

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") to Landcare Research New Zealand Limited ("Challenge Contractor") is used to perform research and related activities ("Research") on Challenge projects.
- 1.2 Funding for specific Challenge projects is allocated by the Challenge Contractor to another party involved in the NZBH Challenge ("Lead Collaborator") which then engages other parties to assist with the Research ("Subcontractors").
- 1.3 These terms and conditions apply when the Lead Collaborator engages a Subcontractor which is not a party to the NZBH Challenge Collaboration Agreement.
- 1.4 Where the Challenge contracts directly with a Subcontractor who is not a party to the NZBH Challenge Collaboration Agreement, the Challenge also acts in the role of "Lead Collaborator"

2 Use of Funding

- 2.1 Subject to the Subcontractor undertaking the Research, meeting project management milestones and reporting in accordance with the 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.
- 2.2 The Subcontractor will invoice the Lead Collaborator as specified in the Work Schedule.
- 2.3 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.
- 2.4 The parties acknowledge that any 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.
- 2.5 The Subcontractor will acknowledge, as appropriate, provision of Challenge Funding by the Ministry.
- 2.6 Payment will be made by the Lead Collaborator to the Subcontractor by the 20th 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.
- 2.7 The Challenge Contractor and the Lead Collaborator's liability to the Subcontractor for payments is limited to the amounts 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.

3 Key Personnel

- 3.1 The parties agree that if the Subcontractor's Project Leader or Key Personnel listed in the 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.
- 3.2 Subject to clause 3.1, 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.

4 Performance

- 4.1 The Subcontractor agrees to exercise all reasonable skill, care and diligence in the performance of the Research 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.
- 4.2 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 the Work Schedule to satisfy itself that the Subcontractor is complying with the terms and conditions of the Work Schedule. In addition the Subcontractor agrees to keep appropriate accounting records of its use of the Funding provided under the Work Schedule and make those records available to the Lead Collaborator if required.

5 Health and Safety Obligations

- 5.1 Both the Challenge Contractor and the Subcontractor 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.
- 5.2 The Subcontractor will:
- (a) perform its obligations under this Agreement in compliance with its obligations under the HSWA, and ensure that its sub-subcontractors and other workers perform their obligations under the HSWA;
 - (b) comply with all reasonable directions of the Lead Collaborator 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 Lead Collaborator to the extent that it relates to, or affects, the Services.
- 5.3 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.

6 Confidentiality

- 6.1 Confidential Information means any information which is by its nature confidential or which the disclosing party advises the receiving party is confidential relating to the business, property, employees, contractors, members, clients and agents of a party, which is obtained by, disclosed to or otherwise made available to the other party in connection with the Work Schedule.
- 6.2 Confidential Information does not include information to the extent that such information:
- (a) is or becomes public through no act or omission of the receiving party; or
 - (b) is already known by the receiving party or is in its lawful possession prior to disclosure; or
 - (c) is obtained 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 law.

6.3 Each receiving party must:

- (a) treat as confidential and take all action necessary to maintain the confidential nature of the disclosing party's Confidential Information; and
- (b) not use or disclose such Confidential Information other than:
 - (i) as agreed in writing by the disclosing party; or
 - (ii) as reasonably required to carry out the Work Schedule; 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.

6.4 If a receiving party is required to disclose Confidential Information by law including, without limitation as required under the Official Information Act, that party will:

- (a) immediately notify the disclosing party and, if appropriate, transfer the request to that party; and
- (b) furnish only that portion of Confidential information which it is legally required to disclose.

6.5 To avoid doubt, the parties agree that a party is not prevented from using or disclosing its own Confidential Information.

6.6 This clause 6 will survive expiry of the Work Schedule.

7 Publications and Communications

7.1 Publication of results and data from the Research is encouraged, subject to any confidentiality requirements and following protection of any potentially commercialisable intellectual property. Publications should acknowledge any funding contribution from the Ministry and the Challenge and be reported to the Challenge Director as required to enable timely reporting to the Ministry.

8 Intellectual Property

8.1 Ownership of any background intellectual property a party contributes to the Research will remain with that party, which will grant to the other party a perpetual, non-exclusive, non-transferable, royalty free licence to use that background intellectual property for purposes related to the Research.

8.2 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 for Other Party Collaborators:

<https://data.bioheritage.nz/dataset/other-party-nzbh-ip-plan>.

9 Records

9.1 The Subcontractor must maintain true and accurate records, including appropriate accounting records, of its use of the Funding provided under the Work Schedule for at least 7 years after termination or expiry of the 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 the Work Schedule.

- 10.2 Subject to clause 8 and clause 10.3, the Subcontractor will make the results of the Research undertaken under the 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.
- 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;
 - 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;
 - 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;
 - 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 The 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 the Work Schedule the Subcontractor will cease all work and, in accordance with clause 2, the Lead Collaborator will pay the Subcontractor for all Research undertaken in accordance with the Work Schedule and any financial liabilities incurred prior to the date of termination of the Work Schedule.
- 11.2 In the event that the Ministry terminates its investment contract with the Challenge Contractor and the Challenge Contractor terminates its contract with the Lead Collaborator, then the Lead Collaborator will also be entitled to terminate the Work Schedule by giving immediate notice to the Subcontractor.
- 11.3 Termination of the 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 End Date(s) in the Work Schedule.

13 Disputes

- 13.1 The parties agree to use their best endeavours to resolve any dispute that may arise under this contract. The following process will apply to disputes:
- a. a party will notify the other and the Challenge Director if it considers a matter is in dispute;
 - b. the Contract Managers and the Challenge Director will attempt to resolve the dispute through negotiation;

- c. if the dispute is not resolved within 10 working days of notification, it will be referred to the parties' senior managers for resolution, and
- d. if the senior managers have not resolved the dispute within 10 working days of it being referred to them, the parties will refer the dispute to mediation or, if agreed by the parties, some other form of alternative dispute resolution.

13.2 If a dispute is referred to mediation, the mediation will be conducted:

- a. by a single mediator agreed by the parties or if they cannot agree, appointed by the Arbitrators and Mediators Institute of New Zealand (AMINZ)
- b. on the terms of the AMINZ Mediation Protocols, and
- c. at a fee to be agreed by the parties or if they cannot agree, at a fee determined by AMINZ.

13.3 Each party will pay its own costs of mediation or alternative dispute resolution under this clause 13.

13.4 If there is a dispute, each party will continue to perform its obligations under this contract as far as practicable given the nature of the dispute.

13.5 Each party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 13.1, unless that party requires urgent relief from a court.

14. General

- (a) **Notices** relating to the Work Schedule will be given by email or by post to a party's Administrator as stated in the Work Schedule. Notices given by email will be deemed to have been delivered on the date of transmission. Notices sent by post will be deemed to have been given three days after dispatch.
- (b) **Force Majeure:** No party will be liable for any delay or default due to natural calamities, acts or demands of government or any government agency, wars, riots, strikes, floods, earthquakes, accidents, 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 other 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.
- (c) **Governing Law:** The Work Schedule and these Terms and Conditions will be governed by and construed in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of New Zealand's courts.