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## Subcontractor 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 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 provided by the Challenge Contractor to one other party to the Collaboration Agreement ("Lead Collaborator") is passed on to other parties ("Subcontractors") and outline project details, aims and milestones which the Subcontractor is responsible for delivering in order to fulfil the requirements of Ministry CPAs.
- 1.4 These terms and conditions apply when the Lead Collaborator engages other Challenge Parties as Subcontractors and passes on to these Subcontractors such rights and obligations as the Challenge Contractor has passed to the Lead Collaborator under equivalent Work Schedules and terms and conditions.

### 2 Relationship with Collaboration Agreement

- 2.1 The following clauses of the Collaboration Agreement: [\[http://www.biologicalheritage.nz/documents\]](http://www.biologicalheritage.nz/documents), 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(b)(force majeure), 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 Subcontractor carries out the Research, a Work Schedule will take precedence over these terms and conditions.

### **3 Use of Funding**

- 3.1 Subject to the Subcontractor providing the Research and reporting in accordance with a Work Schedule, the Lead Collaborator will make the payments specified in the Work Schedule to the Subcontractor providing the Lead Collaborator has received funding from the Challenge Contractor ("Funding") for the Project described in the Work Schedule.
- 3.2 The Subcontractor will invoice the Lead Collaborator as specified in the Work Schedule.
- 3.3 The Subcontractor will only use the Funding for:
- (a) the purposes specified in the Work Schedule;
  - (b) any reporting undertaken by the Subcontractor to allow the Lead Collaborator to meet the Challenge Contractor and 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 Lead Collaborator to meet Challenge Contractor and 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 Subcontractor will acknowledge, as appropriate, provision of Challenge Funding by the Ministry.
- 3.6 Payment will be made by the Lead Collaborator to the Subcontractor by the 20<sup>th</sup> of the month following receipt by the Lead Collaborator of invoice(s) issued by the Subcontractor, 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 and the Lead Collaborator's liability to the Subcontractor for payments is limited to the amounts specified in the Work Schedule for the period 1 July 2015 to 30 June 2019 (years 1 to 4). Any amounts shown for subsequent years are indicative only and are subject to the Ministry providing further funding for the second 5 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 Subcontractor agrees:
- (a) to return to the Lead Collaborator 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 Lead Collaborator and that all such commitments are immediately null and void and cannot be enforced by the Subcontractor,

provided that the amounts to be returned to the Lead Collaborator 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 Lead Collaborator will as soon as practicable give written notice to the Subcontractor setting out the amounts to be repaid to the Lead Collaborator 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 Lead Collaborator, 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 Subcontractor'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 Subcontractor will notify the Lead Collaborator 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 Lead Collaborator or the Subcontractor.

## **6 Performance**

- 6.1 The Subcontractor 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 Subcontractor will obtain and/or abide by required ethical approvals and obligations including any notice of government policy or direction that is provided to the Lead Collaborator by the Challenge Contractor or the Ministry and communicated to the Subcontractor in writing.
- 6.2 The Subcontractor agrees to provide reasonable access and information to the Lead Collaborator 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 Subcontractor is complying with the terms and conditions of a Work Schedule. In addition the Subcontractor agrees to keep appropriate accounting records of its use of the Funding provided under a Work Schedule and make those records available to the Lead Collaborator if required.

## **7 Health and Safety Obligations**

- 7.1 Each party will comply with, and will ensure that its employees, agents or subcontractors are fully aware of and comply with all relevant health and safety laws, guidelines and policies in force during the term of a Work Schedule.

## **8 Intellectual Property**

- 8.1 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: [<http://www.biologicalheritage.nz/documents>]

## **9 Records**

- 9.1 The Subcontractor 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 Lead Collaborator, the Subcontractor will transfer to the Lead Collaborator, under obligations of confidence as applicable, any records that the Lead Collaborator is required to keep in order to fulfil its obligations under the Public Records Act 2005.

## **10 Data Management**

- 10.1 The Subcontractor 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 Subcontractor 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 Subcontractor is not required to make the Results available under clause 10.2 if the Subcontractor 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 Subcontractor's statutory or existing legal obligations; or
  - 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.

## **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 Subcontractor will cease all work and, in accordance with clause 3 but subject to clause 4, the Lead Collaborator

will pay the Subcontractor 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 Subcontractor gives 6 months' notice in writing to the Lead Collaborator 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 and the Challenge Contractor terminates a Work Schedule with the Lead Collaborator, then the Lead Collaborator will also be entitled to terminate the equivalent Work Schedule by giving immediate notice to the Subcontractor.
- 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 Variations to Subcontract Terms and Conditions**

- 12.1 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".
- 12.2 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 Subcontractor 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.