

Water Breakthrough 2 Challenge Entrant Terms and Conditions

The Water Breakthrough Challenge Round 2 (the “**Challenge**”) is run by Nesta Challenges in partnership with Arup and Isle Utilities (“**Isle**”) on behalf of the Water Services Regulation Authority (“**Ofwat**”). Please note that these terms and conditions apply at all stages of the Challenge, from its opening on 11 October 2021 through to when funded projects have concluded and an evaluation of the competition is completed.

The Challenge will have two streams of funding (each a “**Stream**”). The Catalyst Stream is open to entrants seeking funding of between £100,000 and £1 million, and approximately £5 million in total may be awarded under this Stream. The Transform Stream is open to entrants seeking funding of between £1 million and £10 million, and approximately £34 million in total may be awarded under this Stream.

Full information about the Challenge (including each Stream) and what participating in it will involve is published on the Challenge website (<https://waterinnovation.challenges.org>). We draw your particular attention to the [Entrant Handbook](#) which forms part of and should be read alongside these terms and conditions.

In these terms and conditions “**you**” and “**your**” means the lead applicant that submits an entry to the Challenge.

Please read these terms and conditions carefully before submitting an entry to the Challenge. By submitting an entry, you accept these terms and conditions on behalf of your organisation and agree to comply with them. By submitting an entry, you also confirm that you have authorisation to accept these terms and conditions on behalf of any partners, and other participants, identified within your application, and you acknowledge that you are responsible for making sure that those partners and participants comply with these terms and conditions.

1 Participating in the Challenge

1.1. When submitting an entry to the Challenge you must follow the application process for the Stream(s) to which you wish to apply. Entries received by the relevant deadline will be assessed against the Eligibility Criteria for the relevant Stream as set out on the Challenge website (<https://waterinnovation.challenges.org>). Entries which do not meet the Eligibility Criteria shall not be accepted. The eligibility assessment will be conducted by Nesta with oversight from Ofwat. Ofwat reserves the right to refuse any entry that does not, in its assessment, meet the Eligibility Criteria.

1.2. The lead applicant of any entry must be an appointed ‘Water Company’ (a water and/or sewerage undertaker holding an appointment under Chapter 1 Part 2 of the Water Industry Act 1991 (the ‘Act’) see <https://www.ofwat.gov.uk/regulated-companies/ofwat-industry-overview/licences>). The lead applicant must comply with, and must ensure that its partners and participants comply with, these terms and conditions.

1.3. At least 10% of the total cost of the project to which your application relates must be funded from sources other than the Ofwat Innovation Fund (more information on this requirement is included in the Entrant Handbook). Please note that the lead entrant will be required to confirm that its entry complies with this requirement as part of the entry form.

1.4. Ofwat reserves the right to refuse any entry the terms of which Ofwat considers to be inconsistent with these terms and conditions.

1.5. An organisation (whether a Water Company or its partners or participants) is not eligible to apply to or participate in the Challenge:

- 1.5.1 if it shares common ownership with Nesta, Arup and/or Isle, except where such a relationship is declared and measures taken to manage any risk of conflict have been approved by Ofwat; or
- 1.5.2 if any individual in its project team or any senior member of its staff is:
 - (i) an employee of Nesta or Ofwat or an immediate family member of such employee;
 - (ii) an employee of Arup or Isle that is working or has worked on the research, design, administration, delivery and/or evaluation of the Challenge or the Innovation in Water Challenge or the Water Breakthrough Challenge Round 1 or the Ofwat Innovation Fund, or any immediate family member of such employee; or
 - (iii) any other individual that is working or has worked on the research, design, administration, delivery and/or evaluation of the Challenge or the Innovation in Water Challenge or the Water Breakthrough Challenge Round 1 or the Ofwat Innovation Fund, or any immediate family member of such individual,
except where such a relationship is declared and measures taken to manage any risk of conflict have been approved by Ofwat.

1.6 You can submit more than one entry to the Challenge. You may submit an entry or entries to either or both Streams, but each entry submitted must be for a different project. You will not be permitted to switch Streams or IPR proposals once you have submitted your entry. You must bear all the costs of entering and participating in the Challenge, including travel costs and other out of pocket expenses. Please note for the avoidance of doubt that you are responsible for all costs will apply regardless of the outcome of your application.

1.7 Ofwat reserves the right (in its discretion) not to accept late entries or entries submitted in languages other than English. Neither Nesta nor Ofwat are responsible for, and Ofwat may in its discretion disregard, entries that are lost, incomplete, damaged or late due to computer, network or telecommunications failure based on third party telephone or data networks.

1.8 The contact details you provide will be used to contact you about the Challenge. All communications from you in relation to the Challenge must be in English. If you do not respond within 14 days, or if you withdraw or are disqualified from the Challenge for any

reason, another entry may be selected in your place, but there is no requirement or obligation for this to happen.

1.9 When submitting an entry to the Challenge you will be asked to identify which Stream you wish to be considered for. Eligible entries will be assessed against the assessment criteria for the relevant Stream as set out within the [Entrant Handbook](#) in order to determine the winners of the Challenge awards. Ofwat's decision on the selection of winner(s) and the amount of the Challenge awards (including in relation to queries on the assessment process) is final. Ofwat will receive recommendations from the Challenge judging panel which it will take into consideration when making its decisions. However, Ofwat is not bound by the judging panel's recommendations, and all and any awards are at Ofwat's sole discretion. For the avoidance of doubt, Ofwat may at its sole discretion decide not to award any funding in relation to a Challenge competition. Correspondence will not be entered into, although Ofwat may at its sole discretion provide generalised or individual feedback to entrants or winners.

1.10 In consultation with Nesta, Ofwat may vary the form or substance of the Challenge and/or either Stream (including deadlines and event dates) as it deems appropriate in the circumstances to ensure the Challenge objectives, as set out within the Entrant Handbook, are achieved. Ofwat may suspend or withdraw the Challenge and/or either Stream if it considers that the Challenge or the Stream will no longer achieve its objectives.

1.11 Nesta, in consultation with Ofwat, reserves the right to vary these terms and conditions at any time. Variations will take effect from the date they are posted on the Challenge website so please check regularly to see the current version.

2 Challenge Awards

2.1 The payment of any funds awarded through the Challenge shall be settled in accordance with an agreed settlement mechanism. Neither Nesta, Ofwat nor any of their respective partners in the Challenge shall have any responsibility or liability to anyone, however, arising for the non-payment or delay in payment of any funds awarded through the Challenge.

2.2 Funding will be awarded in pounds sterling and the recipient is responsible for payment of tax and other charges.

2.3 If you are selected as a winner of the Challenge you will be required to enter into a Challenge award agreement before funds will be awarded. Any funds awarded by the Challenge must only be used to fund the project described in your application. Such usage must comply with the terms of the Challenge award agreement and must promote the objectives of the Challenge as described on the Challenge website. You must comply with all reasonable monitoring requirements specified by Ofwat, either directly or in conjunction with Nesta, to verify the proper use of such funds, and you consent to the sharing of all monitoring information between Nesta and Ofwat and with any third party Ofwat or Nesta (with the approval of Ofwat) may in future appoint in respect of the monitoring of the Challenge. Nesta and Ofwat reserves the right to include terms within the Challenge award agreement which may impose additional conditions on the release

of funds during the course of the project if either Nesta or Ofwat, in their sole opinion, form the view that (i) the Challenge has not resulted or will not result in sufficient public benefit in line with Nesta's charitable objects or the objectives of the Challenge and/or (ii) if such conditions are required or are appropriate in light of other legal or regulatory requirements.

2.4 If you fail to comply with the provisions of a Challenge award agreement, Ofwat reserves the right to refuse your entry to future competitions.

3 Your promise to us

3.1 To participate in the Challenge, you must:

- satisfy the relevant eligibility criteria and ensure that all information submitted by you is true, accurate and complete;
- submit a proposal which is your own original idea and not copied from anyone else;
- have, or will obtain, all authorisations, consents and permissions, including any relevant legal or regulatory requirements, necessary to submit your entry, carry out your proposal and comply with these terms and conditions;
- ensure that your entry will not infringe any intellectual property or other third party rights or breach any contractual obligation. You may be disqualified if we receive notice that your entry infringes any third party rights;
- act lawfully, ethically and in good faith and comply with these terms and conditions, any Challenge award agreement, the Settlement Agreement, Water Company licences, any other rules of the Challenge and any relevant laws, regulations, guidelines and codes of practice;
- comply with all reasonable instructions while participating in the Challenge, including in relation to health & safety and security.

3.2 You must:

- at the time of submitting an application to the Challenge and at any other point during the Challenge, declare and procure that your partners and participants declare any actual or potential conflict of interest with Nesta, Ofwat, Arup, Isle and/or the Challenge judges, and provide Nesta and Ofwat with all information reasonably requested in relation to such conflict;
- take reasonable steps, and procure that your partners and participants take reasonable steps, to manage any such conflict including (without limitation) by implementing such measures as Nesta or Ofwat may reasonably require. Where a conflict cannot be avoided and/or where Ofwat determines (in its sole discretion) that a conflict cannot be appropriately managed you may be disqualified from participating in the Challenge.

3.3 Ofwat, in consultation with Nesta, reserves the right at its sole discretion to disqualify you from the Challenge if you or your partners do not comply with these terms and conditions, if you or your partners behave in a way which is misleading, disruptive, inappropriate or potentially dangerous, if you or your partners fail to participate fully or do anything to damage the reputation of Nesta, Ofwat or Nesta's partners. Ofwat, in consultation with Nesta, reserves the right to require repayment of any funding awarded to you and/or your partners through the Challenge if you and/or your partners fail to

comply with these terms and conditions and/or the terms of any Challenge award agreement and/or the terms of the Settlement Agreement.

4 Intellectual property

4.1 In these terms and conditions:

“**Background IPR**” is IPR, which exists prior to the submission of the application to the Challenge.

“**Background IPR Principles**” are the principles that will be used to determine any royalties and/or other remuneration payable for any licence granted to a Water Company under clause 4.5.2 which principles will be as detailed in your application and/or as may otherwise be agreed between you and Ofwat.

“**Foreground IPR**” is all IPR that is created through a project funded by the Challenge.

“**General Background IPR**” is any and all Background IPR that is not Specific Background IPR.

“**IPR**” shall mean any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Specific Background IPR**” is Background IPR which has been specifically identified in your application and which Ofwat has agreed shall constitute Specific Background IPR under clause 4.5.2, as may be amended from time to time in accordance with clause 4.5.3.

4.2 Each participant shall retain all rights in and to its Background IPR. Where necessary an appropriate form of licence should be granted to all participants in any project, which is the subject of a bid, for the sole purpose of the project, in order to enable it to go ahead.

4.3 With regards to the ownership of Foreground IPR, where a project funded through the Challenge involves more than one participant, then any jointly created IPR should be shared proportionately as agreed by the project participants, however where any IPR is created independently by one of the project participants then it should be owned by the participant who created it, rather than by all the project participants.

4.4 **Catalyst Stream, Default and Transform Stream, Default (where applicable):** You and your partners hereby grant to all appointed Water Companies (whether currently existing or existing in the future) a non-exclusive, perpetual, sub-licensable, irrevocable, royalty-free licence to:

- 4.4.1 use your respective Foreground IPR for any purpose related to their operations as a Water Company. If the Foreground IPR contains any third party IPR you must ensure that such third party IPR is also licensed on the same basis set out in this clause 4.4.1; and
- 4.4.2 use your respective Background IPR solely to the extent necessary for them to receive the benefit of the licence granted at clause 4.4.1 above. If the Background IPR contains any third party IPR you must ensure that such third party IPR is also licensed on the same basis set out in this clause 4.4.2.

4.5 **Catalyst stream, Background IPR Trial (where applicable):**

- 4.5.1 You and your partners
 - 4.5.1.1 hereby grant to all appointed Water Companies (whether currently existing or existing in the future) a non-exclusive, perpetual, sub-licensable, irrevocable, royalty-free licence:
 - 4.5.1.1.1 to use your respective Foreground IPR for any purpose related to their operations as a Water Company; and
 - 4.5.1.1.2 to use your respective General Background IPR solely to the extent necessary for them to receive the benefit of the licence granted at clause 4.5.1.1.1 above; and
 - 4.5.2.1 if a Water Company (whether currently existing or existing in the future) requests in writing a licence of Specific Background IPR, shall grant to that Water Company on written terms a non-exclusive, irrevocable, sub-licensable licence to use and access the relevant party's Specific Background IPR to the extent necessary and useful for the sole purpose of enabling the relevant Water Company to benefit from the licence granted at clause 4.5.1.1.1 above, subject to the agreement of appropriate royalties and/or other appropriate form of remuneration (you and your partners acting reasonably in good faith) which are fair, reasonable and non-discriminatory taking into consideration:
 - 4.5.1.2.1 the Background IPR Principles;
 - 4.5.1.2.2 that the royalties and/or remuneration must reasonably be considered as standard in the relevant market, subject always to clause 4.5.1.2.4;
 - 4.5.1.2.3 that the royalties and/or remuneration must be no less favourable than those offered by you or your partners to any third parties, subject always to clause 4.5.1.2.4;
 - 4.5.1.2.4 that any royalties and/or remuneration must be proportional to the funding received from the Stream to the development of the relevant Foreground IPR; and
 - 4.5.1.2.5 that the Foreground IPR generated from the Challenge (and therefore the Background IPR required to use that Foreground IPR) should at all times be primarily used for the benefit of the customers of all Water Companies and present value for money for those customers, and
 - 4.5.1.3 acknowledge and agree that if the General Background IPR, Specific Background IPR or Foreground IPR contains any third party IPR you must ensure that such third party IPR is licensed on the same basis as set out in clauses 4.5.1.1 and 4.5.1.2.

- 4.5.2 If you or any of your partners wish for any Background IPR to be treated as Specific Background IPR for the purposes of the Challenge, you must notify Nesta by clearly stating this in your application at section D iv. Background IPR may only be designated as Specific Background IPR where Ofwat has agreed in writing to such designation.
- 4.5.3 If, from time to time throughout the duration of the project, you or one your partners intends to introduce additional Background IPR to the project which did not exist at the time of submitting your application that it wishes to designate as Specific Background IPR, you must notify Nesta as soon as possible and prior to introducing the said Background IPR to the project. Ofwat may, at its sole discretion, consent in writing to such Background IPR being designated as Specific Background IPR. The introduction of any additional Specific Background IPR must be strictly as necessary or useful for the progression and/or furtherance of the project. For the avoidance of doubt, unless and until Ofwat have provided their consent under this clause 4.5.3, the relevant Background IPR shall not be treated as Specific Background IPR.
- 4.5.4 If you or one of your partners are unable to agree fair, reasonable and non-discriminatory royalties and/or other remuneration for a licence of Specific Background IPR with a Water Company in accordance with clause 4.5.1.2 within 1 month after receipt of the written request from the relevant Water Company, you must refer (or you must procure that any relevant partner refers) the matter to an independent expert (an "**Expert**") for determination ("**Expert Determination**") in accordance with clause 4.5.5. Each party shall bear its own costs in relation to any Expert Determination.
- 4.5.5 In the event of any Expert Determination, you (or the relevant partner) and the Water Company shall agree on the appointment of an independent expert and shall agree with the expert their terms of reference. If you (or the relevant partner) is unable to agree on the appointment of an Expert with the Water Company within 7 days, either party shall be entitled to request that Ofwat appoint an Expert. The Expert shall act as an expert and not as an arbitrator in determining whether any proposed licence terms are fair, reasonable and non-discriminatory taking into account those considerations detailed in clauses 4.5.1.2.1 – 4.5.1.2.5 above. The Expert's written decision on the matters referred to them shall be final and binding in the absence of any manifest error or fraud. You or your partner (as relevant) shall act reasonably and co-operate with the Water Company and the Expert to give effect to the provisions of this clause 4.5.5 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 4.5.6 For the avoidance of doubt, this clause 4.5 will not apply to the Catalyst Stream, Default or Alternative, or the Transform Stream.

4.6 Catalyst Stream, Alternative and Transform Stream, Alternative (where applicable): Requests for alternative IPR arrangements will be considered on a case-by-case basis. Where applications to the Challenge propose alternative IPR arrangements, your application must clearly show how the project will benefit all customers of Water Companies and any alternative arrangements do not result in additional costs to customers but instead contribute to net savings (including to the cost of access to Background IPR) than would have been available absent the award.

4.7 It is important that the benefits of the Challenge flow back to those customers funding it, and ensure strong alignment between the customer needs and priorities of the sector and the focus of innovation. In order to ensure this, the default for IPR arising as a result of the Challenge shall be treated in accordance with this clause 4 unless any alternative arrangements are agreed by Ofwat's consent at its sole discretion, in writing in a Challenge award letter.

4.8 To the extent that an applicant or any of its partners receive any royalties:

4.8.1 Foreground IPR will be made available royalty-free to the appointed Water Companies by all project participants (water companies, business retailers and other third parties).

4.8.2 Foreground IPR royalties earned by appointed Water Companies and water retailers in all sectors in England and Wales, which for the avoidance of doubt shall include the water sector in England and Wales, will be shared with Water Company customers (in proportion to the funds that customers have contributed to the project). This includes where there are joint bids.

4.8.3 Foreground IPR royalties earned by other third parties (i.e. those other than the appointed Water Companies and business retailers) in other sectors in England and Wales, do not need to be shared with Water Company customers.

4.8.4 All project participants may retain royalties earned outside England and Wales.

4.9 You shall (and shall procure that your partners shall) provide all reasonable assistance to Nesta, Ofwat and any Water Companies (as relevant) in doing all such acts or things as may be necessary or desirable to give effect to this clause 4, including (without limitation) the execution of any documentation.

5 Use of personal information

5.1 Please see Nesta's Challenge Privacy Policy (<https://waterinnovation.challenges.org/privacy-policy/>) and Ofwat's Challenge Privacy Notice (<https://www.ofwat.gov.uk/publication/privacy-policy/>) for information about how we will use personal information obtained for the purposes of participating in the Challenge.

6 Publicity

6.1 Ofwat, Nesta and Nesta's partners may carry out publicity and promotion for the Challenge and publish research and evaluation in relation to the Challenge. You agree, and you confirm that your partners agree, to the use of each of your organisation names

and a summary of your proposal in promotion and publications in any media and online and to participate in any other publicity reasonably required by Nesta or Ofwat in connection with the Challenge. Before publication, any concerns you have about the confidentiality of your entry will be considered. You should specifically draw any such concerns to the attention of Nesta within the terms of your entry. Nesta may ask you and your partners to support and/or participate in promotional activities related to the Challenge on reasonable notice.

6.2 Any public statements made by you or your partners in relation to the Challenge must acknowledge the support of Ofwat, Nesta and their partners and must be approved in advance by Nesta, in consultation with Ofwat. For the avoidance of doubt, you and your partners will not announce Ofwat's decision on the outcome of your Challenge application without the prior written approval of Nesta, in consultation with Ofwat.

6.3 In this clause "**FOIA**" means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation; and "**EIR**" means the Environmental Information Regulations 2004. You and your partners acknowledge that Ofwat is subject to the requirements of the FOIA and the EIR and may be required under the FOIA and the EIR to disclose information concerning you, your partners, your project and participation in the Challenge (including commercially sensitive information) without consulting or obtaining your (and/or your partners) prior consent. In these circumstances Ofwat shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give you and/or your partners' advance notice, or failing that, to draw the disclosure to you and/or your partners' attention after any such disclosure. Ofwat shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIR.

7 Limitation of Liability

7.1 To the extent permitted by applicable law, Nesta and Ofwat exclude all liability for any direct or indirect loss or liability, costs, claims, taxes, charges or expenses arising from your participation in the Challenge or your reliance on statements made or advice given by Ofwat, Nesta or Nesta's partners. If you submit any materials or items as part of your entry to the Challenge, this is at your own risk. Neither Nesta nor Ofwat give any undertakings to keep safely, maintain or return any materials or items.

7.2 Without prejudice to Clause 7.1, each of Nesta and Ofwat's maximum liability to you in connection with the Challenge (if any) is limited to £500. Nothing in these terms and conditions excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation.

8 Governing Law and Jurisdiction

These terms and conditions shall be governed by and interpreted in accordance with the laws of England and Wales and you hereby submit to the exclusive jurisdiction of the English courts.