

Prescribed minimum terms under the *Biodiscovery Act 2004*

As the primary user with a benefit sharing agreement (a **head agreement**) under the *Biodiscovery Act 2004* (the Act), or a subsequent user with a subsequent use agreement (**SUA**), you may enter into a SUA with another biodiscovery entity. A SUA is subject to prescribed minimum terms to ensure that compliance and reporting obligations in the head agreement are met, and that the benefits of biodiscovery return to the State. This schedule provides the prescribed minimum terms to be included in a benefit sharing agreement and a SUA.

Schedule of prescribed minimum terms under the *Biodiscovery Act 2004*

1 Specific terms

1.1 Subject to *Biodiscovery Act 2004* and the head agreement

- (a) The subsequent user agrees and acknowledges that its use of the relevant native biological material for biodiscovery is subject to the Act and the head agreement to the extent it relates to the subsequent users use of native biological material.
- (b) The subsequent user agrees and acknowledges that access to, and/or use of traditional knowledge when engaging in biodiscovery under an SUA is subject to the Act.
- (c) The subsequent user agrees that use of traditional knowledge under an SUA is subject to the terms of any existing agreement for that traditional knowledge between an authorised user and a custodian.
- (d) The subsequent user agrees to take all steps and actions necessary and within its powers and relevant to the subsequent user to enable the primary user to continue to meet the obligations of the head agreement and the requirements of the Act generally.

1.2 Conventions, codes and protocols

The subsequent user must abide by the spirit and application of the Convention on Biological Diversity and Nagoya Protocol, comply with the Code of Ethics and operate consistently with the Traditional Knowledge Code of Practice.

1.3 Identity and location

The subsequent user must keep the primary user and each subsequent user up the commercialisation chain promptly informed about changes to its location and contact details.

1.4 Right to use

The subsequent user must acknowledge that the subsequent user is only granted a right to use the samples and native biological material subject to the Act and the head agreement.

1.5 Inconsistency

The prescribed minimum terms override the other provisions of the SUA and any other agreement between the primary user and a subsequent user or between a subsequent user and another subsequent user to the extent of any inconsistency.

1.6 Sharing the benefits of biodiscovery

- (a) A subsequent user agrees to provide benefits of biodiscovery to the State up the commercialisation chain to the primary user. The primary user is to account to the State under the head agreement for those benefits of biodiscovery.
- (b) A subsequent user agrees to provide the benefits of biodiscovery from use of traditional knowledge up the commercialisation chain to the custodian of the knowledge, in a manner consistent with the agreement between the authorised user and the custodian.

1.7 Audit and reporting

- (a) The subsequent user agrees to keep and disclose to the primary user, true and accurate accounts and records to enable the primary user to verify that the benefits of biodiscovery to be provided to the State by the primary user are being correctly provided and accounted for, and that there is compliance with its SUA (including the prescribed minimum terms).
- (b) The subsequent user agrees to provide:
 - i. to the primary user, information required by the primary user to meet its obligations to provide further information to the State in relation to compliance with the traditional knowledge obligation and any biodiscovery undertaken by the primary user and in the commercialisation chain; and
 - ii. to the State, access to enable it to audit the SUA and activities undertaken pursuant to the subsequent use agreement (to the extent they relate to the native biological material and the traditional knowledge obligation).

2 Termination provisions

2.1 Termination obligations to be consistent

On termination of the SUA, the subsequent user must comply with the same obligations that are imposed on the primary user under the head agreement were it to be terminated. For clarity, the obligations following termination will be included in the terms of any subsequent use agreement.

2.2 Termination of the subsequent use agreements

If a subsequent user disposes of all its interest in the native biological material (the subject of the SUA), the SUAs down the commercialisation chain terminate in respect of the rights to that native biological material, except if the subsequent user novates, assigns or licences all its interest in the native biological material to another party.

3 Survival of obligations after termination

This clause and clauses 1.1, 1.6, 1.7 and 2 of the prescribed minimum terms will remain in full force and effect and survive the termination of the SUA.

4 Definitions and interpretation

4.1 Definitions:

- (a) **Act** means the *Biodiscovery Act 2004* (Qld).
- (b) **Authorised user** means the primary user with a valid head agreement and a subsequent user with a valid SUA, each permitted to use native biological material for biodiscovery and each is an authorised user for the purposes of the prescribed minimum terms.

- (c) **Commercialisation chain** means all of the authorised users, which have contracted in respect of use of native biological material granted under a particular head agreement.

4.2 Interpretation:

- (a) The meanings of words and phrases contained in this Schedule and defined in the Act have the same meaning as in the Act.
- (b) The meanings of words and phrases contained in this Schedule and defined in the head agreement have the same meaning as in the head agreement.