department of Conservation**
by Lou Sanson
Chief Executive

_____
Signature

_____
Date

Signed on behalf of **Ministry for Primary Industries**
by Martyn Dunne
Chief Executive

_____
Signature

_____
Date

SCHEDULE 1 – Contact Details of the Parties

The contact person for each Party and the address for notices issued under clause 29.1 are:

(a) **Landcare Research New Zealand Limited**:
Phil Hart
General Manager Development
Landcare Research
Gerald Street, P O Box 69040
Lincoln 7640
Phone: 03 321 9692
Mobile: 027 229 7684
Email: hartp@landcareresearch.co.nz

(b) **The New Zealand Institute of Plant and Food Research Limited**:
Philippa Stevens
General Manager of Science, Food Innovation
Plant & Food Research
120 Mt Albert Road, Auckland 1025
Phone: 09 925 7233
Mobile: 021-2268 233
Email: philippa.stevens@plantandfood.co.nz

(c) **AgResearch Limited**
Warren McNabb
Research Director
AgResearch
Grasslands Research Centre, Tennent Drive,
Private Bag 11008, Palmerston North
Phone: 06 351 8061
Email: warren.mcnabb@agresearch.co.nz

(d) **Institute of Environmental Science and Research Limited**
Philip Carter
Chief Scientist
ESR
34 Kenepuru Drive,
PO Box 50348, Porirua
Phone: 04 914 0789
Email: philip.carter@esr.cri.nz

(e) **Institute of Geological and Nuclear Sciences Limited**
Ian Graham
General Manager Research
GNS Science
1 Fairway Drive, Avalon,
PO Box 30368, Lower Hutt
Phone: 04 570 4677
Mobile: 027 235 5162
Email: i.graham@gns.cri.nz

(f) **National Institute of Water and Atmospheric Research Limited**

Rob Murdoch
General Manager Research
NIWA
301 Evans Bay Parade, Hataitai,
Private Bag 14901, Wellington
Phone: 04 386 0346
Mobile: 027 435 7872
Email: rob.murdoch@niwa.co.nz

(g) **New Zealand Forest Research Institute Limited**

Brian Richardson
General Manager Forest Science
Scion
Te Papa Tipu Innovation Park, 49 Sala Street,
Private Bag 3020, Rotorua
Phone: 07 343 5516
Mobile: 021 913 221
Email: brian.richardson@scionresearch.com

(h) **University of Auckland:**

Dr Tracey Swift
Director Research Management
University of Auckland
Building 620, Level 10, 49 Symonds Street,
Private Bag 92019, Auckland 1142
Phone: 09 373 7599 ext. 84329
Mobile: 027 702 0555
Email: t.swift@auckland.ac.nz

(i) **Auckland University of Technology**

Dr Rosanne Ellis
Director Research Strategy & Management
AUT Law Building, 120 Mayoral Drive,
Private Bag 92006, Auckland
Phone: 09 921 9257
Mobile: 021 966 143
Emai: roellis@aut.ac.nz

(j) **University of Canterbury**

Dr Nigel Johnson
Director, Research & Innovation
Private Bag 4800, Christchurch 8140
Phone: 03 364 3488
Mobile: 027 332 2510
Email: nigel.johnson@canterbury.ac.nz

(k) **Lincoln University**

Elizabeth Hopkins
Director, Lincoln Research and Innovation
Gerald Street
PO Box 85084, Lincoln

Phone: 03 423 0812
Mobile: 021 685 189
Email: elizabeth.hopkins@lincoln.ac.nz

(l) **Massey University**
Michael Millan
Director Research Operations, Research & Enterprise
Massey University
Tennent Drive,
Private Bag 11222, Palmerston North
Phone: 06 356 9099 x 83488
Email: m.millan@massey.ac.nz

(m) **University of Otago**
Craig Grant
Fund Specialist
University of Otago
PO Box 56, Dunedin
Phone: 03 479 5047
Mobile: 021 279 8465
Email: craig.grant@otago.ac.nz

(n) **Research Trust of Victoria University of Wellington**
Ian MacIntosh
Manager, Research Commercial & Intellectual Property
Office of the Vice-Provost (Research)
Easterfield Building, Kelburn Parade,
PO Box 600, Wellington
Phone: 04 463 5535
Mobile: 027 563 5535
Email: ian.mcintosh@vuw.ac.nz

(o) **University of Waikato**
Dr Bret Morris
Director of the Research Office
University of Waikato
Private Bag 3105, Hamilton
Phone: 07 858 5059
Mobile: 021 647 135
Email: bret.morris@waikato.ac.nz

(p) **Department of Conservation**
Geoff Hicks
Chief Scientist
Department of Conservation
PO Box 10420, Wellington
Phone: 04 471 3063
Email: ghicks@doc.govt.nz

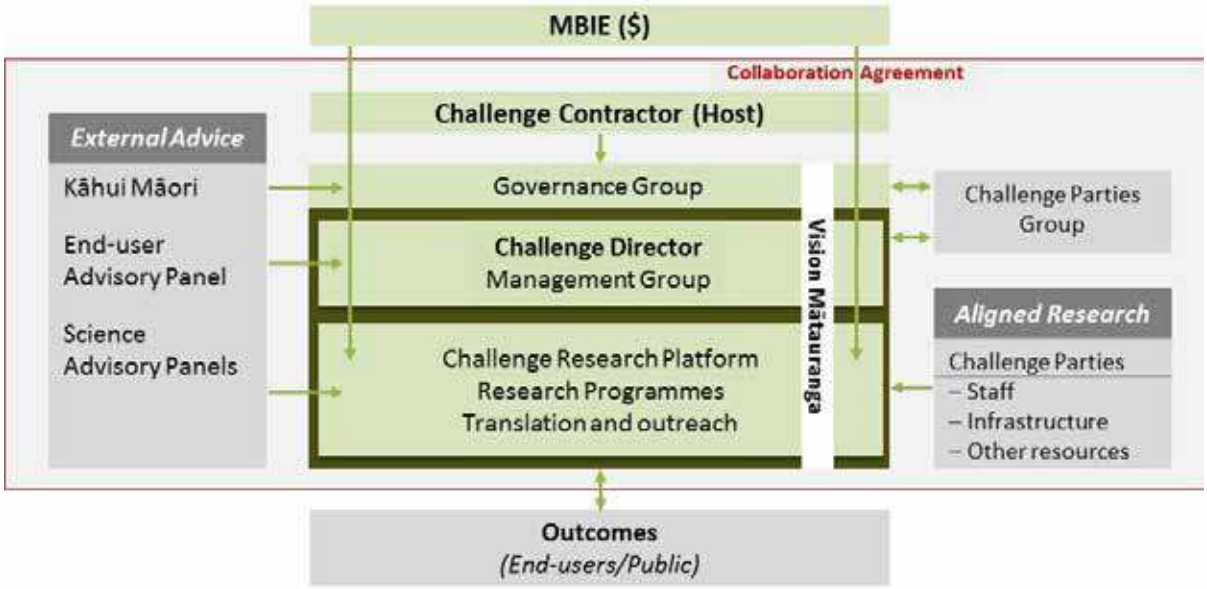
(q) **Ministry for Primary Industries (MPI)**

Veronica Herrera
Director Investigations Diagnostic Centres & Response
Pastoral House, 25 The Terrace,
PO Box 2526, Wellington
Phone: 04 894 0645
Mobile: 029 894 0285
Email: veronica.herrera@mpi.govt.nz

SCHEDULE 2 – Operation of the Challenge – Detailed Provisions

1. **Challenge Structure** (refer to clause 10.1):

GOVERNANCE & MANAGEMENT STRUCTURE



2. **Challenge Director** (refer to clause 10.2):

The Challenge Director will have the following responsibilities:

(a) Representing the Challenge externally to stakeholders, government agencies and the media to build stakeholder and public awareness and engagement in the Mission and programmes for the Challenge.

(b) Facilitating collaboration among Challenge Parties to support integration of Challenge Funding and Aligned Research, delivery of Research Plan programmes and achievement of Challenge outcomes and objective.

(c) Facilitating engagement with Māori, stakeholders and end-users to ensure the Challenge remains mission-focused and support the uptake and application of research results in line with the Challenge outcomes and objective.

(d) Leading the Management Group (that will support the Challenge Director through planning, delivery and monitoring for the Research Plan platform).

(e) Ensuring the Challenge operates effectively, including ensuring that key processes running smoothly.

(f) Ensuring reporting of research progress and achievements from the Challenge.

(g) Informing the NZBH Governance Group appropriately so it can fulfil its governance accountabilities.

(h) Informing the Challenge Contractor, proactively and in a timely fashion, of any major issues impacting it in its capacity as Challenge Contractor.

(i) Informing appropriate stakeholders proactively and in a timely fashion of any major issues impacting on the delivery of the Challenge.

(j) Ensuring that Landcare Research's role as Challenge Contractor confers no advantage or disadvantage with respect to Challenge Research Plan programme as contemplated in this Agreement.

(k) Liaising with Directors of other relevant National Science Challenges.

(l) Managing conflicts of interest or disputes within the Challenge appropriately.

Any changes to the Challenge Director will be notified to the Parties in accordance with clause 29(a) concerning notices.

3. **Management Group** (refer to clause 10.5):

(a) The Management Group will be responsible for the following functions:

- Overseeing the strategic planning process for the Challenge
- Driving the delivery of high-value, high-impact research and promoting relevant research linkages
- Setting strategic priorities for the research platform and allocating resources accordingly
- Monitoring and reporting regularly to the Director on performance against the terms of the NSC Investment Contract
- Embedding the principles of Vision Mātauranga in the Challenge
- Identifying issues/risks (constraints to delivery, high-risk research) and advising on mitigation measures
- Facilitating internal and external communication, engagement and public outreach

(b) The Challenge Director will chair the meetings of the Management Group and seek consensus decision making on all issues.

(c) Where a consensus is not able to be achieved the Challenge Director may seek other advice and inform the Management Group of his/her proposed decision.

(d) If the decision of the Challenge Director is not acceptable to any of the Management Group members he/she may request a review of the decision by the Chair of the NZBH Governance Group. The Chair may confirm the Challenge Director's decision or refer the matter to the NZBH Governance Group for decision.

(e) Actual and reasonable travel and accommodation costs of attending Management Group meetings called by the Challenge Director will be met from Challenge Funding.

(f) The members of the Management Group will adhere to the Conflict of Interest Policy in Schedule 5.

SCHEDULE 3 – NZBH Governance Group Terms of Reference

1. Governance Group Terms of Reference

1.1 The Governance Group will provide effective oversight and governance of the performance of the Challenge.

1.2 The Governance Group's primary role is to aid the Challenge to achieve its stated objectives through regular oversight of strategic direction, Challenge performance and delivery of the Research Plan work programme in accordance with the NSC Investment Contract.

1.3 The Governance Group will be accountable to the Challenge Contractor, acting on behalf of the Parties, for this Challenge.

1.4 The Governance Group's accountabilities will include:

(a) Ensuring that the Challenge meets the terms of the NSC Investment contract through professional oversight, the probity of processes and decision making and a high standard of compliance with the regulatory framework and reporting requirements;

(b) Fulfilling fiduciary duty to act in the best interests of the Challenge, including achievement of Challenge objectives and associated KPIs, rather than in the interests of any individual parties;

(c) Facilitating and overseeing regular reviews of Challenge strategy, including deciding changes within the parameters of the NSC Investment Contract and/or recommending to the Challenge Contractor desired changes to the NSC Investment Contract to be negotiated with the Ministry;

(d) Facilitating and overseeing regular reviews of Challenge performance, including deciding corrective actions within the parameters of the NSC Investment Contract and/or recommending to the Challenge Contractor desired changes to the NSC Investment Contract to be negotiated with the Ministry;

(e) Providing advice to the Challenge Contractor on negotiation of this Collaboration Agreement with Challenge parties;

(f) Ensuring the Challenge operates in alignment with Vision Mātauranga and the principles of the Treaty of Waitangi;

(g) Ensuring the Challenge operates in alignment with the Principles embodied throughout the Challenge, including maintaining effective relationships with Challenge Parties and securing co-funding for Challenge programmes;

(h) Ensuring that no one Party unduly dominates the Challenge;

(i) Maintaining effective relationships with the Kāhui Māori and End-User Advisory Group, consistent with the mission focus and Principles embodied throughout the Challenge;

(j) Approving funding mechanisms within the Challenge (including 'collaborative' and 'contestable' allocation mechanisms), including the way these mechanisms will align the Ministry funding (the 'Challenge Funding Envelope') and co-funding to Challenge programmes;

(k) Recommending (to the Challenge Contractor) the appointment of a Challenge Director;

(l) Overseeing (on behalf of the Challenge Contractor) the performance of the Challenge Director, including holding the Challenge Director to account for delivering the Challenge objectives and adhering to Principles defined in this Collaboration Agreement;

(m) Managing conflicts of interest in a way that is consistent with good governance practice and with the Principles defined in this Collaboration Agreement.

2. Governance Group Membership

2.1 The Governance Group will initially comprise six members, selected for their skills and expertise relevant to the science-based collaboration for delivering outcomes and impacts for New Zealand's biological heritage.

2.2 Key skills required include knowledge of national and regional policy and sector priorities, understanding of Mātauranga Māori and Treaty of Waitangi principles, understanding of the New Zealand research and innovation landscape, science leadership, application of research innovations, impact assessment, finance and governance in relation to this Challenge. Members will bring relevant perspectives based on their professional and leadership roles and experiences. The Governance Group will have a Chair who is independent of direct research provider, stakeholder or end-user responsibilities and who must be approved by the Ministry.

2.3 Any changes in the composition of the Governance Group will be notified to the Parties in accordance with clause 29(a) concerning notices and notified to the Ministry as required under the NSC Investment Contract.

3. Overarching Governance Group Framework

3.1 Governance Group members will be required to act in the best interests of the Challenge and not in the interests of a particular Challenge Party or stakeholder. It is acknowledged that the interests of the Challenge Parties are legitimate concerns for the Challenge and Governance Group members may legitimately raise them for consideration by the Governance Group.

3.2 The Governance Group will work within, and where relevant give effect to, this Collaboration Agreement and the NSC Investment Contract.

3.3 The Governance Group is required to have consideration to upholding the reputation of the Challenge and all Parties to this Collaboration Agreement.

3.4 The Governance Group will be responsible for those matters set out in Clause 10.3 and such related matters as are reasonably required to give effect to those matters and to perform any other activities or roles of the Governance Group as described within this Collaboration Agreement.

3.5 To avoid doubt, the Governance Group will have no powers or authority in relation to Co-funding nor such matters as financial processing and administration of funds, health and safety, ethics, infrastructure, staff employment/HR/misconduct and individual performance management.

3.6 The Governance Group will adopt and give effect to the Conflicts of Interest Policy as described in Schedule 5 of this Collaboration Agreement.

SCHEDULE 4 - Terms of Reference for Observers

The following provisions apply to Governance Group observers appointed under clause 10.4:

1. The Ministry may appoint an observer to the Governance Group. Should the Chair of the Governance Group or a Party, on reasonable grounds, object to an observer nominated by the Ministry, either prior to appointment or subsequently, the Challenge Contractor will discuss with the Ministry whether an alternative person may be appointed instead and the Ministry will endeavour, within reason, to comply with that request.

2. The Challenge Contractor board appoints Professor Emily Parker to sit as its initial observer on the Governance Group. Any changes to the Challenge Contractor observer will be notified to the Parties in accordance with clause 29(a) concerning notices.

3. The Challenge Parties may appoint two observers to represent the Collaborating Organisations.

4. The Challenge Contractor will ensure that all observers receive the same information in respect of board meetings as all Governance Group members, including the right to receive copies of all minutes, and that they are given notice of all Governance Group meetings in the same manner as Governance Group members.

5. The failure to give notice of a meeting to observers or an irregularity in the notice is waived if the observers attend the meeting and agree to waive that failure or irregularity.

6. Observers will have the right to attend all meetings of the Governance Group, whether those meetings are held in person or by teleconference, or by some other approved manner.

7. Observers will have all the right to speak at all meetings of the Governance Group, and to proffer their opinions on matters before the Governance Group, but will not have voting rights on any decision. Any opinions provided by an observer will not be interpreted by the Governance Group as representing the position of the organisations they represent unless expressly stated as such.

8. Observers are not intended to, nor will be deemed to, influence any decisions of the Governance Group.

9. The Chair of the Governance Group may exclude observers for a limited, or defined, time to allow a confidential or free and frank discussion to take place provided that any decisions taken as a result of that confidential discussion are made in the presence of the observers.

10. Within the constraints of any applicable law, observers may share information received in their capacity as such with the organisations they represent but will, at all times, respect the confidentiality, if any, of such information. Any information provided to observers under this terms of reference will not be deemed to have been provided to the organisations the observers represent.

SCHEDULE 5 – Conflicts of Interest Policy

1. All Parties, the Director and the Governance and Management Groups must take the issue of conflict of interest very seriously and follow a rigorous process to maintain the credibility of investment and other decisions and to assure all stakeholders that their proposals or other matters are given fair and reasonable consideration.

2. In order to make best use of the expertise of all Parties in supporting the Challenge, the Governance Group, Director and Management Group and any other staff member involved in making decisions that may affect any Party, including but not limited to assessing proposals for Project Funding and any other funding or investment decisions. For example, when a funding proposal is submitted by one of the Parties, staff from that Party may assist in the assessment of proposals and investment decision where they have no *direct* interest and limited *indirect* interest in the proposal and these details are minuted.

3. Conflicts of interest may occur, and should be handled, as outlined in paragraphs 4-6.

4. Direct Conflicts of Interest:
   (a) This occurs where a person in a position to influence the funding outcome is directly involved with the proposal (as a participant, manager, mentor, or partner) or has a close personal relationship with the applicants e.g. family or close friend. It also occurs when this person is a collaborator, or is in some way involved with the applicant's research programme.

   (b) In these cases, the person must declare the conflict of interest, take no part in the assessment of the proposal or decisions around funding, and leave the room while the discussion takes place.

5. Indirect Conflicts of Interest:
   (a) This can occur where a person in a position to influence the funding outcome is employed by an organisation involved in the proposal but is not part of the applicant's research programme. An indirect conflict can also occur where a member of a panel considering the proposal has a personal and/or professional relationship with one of the applicants, e.g. an acquaintance.

   (b) For indirect conflicts, the person must declare the conflict of interest and, at the discretion of the Chair (or equivalent senior member of the Governance Group who is present) who will consult with other members of the Challenge or Governance Group who are present, either:
      i. leave the room;
      ii. stay but remain silent unless asked to respond to a direct question; or
      iii. contribute to the assessment of the proposal.

6. Involvement in a competing proposal or business activity:
   (a) Such conflicts of interest occur where a person has an involvement (direct or indirect) with a proposal that is in direct competition with a proposal being considered by a panel or where the outcomes proposed by a proposal under discussion may compete with a person's personal business interests. In such cases, the panel member must declare the conflict of interest and, at the discretion of the Chair (or equivalent senior member of the Governance Group present) who will consult with other members of the Challenge or Governance Group present, either:

i. leave the room;

ii. stay but remain silent unless asked to respond to a direct question; or

iii. contribute to the assessment of the proposal.

7. Involvement in strategy development:

(a) Members of the Governance Group and Management Group of the Challenge are likely to be involved in determining the strategic direction and priorities of the Challenge which may be perceived as affecting the future participation of different Parties. It is not intended to exclude these members from these processes and their input is expected to ensure the perspective of all Parties to the Challenge is included in strategy and priority setting. In these situations the conflicts of members representing Parties should be noted. In addition:

i. in the case of the Management Group, the Director will monitor discussions and raise any concerns over the degree of representation occurring and ultimately moderate any perceived bias in developing recommendations to the Governance Group;

ii. in the case of the Governance Group, the Chair will monitor discussions and raise any concerns over the degree of representation occurring. If the Chair believes the Governance Group is unable to moderate any representation bias, in the interests of the Challenge, he or she may take the matter under discussion into an *ad hoc* sub-committee of the Governance Group comprised of not less than three independent or uninterested members to make final decisions and such decisions will be the decisions of the full Governance Group.

(b) All conflicts of interest no matter how significant must be declared and recorded. If any individual feels they have a conflict with a proposal, or other decision that they have been asked to consider, they should contact either the Governance Group Chair or Director immediately to declare the conflict and seek advice on what action is required.

8. When the Chair has any conflict of interest, another member of the Governance Group must be appointed to take on the duties of chairing any meeting to consider any matter where this conflict of interest is relevant.

9. When the Director or any other person has a direct conflict of interest, such as may occur when his or her own research is being considered for funding by the Challenge, the Director or other person will be excluded and a process for independent assessment of any such proposals, broadly equivalent to how other proposals are assessed, will be determined by the Governance Group who will make any funding decisions on the same basis as for any other proposal.

NATIONAL SCIENCE CHALLENGES INVESTMENT CONTRACT ("NSCIC")

between

THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

and

LANDCARE RESEARCH NEW ZEALAND LIMITED

CONTENTS

1. DEFINITIONS 4
2. CONDITIONS 8
3. HOW WE CONTRACT WITH EACH OTHER 9
4. TERM 10
5. MINISTRY'S OBLIGATIONS 10
6. CHALLENGE CONTRACTOR'S OBLIGATIONS 11
7. GOVERNANCE OF THE CHALLENGE CONTRACTOR 18
8. COMPLIANCE WITH COLLABORATION AGREEMENT 20
9. CHANGE EVENTS 20
10. TERMINATION 23
11. CONFIDENTIALITY 25
12. DISPUTE RESOLUTION 26
13. WARRANTIES 27
14. INDEMNITY 27
15. VARIATION 27
16. NOTICES 27
17. NO EMPLOYMENT RELATIONSHIP 28
18. ENTIRE CONTRACT 28
19. FORCE MAJEURE 28
20. PARTIAL INVALIDITY 28
21. ASSIGNMENT 29
22. SURVIVAL OF CLAUSES 29
23. GOVERNING LAW 29

SCHEDULE 1 – CHALLENGE MEMBERS AND GOVERNANCE TERMS 31
SCHEDULE 2 – PRINCIPLES FOR OPERATION OF THE CHALLENGE 33

APPENDIX 1 – CHALLENGE PROGRAMME AGREEMENT 34
APPENDIX 2 – INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES 40

NATIONAL SCIENCE CHALLENGES INVESTMENT CONTRACT

Date: 9 October 2014

Parties:

Her Majesty the Queen in right of New Zealand, acting by and through the Ministry of Business, Innovation and Employment ("**Ministry**")

and Landcare Research New Zealand Limited (the "**Challenge Contractor**")

together referred to as the "**Parties**".

BACKGROUND

A. In August 2012, the Government agreed to the creation of the National Science Challenges (NSCs). The NSCs are a set of mission-led science investments that will help to address some of the most fundamental issues New Zealand faces for its future development. The process of identifying the NSCs involved significant public engagement and recommendations by an independent National Science Challenges Panel. The National Science Challenge funding is to fund research, science, or technology, or related activities that have the potential to:

- respond to the most important, national-scale issues and opportunities identified by science stakeholders and the New Zealand public
- promote collaboration across a number of research providers and involve a broad portfolio of multi-disciplinary research activity
- enable government to take a more long-term strategic approach to managing and coordinating mission-led science investments.

The NSCs will involve greater alignment and co-ordination of research to generate greater impact and value from the government's science investment.

B. Public outreach, communication, and education are important aspects of the NSCs. Public awareness as the NSCs proceed will help to increase understanding of how science contributes to New Zealand's well-being and will encourage a more scientific approach to tackling the challenges facing us. The NSCs will also help lift the profile of science and other disciplines among young people and may encourage them into science and technology based careers.

C. The Science Board is responsible for making funding decisions on proposals for allocation of funding for research, science, or technology, or related activities under the Research, Science, and Technology Act 2010. The Ministry is responsible for implementing the Science Board's

AM

decisions by overseeing the allocation of funding to entities whose funding proposals are approved by the Science Board.

D. The Initial Proposal has been submitted for National Science Challenge funding for research, science, or technology or related activities in the New Zealand's Biological Heritage Challenge *Ngā koiora tuku iho* Challenge on behalf of the Challenge Members.

E. The Initial Proposal has been approved by the Science Board subject to the terms of this Contract.

F. The Challenge Contractor may from time to time apply for Funding for other research, science, or technology work programmes in respect of or related to the Initial Proposal, or a Proposal (subsequent to the Initial Proposal) and in accordance with this Contract. The details of each research, science, or technology work programme for which Funding is allocated by the Science Board will be set out in a separate Challenge Programme Agreement.

G. The purpose of this Contract is to:

(a) set out the terms under which Funding is provided to the Challenge Contractor;

(b) set out the terms that will apply to each Challenge Programme Agreement;

(c) recognise that the Parties to this Contract have a mutual goal of achieving the delivery of the Challenge Programme Agreement(s), and enable both Parties to achieve that goal;

(d) deal with any change in the delivery of or risks to the delivery of a Challenge Programme; and

(e) ensure that the Ministry can get information about the progress of each Challenge Programme from the Challenge Contractor.

1. DEFINITIONS

1.1 In this Contract and each Challenge Programme Agreement, the following definitions apply, unless the context otherwise requires:

Branding Guidelines means the guidelines as to branding of the NSCs and the Challenge and which have been issued by the Ministry, as may be varied from time to time.

Challenge means the New Zealand's Biological Heritage Challenge *Ngā koiora tuku iho* as described in the Gazette Notice dated 31 January 2014.

Challenge Members means those research providers and other entities listed in Schedule 1 who will be involved in delivering the Challenge Programmes .

Challenge Programme means a work programme of research, science, or technology or related activities which is to be described in a Challenge Programme Agreement(s).

Challenge Programme Agreement means an agreement entered into by the Parties in respect of a Challenge Programme in the form set out in Appendix 1 to this Contract.

Challenge Programme Conditions means contractual conditions that apply in respect of a Challenge Programme that are set out in the relevant Challenge Programme Agreement.

Challenge Programme Intellectual Property Rights means Intellectual Property Rights arising directly from the performance of a Challenge Programme.

Change Event has the meaning set out in clause 9.1.

Collaboration means the Challenge Members who will be involved in delivering the Challenge Programmes and who sign the Collaboration Agreement.

Collaboration Agreement means the agreement to be entered into between the Challenge Members containing the matters set out in Schedule 1 to this Contract as may be varied or amended from time to time in accordance with the terms of this Contract and that Collaboration Agreement.

Conditions means the conditions set out in clause 2 of this Contract.

Confidential Information means, in relation to a Party, all information concerning the organisation, administration, operation, business, customers, clients, finances, and methods (including any secret process or formula or other trade secret) of that Party, the content of this Contract and each Challenge Programme Agreement, and includes all information concerning each Challenge Programme.

Contract means this Contract, including its recitals and the Schedules and Appendices, as may be varied from time to time in accordance with clause 15.1.

Cost of Dissemination means the costs incurred by the Challenge Members in providing access to the Primary Results on an on-going and sustainable basis.

Director means the Director of the Challenge appointed under and in accordance with the Collaboration Agreement and includes the interim director of the Challenge, Professor Bruce Clarkson appointed by the Governance Group in advance of the signing of the Collaboration Agreement.

End Date means the end date of a Challenge Programme Agreement as specified in the Challenge Programme Agreement, or the date that a Challenge Programme Agreement is terminated (whichever is the earlier).

Frascati Definition of Research and Experimental Development means the Frascati Definition of Research and Experimental Development as set out in Frascati Manual 2002: Proposed Standard Practice for Surveys on Research and Experimental Development, published by the Organisation for

AM

Economic Co-operation and Development
(http://www.oecd.org/document/6/0,2340,en_2649_34451_33828550_1_1_1_1,00.html).

Funding means the amount of funding paid or to be paid in respect of a Challenge Programme as set out in the relevant Challenge Programme Agreement.

Funding Decision means the independent decisions made from time to time by the Science Board under the Research, Science, and Technology Act 2010.

Governance Group means the governance group which will have oversight of the Challenge and each Challenge Programme Agreement and, as at the date of this Contract comprises those people referred to in the Initial Proposal, as may be changed or supplemented from time to time in accordance with the Collaboration Agreement (or, in advance of the signing of the Collaboration Agreement, as may be changed or supplemented from time to time with the prior approval of the Ministry).

Independent Chair means Dr James Buwalda and any future independent chair of the Governance Group from time to time, appointed in accordance with the Collaboration Agreement.

Intellectual Property Management Plan means a plan specified in a Challenge Programme Agreement that sets out how the Challenge Contractor anticipates managing the Intellectual Property Rights generated by a Challenge Programme to maximise the benefit of that Challenge Programme for New Zealand.

Intellectual Property Policies and Principles means the policies and principles relating to the management of Challenge Programme Intellectual Property Rights that the Challenge Contractor must adopt pursuant to principle 2 of Appendix 2.

Intellectual Property Rights includes copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, circuit layouts, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, together with all right, interest, or licence in or to any of the foregoing.

Initial Proposal means PROP-38591 – NSC 2-LCR submitted by the Challenge Contractor on behalf of the Challenge Members to the Science Board and dated 28 April 2014.

Key Performance Indicators (KPIs) means the defined quantifiable measures used to assess how well the Challenge Contractor is performing in achieving the Challenge objective and outcomes.

Māori Science and Innovation means Māori science and innovation specified in a Challenge Programme Agreement.

Notice means a notice given in accordance with clause 16.

Overseas Party means:

(a) any individual or association of persons not ordinarily resident in New Zealand; or

(b) any incorporated body:

(i) not registered, or deemed to be registered, under Part 18 of the Companies Act 1993; or

(ii) that does not have a registered place of business in New Zealand; and

(iii) that is not carrying on a business in New Zealand.

Performance Management and Reporting Requirements means the requirements set out in clause 6.12.

Primary Results means the data and findings produced as part of a Challenge Programme and the available interpretations and explanations of such data and findings in a form that facilitates their uptake and application by the public, and includes any part of the data and findings but does not include primary data that is an input into creating the Primary Results.

Principles means the principles for the operation of the Challenge as set out in Schedule 2.

Proposal means the Initial Proposal and includes any further proposals (or research and business plans relating to the Challenge) submitted to the Ministry or Science Board as part of a Challenge Programme Agreement with the intent that this Contract and each Challenge Programme Agreement will apply to them.

Science Board means the Board established by the Minister of Science and Innovation under the Research, Science, and Technology Act 2010 to make decisions in respect of proposals for funding.

Special Ethical and Regulatory Requirements means special ethical and regulatory requirements specified in a Challenge Programme Agreement.

Start Date means the start date of a Challenge Programme Agreement as specified in the Challenge Programme Agreement.

Transaction means a formal agreement between the Challenge Contractor and an Overseas Party under which any Challenge Programme Intellectual Property Right is to be transferred for a defined term or permanently (by way of assignment, licence to use, or otherwise), but does not include:

(a) any proprietary information exchange agreement or confidentiality agreement made in anticipation of a formal agreement;

(b) any option or preliminary agreement which has not resulted in a final agreement;

AM

(c) any agreement relating solely to a common law right in the nature of know-how, trade secrets, biological material, or the like, except where a trade secret, or the like, is subject to statutory definition in the Overseas Party's jurisdiction; or

(d) any agreement made by a third party in New Zealand, to whom the Challenge Contractor or any Challenge Member has previously transferred a Challenge Programme Intellectual Property Right, with an Overseas Party.

Working Days means a day of the week other than:

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; or

(b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year, or 3 or 4 January if 1 or 2 January fall on a weekend day.

1.2 In this Contract and each Challenge Programme Agreement, unless the context requires otherwise:

(a) clause and other headings are for ease of reference only and are not to be deemed to form any part of the context, or to affect the interpretation, of the Contract or any Challenge Programme Agreement;

(b) references to Schedules and Appendices are to Schedules and Appendices to this Contract or the relevant Challenge Programme Agreement, as appropriate; and

(c) words importing the singular include the plural and vice versa, unless the context requires otherwise.

2. CONDITIONS

2.1 This Contract is subject to the following conditions:

(a) the Challenge Contractor and the other Challenge Members committing to work together to deliver the first Challenge Programme Agreement including agreeing the terms of a Collaboration Agreement incorporating the matters listed in Schedule 1 by the date listed in schedule 2 to the first Challenge Programme Agreement;

(b) in respect of Funding for a period subsequent to the period covered by the first Challenge Programme Agreement, that the Ministry is satisfied by 20 May 2015, following independent review of the revised research and business plans to be submitted in accordance with that first Challenge Programme Agreement, that those revised research and business plans adequately address feedback given to the Challenge Contractor by the Science Board.

Contract terminated if Conditions not satisfied

2.2 If the conditions set out in clause 2.1 are not satisfied on or before the dates specified in those clauses then this Contract shall be terminated and none of the Parties including any Challenge Member shall have any rights or obligations under it, except any rights or obligations which arise in relation to a prior breach of this Contract.

3. HOW WE CONTRACT WITH EACH OTHER

3.1 If the Science Board approves a Proposal submitted by the Challenge Contractor for Funding, and the Parties agree to enter into an agreement in respect of that Challenge Programme, the Parties must enter into a Challenge Programme Agreement in respect of that Challenge Programme.

3.2 A Challenge Programme Agreement must include a description of the detailed work programme, Funding payable, and any other details that relate to the Challenge Programme.

3.3 The terms set out in this Contract and in the relevant Challenge Programme Agreement, including the Challenge Programme Conditions and schedules, will apply in respect of that Challenge Programme.

3.4 Except to the extent that a Challenge Programme Agreement, including any Challenge Programme Conditions or schedules, expressly states otherwise by setting out the term or terms that the Parties wish to vary and setting out the variation to that term or those terms, if there is any conflict between the terms of this Contract, a Challenge Programme Agreement and the Collaboration Agreement, the order of precedence shall be::

(a) this Contract; and then

(b) the Challenge Programme Agreement; and then

(c) the Collaboration Agreement.

3.5 The Condition specified in clause 2.1(a) above is specified to ensure that the Ministry has certainty that the Challenge Members will be contractually bound to each other to work together to deliver the Challenge. The Challenge Contractor acknowledges, for itself and the other Challenge Members that although the Ministry will not be a party to the Collaboration Agreement, to the extent that it contains promises which confer, and are intended to confer, a benefit on the Ministry under section 4 of the Contracts Privity Act 1982, those promises may be enforced by the Ministry. The Challenge Contractor acknowledges that the Ministry will not implicitly endorse or agree with all the statements made in the Collaboration Agreement. Accordingly, the Challenge Contractor may not raise a clause of the Collaboration Agreement as a defence to a breach of, or non-performance by it or another Challenge Member of any clause of, this Contract or a Challenge Programme Agreement.

CM

4. TERM

4.1 This Contract commences on the date it is signed by the Parties, and stays in force until terminated in accordance with this Contract.

4.2 Each Challenge Programme Agreement starts on the Start Date and ends on the End Date or the date on which anything required to be done by either Party under the Challenge Programme Agreement is completed (whichever is the later), unless terminated earlier in accordance with this Contract.

4.3 Subject to the review referred to in clause 2.1 (b), if the Science Board or the Ministry approves a further Proposal submitted by the Challenge Contractor for additional NSC funding for research, science, or technology programmes or related activities, and the Parties agree to enter into an agreement in respect of that further Proposal, the Parties will enter into a new Challenge Programme Agreement.

5. MINISTRY'S OBLIGATIONS

Funding

5.1 In consideration of the Challenge Contractor carrying out a Challenge Programme and meeting its obligations under this Contract and the relevant Challenge Programme Agreement, the Ministry will provide the Funding to the Challenge Contractor subject to the terms and conditions of this Contract and the Challenge Programme Agreement.

5.2 The Ministry will provide Funding in accordance with the payment schedule set out in the relevant Challenge Programme Agreement.

5.3 The Funding is exclusive of GST, and the Challenge Contractor is responsible for all taxation liabilities, rates, and levies payable in relation to the Funding.

Prerequisite Conditions for Funding

5.4 Except to the extent (if any) otherwise agreed in writing by the Ministry, the Ministry shall not be obliged to make any scheduled payment under the payment schedule set out in the relevant Challenge Programme Agreement on any date, unless the Ministry is satisfied that:

(a) there has been no breach of this Contract by the Challenge Contractor, except any breach which the Ministry is satisfied has been remedied;

(b) there has been no material breach of the Collaboration Agreement (or, pending completion and execution of the Collaboration Agreement, breach of the matters to be addressed in it as referred to in Schedule 1), except any breach which the Ministry is satisfied has been remedied;

(c) the Challenge Contractor has achieved all relevant KPIs and reported them to the Ministry within the expected timeframe(s) (or timeframes varied in agreement with the Ministry); and

(d) there has been no change to the composition of the Collaboration (except as approved in writing by the Ministry under clauses 7 and 8).

5.5 If, in respect of any scheduled payment, the Ministry is not satisfied as to any matter set out in clause 5.4, the Ministry will give notice to the Challenge Contractor of that matter and may require the Challenge Contractor to remedy it or take such action as the Ministry considers appropriate in respect of it. Upon the Ministry being satisfied that the matter has been remedied or satisfied that that other action has been taken (as the case maybe), the Ministry will make payment of the amount of the scheduled payment. If the matter is not remedied or such other action is not taken (as the case may be) to the Ministry's satisfaction that matter will be deemed a Change Event and the provisions of clause 9 will apply to it.

No other funding required

5.6 The Ministry will not be liable to provide funding to, or for payment of any costs incurred, by the Challenge Contractor (or any Challenge Member) except to the extent expressly agreed in this Contract, a Challenge Programme Agreement or otherwise agreed in writing by the Ministry.

Intellectual Property Rights

5.7 The Ministry agrees that all Intellectual Property Rights arising from this Contract and any Challenge Programme Agreement are the property of the Challenge Contractor or the other Challenge Members as agreed between them in the Collaboration Agreement (or, in advance of the signing of that Collaboration Agreement, as may otherwise be agreed between them) and will make no claim to ownership of any Intellectual Property Rights arising from this Contract or any Challenge Programme Agreement but the Parties agree that those Intellectual Property Rights will be dealt with in accordance with the Intellectual Property Policies and Principles and other relevant provisions of this Contract including, for the avoidance of doubt, clause 6.21.

6. CHALLENGE CONTRACTOR'S OBLIGATIONS

Challenge Programmes

6.1 The Challenge Contractor will use its best endeavours to deliver each Challenge Programme in the manner set out in the relevant Challenge Programme Agreement.

6.2 The Challenge Contractor warrants that:

(a) all consents required (including, without limitation, statutory consents, appropriate ethics committee approvals, informed ethical consents (if a person is the subject of research),

Environmental Protection Authority approvals) to carry out each Challenge Programme have been, or will be, obtained. The Challenge Contractor will notify the Ministry immediately if any required consent is not able to be obtained, expires, is withdrawn, or otherwise lapses; and

(b) the Collaboration meets and will continue to meet the eligibility criteria set out in the notice *Criteria for Proposals for National Science Challenges Funding* that was published in the *New Zealand Gazette* on 31 January 2014.

6.3 The Challenge Contractor will comply with any Challenge Programme Conditions relating to a Challenge Programme.

Funding

6.4 Unless the Challenge Programme Agreement specifies otherwise, in respect of a Challenge Programme, the Challenge Contractor will use the Funding only:

(a) for Challenge Programme costs incurred between the Start Date and the End Date;

(b) to deliver the activities, outputs, outcomes and/or KPIs specified in the relevant Challenge Programme Agreement, which must be consistent with the Frascati Definition of Research and Experimental Development, and which include any activities that are reasonably ancillary to purposes that are consistent with the Frascati Definition of Research and Experimental Development;

(c) to meet the Performance Management and Reporting Requirements;

(d) to carry out activities that are reasonably necessary to deliver the Challenge Programme;

(e) to meet the Challenge Contractor's reasonable costs of providing access, information, and reports to the Ministry if the Ministry undertakes an audit as set out in clauses 6.10 and 6.11, or a review or evaluation as set out in clause 6.15; and

(f) to carry out any other activities directly relating to the Challenge Programme as agreed between the Parties.

6.5 The Challenge Contractor will acknowledge, as appropriate, provision of Funding by the Ministry.

6.6 The Challenge Contractor will ensure that:

(a) it enters into legally binding contracts with Challenge Members; sub-contractors and any other entity pursuant to the Proposal or the terms of any Challenge Programme Agreement and as required to fulfil the Challenge Programme Agreement(s) and that no such legally binding contracts will be inconsistent with this Contract; and

(b) the Funding is distributed in accordance with the Collaboration Agreement (or, in advance of the signing of that Collaboration Agreement, as may be agreed between the relevant Challenge Members) and the legally binding contracts required under clause 6.6(a) above

6.7 The Challenge Contractor will implement the contestable process where specified in the research plan referred to in the Initial Proposal or a Proposal to allocate a proportion of the Challenge funding to facilitate the introduction of new ideas and researchers into the Challenge and in accordance with procedures to be outlined in the Collaboration Agreement.

6.8 The Challenge Contractor will ensure that:-

(a) any direct cash and direct in-kind co-funding (if any) specified in a Challenge Programme Agreement is allocated to the relevant Challenge Programme;

(b) it (or a subsidiary of it or a Challenge Member) will enter into legally binding contracts with co-funders for the amounts approved in the Funding Decision;

(c) if a Challenge Programme Agreement is entered into to provide Funding for a period exceeding 6 months, then a payment schedule under a Challenge Programme Agreement (a "payment schedule") may be varied in accordance with the following provisions:

(i) one month (or such longer period as the Challenge Contractor might require to comply with the remaining provisions of this sub-clause) prior to each six-month anniversary (other than the last) of receiving the first payment under that Challenge Programme Agreement, the Challenge Contractor will assess its likely cash flow needs for the next 6 months.

(ii) In assessing those needs, the Challenge Contractor will take into account any funds sitting to the credit of the Challenge accounts and Funding to be received under and in accordance with the payment schedule.

(iii) The Challenge Contractor will provide the Ministry with a copy of that assessment, including relevant cash flow forecasts.

(iv) If that assessment shows that the Funding to be received by the Challenge Contractor under the payment schedule is materially less than or in excess of that expected to be required by the Challenge Contractor over the next 6 month period the Challenge Contractor and the Ministry agree to discuss whether or not that payment schedule should be varied.

(v) A variation may result in the Challenge Contractor not drawing down (either in whole or in part) Funding which it does not expect to need in some or all of the payment periods in the next 6 months or may result in the Ministry increasing the Funding to be paid to the Challenge Contractor for some or all any of the payment

periods in the next 6 months to assist the Challenge Contractor in meeting its contractual obligations in respect of the Challenge

(vi) In either case the Parties agree that an amendment to the payment schedule under a Challenge Programme Agreement may be made by agreement between them and is not intended to constitute a formal variation of that Challenge Programme Agreement, nor to result in a reduction or increase in the overall Funding under that Challenge Programme Agreement; and

(d) it provides the Ministry with a report at the end of any period covered by a Challenge Programme Agreement, and in respect of which period Funding was approved, detailing the amount of any Funding which has not been spent and disbursed (whether or not committed) by the Challenge Contractor (if any) by the end of that period. Upon receipt of such report the Ministry may decide, at its sole discretion, whether (on behalf of the Science Board) that unspent Funding is to be returned to the Ministry or whether it may be retained by the Challenge Contractor (and, if it so decides, the basis on which, and for what purposes, that Funding will be retained). In exercising its discretion, the Ministry will have regard to whether or not it has been committed by the Challenge Contractor via a legally executed subcontract and will be drawn down according to that subcontract or it is anticipated that further Challenge Programme Agreements will be entered into.

Record Keeping

6.9 For each Challenge Programme, the Challenge Contractor must maintain true and accurate records, including appropriate accounting records, of its, and the Collaboration's use of the Funding for at least 7 years after termination or expiry of the relevant Challenge Programme Agreement.

Audit

6.10 There are no scheduled audits planned in respect of this Contract or any Challenge Programme Agreement. However, the Ministry may appoint an independent auditor to audit all records relevant to this Contract or a Challenge Programme Agreement:

(a) if the Ministry has cause to believe that the Challenge Contractor or any Challenge Member is in breach of its obligations under this Contract or any Challenge Programme Agreement;

(b) as part of a random audit programme required by the Ministry in order to satisfy its obligations as a Government funder; or

(c) if directed to do so by the Minister responsible for the Vote (as defined in the Public Finance Act 1989) from which the Funding originates.

6.11 The Ministry will use its best endeavours to ensure that any audit carried out under clause 6.10 minimises:

(a) disruption to the Challenge Contractor; and

(b) overlap with any other audit and/or review that has been carried out in respect of the Challenge Contractor's use of funds.

Performance Management and Reporting Requirements

6.12 The Challenge Contractor will, in respect of the first Challenge Programme Agreement, meet the performance management and reporting requirements set out in that first Challenge Programme Agreement. Thereafter, the Challenge Contractor will meet the following Performance Management and Reporting Requirements in respect of each Challenge Programme Agreement to the reasonable satisfaction of the Ministry:

(a) provide an annual report by no later than 31 July each year that covers the delivery of the Challenge Programme between 1 July of the previous year (or the Start Date of the Challenge Programme, whichever is the later) and 30 June of the year in which the report is due, and includes:

(i) information about the status and progress towards delivering the programme of work required as specified in Schedule 2 to the Challenge Programme Agreement, including, as appropriate, reporting against KPIs with comments where there has been a significant departure from the projected figures or information contained in the Challenge Programme Agreement;

(ii) information to be shared publicly on the status of the Challenge Programme;

(iii) the status of the Challenge Programme ; and

(iv) any other matters specified in a Challenge Programme Agreement.

(b) if the End Date of the Challenge Programme Agreement is a day other than 30 June, provide a final report by no later than 1 month after that End Date that covers the delivery of the Challenge Programme for the partial year from the preceding 1 July to the End Date, and that describes any changes to the information set out in the previous annual report provided under paragraph (a);

(c) provide statistical information including basic profiling data as reasonably required;

(d) provide information that would enhance the Ministry's understanding of the research performance in the Challenge Programme as appropriate; and

(e) comply with any additional performance management and reporting requirements specified in the Challenge Programme Agreement.

6.13 The Challenge Contractor will provide by no later than 31 May each year an annual update that provides information about the research, science, or technology or related activities that it proposes to undertake within the upcoming 12-month period. The research, science or technology or related activities proposed must be consistent with those proposed in the Proposal approved by the Science Board.

6.14 The Challenge Contractor will provide additional reports or information reasonably required by the Ministry.

Reviews and Evaluations

6.15 For each Challenge Programme Agreement, the Challenge Contractor will:

(a) on reasonable Notice from the Ministry, provide reasonable access, information, and reports to the Ministry:

(i) during working hours for the term of the Challenge Programme Agreement, to allow the Ministry to review its investment in the Challenge Programme; and

(ii) for a period of up to 7 years after the Challenge Programme Agreement ends, to allow the Ministry to review or evaluate whether the outcomes for New Zealand described in the Challenge Programme Agreement have been delivered; and

(b) comply with any additional review or evaluation requirements specified in the Challenge Programme Agreement.

6.16 The Ministry may review the performance of the Challenge Contractor in respect of the Challenge Programme Agreement on 90 days' written notice to the Challenge Contractor. The Ministry will provide this information to the Science Board if it requests it when considering any further proposal submitted under clause 4.3.

6.17 The costs of the review panel will be borne by the Ministry but any costs of providing information for and participating in the review incurred by the Challenge Contractor and/or Collaboration will be paid for out of the Funding in accordance with clause 6.4(e).

Intellectual Property Rights

6.18 The Challenge Contractor must comply with Principles 1 – 3 of Appendix 2 in respect of each Challenge Programme, including by adopting Intellectual Property Policies and Principles as required by principle 2 of Appendix 2.

6.19 The Intellectual Property Policies and Principles must be published on the Challenge or Challenge Contractor's website or, where this is inappropriate, made available if requested by a

member of the public. However, the Challenge Contractor is not required to publish individual agreements relating to its Intellectual Property Rights on its website.

6.20 For each Challenge Programme, the Challenge Contractor will maintain the Intellectual Property Management Plan specified in the relevant Challenge Programme Agreement, and will manage any Challenge Programme Intellectual Property Rights arising from the Challenge Programme in accordance with that plan, in order to contribute towards delivering the Challenge Programme Agreement.

Making data available

6.21 Subject to clause 6.22, the Challenge Contractor will make the Primary Results of each Challenge Programme available at the Cost of Dissemination to the public and stakeholder groups, on request through appropriate means in order to contribute towards delivering the relevant Challenge Programme Agreement.

6.22 The Challenge Contractor is not required to make the Primary Results of a Challenge Programme available under clause 6.21 if the Challenge Contractor considers that:

(a) making the Primary Results available would prejudice the commercial position of the Challenge Contractor or any other Challenge Member;

(b) withholding the Primary Results is necessary to protect the privacy of a person;

(c) making the Primary Results available would breach an ethical standard;

(d) the request for the Primary Results is vexatious or frivolous;

(e) making the Primary Results available would prejudice the Challenge Programme;

(f) making the Primary Results available would be contrary to the Challenge Contractor's statutory or existing legal obligations; or

(g) making the Primary Results available would prejudice the filing of a valid patent application in New Zealand or overseas, or a similar application for intellectual property protection, or the commercial value of developed intellectual property.

Overseas transactions

6.23 If the Challenge Contractor concludes a Transaction with an Overseas Party that was an Overseas Party at the date of commencement of the Transaction, the Challenge Contractor will report to the Ministry in a manner to be reasonably agreed by the Challenge Contractor and the Ministry. If the Challenge Contractor is obligated under the terms of the Transaction not to reveal the identity of the Overseas Party, the Challenge Contractor will provide information on:

(a) the particular nature of the Challenge Programme Intellectual Property Right in the Transaction;

(b) the form of the Transaction;

(c) the territorial and/or application limits of the Transaction; and

(d) financial information and related material that indicates the Transaction's contribution to the Challenge Contractor's overseas earnings.

Branding

6.24 The Challenge Contractor will ensure that the Challenge is branded in accordance with the Branding Guidelines. The Challenge Contractor acknowledges that the Branding Guidelines may be amended or updated from time to time and the Ministry agrees that all such amendments or additions will be notified to the Challenge Contractor. The Challenge Contractor will not be liable for non-compliance with amended or revised Branding Guidelines to the extent that they have not been notified to it.

6.25 To the extent that the Challenge develops its own brand, or logo, or get up, use of that brand, logo or get up must be approved by the Ministry (acting reasonably) in advance of it being used.

7. GOVERNANCE OF THE CHALLENGE CONTRACTOR

Governance Structure

7.1 The Challenge Contractor will take all steps open to it to ensure that its governance arrangement including its governing structure, pending signing of the Collaboration Agreement reflects the description set out in the Initial Proposal with the intent that there will be a Governance Group with an Independent Chair and, after signing of the Collaboration Agreement, reflects the structure set out in that Collaboration Agreement. .

Challenge Contractor governance agreements

7.2 The Challenge Contractor will ensure that the Collaboration Agreement will contain the provisions referred to in Schedule 1 to this Contract, except to the extent approved in writing by the Ministry.

7.3 The Governance Group will provide strategic and governance oversight to the Director and for the Challenge. The Challenge Contractor will ensure that the Challenge Contractor, the Governance Group and the Director will act in the best interests of the Challenge and not in the interests of a particular Challenge Member and that no one Challenge Member unduly dominates the Challenge or, particularly in relation to research that they themselves will undertake, is advantaged or disadvantaged.

7.4 The Ministry may appoint an observer to the Governance Group. That observer will have all the rights to attend, at the Ministry's cost, and speak at all meetings of the Governance Group and will have all rights to receive the same information as all other members, but will not have voting rights on any decision. For the avoidance of doubt, it is confirmed that:

(a) the right to attend and speak at all meetings of the Governance Group does not preclude the Governance Group excluding that observer to allow a confidential or free and frank discussion take place, provided that any decisions taken as a result of that confidential discussion are made in the presence of that observer; and

(b) that observer may share information received in his or her capacity as such with the Ministry and that they will, at all times, but within the constraints of any applicable law, respect the confidentiality, if any, of such information. Any information provided to an observer shall not be deemed to have been provided to the Ministry.

7.5 The Challenge Contractor will notify the Ministry of any change (or anticipated change) in the composition of the Governance Group within seven days of that change or anticipated change being advised to the Independent Chair and/or the Challenge Contractor, whether that change or anticipated change arises because of the expiry of the term of the Governance Group member or because of his or her removal or resignation (and if removal, the reason for such).

Compliance with this Contract and prior Approval by the Governance Group

7.6 The Challenge Contractor will ensure that all members of the Governance Group are made aware of the terms of this Contract and, when signed, the Collaboration Agreement and that they will operate the Challenge in a manner consistent with this Contract, and the Principles, and will endeavour to avoid any breach of this Contract. Should inconsistencies in the operation of the Challenge occur or be likely to occur or should the Challenge Contractor believe that a breach has occurred or that a breach or potential breach might occur, it will immediately consult with and seek agreement of the Governance Group as to the action to be taken in respect of that inconsistency, breach, or potential breach. In consulting with the Governance Group, or as the Governance Group might direct, the Challenge Contractor will provide the Governance Group with all information concerning the operation of the Challenge as the Governance Group may reasonably require.

7.7 The Challenge Contractor will ensure that all contracts negotiated by it or other Challenge Members in respect of the Challenge will contain agreements by the other contracting parties as to compliance with relevant parts of this Contract including the:

(1) restrictions on use of the Funding in terms similar to those set out in clause 6.4;

(2) Intellectual Property Policies and Principles.

AM

8. COMPLIANCE WITH COLLABORATION AGREEMENT

8.1 The Parties acknowledge that, when completed as part of the first Challenge Programme Agreement, the Collaboration Agreement will be integral to the management of the Challenge Contractor and achievements of the Ministry's intentions in entering into this Contract. Once signed by all parties to it, the Challenge Contractor shall comply with the Collaboration Agreement at all times, and shall use its best endeavours to ensure each Challenge Member complies with the Collaboration Agreement.

8.2 The Challenge Contractor shall ensure that, once signed by the parties to it, the Collaboration Agreement is not materially amended or supplemented except to the extent (if any) approved by the Ministry in writing.

9. CHANGE EVENTS

9.1 In relation to a Challenge Programme Agreement, the following matters constitute a Change Event:

(a) any significant aspect of the Challenge Programme cannot be, or is unlikely to be, delivered by the dates specified in, or in the manner contemplated by, the Challenge Programme Agreement;

(b) the Ministry is not satisfied with the progress the Challenge Contractor has made in relation to the delivery of any significant aspect of the Challenge Programme;

(c) the Ministry is not satisfied with the annual update referred to in clause 6.13 setting out the intended research, science or technology or related activities for the upcoming year;

(d) there is a change in the involvement of a Challenge Member without the prior written approval of the Ministry;

(e) an amendment is made to the Collaboration Agreement without the prior approval of the Ministry or the Collaboration Agreement is terminated by the parties to it;

(f) the removal from the Governance Group of the Independent Chair or a change in the Director, in either case, without the prior consent of the Ministry;

(g) the Challenge Contractor materially fails to deliver any of the Key Performance Indicators set out in the Challenge Programme Agreement;

(h) co-funding set out in the Challenge Programme Agreement is materially reduced; or

(i) any matter that has not been remedied to the Ministry's satisfaction under clause 5.5.

9.2 If a Change Event occurs:

(a) the Party that is aware of the Change Event will give the other Party Notice of the Change Event as soon as reasonably practicable after becoming aware of the Change Event; and

(b) the Science Board, or any person acting under a delegation given by the Science Board, may suspend payment of all or part of the Funding for the Challenge Programme to the Challenge Contractor.

9.3 The Parties may, at any time after receipt of the Notice of a Change Event:

(a) agree that the circumstances giving rise to the Change Event no longer exist;

(b) agree to vary the relevant Challenge Programme Agreement if the variation does not materially alter the original Funding Decision; or

(c) agree that no further action is required in respect of the Change Event.

9.4 If the Parties reach agreement in accordance with clause 9.3:

(a) the Ministry will pay the Challenge Contractor the Funding suspended under clause 9.2(b) (if any), but only if the Science Board, or any person acting under a delegation given by the Science Board, determines that the Funding must be paid to the Challenge Contractor; and

(b) no further action will be required under this clause 9.

9.5 The Challenge Contractor must try to remedy the Change Event by no later than 3 months (or any other period agreed in writing by the Parties) after the date the Notice of the Change Event was given in accordance with clause 16 ("remedy date").

9.6 The Ministry may, at any time after the date the Notice of the Change Event was received, obtain an independent review of the Challenge Programme that considers the impact of the Change Event on the delivery of the Challenge Programme.

9.7 If the Change Event has not been remedied to the satisfaction of the Parties by the remedy date, the Ministry will refer the Change Event to the Science Board for its determination in accordance with clause 9.9, but only if the Ministry has obtained an independent review in accordance with clause 9.6. The Ministry will give the Challenge Contractor Notice of the referral.

9.8 If the Change Event is referred to the Science Board, the Ministry will provide to the Science Board:

(a) the results of the independent review of the Change Event referred to in clause 9.6;

AM

(b) any information, including recommendations, that the Ministry considers is relevant; and

(c) any information that the Challenge Contractor wants the Science Board to take into account when making its determination (subject to such information being received within the timeframes set by the Ministry).

9.9 The Parties agree that if the Science Board determines that:

(a) no further action is required in respect of the Change Event:

(i) the Ministry will pay the Challenge Contractor any Funding suspended under clause 9.2(b); and

(ii) no further action will be required under this clause 9;

(b) a Challenge Programme Agreement must be varied (which may include a change to the amount of Funding payable), subject to clause 9.10 the Parties will do anything necessary to give effect to that decision, including by entering into a variation of agreement;

(c) a Challenge Programme Agreement must be terminated; the Challenge Programme Agreement will terminate with effect from the date specified by the Science Board (which may provide for a disengagement period, if the Science Board considers that is appropriate).

9.10 If the Science Board determines that a Change Event must be resolved by varying the relevant Challenge Programme Agreement, and the Challenge Contractor does not wish to continue delivering the Challenge Programme, the Challenge Contractor may, at any time before the variation is executed by the Parties, terminate the Challenge Programme Agreement immediately by Notice to the Ministry.

9.11 If a Challenge Programme Agreement is terminated by the Science Board under clause 9.9(c) or by the Contractor under clause 9.10, the Ministry:

(a) is not required to pay any Funding suspended under clause 9.2(b) (if applicable), unless the Science Board determines that such Funding should be paid to the Challenge Contractor;

(b) may require the Challenge Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.

9.12 The Parties agree that:

(a) neither Party may raise a dispute under clause 12 (Dispute Resolution) if a Change Event is notified under clause 9.2;

(b) nothing in this clause 9 prevents the Ministry from terminating this Contract or a Challenge Programme Agreement (as the case may be) under clause 10; and

(c) the Ministry will provide details of any delegations given by the Science Board under section 11 of the Research, Science, and Technology Act 2010, in relation to clauses 9.2(b) and 9.4(a) of this Contract.

10. TERMINATION

10.1 The Ministry, with the approval of the Science Board, may suspend the payment of Funding or terminate this Contract immediately by Notice to the Challenge Contractor if the Challenge Contractor:

(a) commits or is likely to commit a material breach of the terms or conditions of this Contract that is not capable of being remedied;

(b) commits or is likely to commit a material breach of this Contract that is capable of being remedied, but fails to remedy the breach to the Ministry's satisfaction within any reasonable time specified by the Ministry in a Notice;

(c) or any Challenge Member, fraudulently misuses or misappropriates any Funding;

(d) or any Challenge Member, becomes insolvent (or is deemed or presumed to be so under any applicable law) is unable to pay its debts, or in the case of an individual or partnership, commits an act of bankruptcy;

(e) or any Challenge Member, makes an assignment for the benefit of, or makes any arrangement or composition with, its creditors;

(f) or any Challenge Member, has a receiver, liquidator, administrator, trustee, or manager (including the statutory manager) appointed in respect of all or any of its property;

(g) or any Challenge Member, passes any resolution, or proceedings are commenced, for amalgamation with any other company (except for the purposes of a reconstruction approved by the Ministry, for which approval may be withheld by the Ministry in its absolute discretion); or

(h) or any Challenge Member, terminates or amends the Collaboration Agreement or otherwise changes the governance arrangements without the prior approval of the Ministry.

10.2 If this Contract is terminated under clause 10.1, each Challenge Programme Agreement will terminate on the same day as this Contract terminates.

10.3 The Ministry, with the approval of the Science Board, may terminate a Challenge Programme Agreement immediately by Notice to the Challenge Contractor if:

(a) the government reduces, stops, or freezes funding to the Ministry for this NSC

(b) there is a policy change by the government which reduces or removes the Funding;

(c) the Collaboration Agreement is not in the form approved by the Ministry (except to the extent of any variations or amendments agreed in advance with the Ministry);

(d) the Challenge Contractor fraudulently misuses or misappropriates any Funding;

(e) the Challenge Contractor commits or is likely to commit a material breach of the Challenge Programme Agreement that is not capable of being remedied;

(f) the Challenge Contractor commits or is likely to commit a material breach of the Challenge Programme Agreement that is capable of being remedied, but fails to remedy the breach to the Ministry's satisfaction within any reasonable time specified by the Ministry in a Notice;

(g) the Challenge Contractor gives any information, representation, or statement to the Ministry about the Challenge Programme that is misleading or inaccurate in any material respect;

(h) a specified Challenge Member ceases to participate in the relevant Challenge Programme; or

(i) the Science Board is not satisfied with the outcome of a review carried out under clause 6.15 of this Contract.

10.4 If a Challenge Programme Agreement is terminated under clause 10.2 or 10.3, the Ministry may require the Challenge Contractor to return all Funding not spent and for which contractual liabilities have not yet been incurred as at the date of termination.

10.5 If this Contract is terminated under clause 10.1(c) or a Challenge Programme Agreement is terminated under clause 10.3(c), the Ministry may require the Challenge Contractor to return all Funding paid up to the date of termination under all Challenge Programme Agreements in force at the date of termination, together with interest on all sums due, which will be charged on a daily basis at a rate that is same as the credit and debit rate that is charged by Inland Revenue on each day on which interest is charged by the Ministry, from the date on which the Challenge Contractor was paid the money by the Ministry to the date the Challenge Contractor returns the money, or set off the amount against any payment to be made to the Challenge Contractor under any other contract, existing or future, with the Ministry.

10.6 If payment of Funding is suspended in accordance with clause 10.1 but the Contract is not terminated, the Ministry is not required to pay any Funding unless the Science Board determines that such Funding should be paid to the Challenge Contractor.

11. CONFIDENTIALITY

11.1 Except as required by law, and subject to clauses 11.2 to 11.6, each of the Parties will keep the Confidential Information of the other Party confidential and will not use, or allow the use of, the other Party's Confidential Information other than for the purpose for which it was disclosed.

11.2 The Challenge Contractor recognises that from time to time the Ministry may release the following information relating to this Contract and each Challenge Programme Agreement:

(a) the name of the Challenge Contractor;

(b) the names of Challenge Members and any other organisations involved in a Challenge Programme;

(c) the Contract ID;

(d) the title of the Challenge Programme;

(e) the public statement set out in the Challenge Programme Agreement;

(f) that the Challenge Programme is funded from the National Science Challenges programme;

(g) the total amount of Funding paid to a Challenge Member over the duration of each Challenge Programme Agreement;

(h) the relevant sector;

(i) the total amount of Funding paid to the Challenge Contractor in the current financial year and previous years;

(j) the total amount of Funding payable to the Challenge Contractor over the duration of each Challenge Programme Agreement;

(k) the year Funding was approved in respect of each Challenge Programme; and

(l) the period of time for which Funding will be provided in respect of each Challenge Programme.

11.3 Information arising from this Contract and each Challenge Programme Agreement, including reports provided by the Challenge Contractor to the Ministry, will remain confidential to the extent to which the Ministry is able to protect confidentiality in accordance with the Official Information Act 1982 or any other statutory or evidentiary requirement.

11.4 Subject to any legal requirements, the Ministry will give Notice to the Challenge Contractor if it receives a request for information other than the information listed in clause 11.2 concerning the Challenge Contractor.

11.5 The Ministry may release any information in an aggregated form that does not specifically identify the Challenge Contractor.

11.6 Nothing in this clause 11 prevents the Ministry from disclosing Confidential Information to:

(a) a Minister; or

(b) any of the Ministry's advisors (including relevant third parties) or any other government agency (including any Crown entity), provided that any person to whom Confidential Information is disclosed is bound by obligations no less onerous than those contained in this clause 11 prior to any disclosure.

12. DISPUTE RESOLUTION

12.1 Subject to clause 9.12, if any dispute arises between the Parties in relation to this Contract or a Challenge Programme Agreement, then a Party may give Notice to the other Party of the initiation of the dispute resolution process set out in this clause 12.

12.2 The Parties will attempt in good faith to settle the dispute amicably.

12.3 If the Parties cannot settle the dispute amicably within 10 Working Days of Notice being given, a Party may seek to have it mediated. If the Parties agree to attend mediation, they will agree upon a mediator or, failing agreement within 5 Working Days of the Notice regarding mediation, a mediator will be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.

12.4 If a Party refuses to attend mediation, either at all or within a reasonable time frame, or the Parties can not settle the dispute at mediation within 10 Working Days of the appointment of the mediator (or such further period agreed by the Parties), then a Party may, after giving Notice to the other Party, refer the dispute to the arbitration of a single arbitrator to be agreed upon by the Parties, or failing agreement within 5 Working Days of the Notice regarding arbitration, to be nominated, on the application of a Party, by the President of the New Zealand Law Society or his/her nominee.

12.5 The arbitration will be conducted with and subject to the provisions of the Arbitration Act 1996, excluding the Second Schedule to the Act.

12.6 The decision of the arbitrator will be final and conclusive as between the Parties.

12.7 The arbitration will be held in Wellington, New Zealand.

13. WARRANTIES

13.1 Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Contract and any future Challenge Programme Agreement which, when executed, will constitute binding obligations on it in accordance with the terms of this Contract or any Challenge Programme Agreement.

13.2 The Challenge Contractor warrants (on its behalf and on behalf of each of the Challenge Members) 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 Challenge Contract or any of the Challenge Members;

(b) all information provided by it to the Ministry in connection with this Contract or a Challenge Programme 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 the Ministry or the Science Board, which may, if disclosed, materially adversely affect the decision of the Science Board whether to provide the Funding.

14. INDEMNITY

14.1 The Challenge Contractor indemnifies the Ministry against any claim, liability, or expense (including, without limitation, legal fees, costs, and disbursements) ("loss") brought or threatened against, or incurred by the Ministry, arising directly or indirectly from a breach of this Contract or a Challenge Programme Agreement, negligence, or wilful misconduct by the Challenge Contractor, except to the extent that loss arises out of an act or omission by the Ministry.

15. VARIATION

15.1 No modification to or variation of this Contract or any Challenge Programme Agreement, will be effective and binding on the Parties unless made in writing and signed by the Parties.

16. NOTICES

16.1 Notices under this Contract and any Challenge Programme Agreement will be given by post or by email. Notices given by email will be followed by a hard copy sent by post. Notices will be deemed to have been given three days after dispatch.

16.2 In respect of the Ministry, Notices given by post will be sent to: The General Manager, Science Investment, Science, Skills and Innovation, Ministry of Business, Innovation and Employment, PO Box 5762, Wellington. Notices given by email will be sent to contact NSC@mbie.govt.nz.

16.3 In respect of the Challenge Contractor, Notices will be addressed to the contact person for the Challenge Programme specified in the relevant Challenge Programme Agreement.

17. NO EMPLOYMENT RELATIONSHIP

17.1 Neither this Contract nor any Challenge Programme Agreement creates a relationship between the Parties of employer and employee, principal and agent, partners, or joint venturers.

17.2 The Challenge Contractor will not lead any person to believe that remuneration for work or any other payment received by that person is met directly by the Ministry.

17.3 The relationship between the Parties is a relationship only for the supply of Funding on the terms set out in this Contract and one or more Challenge Programme Agreements.

18. ENTIRE CONTRACT

18.1 This Contract, and each Challenge Programme Agreement, represents the entire contract between the Parties and supersedes and extinguishes all prior agreements, discussions, and arrangements between the Parties that relate to the subject matter contained in each Challenge Programme Agreement.

19. FORCE MAJEURE

19.1 No Party will be liable for any delay or default due to natural calamities, acts or demands of government or any government agency, wars, riots, strikes, floods, accidents or any other unforeseen cause beyond its control and not due to that Party's or those Parties' fault or neglect.

19.2 If an event described in clause 19.1 occurs, in which resources employed in this Contract are required for public good purposes in relation to the event, the Ministry will negotiate a reasonable variation to the Contract to take account of the diversion of resources.

20. PARTIAL INVALIDITY

20.1 The illegality, invalidity, or unenforceability of a provision of this Contract or a Challenge Programme Agreement under any law, will not affect the legality, validity, or enforceability of any other provision of this Contract or a Challenge Programme Agreement (as the case may be).

20.2 If any clause of this Contract or a Challenge Programme Agreement is held to be unenforceable or in conflict with the law, the invalid or unenforceable clause will be replaced with a clause which, as far as possible, accomplishes the original purpose of the clause.

21. ASSIGNMENT

21.1 The Challenge Contractor may not assign, or otherwise transfer its rights and obligations under this Contract or any Challenge Programme Agreement to a third party, except with the prior written consent of the Ministry.

21.2 Any change affecting the control of the Challenge Contractor will be deemed a transfer and an assignment.

22. SURVIVAL OF CLAUSES

22.1 Termination of the Contract or a Challenge Programme Agreement for any reason will not affect the validity and enforceability of this clause and the confidentiality, reporting, termination, indemnity, dispute resolution, and governing law clauses of this Contract and each Challenge Programme Agreement.

23. GOVERNING LAW

23.1 The Contract and each Challenge Programme Agreement will be governed by and construed in accordance with the laws of New Zealand, and the Parties submit to the jurisdiction of the Courts of New Zealand.

Signed on behalf of Her Majesty the Queen in right of New Zealand by

[redacted]

Signature

Cherie Marshall
Manager
Grants & Investment Team

Name and position

Ministry of Business, Innovation and Employment

Witness's Signature [redacted]

Full Name Alison Mary Fordyce

Address PO Box 5152
Lambton Quay, Wellington, 6145

Occupation Public Servant

Signed on behalf of the Challenge Contractor, Landcare Research New Zealand Limited, by

[redacted]

Signature

Richard Gordon

Name and position

CEO.

Witness's Signature [redacted]

Full Name Graham Holland Allely

Address 31 Chichester St,
Christchurch, 8023.

Occupation Research Operations Co Ordinator.

SCHEDULE 1 – CHALLENGE MEMBERS AND GOVERNANCE TERMS

1. The Challenge Members are:

    1. Landcare Research New Zealand Limited
    2. The New Zealand Institute for Plant & Food Research Limited
    3. AgResearch Limited
    4. Institute of Environmental Science and Research Limited
    5. Institute of Geological and Nuclear Sciences Limited
    6. National Institute of Water and Atmospheric Research Limited
    7. New Zealand Forest Research Institute Limited
    8. University of Auckland
    9. Auckland University of Technology
    10. University of Canterbury
    11. Lincoln University
    12. Massey University
    13. University of Otago
    14. Victoria University of Wellington
    15. University of Waikato

2. Your Collaboration Agreement should reflect, as a minimum, the Heads of Agreement submitted with the Initial Proposal. It should be legally binding. Matters which should be addressed include such things as:

    - adherence to the Principles by the Challenge Members, the Governance Group, the Director and the management group
    - partnership principles
    - appointment of the Independent Chair (to be approved by the Ministry)
    - appointment of the Governance Group members (to be notified to the Ministry) and methodology for appointment of the Director and the management group

am

- operation of the Challenge including appointment, role, reporting and accountability for the Governance Group (this could include matters referred to in the terms of reference for the Governance Group attached as Appendix 3 to the Initial Proposal), the Director and the management group
- methodology for conflict resolution amongst the Challenge Members
- financial management of the Challenge including oversight by the Governance Group
- process for implementing a contestable process for refreshing the Challenge as referred to in clause 6.7 of this Contract
- intellectual property principles including ownership and management of IP, managing sub-contracts and Open Data requirements (this could include those matters attached as Appendix 7 to the Initial Proposal)
- agreement that the Ministry may appoint an observer to attend Governance Group meetings and the rights of that observer to receive notice of and attend , at the Ministry's cost, and speak at all meetings and to receive all relevant papers. Information received is to be kept confidential and is not to be deemed to have been provided to the Ministry. An observer will not to have voting rights.

SCHEDULE 2 – PRINCIPLES FOR OPERATION OF THE CHALLENGE

Principles to guide the operation of the challenge

- Act in the best interests of the research collaboration to achieve the Challenge objectives (mission and goals) and deliver on this Contract between the Ministry and the Challenge Contractor;
- Involve relevant research capability available nationally that can make a positive and significant contribution to the Challenge;
- Have clear research leadership and accountability;
- Endeavour to respect and meet reasonable needs and expectations of the Ministry and all Challenge Members, including valuing all contributions on merit;
- Create an environment where researchers can collaborate to respond to an important national-scale issue for New Zealand;
- As appropriate, use independent, expert scientific advisors and reviewers to ensure the Challenge delivers excellent quality research;
- Involve key sector and other stakeholders within the Challenge to ensure the research is focused on delivering impact;
- Embed Vision Mātauranga principles and concepts throughout the Challenge, recognising Māori world views, tikanga, mātauranga and language, as well as Māori research priorities and methodologies, through meaningful Māori involvement in governance and management of the Challenge;
- Implement governance, management and financial arrangements that are sound and enduring, including use of a standard operating/financial model based on full-cost funding of research;
- Use professional management to support the Director.

APPENDIX 1 – CHALLENGE PROGRAMME AGREEMENT

[The Challenge Programme Agreement (CPA) will be populated by the information in the Research Plan and the Business Plan, as applicable, included in the Proposal. It is expected that the CPA will cover the terms set out in this template but its final form will be determined by the Science Board as a term of funding.]

Parties

Her Majesty the Queen in right of New Zealand, acting by and through the Ministry of Business, Innovation and Employment ("**Ministry**")

and

[*insert Challenge contractor name*] (the "**Challenge Contractor**")

together referred to as the "**Parties**".

Background

1. The Parties have entered into a National Science Challenge Investment Contract ("the Contract") that sets out the terms that apply when the Science Board approves a proposal for funding submitted by the Challenge Contractor for a research, science, or technology or related activity Challenge Programme.

2. The Science Board has approved such a proposal, and the Parties wish to enter into an agreement under which funding will be provided to the Challenge Contractor to carry out the Challenge Programme.

This Challenge Programme Agreement

3. The Parties agree:

   (a) to enter into this Challenge Programme Agreement which is made up of Schedules 1 to 4 inclusive, which sets out the details of the Challenge Programme to be carried out by the Challenge Contractor *(and the Collaboration – [amend to reflect the approved contracting structure)*, and the Funding to be provided by the Ministry; and

   (b) that the terms of the Contract will apply to this Challenge Programme Agreement.

Signed on behalf of Her Majesty the Queen in right of New Zealand by

Signature

Name and position

Ministry of Business, Innovation and Employment

Witness's Signature

Full Name

Address

Occupation

Signed on behalf of the Challenge Contractor by

Signature

Name and position

Witness's Signature

Full Name

Address

Occupation

SCHEDULE 1 TO APPENDIX 1
SUMMARY

Contract ID:	
Challenge Programme title:	
Proposal reference:	
Contract reference:	
Total Funding year one (GST exclusive):	
Total Funding year one (plus GST, if GST is payable):	
Total Funding (GST exclusive):	
Total Funding (plus GST, if GST is payable):	
Number of years of funding:	
Challenge Contractor:	
Contact person:	
Contact email:	
Contact phone:	
Special flags:	
Payment schedule:	
Start Date:	
End Date:	
Approval date:	
Approval reference:	
Public statement:	

SCHEDULE 2 TO APPENDIX 1
DETAILED RESEARCH PLAN FOR YEARS 1 TO 5 (INCLUSIVE)

[Attach appropriate plans taken from Proposal – as approved by the Science Board]

SCHEDULE 3 TO APPENDIX 1
FINANCIAL INFORMATION

Summary of funding (GST exclusive)

	Year 1	Year 2	Year 3	Year 4	Year 5
Funding (GST exclusive)					

Summary of funding (GST inclusive)

	Year 1	Year 2	Year 3	Year 4	Year 5
Funding (GST inclusive)					

SCHEDULE 4 TO APPENDIX 1
INTELLECTUAL PROPERTY MANAGEMENT PLAN

APPENDIX 2 – INTELLECTUAL PROPERTY POLICIES AND PRINCIPLES

In the following principles, "should" indicates a non-obligatory best practice.

1. The Challenge Contractor must use its best endeavours to maximise the benefits to New Zealand of each Challenge Programme through its management of any Challenge Programme Intellectual Property Rights.

2. The Challenge Contractor must, before a Challenge Programme Agreement commences, have a set of Intellectual Property Policies and Principles in place in respect of that Challenge Programme which may not be inconsistent with these policies and principles.

3. The Intellectual Property Policies and Principles must:

   (i) determine the ownership and/or assignment, if any, of Challenge Programme Intellectual Property Rights and require employees, or grant holders using the Challenge Contractor for that purpose, to acknowledge the relevant ownership and rights associated with Challenge Programme Intellectual Property;

   (ii) ensure that researchers are advised of the potential value of Challenge Programme Intellectual Property Rights and of the options available to them to add value to those rights;

   (iii) ensure that researchers are advised of any actual or potential confidentiality issues relating to Challenge Programme Intellectual Property Rights;

   (iv) make clear and binding to the Challenge Contractor's staff the separate and mutual obligations of the staff and the Challenge Contractor in relation to Challenge Programme Intellectual Property Rights management and protection;

   (v) set out a review process to identify protectable and potentially valuable Challenge Programme Intellectual Property Rights and associated commercial activities and to prevent the infringement of existing protected Challenge Programme Intellectual Property Rights and associated commercial activities;

   (vi) provide guidance on the prompt disclosure and resolution of potential conflicts of interest concerning the generation, ownership, management and use of Challenge Programme Intellectual Property Rights, such as on:

      (a) staff members' financial interests in external firms that contract with the Challenge Contractor, particularly where these entail research contacts and the exchange of Intellectual Property Rights;

      (b) the nature and terms of institutional support for start-up companies and the equity holdings of the Challenge Contractor and its staff;

(vii) satisfy all legal and regulatory obligations with such amendments promptly incorporated as may be necessary to comply with all changes or additions to legal or regulatory obligations that may be made during the term of the relevant Challenge Programme Agreement; and

(viii) cover good scientific conduct, including sound record keeping and human and animal experimentation ethics.

4. The Intellectual Property Policies and Principles should ensure that cultural, Treaty of Waitangi, and Māori issues are properly taken into consideration.

5. The Challenge Contractor should give preferential access to competent New Zealand-based firms to develop the Challenge Programme Intellectual Property Rights. Where a Challenge Contractor believes that it is best to commercialise the Challenge Programme Intellectual Property Rights outside of New Zealand, the Challenge Contractor should seek to retain ongoing research, science, and technology in New Zealand and reinvest any net income derived from the commercialisation of the Challenge Programme Intellectual Property Rights in research, science, and technology in New Zealand.

6. The Challenge Contractor should, wherever possible:

(i) provide assistance to researchers in fulfilling Challenge Programme Intellectual Property Rights obligations and responsibilities;

(ii) encourage participation by researchers in any subsequent commercialisation process of any Challenge Programme Intellectual Property Rights; and

(iii) develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.

CHALLENGE PROGRAMME AGREEMENT

Parties

Her Majesty the Queen in right of New Zealand, acting by and through the Ministry of Business, Innovation and Employment ("**Ministry**")

and

Landcare Research New Zealand Limited (the "**Challenge Contractor**")

together referred to as the "**Parties**".

Background

1. The Parties have entered into a National Science Challenge Investment Contract ("the Contract") that sets out the terms that apply when the Science Board approves a proposal for funding submitted by the Challenge Contractor for a research, science, or technology or related activity Challenge Programme.

2. The Science Board has approved such a proposal, and the Parties wish to enter into an agreement under which funding will be provided to the Challenge Contractor to carry out the Challenge Programme.

This Challenge Programme Agreement

3. The Parties agree:

   (a) to enter into this Challenge Programme Agreement which is made up of Schedules 1 to 4 inclusive, which sets out the details of the Challenge Programme to be carried out by the Challenge Contractor and those Challenge Members who sign the Collaboration Agreement, and the Funding to be provided by the Ministry; and

   (b) that the terms of the Contract will apply to this Challenge Programme Agreement.

01

Signed on behalf of Her Majesty the Queen
in right of New Zealand by

[redacted]

Signature

Cherie Marshall
Manager
Grants & Investment Team

Name and position

Ministry of Business, Innovation and Employment

9/10/2014

Date

Witness's Signature [redacted]

Full Name Alison Mary Fordyce

Address PO Box 5152, Lambton Quay
Wellington 6145

Occupation Public Servant

[redacted]

Signed on behalf of the Challenge Contractor, Landcare Research New Zealand Limited, by

Signature

Richard Gordon
Chief Executive, Landcare Research

1 / 10 / 14

Date

Witness's Signature

Full Name Graham Holland Allely

Address 31 Chichester St,
Christchurch, 8023.

Occupation Research Operations CoOrdinator.

AY

SCHEDULE 1

SUMMARY

Contract ID:	C09X1415
Challenge Programme title:	New Zealand's Biological Heritage *Ngā koiora tuku iho*
Proposal reference:	PROP-38591-NSC2-LCR
Contract reference:	BioHeritage
Total Funding year one (GST exclusive):	$ 913,926
Total Funding year one (plus GST, if GST is payable):	$ 1,051,015
Total Funding (GST exclusive):	$ 913,926
Total Funding (plus GST, if GST is payable):	$ 1,051,015
Number of years of funding:	1
Challenge Contractor:	Landcare Research New Zealand Limited
Contact person:	Graham Allely
Contact email:	allelyg@landcareresearch.co.nz
Contact phone:	03 321 9635
Special flags:	
Payment schedule:	As per Schedule 3
Start Date:	4 August 2014
End Date:	30 September 2015
Approval date:	23 July 2014
Approval reference:	SB 14.07.23.2b

Public statement:	With our economy, lifestyle and sense of identity inseparably linked to our environment, New Zealanders are passionate about the protection of our biological heritage. Many of us have deep cultural or family connections to our land, rivers and lakes. Fundamental to NZ's economy and well-being are the services provided by production and natural ecosystems. Our global reputation is founded on our ability to sustain healthy ecosystems. Put simply, NZ's future relies on our biological heritage. Whether it's the devastating impact of predators such as possums and stoats on our native birds, the spread of deadly kauri dieback disease in our northern forests, or the crippling effect of the PSA kiwifruit vine disease, Kiwis have high expectations of our biosecurity and biodiversity managers. Recent events – such as the Queensland fruit fly incursions – and new national initiatives – such as Predator Free NZ – have heightened New Zealanders' awareness and readiness to act. Research has a key role in developing socially acceptable, effective solutions to address these national priorities. The NZ's Biological Heritage - Ngā Koiora Tuku Iho Science Challenge will increase the relevance, value and impact of biosecurity and biodiversity research through: • a new, integrated 'one ecosystem' research agenda; • deeper collaboration across research boundaries and disciplines • larger-scale research programmes focusing on 'mission-critical' research • stimulating and rewarding research excellence • more effective public engagement. The Challenge aims to: Reverse the decline of New Zealand's biological heritage, through a national partnership to deliver a step change in research innovation, globally leading technologies and community and sector action. This will be achieved through: • improved prediction, detection and eradication of invasive species; • new tools, technologies and approaches to manage chronic pests; • better ways to assess the health of our ecosystems and avoid 'tipping points' which pose risks • incorporating Māori worldviews and customary approaches • new approaches to restore our valued species and ecosystems • involving Māori, other stakeholders and the community in this important work. This Challenge will ensure that New Zealanders have the knowledge, tools and technologies to better protect our primary production-based economy, precious native flora and fauna, and unique environments for future generations.

Executive summary:	As New Zealanders, we value our unique biological heritage – the natural, production and urban environments in which we live, work and play. Our distinctive natural and rural landscapes underpin our national identity, and the services provided by healthy production and natural ecosystems are fundamental to our economy and well-being. Nothing threatens NZ's future more than biosecurity failure and biodiversity loss. Based on a broad consortium, we propose a Challenge research platform to deliver a step change in innovation, new technologies and tools, and community and sector action to reverse the decline of NZ's biological heritage. With direct and aligned investment in the Challenge likely to total $250m–$300m over 10 years, we expect much greater impact than previously. Significant economic and environmental benefits will result from reducing the impacts of invasive pests, diseases and weeds which cost NZ $1.28b each year. One incursion alone – kiwifruit Psa – cost around $300m. A small reduction in these production losses would more than offset the Crown's investment in this Challenge. Other benefits accrue from better managing our biological heritage. NZ exports face increased environmental regulation, and market access will depend on credible, science-based metrics that link management to ecosystem health. NZ must invest strategically if we are to achieve the BGA target of increasing exports to 40% of GDP and grow the Māori asset base, while maintaining environmental and cultural safeguards. Research has a critical role in developing socially acceptable, effective solutions to address these national priorities. This Challenge will increase the relevance, value and impact of biosecurity and biodiversity research through: • a 'national partnership' to better align resources and transfer knowledge and technology • a new, integrated 'one ecosystem' research agenda • deeper collaboration across research boundaries and disciplines • larger-scale research programmes focusing on 'mission-critical' research • stimulating and rewarding research excellence • integrating Māori worldviews and customary approaches • more effective public engagement. Key impacts include: • improved prediction, detection and eradication of invasive species; • new tools, technologies and approaches to manage chronic pests; • improved assessment of ecosystem health and 'tipping points' • new approaches to ustain natural capital through ecosystem resilience.

SCHEDULE 2

FIRST CHALLENGE PROGRAMME AGREEMENT DELIVERABLES

Clause 6.12 of the NSCIC will not apply for this first Challenge Programme Agreement.

1. The research and business plans contained in the Initial Proposal are to be refined to address feedback from Science Board. These refined plans, which will be based on the Initial Proposal, are to be submitted to the Ministry for review within 6 months of the date this Challenge Programme Agreement is signed by the last party to affix its signature.

2. A Collaboration Agreement, acceptable to the Ministry and signed by the Challenge Members, is to be submitted to the Ministry as soon as possible, and in any event within 6 months of the date this Challenge Programme Agreement is signed by the last party to affix its signature.

SCHEDULE 3

FINANCIAL INFORMATION

Summary of funding (GST exclusive)

	Year 1
Funding (GST exclusive)	**$ 913,926**
Funding (GST inclusive)	**$ 1,051,015**

Payment schedule

Day/Month	**Payment amount (excluding GST)**	**GST**	**Payment amount (including GST)**
2014			
On signing this Agreement	$ 228,481	$ 34,273	$ 262,754
1 November	$ 137,089	$ 20,563	$ 157,652
1 December	$ 137,089	$ 20,563	$ 157,652
2015			
1 January	$ 137,089	$ 20,563	$157,652
1 February	$ 137,089	$ 20,563	$157,652
1 March	$ 137,089	$ 20,564	$157,653

SCHEDULE 4

INTELLECTUAL PROPERTY MANAGEMENT PLAN

Note: Capitalised terms are defined in paragraph 26 of this IP Plan.

Intellectual Property Policies and Principles

1. Challenge Members involved in carrying out Projects under Challenge Programme Agreements will comply with the intellectual property policies and principles set out in Appendix 2 to the Contract, with necessary changes, and the additional intellectual property policies and principles at paragraphs 2 to 7 of this IP Plan.

2. Challenge Members will each acknowledge and agree that they have no right to the Background IP that any other Challenge Member brings to a Project, other than as expressly set out in this IP Plan.

3. Challenge Members will also each acknowledge that they have no right to mātauranga Māori (indigenous knowledge) that is kept and treated as proprietary by whanau, hapū and iwi, and will each agree that, where a Project seeks to make use of any such mātauranga Māori, the Challenge Members involved in that Project will consult with the relevant whanau, hapū and iwi to reach kotahitanga (consensus) on how that mātauranga Māori is to be used in the Project and as part of any potential Project IP or publication.

4. Challenge Members will each agree that where it is reasonable to believe that any information generated under a Project does not have future commercial application, and that it is to the benefit of New Zealand to do so, then they will take all reasonable steps to provide open access to that information to the public.

5. Challenge Members will agree that, subject to any kotahitanga that may have been otherwise reached as contemplated in paragraph 3, or as otherwise expressly agreed by the relevant Creating Parties, any Project IP shall be owned:

   (a) by the sole Creating Party, if the Project IP is not Jointly-Developed Project IP;

   (b) as set out in paragraphs 6 and 8, if the Project IP is Jointly-Developed Project IP.

6. Challenge Members will agree that Project IP shall be dealt with in the best interests of New Zealand.

7. Challenge Members will agree that the intellectual property policies and principles referred to in paragraphs 1 to 6 will be published on the Challenge website.

Joint Intellectual Property

8. The Creating Parties of Jointly-Developed Project IP shall regularly review that Jointly-Developed Project IP to determine if it has potential or actual future commercial application. Any Jointly-Developed Project IP which is reasonably believed by the Creating Parties to have no commercial application will be owned by the Creating Parties jointly, and shall be dealt with in accordance with paragraph 4, and all Creating Parties will have full rights of disposal and use as if they owned the Jointly-Developed Project IP individually.

9. Paragraphs 10 to 19 will only apply to any Jointly-Developed Project IP that has been identified as having a commercial application pursuant to paragraph 8.

10. All proprietary rights to Jointly-Developed Project IP shall vest or remain with the Managing Party, whether agreed before, during or after the development of the Jointly-Developed IP.

11. The Managing Party will agree to pay each other Creating Party such Royalties as are in proportion to that other Creating Party's Inventive Contribution towards the creation of that Jointly-Developed Project IP.

12. Each Creating Party will agree to do anything that the Managing Party reasonably requests (including signing any documents) in order for the Managing Party to obtain full ownership and, where possible, to become the registered owner of and to protect, the Jointly-Developed Project IP.

13. If the Creating Parties cannot agree on which of them should be the Managing Party, or on the proportions in which Royalties are to be paid to the other Creating Parties, then any Creating Party will be entitled to refer either of those two issues to be settled pursuant to paragraph 25.

14. Each Creating Party will agree not to transfer, assign, encumber, mortgage, pledge or otherwise alienate, or grant a licence or right in respect of, any or all of its rights in and to Jointly-Developed Project IP that they have developed prior to the identity of the Managing Party being agreed or determined pursuant to this IP Plan.

15. If commercialisation of any Jointly-Developed Project IP by the Managing Party will require access to any other Creating Party's Background IP, then, to the extent that the other Creating Party holds the legal rights to do so, they will negotiate with the Managing Party in good faith with the aim of reaching agreement on a licence to use the Background IP for that purpose on arms-length commercial terms and conditions.

16. If the Managing Party:

    (a) does not take reasonable steps to commercialise Jointly-Developed Project IP within 2 years of the Creating Parties agreeing on which of them will be the Managing Party (as contemplated under paragraph 10) or the determination thereof under paragraph 25; or

    (b) after commencement of commercialisation, fails for a continuous period of 1 year to use all reasonable endeavours to exploit the Jointly-Developed Project IP so as to maximise the Net Returns to the Creating Parties,

    then, upon request in writing by any other Creating Party, the Managing Party will assign or reassign, as the case may be, ownership of that Jointly-Developed Project IP to the Creating Party next best placed to commercialise that Jointly-Developed Project IP for the benefit of New Zealand and the mutual benefit of the Creating Parties, and that other Creating Party may then commercialise the Jointly-Developed Project IP on the same basis as set out in this IP Plan. The initial Managing Party will be entitled to a share of the Net Returns from any commercialisation of the Jointly-Developed Project IP at 75% of the rate at which the Challenge Members had agreed, or had had determined under paragraph 25, would go to the initial Managing Party, and the proportion due to the other Creating Parties shall increase pro rata.

17. The Managing Party shall not transfer, assign, encumber, mortgage, pledge or otherwise alienate any of its rights in and to the Jointly-Developed Project IP, nor enter into any contracts with any associate in relation to the Jointly-Developed Project IP, without the prior written consent of the

other Creating Parties, which consent shall not be unreasonably withheld or delayed. In any event, any such consent will be subject to those terms and conditions as are necessary to protect the other Creating Parties' rights under this IP Plan, including the granting of a security interest as contemplated under paragraph 19.

18. Paragraphs 9 to 17 will be subject to any agreement to the contrary reached by the Creating Parties for any Jointly-Developed Project IP.

Security Interest

19. The Managing Party will grant to each other Creating Party jointly a first ranking security interest over the Jointly-Developed Project IP to secure each Creating Party's right to receive a share of the Net Returns from the commercialisation of the Jointly-Developed Project IP and the right to receive the assignment or reassignment of Jointly-Developed Project IP as contemplated in paragraphs 12 and 16 respectively.

20. The Managing Party will undertake to execute any documents and authorisations, and depose to or swear any declaration or oath as may be necessary to effect the registration of the security interest set out in paragraph 19 under the Personal Property Securities Act 1999 in New Zealand and any similar rules or legislation in any other country in which IP rights are sought.

Publication

21. Except in respect of information that is released pursuant to paragraph 4, formal statements to the media, or publications or presentations relating to any Project IP to be released or published in any way, must in all cases be submitted to the Managing Party, and/or any sole Creating Parties, as the case may be, and cleared in writing by them before release or publication, such permission not to be unreasonably withheld or delayed.

22. If a Challenge Member produces any media release, publication or presentation relating to any Project IP, then they will acknowledge each other Challenge Member's contribution towards the Project as well as the moral rights in respect of any other Challenge Member's staff who have contributed towards that publication.

Reporting

23. Each Creating Party will report Project IP that it creates within a reasonably practicable timeframe to the Challenge Director, who will keep a log of Project IP for reporting purposes – subject to any such confidentiality restrictions as are reasonably prudent given the nature of the Project IP concerned and any likely avenues for the commercialisation thereof.

Challenge Members' Access to Project IP

24. Subject to any such confidentiality restrictions as are reasonably prudent given the nature of the Project IP concerned and any likely avenues for the commercialisation thereof, Project IP will be made available to all Challenge Members for the purposes of the Project and educational or related non-commercial activities (under an appropriate royalty free non-exclusive licence).

Dispute Resolution

25. If a dispute arises in respect of any matter under this IP Plan, then any affected Challenge Member will be entitled to refer the dispute to be settled pursuant to the disputes resolution

provisions of the Collaboration Agreement or, in advance of the signing of that Collaboration Agreement, the Heads of Agreement submitted with the Challenge proposal.

Definitions

26. In this IP Plan:

'Background IP' means any Intellectual Property that a Challenge Member makes available for use in the Programme.

'Challenge' means New Zealand's Biological Heritage Challenge *Ngā koiora tuku iho.*

'Challenge Members' means those research providers and other entities who are involved in delivering a Challenge Programme Agreement.

'Challenge Programme' means a work programme of research, science or technology or related activities which is described in a Challenge Programme Agreement.

'Challenge Programme Agreement' means an agreement entered into as a result of the Contract.

'Contract' means the contract entered into by the Ministry of Business, Innovation and Employment and Landcare Research New Zealand Limited.

'Creating Party' means each Challenge Member that makes an Inventive Contribution towards the creation of any Project IP.

'Inventive Contribution' means a contribution that would create an entitlement to a joint ownership share of the Intellectual Property concerned.

'IP Plan' means this Intellectual Property Management Plan.

'IP protection and commercialisation costs' means fees, costs and expenses (including patent attorney and legal fees, travel expenses and out of pocket expenses) incurred in managing the Project IP or obtaining of grants of patents or other forms of registered Intellectual Property protection and maintaining the same and including without limitation all costs and expenses incurred in making, prosecuting and registering patent applications and dealing with any opposition to any application for such registrations, any challenge to the validity of any such registrations, and any action taken in relation to infringement of Project IP.

'Jointly-Developed Project IP' means Project IP that is jointly-developed by two or more Challenge Members.

'Managing Party' means the Creating Party that all Creating Parties agree is best able to commercialise Jointly-Developed Project IP for the benefit of New Zealand and the mutual benefit of the Creating Parties.

'Net Returns' means the total consideration , in any form, including equity, receivable by the Managing Party from third parties based on exploiting the Project IP minus all IP protection and commercialisation costs incurred by the Managing Party, but excluding research funds received from third parties for further development of the Project IP.

'Project' means a research project carried out by any combination of Challenge Members as contemplated (or to be contemplated) in the Collaboration Agreement.

'Project IP' means any Intellectual Property that is created by Challenge Members, either solely or jointly, during the course of carrying out any Project.

'Royalties' means a share of the Net Returns from the commercialisation of Jointly-Developed Project IP.