

COLLABORATION AGREEMENT FOR THE
A BETTER START NATIONAL SCIENCE CHALLENGE
E TIPU E REA

between

THE UNIVERSITY OF AUCKLAND
and
THE UNIVERSITY OF OTAGO
and
AGRESEARCH LIMITED
and
THE UNIVERSITY OF CANTERBURY
and
MASSEY UNIVERSITY
and
WAIKATO UNIVERSITY
and
AUCKLAND UNIVERSITY OF TECHNOLOGY
and
VICTORIA UNIVERSITY OF WELLINGTON

Unique identifier: BeSTCA001

NOTE: This document has been agreed in principle by the Parties and will be executed following approval of the Challenge by the Science Board and agreement on the content by MBIE

AGREEMENT DATED

BACKGROUND

- A.** The Government has led development of a set 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 A Better Start - E Tipu e Rea National Science Challenge (**Challenge**) the objective of which is to improve the potential of young New Zealanders to have a healthy and successful life.
- B.** The Parties have complementary research expertise and related capabilities in the areas of:
- (i) Maternal health, pregnancy and early childhood, including preventing childhood obesity through early risk assessment and intervention;
 - (ii) Successful transition into healthy adulthood including to improve literacy in new school entrants and in poor performing adolescents.
 - (iii) Supporting healthy social and emotional development, enhancing emotional regulation and reducing problem behaviours including self-harm.
 - (iv) Understanding the context of health and wellbeing in New Zealand communities including Māori and Pacific people
 - (v) The opportunities and risks for young people living in a digital world.
- C.** The Parties wish to work together collaboratively to establish a nationally coordinated research Challenge for the improvement of young New Zealanders' potential (**Challenge**), and have worked together to develop and submit an investment proposal (**Proposal**) to the Ministry of Business, Innovation and Employment (the **Ministry**) in response to a Request for Proposals issued by the Ministry in January 2014 (**RFP**).
- D.** The University of Auckland submitted the Proposal to the Ministry on behalf of the Parties.
- E.** All Parties to this Agreement were co-signatories to (or otherwise endorsed) the Proposal.
- F.** The Science Board has approved funding to the Challenge to complete further research and business planning for the Challenge and establish the collaboration under this Collaboration Agreement. The University of Auckland has contracted with the Ministry on behalf of the Challenge, and the Ministry has entered into a NSC Investment Contract (and the first Challenge Programme Agreements) with the University of Auckland as the Challenge Contractor. Subsequent Challenge Programme Agreements will also be between the Ministry and the University of Auckland.
- G.** The NSC Investment Contract envisages the work programme being carried out in part by all of the Parties and with Other Parties.
- H.** This Agreement sets out the terms under which the Parties shall establish and operate the Challenge and perform the NSC Investment Contract and any related Challenge Programme Agreements.

AGREEMENT

1 Definitions applicable to this Agreement

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

Administration Funding means the funds allocated to the Challenge Contractor in approved annual budgets for administration, management and governance of the Challenge including any risk management costs as contemplated under clause ~~16.215.2~~(a).

Agreement means this Agreement, including its recitals and any schedules, appendices and annexures, as it may be varied or supplemented from time to time in writing signed by the Parties.

Annual Plan or Report means the annual plan or report the Challenge Contractor is required to provide to the Ministry as specified in the NSC Investment Contract.

Background IP means intellectual property that is acquired or developed by a party independently for use in the Research and/or Related Activities under this Agreement.

Benefit for New Zealand means achievement of or contribution to the mission (including objectives and aim) outlined in clause ~~2.03.0~~ within the scope and domain defined in clause 4.0 of this Agreement and the obligations under the NSC Investment Contract.

Board means the Board established under clause 11.5 with the duties and roles described under clause 12.1 of this Agreement. (Note for clarity : During the Commencement Phase this role was performed by the Establishment Oversight Group or Subgroup).

Business Day means a day, not including a Saturday or Sunday, on which all universities are open for business in New Zealand.

Central Discretionary Funding means the funds allocated centrally to support Challenge activities not covered by Administration Funding or Project Funding as contemplated under clause ~~16.216.2~~ (b).

Chair means the independent chair of the Board appointed in accordance with clause 11.5(a) and, where the context permits, includes any subsequent chair of the Board.

Challenge means the collaboration of the Parties, established by this Agreement to conduct the A Better Start / E Tipu E Rea National Science Challenge and to deliver the NSC Investment Contract.

Challenge Contractor means the Party executing the NSC Investment Contract with the Ministry and administering the Challenge on behalf of the Parties.

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

Challenge Member means a Party listed as such in the NSC Investment Contract .

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.

Collaborating Organisation means a Party other than the Challenge Contractor listed as a Challenge Member in the NSC Investment Contract.

Commencement Director and Co-Directors means the Director and Co-Directors appointed by the Parties for the Commencement Phase under clause [11.310-3](#).

Commencement Phase means the period from the date of signing of the first Challenge Programme Agreement until the earlier of:

1. the expiry of the 12 month anniversary of that date of signing; or
2. the date of approval or decline by the Science Board for funding of any Proposal submitted to the Science Board under and in accordance with that first Challenge Programme Agreement; or
3. the date of signing of the second Challenge Programme Agreement.

Director means the Director of the Challenge appointed under clause [11.211-2](#) and, where the context permits, includes the Commencement Director.

Directorate means the Director and the two Co-Directors.

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

Intellectual Property means industrial and intellectual property of any kind, whether or not in a material form, including but not limited to:

- a) copyrights (excluding those in academic articles), trade mark rights, design rights, all rights relating to confidential information, and patents (or equivalent in any jurisdiction), any right to apply for registration of any such intellectual property rights anywhere in the world, any right to claim priority under international convention for any such applications and all rights conferred by such industrial or intellectual property when registered or granted; and
- b) all rights to and in any processes, formulae, designs, reports, drawings, circuit layouts, specifications, software, blue prints, know-how, experiences, characteristics, inventions, discoveries, research data.

KPIs means the key performance indicators agreed with the Ministry in the NSC Investment Contract.

Managing Party means a Party who either owns Project IP on creation or is assigned Project IP by a Party or Parties under clause [17.217-2](#).

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

NSC Investment Contract means the contract between the Challenge Contractor and the Ministry which sets out the terms under which funding is provided for the Challenge and, except where the context requires otherwise, includes any Challenge Programme Agreement issued under it.

Operations Support Group means the Operations Manager and any other management or administration roles agreed by the Board, with responsibility for assisting the Director in operating and administering the Challenge during the Commencement Phase (and any equivalent roles established by the agreement of the Board beyond the Commencement Phase).

Other Party means any legal entity that is not a Party to this Agreement and may include but is not limited to private sector businesses, firms or sector organisations, other research organisations, other tertiary education institutions, public or government agencies.

Party means a party to this Agreement (namely The University of Auckland, The University of Otago, The University of Canterbury, Massey University, Waikato University, Auckland University of Technology, Victoria University of Wellington and AgResearch Limited) and **Parties** has a 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 ~~16.215.2~~(c) and 18.

Project Intellectual Property or **Project IP** means all Intellectual Property and proprietary information pertaining to material brought into existence or required to be brought into existence as part of or for the purposes of implementing the Research Plan, but does not include any Background IP.

Proposal means the proposal by the Parties for the Challenge submitted to the Ministry on 27 March 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. For the avoidance of doubt, in the case of the University of Auckland **Research and/or Related Activities** has the same meaning despite the absence of a Subcontract.

Research Plan means a Research Plan set out in the schedule to a Challenge Programme Agreement as varied or supplemented from time to time.

Science Advisory Panel means the body established under clause 11.13 of this Agreement.

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.

Science Leadership Team means the Director plus researchers approved by the Board from time to time.

Subcontract means an agreement between the Challenge Contractor and a Party or any Other Party pursuant to clause 18.

Term means the period commencing on the date of signing of this Agreement by the last Party to sign and after all Parties have signed to 31 June 2024 (the

Initial Period) plus any disengagement period under the NSC Investment Contract, plus any extension of the term agreed under clause [21.121.1](#).

1.2 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.

2.0 Principles

2.1 The Parties shall operate the Challenge in accordance with the general principles set out in Appendix 4 (Principles).

3.0 Mission (including Objectives and Aim)

3.1 The overarching objective of the Challenge is to predict, prevent and treat childhood vulnerability in obesity, poor literacy and behavioural problems through research excellence that will achieve healthy, well-adjusted and well-educated children and young people.

3.2 We aim to achieve our mission by taking both a life course and a “braided river” approach to integrate themes, research disciplines and both western and indigenous models of knowledge and practice as well as incorporating the use of digital technology into our proposed solutions.

3.3 The Parties agree that the aims of the Challenge are:

- To determine characteristics, associations and predictors of biological (manifest as obesity), social, psychological and educational vulnerability in children and adolescents that will inform policy, health and education intervention strategies to improve the potential for young New Zealanders to have a healthy and successful life.
- To develop effective research based interventions that will result in government and sector policy changes and will be implemented within the community.
To evaluate the effectiveness of intervention and the progress against agreed key Performance Indicators.

3.4 The Challenge should both respond to the expectations and requirements laid out in the RFP and address any conditions or issues set by the Science Board in response to a Proposal.

4.0 Scope and Domain

4.1 The Challenge is restricted in scope to research, science or technology or related activities as may be required to give effect to the obligations of the NSC Investment Contract as envisaged in the RFP and as may be permitted under the Research, Science, and Technology Act 2010.

4.2 It is not within the scope of the Challenge to establish an ongoing revenue generating business.

- 4.3 The Challenge is primarily focused in the domain of public health research, clinical service delivery, education research or research in the use of digital technology for improving outcomes for children and young people in target areas approved from time to time by the Board.

5.0 Establishment of Challenge

- 5.1 The Parties have agreed that the Challenge Contractor shall be the University of Auckland. The Challenge Contractor will establish the Challenge, in accordance with all of its relevant internal policies and procedures, as a business unit within its organisational structure.
- 5.2 The Parties agree to collaborate to implement the mission (including objectives and aim) of the Challenge outlined in clause 3.0 including fulfilling the obligations of the NSC Investment Contract and delivering the Challenge Programme Agreements.
- 5.3 This Collaboration Agreement is conditional upon (and shall be of no effect until) the NSC Investment Contract is signed between the Ministry and the Challenge Contractor.
- 5.4 Where any plans or duly approved documents (including the NSC Investment Contract) describe any measures or reporting requirements, the Parties agree to record and to provide such information to the Challenge Contractor as is needed to meet these requirements.
- 5.5 A Party will immediately notify the Challenge Contractor of any issues that may impact on the Party's ability to comply with its obligations under this Agreement or to contribute to the Research Plan.

6.0 Prior and Other Agreements

- 6.1 This Agreement replaces all prior agreements between the Parties in relation to the Challenge including the Heads of Agreement signed in April 2014.
- 6.2 The Challenge Contractor will provide the Parties with copies of the NSC Investment Contract and any amendments thereto as soon as reasonably practicable after execution.
- 6.3 The activities of the Challenge are established and governed by the NSC Investment Contract (including any Challenge Programme Agreements issued under that contract) and this Agreement. Implementation of specific Research and/or Related Activities will be enacted via the mechanisms:
- (a) The Challenge Contractor will enter into Subcontracts with the Collaborating Organisations to agree the Research and/or Related Activities that will be provided by them and the Project Funding that will be paid to them by the Challenge Contractor as envisaged under clause 18.
 - (b) The Challenge Contractor will enter into Subcontracts with Other Parties to agree any Research and/or Related Activities that will be provided by them and the Project Funding that will be paid to them by the Challenge Contractor as envisaged under clause 18.
- 6.4 The Parties acknowledge that it is a condition of the NSC Investment Contract existing as at the date of this Agreement that, unless funding for any period subsequent to the expiry of the Commencement Phase is declined, that NSC Investment Contract and this Agreement are to be reviewed at the end of the

Commencement Phase. Any required modifications to this Agreement will be undertaken in accordance with clause 26.

- 6.5 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) A Subcontract.

7.0 Nature of the Collaboration and Independence of Parties

- 7.1 The relationship between the Parties is that of a research challenge with all Parties working to a common purpose (the objective stated in clause 3.1) supported by a legal arrangement of a head contractor (the Challenge Contractor) and subcontractors (the Collaborating Organisations) all of whom acknowledge the mutual and specific obligations that flow from the NSC Investment Contract, the Proposal and this Agreement.
- 7.2 Nothing in this Agreement or in the relationship between the Parties shall be deemed or construed as creating a partnership, agency, joint venture or trust 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.

8.0 Challenge Contractor's Obligations

- 8.1 The Challenge Contractor shall:
- (a) establish the Challenge as a business unit within its organisational structure, and in accordance with its internal policies and procedures.
 - (b) provide a management office for the Challenge within its Liggins Institute at its Grafton Campus in Auckland.
 - (c) establish the Directorate and Board business processes and such other administrative matters as are contemplated by this Agreement,...
 - (d) ensure compliance with the NSC Investment Contract. and apply the Challenge Funding only in accordance with the NSC Investment Contract.
 - (e) establish separate accounts for the Challenge within its standard financial management system and apply standard financial management practices to the use and monitoring of the Challenge Funding.
 - (f) provide Project Funding subject to Subcontracts consistent with this Agreement, the NSC Investment Contract and by mutual agreement on the terms and conditions described in clause 18.

The Challenge Contractor is not required to establish a separate bank account for the Challenge Funding. The Challenge Contractor shall maintain Challenge Funding allocated to support Administration Funding and Central Funding in a separate project account from Project Funding allocated to Research and/or Related Activities to be undertaken by the Challenge Contractor, which shall be maintained in internal project accounts operated similarly to external subcontracts.

- 8.2 The Challenge Contractor will, where reasonably practicable, consult with the Board and other Parties prior to taking action to avoid or address any breach of the NSC Investment Contract.
- 8.3 The Challenge Contractor will provide the Board (either via the Director or directly if requested) with all information concerning the operation of the Challenge and the Research Plan as is reasonably required by the Board, including with respect to the Research and/or Related Activities of the Challenge Contractor.
- 8.4 The Challenge Contractor will not enter into any subsequent NSC Investment Contracts or variations to the NSC Investment Contract (including changes arising as a result of the review referred to in clause 6.4) without first copying the proposed changes to the Collaborating Organisations and obtaining the prior written approval of the Board. If a Collaborating Organisation does not endorse a proposed subsequent NSC Investment Contract or variation to the NSC Investment Contract, the Collaborating Organisation, the Collaborating Organisation may notify its objection to the Director for resolution under clause 20.

9.0 Obligations of Collaborating Organisations

- 9.1 The Collaborating Organisations shall 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 duly approved variations thereto.
- 9.2 Subcontracts negotiated between the Challenge Contractor and a Collaborating Organisation shall include any requirements on the use of Challenge Funding specified in the NSC Investment Contract and shall 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.
- 9.3 The Collaborating Organisations agree not to take any action at material variance 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 may be treated by the other Parties as a material breach of this Agreement.
- 9.4 The Parties shall use all reasonable endeavours to secure any co-funding specified in the NSC Investment Contract and relevant Subcontracts or internal projects.
- 9.5 The Collaborating Organisations 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 or this Agreement where the action involves them and conversely, the Challenge Contractor agrees to involve any Collaborating Organisation in defending any actions which could result in a financial or other liability against them. Where any Collaborating Organisations is unable to fully support the Challenge Contractor in such legal actions it will advise the limits or constraints on its support and provide what support it is free and able to do in good faith.
- 9.6 Where any Research Plans or duly approved documents (including the NSC Investment Contract) describe any measures or reporting requirements, the

Collaborating Organisations will record and provide such information to the Challenge Contractor as is needed to meet these requirements.

- 9.7 Each Collaborating Organisation will immediately notify the Challenge Contractor of any issues that may impact on the Collaborating Organisation's ability to comply with its obligations under this Agreement or to contribute to the Research Plan.

10 Warranties, Liabilities and Indemnities

10.1 Each Party warrants that it has the necessary authority to enter into and perform its obligations under this Agreement and that it will 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.

10.2 Each Collaborating Organisation acknowledges and agrees that if the Ministry invokes any indemnity in relation to the NSC Investment Contract against the Challenge Contractor, the Challenge Contractor may in its sole discretion rely on an identical indemnity against each of the Collaborating Organisations severally to the extent that claim, liability, or expense (including, without limitation, legal fees, costs and disbursements) ("loss") brought or threatened against, or incurred by the Ministry was directly or indirectly caused by, or contributed to, by any act or omission of that Collaborating Organisation or its employees, contractors or students in connection with this Agreement or the NSC Investment Contract.

10.3 A Collaborating Organisation's liability to indemnify the Challenge Contractor under clause 10.2 will be reduced proportionately to the extent that any act or omission involving fault of another Party or the Ministry contributed to the relevant liability, loss or damage, or loss or expense.

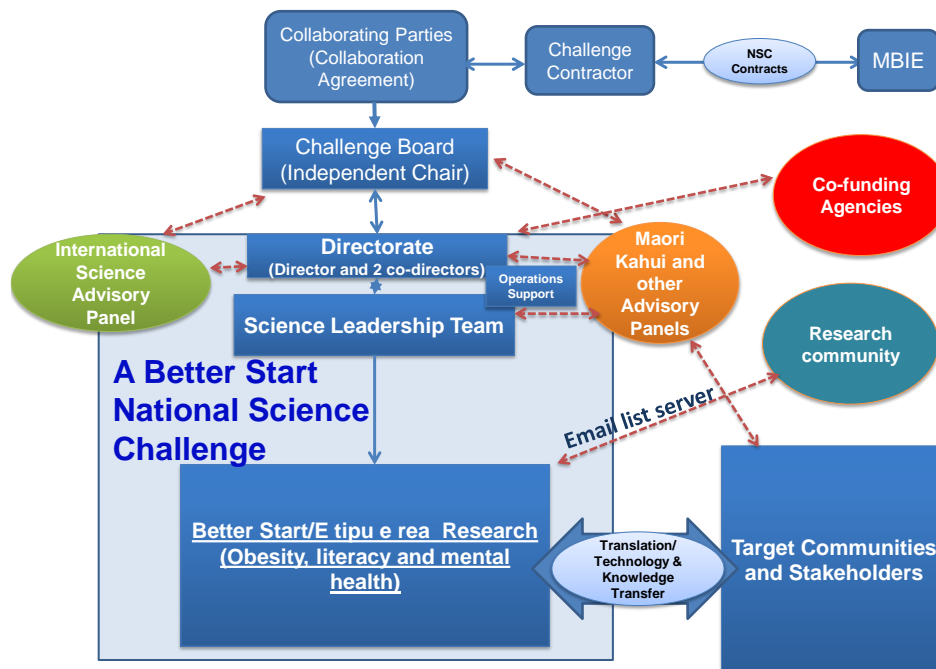
Except in the case of liability fraud or wilful default, no Party will be liable to another Party for any indirect, consequential or incidental loss or damage or loss of profit or loss of opportunity arising out of or in connection with this Agreement.

10.4 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 them and conversely, the Challenge Contractor agrees to involve any Party in defending any actions which could result in a financial or other liability against them. Where any Party is unable to fully support the Challenge Contractor in such legal actions it will advise the limits or constraints on its support and provide what support it is free and able to do in good faith.

11 Operation of the Challenge

11.1 The intent of the Parties is to operate the Challenge as a mission-led science investment initiative in keeping with the mission (including objectives and aim) of the Challenge outlined in clause 3.0 and the development of the National Science Challenges. The research priorities and their implementation shall be set by the Board on the recommendation of the Director in close and open consultation with a Directorate and Science Leadership Team with decisions made by consensus whenever possible. The Director and Science Leadership Team will report to the Board and have input from both an independent Science Advisory Panel and relevant stakeholders. The Director will be supported by professional management and administration provided by the Challenge Contractor. A diagrammatic model of

the overall Challenge structure is shown below while the following clauses define the various roles and responsibilities of the different components of the governance/management model which seek to balance the need to support the Directorate and Science Leadership Team with strategic, performance and risk management oversight on behalf of the Parties.



As this is a new initiative and research funding model with an intent to span a 10 year period to achieve clear agreed objectives the Parties agree it is prudent to review all elements of the operating model after 2 years from the beginning of the second Challenge Programme Agreement, including all roles and the initial appointees to those roles. For this reason any appointments to Challenge roles will be initially limited to the Commencement Phase and 2 years of any subsequent phase.

11.2 The Director of the Challenge shall be employed by the Challenge Contractor, and will be appointed in accordance with an appointment process determined by the Board and agreed to by all of the Parties. The Challenge Contractor agrees that it will instruct the Director to work to the instruction of the Board for those aspects of the Director's role which involve the Challenge. The Director shall have the following responsibilities:

- (a) Implement the relevant NSC Investment Contract on behalf of the Parties.
- (b) Meet all reporting, review and record keeping requirements of the NSC Investment Contract.
- (c) Report on all aspects of the management and research programme of the Challenge and of the NSC Investment Contract to the Board.
- (d) Coordinate, support and monitor management of the Subcontracts to the Parties and those internal projects funded from Challenge funds within the Challenge Contractor.

- (e) Approve and monitor expenditure against the approved budget within delegated authority.
- (f) Performance management of the overall programme of work to ensure the outcomes sought by the Ministry are achieved over the term of the NSC Investment Contract.
- (g) Prepare, for approval by the Board, any Annual Plans and budgets and any annual or other reports required under the NSC Investment Contract or any other documents as agreed by the Board.
- (h) Recommending to the Board, on behalf of the Science Leadership Team and/or Directorate, any decisions concerning allocation of Project Funding for Research and Related Activities under the NSC Investment Contract and this Agreement.
- (i) Recommending to the Board for approval any changes in Science Leadership Team members.
- (j) Provide overall leadership of the research programme including promoting its value to external stakeholders.
- (k) Overseeing the Operations Support Group including providing input into performance management of staff.
- (l) Meet regularly with the Directors of related National Science Challenges including Healthier Lives, Ageing Well and High-Value Nutrition to explore and action opportunities for synergies and mutually beneficial activities.

11.3 The Commencement Phase Director is Professor Wayne Cutfield. The Commencement Phase Co-Directors are Professor Gail Gillon and Professor Barry Taylor. These appointments will remain in place for two years from the beginning of any subsequent Challenge Programme Agreement unless determined otherwise by the Board. The appointment of any subsequent Director or co-Directors, and the terms of these appointments, shall be determined by following the appointment process agreed under clause [11.244.2](#). For the avoidance of doubt a Commencement Director or Co-Director will be eligible to be appointed as the Director following his or her initial term. The Director and co-Directors will report to their line manager who may seek input from the Parties and the Board in any performance and development processes used by the employing party.

11.4 The Director shall have a partial FTE to manage the Challenge and, subject to the same assessment/due diligence applied to all Challenge-funded projects, may actively lead an aspect of the Challenge research. The Director will be supported by an Operations Support Group either as detailed in the Proposal or subsequently agreed via the annual planning and budgeting processes. These appointments and related Administration Costs will be met from the Challenge Funding.

11.5 By no later than 1 July 2015, the Parties will establish a Board to govern the Challenge as outlined below in clause 12. The Board will operate for the term of any Challenge Programme Agreement following the Commencement Phase. The composition of the Board will reflect any conditions of the Science Board including the need to contain strong science, Māori and Pacific expertise and an independent chair. The Board will be skills-based to carry out its functions and responsibilities as outlined in clause 12 The initial Board will comprise the following members:

- a) An independent Chair acceptable to the Chair of the Science Board and to the Challenge Collaborators.
- b) A nominee of the Challenge Contractor.
- c) One nominee by agreement with all other Challenge Members with knowledge of the research organisation sector and research management and performance.
- d) Two appointees to ensure strong awareness of Māori and Pacific perspectives and approaches, including vision Mātauranga, relevant to the Challenge mission.
- e) Two further independent strategic appointments to strengthen the skills and capabilities of the Board relevant to the mission, scope and domain of the Challenge. These strategic appointments will be appointed for an initial term of two years, which may be renewed for further three year terms by the Chair.
- f) In finalising the Board composition, the Chair shall ensure appropriate gender, ethnicity and skills balance, with a particular focus on ensuring effective Māori engagement. Consideration will also be given to common or overlapping appointments with the other two related National Science Challenges – Ageing Well and Healthier Lives to minimise overall costs and facilitate synergistic alignment across these Challenges
- g) Apart from the nominee of the Challenge Contractor and Challenge Members, all Board appointees shall be made on the recommendation of the Chair and agreed by at least 75% of the Challenge Members.
- h) Unless otherwise stated, the Board members will be appointed for the term of the second Challenge Programme. Membership of the Board for any subsequent Challenge Programme Agreement terms will be agreed by the Challenge Members and follow a similar model and process as outlined here.
- i) The Ministry may appoint an observer to the Board, without any voting rights, to ensure good communication between the Board and the Ministry. However, the Ministry observer shall not be involved in decision-making or influencing decision-making in any way.

11.6 By unanimous agreement of the Parties, but with the prior approval of the Science Board in the case of the Chair and the prior approval of the Chair in the case of a strategic appointment under clause 11.5 (e), through their CEOs/VCS the Parties may remove and/or replace the Chair, the Māori or Pacific member appointed under clause 11.5(d) or a strategic appointment made under clause ~~11.5~~11.5(e). By written notice to the other Parties, a Party Nominee may be removed and/or replaced by the Party or Parties that appointed that Party Nominee.

11.7 The Director shall convene and chair the Directorate and the Science Leadership Team and, from time to time, additional advisors from across the Parties (and Other Parties if required to address any skills gaps) to support him or her in achieving the contractual goals of any Challenge Programme Agreement consistent with the mission and objectives. The initial Science Leadership Team members will be the Director and co-Directors plus researchers approved by the Board. Subsequent changes to the Science Leadership Team will be approved by the Board and may have a partial FTE to cover their time in supporting the Director. The Directorate (with input from the other Science Leadership Team members as appropriate will be responsible for:

- (a) Coordinating the work of the Challenge to ensure contract deliverables / research aims or objectives are met as planned.

- (b) Recommending, to the Board, changes in research priorities, activities and research funding or related activities required to deliver the NSC Investment Contract and the overall aims and impact expected by the Ministry including proposing contract variations.
- (c) Supporting any Annual Planning or Reporting processes required under the NSC Investment Contract.
- (d) Reviewing the research of the Challenge to ensure it is both of high quality and remains relevant to the mission (including objectives and aim) outlined in clause 3.0.
- (e) Identifying strategic opportunities for the Challenge.
- (f) Assessing and assisting identify commercial or translation or outreach opportunities.
- (g) Raising any issues of concern by any of the Parties (and, if possible, resolving them by mutual agreement).
- (h) Other matters that may be important for the successful functioning of the Challenge.

11.8 The Director shall chair the meetings of the Directorate and the Science Leadership Team and seek consensus decision making on all issues.

11.9 Where a consensus is not able to be achieved the Director may seek other advice and inform the Directorate or the Science Leadership Team of his/her proposed decision to ensure decisions are made in a timely way.

11.10 If the decision of the Director is not acceptable to any of the Directorate or Science Leadership Team members he/she may request a review of the decision by the Chair of the Board. The Chair may confirm the Director's decision or refer the matter to the Board for decision.

11.11 Direct travel and accommodation costs of attending Directorate and Science Leadership Team meetings called by the Director shall be met from Challenge Funds.

11.12 The Director will consult with the Co-Directors and Science Leadership Team on and recommend to the Board the composition and purpose of an independent Science Advisory Panel.

11.13 The Science Advisory Panel will be established by the Director in consultation with the Board and Science Leadership Team to provide the Board with independent advice on research strategy, quality and performance and to assist the Directorate and Science Leadership Team in ensuring the quality and appropriate priorities of the research undertaken by the Challenge. Any advice from the Science Advisory Panel made available to the Board will be accompanied by any responses and recommendations from the Science Leadership Team.

11.14 The other advisory groups or stakeholders may be used from time to time to ensure the perspective of the end users and relevant communities are included in Challenge research strategies and implementation. This may include a duly constituted Māori Kahui (or any other group) under a Terms of Reference agreed with the Board.

- 11.15 Meetings of the Directorate, Science Leadership Team, Science Advisory Panel or any other group established for this 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.
- 11.16 Oversight of the Director will be carried out by the Board in respect of delivery of the Challenge, and by the Challenge Contractor in respect of any employment or non-Challenge activities.

12 Roles of the Board

12.1 The Board will ensure the research is of a high standard and meets the expectations of the Ministry and the Science Board, and the requirements of the NSC Investment Contract. The Board will meet at least four times per year to coincide with quarterly monitoring of Challenge funds and the reporting and planning requirements of the Ministry. Other meetings may be held by agreement with the Chair as required. Roles and responsibilities of the Board include:

- (a) Advising the Parties on the appointment of, and providing feedback on, the performance of the Directors;
- (b) Providing strategic and business advice to the Directors;
- (c) Managing the risks of Directors and Science Leadership Team bias or conflicts by reviewing and approving plans, reports and budgets;
- (d) Supporting the Directors in raising the profile and reputation of the research and the Challenge;
- (e) Providing oversight on the implementation and delivery of the Challenge work programme, its performance and the achievement of the outcomes envisaged in the NSC Investment Contract;
- (f) Approval of Director recommendations about allocation of Challenge Funding and other funding based on merit and alignment with the NSC Investment Contract and mission;
- (g) Approving recommendations from the Director on membership of the Science Leadership Team;
- (h) Ensuring that the intent of this Agreement is upheld and no one Party is given an unfair advantage;
- (i) Acting in a way that does not cause the Challenge Contractor to be in breach of the NSC Investment Contract;
- (j) Ensuring any conflict of interest of any individual or Party is managed according to the Conflicts of Interest Policy in Appendix 1;
- (k) Meet regularly (at least annually during one of the Boards scheduled meetings) with the Science Leadership Team to build a shared vision and approach for the Challenge;
- (l) Hold at least one joint meeting annually (at the same time as one of the Board's scheduled meetings) with the Boards or equivalent governance groups of the Ageing Well and Healthier Lives National Science

Challenges to identify potential synergies and efficiencies across the three Challenges

- (m) Participate in reviews as required;

(Note: to ensure clarity the Board shall have no responsibilities typical of an owner including financial processing and administration of funds, health and safety, ethics, infrastructure, staff employment/HR/misconduct and individual performance management. These matters shall remain with the relevant Parties but the Board may refer matters to the CEO or VC of the relevant Party where such matters may have an impact upon the Challenge.)

- 12.2 A terms of reference for the Board, in the form of Appendix 2, shall be agreed by the Parties based on these proposed roles and be signed by the Chair and CEO or VC of each Party (or their delegate) and will act as the Board's guiding document. Any changes to the terms of reference shall be agreed with all Parties, such changes shall be approved by the Ministry, and executed by the Parties' CEO or VC (or their delegate) and the Board Chair. The terms of reference shall allow for the Board to delegate all or part of its responsibilities to either a subcommittee of the Board formed for a particular purpose or to the Director at its own discretion.
- 12.3 The Board shall meet annually (during one of their scheduled meetings) with representatives of the Challenge Members to discuss areas of mutual interest and address any issues of concern raised by Members. In addition to or in combination with this annual meeting the Board may establish a wider network of stakeholders that have an interest in the Challenge and meet with them in a formal annual meeting of stakeholders to present the progress of the Challenge, its plans for the period ahead and address any issues raised by stakeholders in the network relevant to the functioning and performance of the Challenge.
- 12.4 The Challenge Contractor, through the Director, shall support the Board processes consistent with the terms of reference and support the requirements of the Challenge in terms of timing.
- 12.5 Should the Challenge Contractor reasonably believe the Board may be about to take a decision that would place the Challenge Contractor in breach of the NSC Investment Contract the CEO or VC of the Challenge Contractor may, acting reasonably, veto the decision and negotiate an alternative decision with the Board or take other such action as is necessary to ensure the Challenge Contractor does not breach the NSC Investment Contract. Any such veto or unilateral action by the Challenge Contractor may be referred by the affected Party to the dispute resolution procedures, and in this case the dispute resolution procedures will commence at clause ~~20.320.3~~.
- 12.6 Where actions of the Board 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 Vice-Chancellor or CEO of the Challenge Contractor can take all actions necessary to remedy or remove the risk.

13 Independent Science Review

- 13.1 Prior to completion of the initial 2 years from commencement of the second Challenge Programme Agreement (if signed), the Board may require that the Director establish an independent science review of the research being undertaken within the programme and the research proposed to the end of the term of that second Challenge Programme Agreement to ensure it remains of high international quality. The review shall involve an Independent Science Review Panel of at least

three and no more than five researchers or experts of international standing in the domain covered by the Research Plan and may involve all or some members of the Science Advisory Panel. The form of the review is to be agreed with the Board, and the Ministry if required. Following the review the Panel may recommend modifications to the proposed work programme and bring any other matters to the attention of the Director and Board as they see fit.

13.2 The Directors and the Science Leadership Team shall consider the findings of the Independent Science Review Panel report and adjust the Research Plans accordingly or as they deem appropriate within the constraints of the NSC Investment Contract. Where this results in proposed changes in allocation of Project Funding to any Party the Director shall recommend such changes to the Board for approval.

13.3 The Independent Science Review Panel report shall be made available to the Board and all the Parties and the Ministry along with the Director and Science Leadership Team response and the final recommendations for any changes. The Board may consider the recommendations of the Independent Science Review Panel in making any decisions in relation to changes in Project Funding or other matters brought to its attention and will approve any changes subject to agreement to any contract variation with the Ministry.

13.4 Assuming subsequent Challenge Programme Agreements are entered into after the Commencement Phase, a further independent science review shall be established and be completed prior to the date for submission for the second five years of funding from July 2019. This will review both the progress over the life of the Challenge and the proposed research for the second five years' funding. The review process will be agreed by the Board and follow a similar process to that outlined above for the initial review.

14 Review of Board, Directors, Science Leadership Team, Advisory Boards and other support staff

14.1 Within 2 years of starting the second Challenge Programme Agreement period, the Board shall review the roles and function of the Directors, key support staff and Science Leadership Team. At the same time, the Board will also review the roles and functions of the Science Advisory Panel, any other advisory panels (e.g. the Māori Kahui), the Board and the overall structural model for the Challenge.

14.2 These reviews will result in confirmation of existing roles, responsibilities and appointees for the balance of the NSC Investment Contract Term or will recommend any changes it believes are needed to enhance the overall performance of the Challenge. Such recommendations will be addressed to the parties via the VCs or CEOs who shall collectively endorse or seek modifications to the recommendations. Any agreed changes will then be proposed to the Ministry to ensure compliance with the NSC Investment Contract and any Challenge Programme Agreements with the intent that any changes approved by the Ministry or the Science Board, as appropriate, will be reflected in this Agreement and those documents..

14.3 A similar review may be established by the Board prior to the end of the second Challenge Programme Agreement (if any) for the period to June 2019 with a view to recommending the structure, roles and key personnel to the Ministry for the second 5 year term.

15 Project Funding

- 15.1** All research funded by the Challenge will be explicitly approved by the Board on the recommendation of the Director (as Chair of the Science Leadership Team), subject at all times to the requirements of the NSC Investment Contract.
- 15.2** Access to Challenge Funding shall be open to all research capability in New Zealand relevant to the mission (including objectives and aim) of the Challenge as referred to in clause 3.0. 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 Director and Science Leadership Team and approved by the Board.
- 15.3** The initial research programme shall derive from the second Challenge Programme Agreement. No further funding application will be required for those research programmes and component research projects deriving from the resubmission of the Research Plan during the Commencement Phase and specifically identified in the subsequent Challenge Programme Agreement under the NSC Investment Contract. Subcontracts or internal projects will be established to implement the work programme outlined in the NSC Investment Contract as per clause 18.
- 15.4** The Research Plan and Project Funding (as specified in the second Challenge Programme Agreement (if any) of the NSC Investment Contract) will remain in place until after any Independent Science Reviews conducted under clause 13. Following any such reviews the Director will agree with the Board a suitable process for allocating Project Funding to achieve the revised Research Plan for the next period if required. The Directorate will recommend the research projects based on merit coupled with alignment to the mission and revised Research Plan. The Board will approve any new project funding subject to the Ministry agreeing to any contract variations required.
- 15.5** If provided for in a Challenge Programme Agreement, the Director, with the agreement of the Board, 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 direct contracting such research to suitably qualified researchers and research organisations and the Board 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 15.6.
- 15.6** The Board shall put aside up to 20% of the available Challenge research funding received from the Ministry which shall 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 Board shall work with the Director and Science Leadership Team to establish a robust contestable process, with the expectation a first call will be issued before the end of the first year of commencement of the second Challenge Programme Agreement, which is thus anticipated to be by mid 2016, and at appropriate intervals thereafter. The calls may be fully open within the overall constraints of the mission, objectives and scope of the Challenge as described in clauses ~~2.03-0~~ and 4.0 of this Agreement or may target specific aspects of the Challenge's research priorities at the Board's sole discretion. For the avoidance of 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 Appendix 1.

16 Financial Management

16.1 The Challenge Contractor shall administer all Challenge Funds 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 Funds will be subject to the standard auditing practices of the Challenge Contractor and any specific audit requirements agreed in the NSC Investment Contract.

16.2 Prior to each Financial Year the Director shall prepare, and submit to the Board for approval, a budget for that Financial Year for the use of Challenge Funds. The budget shall provide for:

(a) **Central Administration Funding, which shall include**

- (i) The Challenge administration and management costs including salary costs of any operational management, secretariat or other staff employed by Parties specifically to support the Challenge, any stipends paid to the Board Chair and other independent Board members, as well as general administration costs, travel, accommodation, event management, promotions and other agreed direct costs. Indirect costs of the Challenge administration and management will be included 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 outlined above or otherwise appointed or however overheads are applied by each Party).
- (ii) Note: while these costs are likely to be primarily incurred by the Challenge Contractor if such services are provided by any party and agreed by the standard budget process then the costs involved would be covered from this pool.

(b) **Central Discretionary Funding, which shall include:**

- (i) Salary and indirect costs for the Directorate
- (ii) Salary and indirect costs to enable the Science Leadership Team to support the management and leadership of the Challenge.
- (iii) Any other funds administered centrally by the Challenge for supporting activities not included in research projects such as equipment user-charges, student support, travel awards etc.

(c) **Project Funding, which shall 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) For the avoidance of 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).

- 16.3** The Challenge Contractor shall provide access to reports on expenditure against budget to the Director who shall report not less than quarterly to the Board at its scheduled quarterly meetings including identifying any variances against budget and providing sufficient explanations as the Board requires.
- 16.4** The Board may seek further detailed expenditure reports from the Challenge Contractor if required and the Challenge Contractor will provide such reports if it is able.
- 16.5** Allocation of Project Funding to Collaborating Organisations and Other Parties shall be via Subcontracts as outlined in clause 18. Payments under any Subcontracts shall be made on submission of an invoice according to standard practice in the sector.
- 16.6** The Parties agree that the Challenge Contractor shall not be obliged to make any payments in connection with this Agreement, the NSC Investment Contract and any Subcontracts unless there are sufficient Challenge Funds. The Challenge Contractor shall immediately advise the Parties of any circumstances that have or might give rise to such shortfall and the Challenge Contractor will take all available steps to rectify the shortfall without delay.
- 16.7** 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) then the Challenge Contractor shall not be obliged to make any payments to any Parties in relation to that Challenge Funding.
- 16.8** Unspent Project Funding shall 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 (including objectives and aim) of the Challenge outlined in clause 3.0.
- 16.9** In addition to Challenge Funding, the following other funds may be associated with the Challenge:
- (a) **Other Party Co-funding:** A Party may receive funding from Other Parties for work related to the objectives of the Challenge. This may be recognised as co-funding by the Challenge but the Challenge acknowledges it has no role in directing nor managing such funding. Parties receiving such co-funding will report on it to the Challenge Contractor via the contracting organisation in sufficient detail to allow the Challenge Contractor to fulfil its obligations to the Ministry under the NSC Investment Contract.
 - (b) **Mapped Ministry Contracts:** The Ministry has indicated one research contract it has with New Zealand research organisations which it has mapped to the Challenge. This contract is unaffected by being mapped and remains in place until its end date. The Challenge has no role in directing nor managing this mapped contract. The Challenge will engage with the research organisation who holds this mapped contract and seek their agreement to report the activities of the mapped contract 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 contract are likely to be relevant to the research activities of the Challenge.

17 Intellectual Property and Commercialisation

- 17.1** Project IP will be owned by the Party or Parties that creates it and according to any internal policies for its assignment, who will be responsible for decisions concerning protection, management and commercialisation of the Intellectual Property that arises.
- 17.2** Where Project IP is created by more than one of the Parties, the Parties who created it shall agree which of them shall be the Managing Party. The Managing Party will be responsible for decisions concerning protection, management and commercialisation of the Project IP. Generally, for the purposes of guidance, the Managing Party will be the Party which is best placed to create value from the Project IP and/or with any other parties involved in the project consistent with the mission and objectives. Benefits will be shared between the creating Parties in shares reflecting the relative input to the Project IP, including Background IP and know how provided, inventorship and costs of commercialisation and after recognising the relative risks of the different Parties (this may include the additional financial risks of the Managing Party).
- 17.3** Parties will report all Project IP to the Director, who will keep a register of reported Intellectual Property to support reporting to the Ministry.
- 17.4** It is acknowledged that where Project IP is developed in collaboration with co-funders / industry partners the regime set out in clauses [17.147.4](#) and [17.217confidentialITY.2](#) may not apply and it is expected that the Parties involved will enter into appropriate agreements with the co-funders / industry partners to:
- (a) ensure Project IP is developed in a manner that will advance the purposes of the Challenge; and
 - (b) agree commercialisation and revenue sharing arrangements.
- 17.5** Subject to clause 23, Project IP will be licensed non-exclusively and royalty free to all Parties for the purposes of Research and/or Related activities as well as educational activities.
- 17.6** The underlying purpose of the Challenge is to create Benefit for New Zealand. Each Party will observe the Intellectual Property Policies and Principles set out in Appendix 4 when making decisions about the management of any Project IP.
- 17.7** Progress on commercialisation or translation or implementation plans shall be reported annually to the Director, Science Leadership Team and the Board for the purposes of reporting outcomes to the Ministry. Such reporting shall be subject to ensuring protection of commercially sensitive or confidential information.
- 17.8** Post contract reporting to the Ministry by the Challenge Contractor may be required to allow the Ministry to review or evaluate the delivery of the outcomes of the Challenge. The Parties shall maintain, and provide to the Challenge Contractor on reasonable notice, sufficient information and reports to allow the Ministry to review the delivery of outcomes by the Challenge for a period of at least 7 years after the end of the Challenge, or such other period specified in any Subcontracts or the NSC Investment Contract.
- 17.9** Nothing in this Agreement shall change the ownership of any Background IP. Parties will grant a non-exclusive, royalty-free, non-transferable licence of relevant Background IP to each other, to the extent that they are able, unless there are reasonable grounds not to grant such a licence. Such licence shall be solely for

the purposes of the Research and/or Related Activities. Any commercial use of Background IP shall require the grant of a separate licence which shall be negotiated between the interested Parties.

18 Subcontracts

- 18.1** Subcontracts shall be issued by the Challenge Contractor to any Collaborating Organisation initially for the terms either specified in the Research Plan or subsequently approved by the Board.. Subcontracts will be consistent with this Agreement. Funding for research not defined in any Research Plan included in a Challenge Programme Agreement will be via a process determined by the Board and will include consideration of performance to date and any changes in priorities for the Challenge as recommended by the Director and will involve inputs from both the Board and any Independent Science Review Panel or the Science Advisory Panel of the quality of the proposed science and its alignment with the purpose and the Research Plan. Before the Challenge Contractor issues any Subcontract the terms of that Subcontract must be reviewed and approved by the Board.
- 18.2** The issuing of Subcontracts shall be via the standard policies and practices of the Challenge Contractor using a template based on the example in Appendix 3 or as subsequently agreed by the Board.
- 18.3** All Parties are free to decline any Subcontract offered under this Agreement and to 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 Board or use the dispute resolution provisions of this Agreement
- 18.4** Subcontracts may also be issued to Other Parties on an equivalent basis to those outlined here for Parties to this Agreement and subject to Board approval.

19 Publication

- 19.1** 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 including student thesis publication which may require time limited embargoes of confidential information) and any Other Parties (e.g. co-funders and end users) and following protection of any potentially commercialisable Intellectual Property 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.

20 Disputes

- 20.1** Any dispute, or potential dispute, between two or more Parties will be notified to the Director and genuine attempts made by the affected Parties, with the assistance of the Director, to resolve the dispute by mutual agreement.
- 20.2** If the Director is unable to resolve the dispute either Party may seek the involvement of the Board Chair who will work with the Parties to resolve it.
- 20.3** 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.
- 20.4** If the Parties are unable to resolve the dispute within 30 days of notifying the Director and having followed the above steps, any Party may refer the dispute to

mediation. The mediation procedure must be used by the Parties to resolve a dispute before commencing legal proceedings.

20.5 The mediation procedure shall be as follows:

- (a) The disputing Parties shall appoint a mediator. If they fail to agree a mediator within 10 Business Days from the date of one Party advising the other Parties in the dispute of the referral to mediation, the President of the Auckland District Law Society or nominee will appoint a mediator.
- (b) The disputing Parties shall cooperate with the mediator in an effort to resolve the dispute.
- (c) If the dispute is settled, the disputing Parties shall sign a copy of the terms of settlement which shall 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 shall cease.

20.6 If the disputing Parties are unable to resolve the dispute via mediation as outlined in the above clause then any disputing Party may refer the dispute to arbitration by Notice to the other(s). The arbitration will be conducted in accordance with the Arbitration Act 1996. The award in the arbitration will be final and binding.

21 Term or Agreement/Termination / Disengagement provisions / surviving clauses

21.1 This Agreement will remain in force for the Term unless and until amended prior to the expiry of the Term. The Agreement may be renewed for a further term by agreement in writing of all Parties wishing to renew the Agreement.

21.2 A Party may withdraw as a Party to this Agreement with six months' notice to all Parties.

21.3 The Challenge Contractor may terminate the participation of a Collaborating Organisation as a Party to this Agreement on 40 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.

21.4 The Challenge Contractor may terminate this Agreement in the event that the NSC Investment Contract is terminated, or the payment of Challenge Funding is suspended by the Ministry for more than two months.

21.5 In the event that a Collaborating Organisation withdraws or their participation is terminated or this Agreement is terminated under clause 21.3, 21.4 or 27.2 or not renewed under clause 21.1:

- (a) The Collaborating Organisation shall 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 shall comply with any disengagement plan agreed with the Ministry. The Challenge Contractor shall consult with and have due regard for the views of the Collaborating Organisations prior to agreeing any disengagement plan with the Ministry.

22 Access to records/keeping of records

22.1 The Collaborating Organisations agree to provide reasonable access and information to the Challenge Contractor, its authorised agents, or any auditors, reviewers or evaluators appointed under the NSC Investment Contract, as is reasonably 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. 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.

23 Confidentiality

23.1 **Confidential Information** means “any information of a confidential nature in respect of the business, property, employees, contractors, members, clients and agents of a Party (**Disclosing Party**), which is obtained by, disclosed to or otherwise made available to another Party (**Receiving Party**) in connection with this Agreement. Where the Challenge Contractor is the Disclosing Party, its Confidential Information includes such information of the other Parties. 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.”

23.2 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.

23.3 In respect of any information that would otherwise be Confidential Information, but where the Receiving Party has determined that the information is not Confidential Information by reason of the application of sub-clauses 23.1(a) – (f) above, subject to any legal requirements, before disclosing the information to any third party the Receiving Party must provide the Disclosing Party with 5 Business Days' written notice of the intended disclosure, including specifying the information intended to be disclosed and stating the reasons for the disclosure including why the Receiving Party considers the information not to be Confidential Information.

23.4 Subject to any legal requirements, where a Party receives a notice pursuant to clause ~~23.323-3~~ that Party may, by written notice and providing reasons, before the expiry of the notice period in clause ~~23.323-3~~, dispute that some or all of the information to be disclosed does not constitute Confidential Information. Upon receiving such a notice the Party intending to make disclosure must reconsider whether any or all of the information is Confidential Information and whether any disclosure of the information should be made. Where the Parties are unable to agree as to whether any information is Confidential Information the Parties shall, subject to any legal requirements, invoke the dispute provisions in clause ~~2019~~

23.5 This Clause 23 shall survive expiry of this Agreement.

24 Use of name or logo and branding

24.1 No Party may use the name or logo of another Party in relation to this Agreement in any publicity or endorsement, without the consent of the other Party.

24.2 The Parties intend that the Challenge shall establish a suitable brand based on the brand guidelines provided by the Ministry for use on all Challenge communications and agree that, subject to clause 24.1, each Party will be equally represented on such communications as a sub-brand.

24.3 The Parties will agree a suitable brand usage procedure for individual Parties wishing to use or make reference to the Challenge brand established under clause ~~24.223-2~~ consistent with the brand guidelines provided by the Ministry.

25 Notices

25.1 Any notice or other communication under this Agreement will be deemed to be validly given if in writing and delivered by hand, registered mail, national post or facsimile to the address of the Party to whom the notice is to be given, as denoted in Schedule 1, or as notified by that Party to the others.

25.2 Notices shall be deemed to have been delivered:

- i. on the third Business Day after posting in the case of notices sent by post,

- ii. if sent by facsimile, at the time of transmission specified in a transmission report by the machine from which the facsimile was sent in its entirety to the facsimile number of the recipient; or
- iii. on the date of delivery in the case of personal service or email, provided that any notice received after 5:00pm or on a day which is not a Business Day shall be deemed not to have been received until the next Business Day.

26 Modification or Addition of new Parties and Assignment

- 26.1 Any modification to this Agreement must be agreed by all Parties, approved by the Board, and recorded in writing signed by the authorised signatories of all Parties. 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.
- 26.2 A new party may be added to this Agreement by mutual agreement of all existing Parties and by agreement with the Ministry and recorded in writing signed by the authorised signatories of all existing Parties. Any new party to this Agreement shall agree to the terms of this Agreement.
- 26.3 No Party may assign its rights and obligations under this Agreement without the prior written consent of the other Parties and the approval of the Board. In agreeing to any assignment the Challenge Contractor may consult with the Ministry to ensure the assignment does not comprise a breach of the NSC Investment Contract.
- 26.4 No Collaborating Organisation may subcontract their rights and obligations under this Agreement without the prior written consent of the Challenge Contractor.

27 Force majeure

- 27.1 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. The affected party will resume activities as soon as practicable once the force majeure event has ended.
- 27.2 If an event referred to in this clause has the effect of preventing 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.

28 Counterparts

- 28.1 This Agreement may be executed in any number of counterparts (including a facsimile copy), each of which shall be deemed an original and all of which together shall constitute a single instrument.

29 Severability

- 29.1 If any provision of this Agreement is illegal, invalid or otherwise unenforceable, it shall be severed from this Agreement without affecting the remaining provisions, and the Parties shall 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.

30 Governing law and jurisdiction

30.1 This Agreement will be governed by and construed in accordance with New Zealand law and New Zealand courts will have exclusive jurisdiction.

31 No waiver

31.1 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.

32 Contracts Privity Act

32.1 To the extent that this Agreement contains promises which confer, and are intended to confer, a benefit on the Ministry, those promises may be enforced by the Ministry under section 4 of the Contracts Privity Act 1982.

Signed on behalf of the University of Auckland by:

Signature

Name

Title

Date

Signed on behalf of the University of Otago by:

Signature

Name

Title

Date

Signed on behalf of AgResearch Limited by:

Signature

Name

Title

Date

Signed on behalf of The University of Canterbury by:

Signature

Name

Title

Date

Signed on behalf of Massey University by:

Signature

Name

Title

Date

Signed on behalf of Waikato University by:

Signature

Name

Title

Date

Signed on behalf of Auckland University of Technology by:

Signature

Name

Title

Date

Signed on behalf of Victoria University of Wellington by:

Signature

Name

Title

Date

SCHEDULE – CONTACT DETAILS OF THE PARTIES

1.2. The contact person and contact details for each Party are:

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Tba
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Tba
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Appendix 1

CONFLICTS OF INTEREST POLICY AND PROCESS FOR THE CHALLENGE

1. The Parties take the issue of conflict of interest very seriously. All Parties including staff and the Board must follow a rigorous process to maintain the credibility of the investment and other decisions and to assure all stakeholders that their proposals or other matters are given fair and reasonable consideration.
2. However, a pragmatic approach is necessary in order to make best use of the expertise of all Parties in supporting the Challenge. This may occur at all levels including the Board, Directors and Science Leadership Team 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 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 in different ways, as outlined below.
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 Board who is present) who shall consult with other members of the Challenge or Board 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 Board present) who shall consult with other members of the Challenge or Board 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 Board, Directorate and Science Leadership Team 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 to the collaboration should be noted. In addition:
- i. in the case of the Science Leadership Team the Director shall monitor discussions and raise any concerns over the degree of representation occurring and ultimately moderate any perceived bias in developing recommendations to the Board;
 - ii. in the case of the Board, the Chair shall monitor discussions and raise any concerns over the degree of representation occurring. If the Chair believes the Board 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 Board comprised of not less than three independent or uninterested members to make final decisions and such decisions will be the decisions of the full Board.
- (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 Board 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, a Deputy Chair 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 shall be excluded and a process for independent assessment of any such proposals, broadly equivalent to how other proposals are assessed, shall be determined by the Board who shall make any funding decisions on the same basis as for any other proposal. (Note: This does not apply to the research proposed within any Research Plan)

submitted to MBIE which is assessed by independent experts and decisions made by the Science Board).

Appendix 2

TERMS OF REFERENCE FOR THE A BETTER START NATIONAL SCIENCE CHALLENGE BOARD (BOARD)

1 Establishment of the Board

- 1.1 The Parties of the New Zealand Challenge for the Better Start National Science Challenge (the **Challenge**) have executed an agreement (the **Collaboration Agreement**) that sets out how they will work together to deliver the NSC Investment Contract (**NSCIC** or **NSC Investment Contract**) for the Better Start, E Tipu e Rea National Science Challenge (**Challenge**). The NSC Investment Contract is between the Ministry of Business, Employment and Innovation (**the Ministry**) and the University of Auckland as **Challenge Contractor** for the Challenge. The Collaboration Agreement specifies the establishment of a **Board** to manage the Challenge. The composition, functions and responsibilities of the Board are primarily set out in clauses ~~11.540.5~~, 0 and ~~1244~~ and these clauses and any others of relevance should be read in conjunction with these Terms of Reference (**TOR**). For the avoidance of doubt if any clause or element or inference in these TOR differ from the Collaboration Agreement then the Collaboration Agreement shall have priority.

2 Overarching Board Framework

- 2.1 The members of the Board shall 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 Board members may legitimately raise them for consideration by the Board.
- 2.2 The Board shall work within, and where relevant give effect to, the Collaboration Agreement and the NSC Investment Contract.
- 2.3 The Board is also required to have consideration to upholding the reputation of the Challenge and all Parties to the Collaboration Agreement.
- 2.4 The Board will be responsible for those matters set out in Clause ~~12.144.4~~ of the Collaboration Agreement and such related matters as are reasonably required to give effect to those matters and to perform any other activities or roles of the Board as described within the Collaboration Agreement.
- 2.5 For the avoidance of doubt, the Board shall have no powers or authority in relation to the Other Funds described in Clause ~~16.945.9~~ of the Collaboration Agreement nor for those matters expressly excluded in Clause ~~12.144.4~~ (financial processing and administration of funds, health and safety, ethics, infrastructure, staff employment/HR/misconduct and individual performance management matters) of the Collaboration Agreement.
- 2.6 The Board shall adopt and give effect to the Conflicts of Interest Policy and Process for the Challenge as described in Appendix 1 of the Collaboration Agreement.

3 Board Operating Procedures

Notice of Meeting

- 3.1 The Board shall meet at least four times per year on a schedule agreed with the members at its first meeting and at such other times as at least two members of the Board request a meeting.
- 3.2 A member of the Board may convene a meeting of the Board by giving notice in accordance with clauses 3.3 to 3.6.
- 3.3 Not less than five Business Days' notice of a meeting of the Board must be given to every member of the Board (and any alternate notified to the Board and to any observer appointed by the Ministry in accordance with the NSC Investment Contract). The notice must include the date, time and place of the meeting and the matters to be discussed.
- 3.4 The failure to give a notice of a meeting or an irregularity in the notice is waived if all members of the Board (and all observers) entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all members of the Board (and all observers) entitled to receive notice of the meeting agree to the waiver.
- 3.5 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a member at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.

Method of holding meetings

- 3.6 A meeting of the Board may be held either:
- (a) by a number of members of the Board sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual communication, by which all the members of the Board (and any observers) participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.

Where a meeting of the Board is held under clause 3.6(b), at the commencement of the meeting each member (and each observer) participating must acknowledge his or her presence to all the other members participating. A member may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chair.

Quorum

- 3.7 A quorum for a meeting of the Board is four members.
- 3.8 No business shall be transacted at a Board meeting if a quorum is not present however, those members present may discuss Board business and prepare preliminary decisions which may be ratified by a duly quorate Board meeting called for that purpose.

Voting

- 3.9 Each Board member has one vote and any business of the Board requiring a decision will be determined by a simple majority of the members present.

- 3.10 The Chair (in his or her capacity as a Board Member) has one vote and does not have a casting vote. The Chair is tasked with encouraging consensus in voting where possible. In the event of a deadlock in voting, then Chair will approach the Vice-Chancellors and CEOs of the Challenge Parties who will have one vote each which will be added to the Board votes to determine a majority. If the additional votes are unable to be obtained during the duration of any meeting where a deadlock occurs, then voting on that matter will be suspended until the Vice Chancellor's and CEO's votes have been obtained and tallied. The Chair will report back to the Board as to the outcome of voting due to the additional votes either at the next meeting or in writing, whichever is the most expedient. If, following this process the vote is still deadlocked the matter will not be resolved and the Board members will be asked to review the matter and seek to find an alternative path forward.

Minutes

- 3.11 The Board must ensure that full and accurate minutes are kept of all proceedings at Board meetings.
- 3.12 Minutes of proceedings of the Board which have been signed correct by the Chair are prima facie evidence of the proceedings.

Qualifications of Board members

- 3.13 The following persons are disqualified from being appointed or holding office as a member of the Board:
- (a) a person who is under 18 years of age;
 - (b) a person who is an undischarged bankrupt;
 - (c) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 382 or section 383 or section 385 of the Companies Act 1993;
 - (d) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Securities Act 1978 or the Securities Markets Act 1988 or the Takeovers Act 1993 (or any successor legislation).

Attendance of Non- Board members

- 3.14 It is expected that the Challenge Director shall attend all Board meetings and report such matters to the Board required by the Board to perform its role. In addition, a minute secretary (or equivalent) shall normally attend all meetings of the Board to record the minutes. The Board may however, seek to hold a session in committee in which neither the Director nor any other non-Board members are present to discuss any matters it wishes.
- 3.15 The meetings of the Board may include other attendees by invitation for all or part of any meeting by agreement between the Chair and Director to help facilitate the business of the Board.

Delegation of Board Responsibilities

- 3.16 The Board may choose to establish subcommittees of the Board of not less than three members for specific purposes as it sees fit. In such cases any decisions of the subcommittee must be unanimous for them to be considered

decisions of the Board and should be reported back to the Board at its next meeting.

- 3.17 The Board may also choose to delegate specific responsibilities of a low risk nature to the Director to facilitate the efficient operation of the Challenge. These could include (but is not limited to) approval of investments and expenses below a set threshold. In all such cases the Director's decision will be considered the Board's decision and must be reported to the next meeting of the Board.

Appendix 3: Inter-Party Subcontract Draft Template

A Better Start – E Tipu e Rea National Science Challenge Inter-Party Subcontract

where the Challenge Contractor for the Challenge is engaging a Collaborating Organisation (the “Subcontracting Party”) to provide research and/or services with Challenge funding

XXX	XXX
Contract ref: Challenge Contractor	Contract Ref: Subcontracting Party

Challenge Contractor	The University of Auckland
Description	A body corporate established under the University of Auckland Act 1961, of Princes Street, Auckland, New Zealand, including its employees and agents

Subcontracting Party	...
Description	...

NSC Investment Contract Title (“NSC Investment Contract”)	A Better Start – E Tipu e Rea National Science Challenge (Challenge)		
Challenge Programme Agreement	Commencement Phase		
Funding Agency	Ministry of Business Innovation and Employment	Reference	...
Start Date		End Date	
NSC Director and Challenge Contractor’s Science Leader	Professor Wayne Cutfield	Subcontracting Party’s Science Leader (s)	...
		Subcontracting Party’s Key Personnel	N/A

- A. The Challenge Contractor and Subcontracting Party are both Parties to the Collaboration Agreement for “A Better Start”. This agreement (Reference BeSTCA001) sets out how the funding provided by the Ministry of Business, Innovation and Employment (the Ministry) under a contract with the University of Auckland (the NSC Investment Contract) shall be used by the parties to perform the research and related activities envisaged within the NSC Investment Contract. The Collaboration Agreement designates The University of Auckland as the Challenge Contractor and specifies that funding to other Parties to the Collaboration Agreement shall be via subcontracts. This “Subcontract” outlines the basis under which the funds will be provided for the services and related activities to the Subcontracting Party (the Statement of Work) and the terms conditions of engagement and obligations on both parties.

- B. The Challenge Contractor engages the Subcontracting Party to provide the research and/or services described in the attached Statement of Work ("SOW") and the Subcontracting Party agrees to perform the research and/or services described in that SOW ("Research"). Both parties agree to the Terms Conditions of Engagement and any variations noted in the SOW. This Subcontract together with the SOW and any attachments referred to below, will replace all written or oral agreements previously reached between the parties in relation to the research services and related activities described in the SOW. If there is any inconsistency or conflict between any prior descriptions of the SOW and the SOW in this Subcontract, the terms and/or conditions in this SOW will prevail.
- C. The parties agree that, where appropriate, the total amount of the Fee under this Subcontract will, for Performance Based Research Funding purposes, be excluded by the Challenge Contractor as External Research Income received from the Funding Agency, but may be recorded and reported as such by the Subcontracting Party.

Fee	...	payable in New Zealand Dollars plus GST (as applicable) in accordance with the Payment Schedule in the SOW
Attachments (in addition to the Conditions of Engagement and the Statement of Work)		
(This could include reference to external documents such as proposals defined in the Research Plan or submitted in response to calls for contestable funding; the budget, an FTE table and a schedule of sub-subcontractors)		

Authorised Signatory – Challenge Contractor		Authorised Signatory – Subcontracting Party	
Signature		Signature	
Name	Dr Tracey Swift	Name	...
Title	Director Research Management	Title	...
Date		Date	

Terms and Conditions of Engagement

1 Prior Agreement

- 1.1 The parties to this Subcontract are also parties to the Collaboration Agreement (BeSTCA001) which sets out how the parties will collaborate to deliver the NSC Investment Contract. The Collaboration Agreement also applies to this subcontract for work under the Challenge and NSC Investment Contract. Any matters included in the Collaboration Agreement shall be considered to be Terms and Conditions of Engagement for this subcontract. If there is any variation between the following clauses and the Collaboration Agreement then the Collaboration Agreement has priority.

2 Fees and Expenses

- 2.1 Subject to the Subcontracting Party providing the Research and reports in accordance with this Agreement, the Challenge Contractor shall pay the Subcontracting Party the Fee providing it has received funds from the Funding Agency.
- 2.2 The Subcontracting Party shall provide invoices to the Challenge Contractor as specified in the SOW. The Subcontracting Party will only use the Funding for:
- (a) The purposes specified in the SOW that are consistent with the Frascati Definition of Research and Experimental Development, including any activities that are reasonably ancillary to purposes that are consistent with the Frascati Definition of Research and Experimental Development;
 - (b) Any reporting undertaken by the subcontracting party to allow the contracting party to meet the Funding Agency's performance management and reporting obligations;
 - (c) activities that are reasonably necessary to carry out the SOW;
 - (d) the reasonable costs of auditing of the Challenge Contractor's performance management and reporting obligations;
 - (e) the reasonable costs of complying with the Subcontracting Party's obligations to provide access, information, and reports to the Challenge Contractor to allow it to meet the Funding Agency's obligations; and
 - (f) any other activities directly related to the SOW as agreed between the parties.
- 2.3 Payment shall be made by the Challenge Contractor to the Subcontracting Party within thirty (30) days from the date of receipt by the Challenge Contractor of invoice(s) issued by or on behalf of the Subcontracting Party provided that the milestones associated with payment have been met to the satisfaction of the ETER Board or as delegated by it to the Director.
- 2.4 The Challenge Contractor shall be liable only for payment as outlined in the SOW.

3 Reporting

- 3.1 The Subcontracting Party shall provide to the Challenge Contractor written progress reports and a final report on the Research to allow the Challenge Contractor to meet the Funding Agency's performance management and reporting obligations and to satisfy any other reporting requirements specified by the Challenge Board.

4 Key Personnel

- 4.1 The parties agree that if the Subcontracting Party's Science Leader or Key Personnel become unavailable for the time specified in the SOW, the Subcontracting Party will notify the Challenge Contractor in a reasonable time and the parties will endeavour to agree on a suitably competent substitute.
- 4.2 Subject to clause 4.1 in the event that both parties, or the Funding Agency, agree that no suitable substitute is available then this Agreement may be terminated by the Challenge Contractor.

5 Performance and Liability

- 5.1 The Subcontracting Party agrees to exercise all reasonable skill, care and diligence in the performance of work under this Subcontract and such work shall be performed to standards which are in accordance with the Funding Agency's Code of Professional Standards and Ethics and those generally accepted professionally worldwide. The Subcontracting Party will obtain and/or abide by required ethical approvals and obligations including any notice of government policy or direction that is provided to the Challenge Contractor by the Funding Agency.

- 5.2 The Subcontracting Party agrees to provide reasonable access and information to the Challenge Contractor or its authorised agents to allow the inspection of the conduct of the Research as outlined in the SOW to satisfy itself that the Subcontracting Party is complying with the terms and conditions of this Subcontract. In addition the Subcontracting Party agrees to keep appropriate accounting records of its use of the Funding and provide those records to the Challenge Contractor when required.
- 5.3 Subject to clause 5.4, the Subcontracting Party's liability to the Challenge Contractor under or in connection with this Subcontract and the research and/or services described in this Subcontract, whether in contract, tort (including negligence), equity, statute or otherwise, is limited to a sum equivalent in aggregate to the total fees that the Challenge Contractor has actually paid to the Subcontracting Party under this Subcontract. The liability of the Subcontracting Party is, to the extent permitted by law, limited to actual loss suffered by the Challenge Contractor as the direct result of the Subcontracting Party's wilful default.
- 5.4 The limitation of liability under clause 5.3 does not apply to any matter addressed in clause 10.2 of the Collaboration Agreement in respect of claims by MBIE.

6 Termination

- 6.1 This Subcontract may be terminated by either party on notice in writing to the other party if such other party is in breach of any material condition of this Subcontract and does not remedy the breach within thirty (30) days from the date of service of a notice in writing specifying the breach and requiring its remedy. Upon termination of this Agreement the Subcontracting Party shall cease all work and, in accordance with clause 2, the Challenge Contractor shall pay the Subcontracting Party for all Research undertaken in accordance with this Subcontract prior to the date of termination. Failure to achieve satisfactory progress against milestones or meeting the conditions of any Stop/Go Gate or the performance expectations specified in the Statement of Work to the satisfaction of the Challenge Board shall be considered a breach for the purposes of this clause.
- 6.2 In the event that the Funding Agency terminates its agreement with the Challenge Contractor, then the Challenge Contractor shall also be entitled to terminate its relationship with the Subcontracting Party by giving immediate notice to the Subcontracting Party.

8 Confidentiality

- 8.1 Subject to clause 9.1 and any obligations imposed on the Challenge Contractor by the Funding Agency the parties agree that they will each keep secret and confidential the terms of this Subcontract and all information of a secret, confidential and/or proprietary nature concerning the business or affairs of the other of them and which may come into their knowledge as a result of performance under this Subcontract, including the results of the Research ("Confidential Information").
- 8.2 Each party further undertakes that it will restrict access to the terms of this Subcontract or other such information to their employees or agents on a strictly "need to know" basis and will not make use, or seek to make use, of the existence of the terms of this Subcontract, or other such information, except for the purposes of this Subcontract.
- 8.3 The obligation of confidentiality shall not, however, apply to information to the extent that:
- (a) is already known to the party to which it was disclosed or is independently developed with reference to the Confidential Information;
 - (b) is in, or becomes, part of the public domain without a breach of this Subcontract;
 - (c) is obtained from third parties which have no obligation to keep confidential to the contracting parties;
 - (d) is agreed in writing between the parties not to be confidential; or
 - (e) is required to be disclosed by law.

provided that where disclosure is required under sub-clause (e) above, the receiving party will promptly notify the disclosing party so as to allow the disclosing party a reasonable time to oppose such process.

9 Amendments

- 9.1 All amendments to this Subcontract must be in writing and signed by duly authorised representatives of each party.

10 No Waiver

10.1 No waiver of any provision of this Subcontract will serve as a waiver of any other provision, or as a continuing waiver, and the Contractor will not have waived or be deemed to have waived any provision(s) of this Agreement unless such waiver is in writing.

11 Assignment

11.1 The Subcontractor shall not assign, transfer or sub-contract any of its rights or obligations under this Subcontract, unless specified in the Statement of Work, without the prior written consent of the Contractor and, if required, the Funding Agency.

12 Force Majeure

12.1 Neither party shall be responsible for any failure or delay in complying with the terms of this Subcontract where such failure or delay results from events beyond its reasonable control. The frustrated party is to resume its obligations under this Agreement as soon as it reasonably can after the force majeure event ceases. If such force majeure is not remedied within thirty (30) business days of its initial occurrence the other party may terminate this Agreement with immediate effect on written notice to the frustrated party.

13 Notices

13.1 Notices under this Subcontract shall be in writing and may be delivered by hand, sent by prepaid post or transmitted by facsimile, by one party to the other at the address showing on the attached SOW or such other address as notified in writing.

13.2 Notices are deemed served at the following times:

- (a) when sent by post, three (3) business days after posting;
- (b) when sent by registered mail or courier, upon delivery; or
- (c) when sent by facsimile, upon receipt of the correct answerback or receipt code; and
- (d) any notice received after 5:00 pm is deemed served on the next business day.

14 Survival

14.1 Neither the termination nor expiry of this Subcontract, nor the end of the Programme, will affect the following clauses that will endure: clauses 8 and 1.1

15 Severability

15.1 If any provision of this Subcontract is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in the circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected.

16 Variations to Terms and Conditions of Engagement

16.1 These Terms and Conditions of Engagement will be read subject to any variations specified in the part of the SOW entitled "Variation to Terms and Conditions of Engagement". Any variations that would vary the intent and detail of the Collaboration Agreement will only be valid if agreed by all the parties to the Collaboration Agreement.

17 Law and Jurisdiction

17.1 The validity, construction and performance of this Subcontract shall be governed by New Zealand law and shall be subject to the non-exclusive jurisdiction of the New Zealand courts to which the parties hereby submit.

18 Term

18.1 Despite the date of signing, this Subcontract shall commence on the Start Date and, unless terminated earlier, shall end on the End Date. The term may be extended for such further period(s) as is/are agreed in writing between the Challenge Contractor and the Subcontracting Party.

Statement of Work –ETER Inter-Party Subcontract

Scope and Outline of research and any related activities for the period of this subcontract
Research and Related Objectives (Include specifications of their achievement)

Reporting Timetable, Milestones, Stop/Go Gates and Other Deliverables		
Milestone (include specifications of achievement)	End Date	Related objective
Stop/Go Gates (include specifications of achievement)	End Date	Related objective
Report No	Due Date	Description
Deliverable No	Due Date	Description

Payment Schedule

Quarterly in advance or as otherwise agreed:

Note to payments schedule: All payments will be made upon presentation of an invoice for the agreed amount except for the final payment which will be withheld until all final reports, milestones, deliverables and other agreed expectations and obligations under this statement of work have been met to the satisfaction of the Challenge Board or its delegate.

Payments may also be suspended or terminated at any time if the conditions of a Stop/Go Gate are not met or the subcontract is not progressing to plan to the satisfaction of the Challenge Board. In such a circumstance the Parties will agree any modification to any aspects of the statement of work including any resumption of the payments in the same or modified form or the winding up of the subcontract in a way that preserves the value to the Challenge created to that point.

Information, services, resources and/or facilities to be provided by the Challenge Contractor**Any other expectations, conditions or obligations under this subcontract including performance expectations**

(Include any requirements for providing information to support reporting to MBIE or any reasonable communications and outreach activities of the Challenge as well as a statement of performance expectations)

Model performance expectations statement:

"The Subcontracting Party will provide evidence of progress against all aspects of the statement of work twice yearly, as part of the reporting requirements, sufficient for the Contractor to assess performance. If the Contractor has any concerns over performance it may, acting through the Director, either seek further clarification, negotiate a variation to the statement of work or terminate the subcontract and seek an orderly windup of the project. Any termination and wind up will be subject to approval of the Challenge Board and the Subcontracting Party may present a case for continuation to the Board prior to its final decision

Description of any further subcontracting of the work under this Subcontract

(Outline the organisation, lead researcher or investigator, funding amounts, terms, milestones and deliverables that are further subcontracted under this Subcontract)

Description of any third party co-funding or aligned research required to achieve the Research and Related Objectives

(Outline the organisation providing co-funding, the amount and nature of any co-funding including cash or in kind funding amounts (or similar description of any aligned research), terms, milestones and deliverables supported and contract status of any direct co-funding of any of the Research and Related Objectives. Do not include co-funding or aligned research that is related to these objectives but is not essential to their achievement)

Variation to Conditions of Engagement (Note any variations to the Collaboration Agreement must be agreed by all parties to the Collaboration Agreement)

Subcontracting Party's Background IP

Note: Intellectual Property created within this subcontract ("Project IP") will be dealt with according to the relevant clauses of the Collaboration Agreement (ETERCA001) and the Intellectual Property Management Plan within the relevant Challenge Programme Agreement. These are available on request.

Notices – Challenge Contractor		Notices – Subcontracting Party	
Name	Dr Tracey Swift, Director Research Management	Name	...
Department	Research Office	Department	...
Postal Address	Private Bag 92019, Auckland 1010, New Zealand	Postal Address	...
Physical Address	Level 10, 49-51 Symonds Street, Auckland	Courier Address	...
Phone	(+64) 9373 7599 ext 87351 (+64) 027 702 0555	Phone	...
Fax		Fax	...
E-mail	t.swift@auckland.ac.nz	E-mail	...
Invoices – Challenge Contractor		Science Leader – Subcontracting Party	
Name		Department	...
Department		Phone (/ Fax)	...
Postal Address		E-mail	...
Phone		Other key contact?	
Fax		Department	
E-mail		Phone (/ Fax)	
		E-mail	

Appendix 4 Principles to guide the operation of the A Better Start / E Tipu e Rea National Science Challenge

General Principles

The Principles for the operation of the Challenge are:

- Shared commitment to a common purpose and intent as a mission-led science investment.
- Support Vision Maturanga Policy objectives whilst meeting the needs of all New Zealanders through a commitment to:
 - Māori and non-Māori inclusion at the governance level, consistent with Te Tiriti o Waitangi.
 - Recognising Māori worldviews, tikanga, knowledge and language.
 - Meaningful involvement of Māori in decision making in the planning, implementation evaluation and dissemination of the challenge research.
 - Building long-term positive relationships and consulting as appropriate with Māori stakeholders.
 - Considering the inclusion of Māori research methodologies and the need to protect and enhance Māori knowledge of healthy wellbeing.
 - Undertaking future-focused interdisciplinary research that will inform equitable transformation of health, education, and well-being for Māori and all New Zealanders.
 - Helping to build Māori research capacity, capability and research leadership.
- Equivalence of the Challenge Members managed through oversight and arms-length science investment decision making by the Board and via establishment of a national brand with equal sub-branding of the Challenge Members.
- Science investments are made that contribute to the Challenge mission, balance economic or social impact and scientific merit, take account of performance and that complement related research investments across other National Science Challenges, Centres of Research Excellence and CRI core funding.
- Awareness of the relevant research, regulatory and sector landscape for the three Health and well-being related Challenges in New Zealand and globally with a commitment to consider all relevant New Zealand capabilities and capacity when making science investment decisions.
- Strong internal science leadership and accountability (via Directors and Science Leadership Teams) supported by independent international science review (Science Advisory Panel) and a relevant sector and target community advisory committee or committees.
- Transparency of all business and investment processes to all Challenge Members and a clear separation of the contracting party from each Challenge.
- Aim to build a sustainable research collaboration that doesn't create internal competition or duplicate capabilities and shares relevant information on related and aligned funding within each Challenge Member.

- Endeavour to respect and meet reasonable needs and expectations of all Challenge Members, including valuing all contributions on merit.
- Use a standard operating/financial model based on full-cost funding of research;
- Act in the best interests of the Challenge to deliver the NSC Investment Contract (i.e. the common purpose or mission and the NSC Investment Contract requirements).
- Have sponsorship at senior levels in all Challenge Members to ensure organisational support and to resolve issues as they arise.
- Create an environment where collaboration occurs by mutual agreement of the researchers and Challenge Members.

Intellectual Property Policy and Principles

The Parties will observe the following Principles (which must not be inconsistent with the “Intellectual Property Policies and Principles” contained in Appendix 2 to the NSC Investment Contract, and, to the extent that they are, the provisions of the NSC Investment Contract will prevail) in dealing with Intellectual Property created from Challenge funding.

The underlying purpose of the Challenge is to create Benefit for New Zealand. It is expected that Project IP will, to the extent reasonable, be commercialised by the owning/Managing Party in a manner consistent with this purpose. Such commercialisation may involve making the Project IP available to a suitable New Zealand company, or publicly disseminating the Project IP. A detailed IP Management Plan will be included in any Challenge Programme Agreement that operationalizes the principles set out here.

For the avoidance of doubt

- Research organisations (including the Parties to this Agreement) participating in the Challenge retain ownership of both Background IP and new Project IP created.
- Where multiple parties create IP then it is up to them to agree IP arrangements but the Challenge will have visibility of the outcomes of these discussions.
- Research organisations do their own technology transfer or commercialisation.

Furthermore

- The Parties will use all reasonable endeavours to maximise the Benefits for New Zealand of each investment through their management of any Intellectual Property created.
- The Parties will ensure that the ownership and/or assignment, if any, of Project IP is clear and will require employees to acknowledge the relevant ownership and rights associated with any Project IP (this may be via their employment agreement or a general institutional policy); ensure that researchers are advised of the potential value of Project IP and of the options available to them to add value to those rights; ensure that researchers are advised of any actual or potential confidentiality issues relating to Project IP and any mutual obligations of the staff and the Parties in relation to Project IP management and protection.

- The Parties will ensure internal processes are in place to identify protectable and potentially valuable Project IP and associated commercial activities and to prevent the infringement of existing protected Project IP and associated commercial activities; and which provide guidance on the prompt disclosure and resolution of potential conflicts of interest concerning the generation, ownership, management and use of Project IP; and cover good scientific conduct, including sound record keeping and human and animal experimentation ethics.
- The Intellectual Property Policies and Principles of the Parties should ensure that cultural, Treaty of Waitangi, and Māori issues are properly taken into consideration.
- The Parties should give preferential access to competent New Zealand-based firms to develop the Project IP. Where a Party believes that it is best to commercialise the Project IP outside of New Zealand, the Party should seek to retain ongoing research, science, and technology in New Zealand and reinvest any net income derived from the commercialisation of the Project IP in research, science, and technology in New Zealand.
- The Parties should, wherever possible: provide assistance to researchers in fulfilling Challenge Programme Intellectual Property Rights obligations and responsibilities; encourage participation by researchers in any subsequent commercialisation process of any Challenge Programme Intellectual Property Rights; and develop policies that incentivise staff and other stakeholders to generate benefits to New Zealand from the work.

Appendix 5

Terms of Reference for observers appointed under clause 11.5

1. Observers may be appointed by the Ministry, either during the Commencement Phase or subsequently, to assist the Board in understanding or clarifying the Ministry's policies and practices relevant to the Challenge and in understanding or clarifying the Ministry's approach to the Challenge and vice versa. . Should the Chair of the Board or a Party object to any nominated observer, on reasonable grounds, either prior to appointment or subsequently the Challenge Contractor will discuss with the Ministry whether another person may be appointed in his or her stead and the Ministry will endeavour, within reason, to comply with that request.
2. The Challenge Contractor will ensure that all observers receive the same information in respect of board meetings as all Board members, including the right to receive copies of all minutes, and that they are given notice of all Board meetings in the same manner as Board members in accordance with the Terms of Reference ("**ToR**") attached as Appendix 2 to the Collaboration Agreement.
3. 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.
4. Observers will have the right to attend all meetings of the Board, whether those meetings are held in person or by teleconference, or by some other approved manner, as may be permitted by the ToR and will comply with the requirements following clause 3.6(b) of the ToR, if relevant.
5. Observers will have all the right to speak at all meetings of the Board, and to proffer their opinions on matters before the Board, but will not have voting rights on any decision. Any opinions provided by an observer shall not be interpreted by the Board as representing the Ministry's position unless expressly described as such.
6. Observers are not intended to, nor shall be deemed to influence any decisions of the Board.
7. The Chair of the Board may decide to exclude those observers for a limited, or defined, time to allow a confidential or free and frank discussion to take place, in accordance with clause 3.14 of the ToR provided that any decisions taken as a result of that confidential discussion are made in the presence of, or are shared with, the observers.
8. The observers may share information received in their capacity as such with the Ministry and will, at all times, but within the constraints of any applicable law, respect the confidentiality, if any, of such information. Any information provided to observers under this terms of reference shall not be deemed to have been provided to the Ministry.