

## **TERMS AND CONDITIONS**

All capitalized terms used and not otherwise defined in these Terms & Conditions shall have the meanings set forth in the Statement of Work (SOW). See Appendix A for a list of defined terms.

### **1. SCOPE OF WORK**

The SOW and these Terms and Conditions are intended for research and clinical projects for Internal Parties, and for research projects for External Parties. NOT INCLUDED in the SOW are (1) clinical projects for External Parties, and (2) alternate activities beyond or in addition to those specifically described in the SOW. Any additional activities beyond those described in the SOW will require a separate SOW and budget.

Changes to the SOW require the mutual prior written consent of the Recipient and the GSC. A minimum of 90 days' notice is required for a change of the SOW unless mutually agreed to in writing by all parties.

### **2. INTELLECTUAL PROPERTY**

The parties hereto acknowledge and agree that a Recipient may provide the GSC with access to Intellectual Property which is proprietary to the Recipient (hereinafter "Recipient Intellectual Property").

**2.1 For External Party** - During the Contract Period of the Project, the GSC may, either solely, or jointly with one or more employees of the Recipient, conceive and/or make inventions, improvements, and/or discoveries related to the Recipient Intellectual Property (hereinafter "New Intellectual Property"). All rights and title to Recipient Intellectual Property and New Intellectual Property shall belong to the Recipient.

The Recipient acknowledges and agrees that the GSC may use the Intellectual Property and New Intellectual Property without charge in any manner at all for research, scholarly publication, educational and all other non-commercial uses.

### **2.2 For Internal Party or Academic Collaborator**

All work conducted by the GSC for the Project is being done as a collaborative service. Therefore:

- All discoveries, inventions or developments of Intellectual Property resulting from Activities outlined shall be disclosed by the Investigator as soon as reasonably possible to the Recipient, who is responsible to promptly communicate the disclosure to the GSC. The management and commercialization of the Intellectual Property, as well as the appropriate designation of authors on any scientific publications resulting from this work, will be determined, as appropriate:
  - in accordance with institutional agreements between the GSC and the Recipient;
  - by mutual consent between the GSC and the Recipient;
  - in accordance with the policies of the GSC.

**2.3 For All Recipients** - the GSC and the Recipient hereto acknowledge and agree that during the Project, the GSC may create, develop or utilize techniques, processes, methods, approaches, algorithms, scripts, software, and/or tools in providing the Activities which are proprietary to the GSC. Notwithstanding anything else in the SOW, the GSC retains all right in and title to same and any improvements and/or modifications thereto.

### **3. DISCLAIMER OF WARRANTIES**

The GSC does not guarantee the availability of methods and technology in development, or the suitability of any processes (production or development) for the Project. The GSC will undertake good faith efforts to conduct the Activities, but results are not guaranteed. **THE GSC MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE NEW INTELLECTUAL PROPERTY OR WITH RESPECT TO ANY DATA OR OTHER RESULTS ARISING FROM THE PROJECT. THE GSC SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SHALL IN NO EVENT BE LIABLE FOR ANY LOSS OF PROFITS, BE THEY DIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL OR OTHER SIMILAR OR LIKE DAMAGES ARISING FROM ANY DEFECT, ERROR OR FAILURE TO PERFORM, EVEN IF THE GSC HAS BEEN ADVISED OF THE POSSIBILITY OF**

**SUCH DAMAGES. THE RECIPIENT HEREBY ACKNOWLEDGES THAT THE PROJECT IS OF AN EXPERIMENTAL AND EXPLORATORY NATURE, THAT NO PARTICULAR RESULTS CAN BE GUARANTEED, AND THAT IT HAS BEEN ADVISED BY THE GSC TO UNDERTAKE ITS OWN DUE DILIGENCE WITH RESPECT TO ALL MATTERS ARISING FROM THE SOW. THIS ARTICLE 3 SHALL SURVIVE TERMINATION OR EXPIRATION OF THE SOW.**

#### **4. LIMITATION OF LIABILITY**

Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from its use, storage or disposal of any data or other results arising from the Project and acknowledges that the GSC has no obligation to retain or back up any such data or results once delivered or made available to the Recipient. The GSC will not be liable to the Recipient for any loss, claim or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of any data or other results arising from the Project by the Recipient, except to the extent permitted by law when caused by the negligence or willful misconduct of the GSC .

#### **5. INDEMNIFICATION**

The External Party hereby indemnifies, holds harmless and defends the GSC , the PHSA, its Board of Directors, officers, employees, and agents against any and all claims (including all legal fees and disbursements incurred in association therewith) arising out of the receipt or use by the Recipient of any of the Recipient Intellectual Property and/or any New Intellectual Property and/or any data or other results arising from the Project including, without limiting the generality of the foregoing, any damages or losses, consequential or otherwise, arising from or out of same, howsoever the same may arise.

#### **6. COSTS**

**6.1 Activities Costs** - The GSC is currently funded to provide access to sequencing technologies on a collaborative basis. In the event that the GSC 's funding for this access ends, any Activities that would extend beyond the end of that funding will be subject to Termination in accordance with Section 8. To

extend collaborative activities, a new SOW with revised scope and costs will be required.

The costs quoted herein may be utilized by the Recipient to estimate the cost of activities until the end of the Contract Period. However, such estimates will not be binding on GSC.

The SOW is based on information provided by the Recipient and assumes:

- The Recipient is fully responsible for funding of Activities.
- The Recipient is fully responsible for meeting all requirements for ethics and equity, diversity and inclusion (EDI) for sample acquisition, sample transfer and handling and data management.
- The Recipient is fully responsible for all safety approvals for sample acquisition and transfer. The GSC is responsible for safety approvals for Activities to be conducted under the SOW; for clarity, the GSC is responsible for all safety approvals for all Activities to be conducted at its facility, including the Activities for this SOW.
- Sufficient ongoing support for the operation of GSC will be provided by Genome Canada funding for GSCs, including funding for equipment and infrastructure, to support projects funded through the Genome Canada competitions.
- Sufficient funded capacity at GSC to include these Activities along with other previous commitments

**6.2 Shipping Costs** - The Recipient is responsible for all costs associated with the delivery and submission of samples to GSC including, but not limited to, courier and shipping fees, customs fees, brokerage fees, added duty charges and extra handling charges for dry ice shipments. The Recipient must ensure that any shipment includes all of the required information and documentation sufficient for customs, brokerage, transport and delivery of samples to GSC as well as sufficient packaging and dry ice to maintain samples in desired condition during shipment. The Recipient will be invoiced for any costs associated with sample shipment incurred by GSC. In accepting the terms of the SOW, the Recipient agrees to pay all such costs as invoiced.

Notwithstanding any advice or instructions provided by GSC to the Project regarding shipping and

packaging, the GSC is not responsible, nor liable, for delays occurring during sample shipment, or to any damage to or destruction of the samples during shipment. It is the responsibility of the Recipient to ensure sufficient and appropriate packaging of samples for shipment to GSC.

**6.3 Cost Estimates** - Any SOW provided to support a grant application is to be considered as an estimate only. Prior to the start of the Activities, a revised Statement of Work will be required to confirm scope of work and costs.

GST and PST will not be charged on any invoices for this work when the Recipient is an Internal Party or Academic Collaborator but will be charged when the Recipient is an External Party.

The Recipient will be responsible for any and all withholding costs.

## **7. PUBLICATION**

The Recipient acknowledges that the policies of the GSC require that the results of the Project be publishable by the GSC. The parties therefore agree that researchers engaged in the Project shall not be restricted from presenting at symposia, national, or regional professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, methods and results of the Project.

GSC will be acknowledged on any subsequent publications resulting from this work. GSC's acknowledgement policy is available at <https://www.bcgsc.ca/services>.

## **8. TERM AND TERMINATION**

The SOW shall be deemed to have come into force upon the beginning of the Contract Period and shall continue in effect for the full duration of the Contract Period unless sooner terminated in accordance with the provisions of this Article. Either party may terminate the SOW upon thirty (30) days prior written notice to the other.

The GSC may terminate the SOW upon providing five

(5) days written notice to the Recipient if the GSC does not have the availability of methods and technology in development, or the suitability of any processes for the Project.

Termination of the SOW by either party for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination of the SOW. No termination of the SOW, however effectuated, shall release the parties hereto from their rights and obligations under Articles 3 (Disclaimer of Warranties), 4 (Limitation of Liability), 5 (Indemnification), 7 (Publication), and 10 (Confidentiality).

In such case, the GSC shall be entitled to receive full compensation for all Activities performed prior to the date of termination. The Recipient shall not be entitled to, and hereby waives, claims for lost profits and any and all other direct or indirect damages and expense.

## **9. INSURANCE**

The Academic Collaborator/External Party shall, without limiting its obligations and liabilities herein, obtain and maintain, at its own expense, comprehensive or commercial general liability insurance including, but not necessarily limited to, blanket contractual liability, products and completed operations liability insurance. Such coverage shall be written on an occurrence basis in an amount not less than two million Canadian dollars (\$2,000,000.00) for any one occurrence or in the aggregate with respect to products and completed operations, and shall be with insurers licensed in the Province of British Columbia. Such insurance shall include the GSC, its directors, officers, employees (and volunteers if applicable), students and agents as additional insureds and shall provide thirty (30) days written notice of cancellation or material change to the GSC.

If requested, the Academic Collaborator/External Party shall provide evidence of such coverage at the request of the GSC prior to commencement of any work to be performed under the SOW. the GSC may request, from time to time, further evidence of coverage and/or certified copies of policies and Academic Collaborator/External Party agree to provide same.

The GSC shall obtain and maintain comprehensive/commercial general liability insurance, including, but not necessarily limited to, blanket contractual liability written in an amount not less than two million Canadian dollars (\$2,000,000.00) per occurrence. The GSC shall also obtain and maintain "all risk" property insurance covering machinery and equipment owned by the GSC.

Notwithstanding anything contained in this Article 9, the Academic Collaborator/External Party acknowledge that the GSC is insured for "all risk" property insurance and comprehensive/commercial general liability coverage as a member entity under the provisions of the Health Care Protection Program (HCPP) and the Academic Collaborator/External Party confirm that the GSC is deemed to be in compliance with the provisions of this Article 9, provided that the GSC remains insured under HCPP throughout the term of the SOW.

#### 10. CONFIDENTIALITY

The Academic Collaborator/External Party shall maintain in confidence and shall not disclose to any third party any Confidential Information (as defined below) of the GSC received pursuant to the SOW without the prior written consent to the GSC. For the purposes of the SOW, confidential information (as defined below) shall mean any and all information that is or has been received by the Academic Collaborator/External Party from the GSC and that:

- relates to the Project;
- relates to the GSC 's business, operations or activities, including the existence of the SOW and its terms and conditions; and
- is designated by the GSC as being confidential or is disclosed in circumstances where the Academic Collaborator/External Party would reasonably understand that the disclosed information would be confidential.

("Confidential Information")

Without limiting the generality of the foregoing, Confidential Information shall include trade secrets

and other confidential and/or proprietary information, business plans, patient information, informational memoranda, reports, investigations, research, work in progress, marketing and sales programs, financial projections, cost summaries, pricing formula, contract analyses, financial information, projections, confidential filings with any international, federal or state/provincial agency, and all other confidential concepts, methods of doing business, ideas, materials or information prepared or performed by or on behalf of the Academic Collaborator/External Party.

The foregoing obligation shall not apply to:

- Confidential Information that is known to the Academic Collaborator/External Party or independently developed by Academic Collaborator/External Party prior to the time of disclosure, in each case, to the extent evidenced by written records promptly disclosed to the GSC upon receipt of the Confidential Information;
- Confidential Information disclosed to the Academic Collaborator/External Party by a third party that has a right to make such disclosure;
- Confidential Information that becomes patented, published or otherwise part of the public domain as a result of acts by the GSC or a third person obtaining such information as a matter of right; or
- Confidential Information that is required to be disclosed by order of government authority or a court of competent jurisdiction; provided that the parties shall use their best efforts to obtain confidential treatment of such information by the agency or court.

The Academic Collaborator/External Party will take all reasonable steps to protect the Confidential Information of the GSC with the same degree of care the Academic Collaborator/External Party use to protect their own confidential or proprietary information.

Internal Parties and the GSC will be governed by such PHSA policies, as applicable to conduct of research, as may be in place and in force at the time of the

Activities, including but not limited to Confidentiality Policy.

Notwithstanding any termination or expiration of the SOW, the obligations of confidentiality set forth in this Article 10 shall survive and continue to be binding upon the Recipient, its successors, and assigns until five (5) years after such termination or expiration.

#### 11. NOTICES

All notices or other documents that either of the parties hereto are required or may desire to deliver to the other party hereto may be delivered only by email, personal delivery or by registered or certified mail, all postage and other charges prepaid, at the address for such party set forth in the SOW or at such other address as that party may hereinafter designate in writing to the other.

#### 12. GENERAL

The appendices to the SOW together with the terms and conditions contained within the SOW constitute the entire understanding between the parties hereto and no modifications hereof shall be binding unless executed in writing by the parties hereto. The appendices will be binding upon the parties hereto except to the extent that they may conflict with the terms and conditions contained within the SOW itself, in which case the terms and conditions of the SOW shall govern.

In the event that any part, section, clause, paragraph or subparagraph of the SOW shall be held to be indefinite, invalid, illegal or otherwise voidable or unenforceable, the entire SOW shall not fail on account thereof, and the balance of the SOW shall continue in full force and effect.

No condoning, excusing or overlooking by either party of any default or breach by the other party in respect of any terms of the SOW shall operate as a waiver of such party's rights under the SOW in respect of any continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by such party, save only an express waiver in writing.

No exercise of a specific right or remedy by any party

precludes it from or prejudices it in exercising another right or pursuing another remedy or maintaining an action to which it may otherwise be entitled either at law or in equity.

The SOW may be executed in counterparts, each of which shall be an original as against either party whose signature appears thereon, but all of which taken together shall constitute one and the same instrument. An executed facsimile or electronic scanned copy of the SOW shall have the same force and effect as an original.

In the event of any dispute arising between the parties concerning this Agreement, its enforceability or the interpretation thereof, the parties hereto shall use their best efforts to settle such disputes, claims, questions, or disagreement. To this effect, the VP of Research from each party shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice by either party to the other, disputes shall be finally settled by a single arbitrator appointed pursuant to the provisions of the *International Commercial Arbitration Act*, or any successor legislation then in force.

This SOW shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada in force therein without regard to its conflict of law rules. All parties agree that by executing this SOW they have attorned to the jurisdiction of the courts of the Province of British Columbia, and that the courts of the Province of British Columbia shall have exclusive jurisdiction over this SOW.

## Appendix A – Definitions

In this Statement of Work, unless a contrary intention appears, the following words and phrases shall mean:

- (a) **“Academic Collaborator”** shall mean those Recipients being non-GSC parties seeking a collaborative relationship during the Contract Period;
- (b) **“Activities”** shall mean the Activities as described in the SOW;
- (c) **“GSC”** shall mean: Canada’s Michael Smith Genome Sciences Centre, a program of the Provincial Health Services Authority, with offices at 100-570 West 7th Avenue, Vancouver, British Columbia, Canada, V5Z 1B3
- (d) **“Budget”** shall mean the Budget as set out in the SOW;
- (e) **“Contract Period”** shall mean the period from the Start Date to the End Date;
- (f) **“Confidential Information”** shall mean any and all information that is or has been received by the Academic Collaborator/External Party from the GSC and that relates to the Project; relates to the GSC’s business, operations or activities, including the existence of the SOW and its terms and conditions; and is designated by the GSC as being confidential or is disclosed in circumstances where the Academic Collaborator/External Party would reasonably understand that the disclosed information would be confidential.
- (g) **“End Date”** shall mean the date set out as the End Date on the SOW;
- (h) **“External Party”** shall mean those Recipients being non-PHSA parties seeking a non-collaborative relationship during the Contract Period;
- (i) **“Intellectual Property”** shall mean any data, discoveries, developments, enhancements, improvements, know-how, trade secrets or utility models, industrial or other designs, methods, concepts, formulas, techniques, processes, standards, instructions, research manuals, training materials, business plans, ideas, writings, and the like in any media whether written, electronic, or other tangible form format, and all copyright in any of the foregoing, patents, copyrights, trade-marks and other forms of intellectual property, whether or not copyrighted or patented or registered or protected, or capable of such registration or protection, in any jurisdiction world-wide;
- (j) **“Internal Party”** shall mean those Recipients being PHSA departments during the Contract Period;
- (k) **“Investigator”** shall mean the person(s) employed by the Recipient acting as Investigator to the Project as set out in the SOW;
- (l) **“New Intellectual Property”** shall mean During the Contract Period of the Project, GSC may, either solely, or jointly with one or more employees of the Recipient, conceive and/or make inventions, improvements, and/or discoveries related to the Recipient Intellectual Property. For greater certainty, “New Intellectual Property” excludes the techniques, processes, and/or tools referred to in Section 2.3 of this SOW, and any improvements and/or modifications thereto, even if conceived, developed, refined, or reduced to practice during the Contract Period;
- (m) **“Participants”** shall mean the named Principal Investigator(s) in the SOW and associated Project team members involved;

- (n) **"PHSA"** shall mean the Provincial Health Services Authority;
- (o) **"Project"** shall mean the Project as described in the SOW;
- (p) **"Recipient Intellectual Property"** shall mean Intellectual Property which is proprietary to the Recipient;
- (q) **"Start Date"** shall mean the effective date indicated on the SOW; and
- (r) **"SOW"** shall mean the Statement of Work.