

Lead Collaborator Terms and Conditions

1. Background

- 1.1 These terms and conditions govern how funding provided for New Zealand's Biological Heritage ("NZBH") National Science Challenge ("Challenge") by the Ministry of Business, Innovation and Employment ("the Ministry") under an investment contract ("the NSCIC") with Landcare Research New Zealand Limited ("Challenge Contractor") are used to perform the research and related activities ("Research") required to be carried out under the NSCIC and Challenge Programme Agreements ("CPAs") made in accordance with the NSCIC.
- 1.2 The parties undertaking the Research under these terms and conditions are also parties to the NZBH Challenge Collaboration Agreement ("Collaboration Agreement"), which specifies that funding to deliver the Challenge mission will be distributed by the Challenge Contractor through subcontracts. These terms and conditions apply to work schedules in which details of Challenge projects are specified ("Work Schedules").
- 1.3 Work Schedules specify how Challenge funding is provided by the Challenge Contractor to another party to the Collaboration Agreement ("Lead Collaborator") and outline project details, aims and milestones which the Lead Collaborator is responsible for delivering in order to fulfil the requirements of Ministry CPAs. The Lead Collaborator may engage subcontractors and pass on the rights and obligations that the Challenge Contractor passes to the Lead Collaborator under these terms and conditions and Work Schedules.

2 Relationship with Collaboration Agreement

- 2.1 The following clauses of the Collaboration Agreement:
<https://data.bioheritage.nz/dataset/nzbh-collaboration-agreement>, with any changes necessary to suit the context, are incorporated by reference into these Subcontract Terms and Conditions and apply to any Work Schedules:
 - Clause 8 (use of facilities)
 - Clause 9 (warranties, liabilities and indemnities)
 - Clause 13 (aligned research)
 - Clause 18 (publication and communication)
 - Clause 22 (confidentiality)
 - Clause 23 (variation)
 - Clause 28 (disputes)
 - Clauses 29(a) (notices), 29(f) (severability), 29(g) (waiver), 29(h), (governing law)
 - Clause 30 (definitions).
- 2.2 If there is any conflict or difference between the documents under which the Lead Collaborator carries out the Research, a Work Schedule will take precedence over these terms and conditions.

3 Use of Funding

- 3.1 Subject to the Lead Collaborator providing the Research and reporting in accordance with a Work Schedule, the Challenge Contractor will make the payments specified in the Work Schedule to the Lead Collaborator providing the Challenge Contractor has received funding from the Ministry ("Funding") for the Project described in the Work Schedule.

- 3.2 The Lead Collaborator will invoice the Challenge Contractor as specified in the Work Schedule.
- 3.3 The Lead Collaborator will only use the Funding for:
- (a) the purposes specified in the Work Schedule;
 - (b) any reporting undertaken by the Lead Collaborator to allow the Challenge Contractor to meet the Ministry's performance management and reporting requirements;
 - (c) activities that are reasonably necessary to deliver the Work Schedule;
 - (d) the reasonable costs of providing access, information and reports required by the Challenge Contractor to meet Ministry audit, review or evaluation requirements; and
 - (e) any other activities directly related to the Work Schedule as agreed between the parties.
- 3.4 The parties acknowledge that Funding provided for PhD scholarships will be guaranteed for the full 3-years of full-time study, or an equivalent period for part-time study.
- 3.5 The Lead Collaborator will acknowledge, as appropriate, provision of Funding by the Ministry.
- 3.6 Payment will be made by the Challenge Contractor to the Lead Collaborator by the 20th of the month following receipt by the Challenge Contractor of invoice(s) issued by the Lead Collaborator, provided that the milestones associated with payment have been met to the reasonable satisfaction of the Challenge Director. Any disputes about payments may be referred to the Governance Group for settlement prior to the disputes procedure in clause 28 of the Collaboration Agreement being invoked.
- 3.7 The Challenge Contractor's liability to the Lead Collaborator for payment of Funding is limited to the amount specified in the Annual Work Plan for each year. Any amounts shown for subsequent years are indicative only and are subject to and conditional on the Ministry providing further funding for subsequent years of the NZBH Challenge.

4. Return of Funding

- 4.1 If the NSCIC is terminated under clause 10.1(c) of that contract as a result of fraudulent misuse or misappropriation of Challenge Funding and the Ministry exercises its rights under clause 10.5 of the NSCIC, the Lead Collaborator agrees:
- (a) to return to the Challenge Contractor all amounts which have been paid to it under a CPA in force at the date of termination of the NSCIC, together with interest on all sums due charged in accordance with clause 10.5 of the NSCIC; and
 - (b) that any amounts committed to be paid to it under any CPA will not be paid to it by the Challenge Contractor and that all such commitments are immediately null and void and cannot be enforced by the Lead Collaborator, provided that the amounts to be returned to the Challenge Contractor will be adjusted as appropriate to reflect the degree and extent to which the Ministry exercises its rights under clause 10.5 of the NSCIC.
- 4.2 If clause 4.1 applies, the Challenge Contractor will as soon as practicable give written notice to the Lead Collaborator setting out the amounts to be repaid to the Challenge Contractor under this clause 4 and the required date for repayment. If there is any dispute as to the amount required to be repaid to the Challenge Contractor, the dispute will be determined in accordance with clause 28 of the Collaboration Agreement provided that the procedure will start from clause 28.4.

- 4.3 If the Ministry has determined that one party (the defaulting party) has breached clause 10.1(c) of the NSCIC and this leads to the Ministry exercising its rights under clause 10.5 of the NSCIC, the defaulting party will indemnify the non-defaulting party against any claim, liability, or expense (including without limitation, legal fees, costs and disbursements) the non-defaulting party incurs as a result of the Ministry exercising its rights under clause 10.5 of the NSCIC.

5 Key Personnel

- 5.1 The parties agree that if the Lead Collaborator's Project Leader or Key Personnel listed in a Work Schedule become unavailable or are otherwise unable to complete a milestone by the date it is due as specified in the Work Schedule, the Lead Collaborator will notify the Challenge Contractor as soon as practicable and the parties will endeavour to agree on a suitably competent substitute.
- 5.2 Subject to clause 5.1, in the event that both parties agree that no suitable substitute is available or the Ministry determines that no suitable substitute is available, then a Work Schedule may be terminated by the Challenge Contractor or the Lead Collaborator.

6 Performance

- 6.1 The Lead Collaborator agrees to exercise all reasonable skill, care and diligence in the performance of Research under a Work Schedule and such work will be performed to standards which are in accordance with the Royal Society of New Zealand Code of Professional Standards and Ethics and those generally accepted professionally worldwide. The Lead Collaborator 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 Ministry and communicated to the Lead Collaborator in writing.
- 6.2 The Lead Collaborator 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 a Work Schedule to satisfy itself that the Lead Collaborator is complying with the terms and conditions of a Work Schedule. In addition the Lead Collaborator agrees to keep appropriate accounting records of its use of the Funding provided under a Work Schedule and make those records available to the Challenge Contractor if required.

7. Health and Safety Obligations

- 7.1 Both the Challenge Contractor and the Lead Collaborator will consult, cooperate and coordinate with each other with a view to ensuring that, where both parties are persons in control of a business or undertaking ("PCBUs"), they comply with their respective obligations under the Health and Safety at Work Act 2015 ("HSWA") as they relate to the Services.
- 7.2 The Lead Collaborator will:
- (a) perform its obligations under this Agreement in compliance with its obligations under the HSWA, and ensure that its subcontractors and other workers perform their obligations under the HSWA;
 - (b) comply with all reasonable directions of the Challenge Contractor relating to health, safety and security;
 - (c) report any health and safety incident, injury or near miss, or any notice issued under the HSWA, to the Challenge Contractor to the extent that it relates to, or affects, the Services.

- 7.3 If the Challenge Contractor reasonably believes that the health and safety risks involved in providing the Services warrant it, the Challenge Contractor may request evidence that the Lead Collaborator is complying with its obligations under the HSWA.

8. Intellectual Property

Unless otherwise specified in a Work Schedule, intellectual property arising from Challenge projects carried out under Work Schedules will be owned and managed in accordance with the NZBH Intellectual Property Management Plan: <https://data.bioheritage.nz/dataset/nzbh-ip-plan>

9. Records

- 9.1 The Lead Collaborator must maintain true and accurate records, including appropriate accounting records, of its use of the Funding provided under a Work Schedule for at least 7 years after termination or expiry of that Work Schedule.
- 9.2 As reasonably requested by the Challenge Contractor, the Lead Collaborator will transfer to the Challenge Contractor, under obligations of confidence as applicable, any records that the Challenge Contractor is required to keep in order to fulfil its obligations under the Public Records Act 2005.

10. Data Management

- 10.1 The Lead Collaborator will comply with any Data Management Plan issued in conjunction with a Work Schedule.
- 10.2 Subject to clause 8 and clause 10.3, the Lead Collaborator will make the results of the Research undertaken under a Work Schedule ("Results") available, at cost of dissemination, to the public and stakeholder groups on request through appropriate means in order to contribute towards delivering the Challenge mission and any Work Schedules.
- 10.3 The Lead Collaborator is not required to make the Results available under clause 10.2 if the Lead Collaborator considers that:
- making the Results available would prejudice the commercial position of the parties or any other party to the Collaboration Agreement;
 - withholding the Results is necessary to protect the privacy of a person;
 - making the Results available would breach an ethical standard;
 - the request for the Results is vexatious or frivolous;
 - making the Results available would prejudice the Research or other research carried out under a CPA;
 - making the Results available would be contrary to the Lead Collaborator's statutory or existing legal obligations;
 - making the Results available would prejudice the filing of a valid patent application in New Zealand or overseas, or a similar application for intellectual property protection, or the commercial value of developed intellectual property, including maintaining a trade secret or
 - making the results available would threaten the control over and/or integrity of Māori or other traditional knowledge or other culturally sensitive material or jeopardise the economic or other potential to Māori or other indigenous groups of Māori or other traditional knowledge or other culturally sensitive material.

11 Termination

- 11.1 A Work Schedule 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 a Work Schedule 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 a Work Schedule the Lead Collaborator will cease all work and, in accordance with clause 3 but subject to clause 4, the Challenge Contractor will pay the Lead Collaborator for all Research undertaken in accordance with that Work Schedule and any financial liabilities incurred prior to the date of termination of that Work Schedule.
- 11.2 A Work Schedule may be terminated if the Lead Collaborator gives 6 months' notice in writing to the Challenge Contractor of its intention to exit from the NZBH Challenge in accordance with clause 26 of the Collaboration Agreement.
- 11.3 In the event that the Ministry terminates the NSCIC with the Challenge Contractor, then the Challenge Contractor will also be entitled to terminate a Work Schedule by giving immediate notice to the Lead Collaborator.
- 11.4 Termination of a Work Schedule under this clause 11 is without prejudice to the rights of either party accrued to the date of termination.

12. Force Majeure

No party will be liable for any delay or default due to natural calamities, acts or demands of government or any government agency, wars, riots, strikes, floods, earthquakes, accidents, pandemics or epidemics or any other unforeseen cause beyond its control and not due to that party's fault or neglect. If a party notifies the Challenge Contractor of a force majeure event, the parties will consult in good faith and seek to agree a revised timetable for the Services, changes to the deliverables or other arrangements to mitigate the effects of the force majeure event. If this is not possible the parties may agree to terminate this contract.

13. Variations to Subcontract Terms and Conditions

- 13.1 These Subcontract Terms and Conditions will be read subject to any variations specified in the part of the Work Schedule entitled "Variation to Subcontract Terms and Conditions.
- 13.2 If, after the Work Schedule has been entered into, any variation is requested (including changes requested by the Ministry) that is likely to result in the Lead Collaborator incurring additional or lower costs, or if it is likely to increase or decrease the time required to complete the Research, then the parties will agree on any required amendments to the payment and/or Completion Date(s) in the Work Schedule.

Alterations made to this document

04/05/2020: Clause 2.1 URL for the Collaboration Agreement was amended to the correct (live) version - <https://data.bioheritage.nz/dataset/nzbh-collaboration-agreement>

04/06/2020:

- Clause 3.7 has been amended.
- New bullet point added to end of clause 10.3.
- New Force Majeure clause 12 has been added and reference to Collaboration Agreement Force Majeure clause has been removed from 2.1
- Clause 8 updated URL for IP Plan <https://data.bioheritage.nz/dataset/nzbh-ip-plan>