

Project Agreement

P781

between

THE SCIENCE AND TECHNOLOGY CENTER IN UKRAINE

and

NSC Institute of Experimental and Clinical Veterinary Medicine

and

***National Center for Disease Control and Public Health; Richard G. Lugar
Center for Public Health Research***

Kyiv

OPERATIVE COMMENCEMENT DATE:

The Science and Technology Center in Ukraine (hereinafter referred to as **“the Center”**),
the *NSC Institute of Experimental and Clinical Veterinary Medicine*,
and the National Center for Disease Control and Public Health; Richard G. Lugar Center for Public Health Research

(hereinafter referred together as **“the recipient entity(ies)”**), represented for the purpose of signing this Project Agreement (hereinafter referred to as **“the agreement”**) by their authorized representatives (with the Center and the recipient(s) hereinafter referred to collectively as **“the signatory parties”**),

TAKING INTO ACCOUNT THE FOLLOWING CONSIDERATIONS:

The United States of America, Canada, Sweden and Ukraine signed the agreement establishing the Science and Technology Center in Ukraine on October 25, 1993 (referred to as **“the STCU agreement”**),

The European Communities acceded to the STCU agreement on November 26, 1998, and in so doing, replaced Sweden as a Party to the STCU agreement (hereinafter, “Party” means an entity that was an initial signatory to the STCU agreement or that has acceded to the STCU agreement),

Additional states may accede to the STCU agreement to participate in the activities of the Center (Georgia acceded to the STCU agreement on March 18, 1998; Uzbekistan acceded to the STCU agreement on December 29, 1997; Azerbaijan acceded to the STCU agreement on June 27, 2003; Moldova acceded to the STCU agreement on December 7, 2004),

The Center is a legal entity and has been accredited by the Ministry of Foreign Affairs of Ukraine as an intergovernmental organization with its headquarters in Kyiv,

The recipient(s) is a legal entity within Ukraine (or other CIS state),

The Governing Board of the Center has approved the financing of a project through the Center in the domain covered by the agreement. The (hereinafter referred to as **“the Financing Parties”**) have agreed to provide financial support for such a project,

As set forth in the STCU agreement, funds received by a legal entity in connection with the Center’s projects shall be excluded in determining the profits of that organization for the purpose of tax liability, and funds received by persons in connection with the Center’s projects shall not be included in these person’s taxable incomes,

HAVE AGREED AS FOLLOWS:

Article 1 - Scope of agreement

1.1 The recipient entity(ies) shall carry out the work plan set forth in Annex I according to the conditions of the agreement, subject to the provisions of the STCU agreement, and the statute of the Center (hereinafter referred to as **“the STCU statute”**) which govern in case of conflict. The activities carried out under the agreement are entitled *“Risk of Emerging Infections from Insectivorous Bats in Ukraine and Georgia”* (hereinafter referred to as **“the project”**). All Project Activities subject to this Agreement are to be executed by the Recipient, using only funding provided by the Center and/or sources approved by the Center. The recipient entity(ies) shall notify the Center immediately if it and/or other participating institutions determine at any time to utilize any other funding sources to execute such Project activities.

1.2 Subject to any amendments or exclusions by any other articles, the detailed terms of the agreement are specified in the annexes which form an integral part of the agreement. In the case of conflict between any provision in the annexes and any other provision of the agreement, the latter shall prevail.

Article 2 - Duration of the project

The duration of the project will be 36 months from the first of the month following the date this Agreement is signed by the STCU Executive Director, or from the first of the present month if this agreement is signed by the fifteen of the present month inclusively (hereinafter referred to as **“the operative commencement date”**).

Article 3 - Organizational structure of the project

3.1 The scope of work for each institution which takes part in the project, the organizational structure of the project, as well as financial requirements of such an institution, are attributed and stipulated in Annex I. The *NSC Institute of Experimental and Clinical Veterinary Medicine* (hereinafter referred to as **“the coordinating institution”**) and the other institutions participating in the agreement will hereinafter be referred to collectively as **“the participating institutions.”**

3.2 In the agreement, the authorized representatives of participating institutions, the project manager and the participating institution managers who are identified in Annex I, shall be responsible for the scientific, financial, personnel, and administrative management of the project in accordance with the terms and conditions of the agreement. The project manager from the coordinating institution shall be responsible for all aspects of the project including authorization of requests for payments associated with fulfilling the work plan, coordination between participating institutions, and the submission of all documents on behalf of the recipient(s) to the Center, whereas the participating institution managers shall be responsible for work carried out by their respective participating institutions and the submission of documents on behalf of their respective participating institution to the coordinating institution.

3.3 In the agreement, the authorized representatives of participating institutions, the directors, shall be responsible for general administrative and legal agreement's support in accordance with the terms and conditions of this agreement. The directors hereby accept the project manager, the participating institution managers and the project grantees; agree that the project will be performed on the premises of their respective institutions and that necessary facilities and services will be made available to support the project manager, the participating institution managers and the project grantees during the performance of the project.

3.4 The recipient entity(ies) is bound by this agreement to take all necessary and reasonable precautions to make safe all money and property according to this agreement and bears responsibility for any loss or damage of items provided. The project manager and the participating institutions managers shall have exclusive rights to utilize all equipment and materials provided to or procured by respective participating institution during the term of the project.

Article 4 - Financial contribution of the Center

4.1 The total cost of the project to the Center shall not exceed \$1,454,545. This total includes the cost of items described in Articles 4.2, 4.3, and 4.6 below.

4.2 The Center shall make grant payments directly to the project grantees. The amount of such payments is estimated to be \$418,410. This total amount may be increased with the concurrence of the Center project coordinator provided that (1) such increase results from the additional time worked on the project rather than an increase in the rate of pay and (2) an offsetting reduction is made to the cost of items in article 4.3.

4.3 The Center shall pay for items ordered by the project manager on behalf of the participating institutions including: equipment, materials, other direct costs and travel. The amount of such payments is estimated to be \$959,503.

4.4 Equipment purchased in accordance with Article 4.3 will be preserved, accounted for, and maintained throughout the term of the project by the participating institutions. Such equipment shall be used only in areas that are open for monitoring and auditing in accordance with Article 9.

4.5 Title to equipment purchased in accordance with Article 4.3 with an acquisition per item cost of less than \$2,500 will vest in the participating institution at the time of delivery. Title to all other equipment will remain with the Center until termination, cessation, or completion of the project, at which time title will be vested in the participating institution unless prior to or on that date the Center informs the participating institution of its intention to retain title to the equipment.

If the Center retains title to the equipment, the Center will provide instructions to the participating institution for disposition of the equipment. The Center will pay the cost of disposing of such equipment.

4.6 The Center will pay overhead to participating institutions, represented by their respective directors, in an amount not to exceed 10% of the direct project costs for each participating institution.

Article 5 - Cash payments by the Center

5.1 The Center shall pay its financial contribution through special bank accounts established by the Center.

5.2 Pursuant to Article 4.2, the Center shall make grant payments directly to private bank accounts of the project grantees in accordance with Letters of agreement between the Center and with each project grantee.

Each project grantee shall personally withdraw grant payments from his or her bank account. The use of a power of attorney to allow one individual to withdraw grant payments from the individual accounts of the project grantees is not permitted without the express permission of the Executive Director of the Center.

The Center shall make the advance payment, which is one third of the first quarter grant payment to the project grantees, as soon as possible following the operative commencement date.

The Center shall make quarterly grant payments in accordance with the payment level rates set forth in Annex I and the amount of time devoted to the project by each grantee. Such payments are made after approval by the Center the cost statement for the last completed quarter. The Center, at its option, may require the project manager to provide completed time cards certified by the project manager to the Center on a monthly basis to support the time devoted to the project.

Since the project grantees will remain employees of the participating institutions, the Center's act of direct grant payments to the project grantees will not transfer from the participating institutions to the Center any liability for damages caused by the project grantees during execution of the projects or any liability for damages to the project grantees during execution of the project.

5.3 Pursuant to Article 4.3, the Center shall make current payments directly to vendors in amounts which are estimated in Annex I. Such payments shall be based on vendor invoices and other documents delivered to the Center with written requests from the project manager.

5.4 Pursuant to Article 4.6, the Center shall make payments of overhead to the participating institutions represented by their respective directors as a fixed payment.

One half of the overhead will be paid after approval of quarterly progress and cost statements by the Center. A retention shall be made by the Center of the remaining one half of the allowable overhead for the project. The retention shall be released to the participating institutions represented by their respective directors within one month following the approval by the Center of the last technical or financial document or other deliverable required by the agreement.

5.5 Within Ukraine, all cash payments will be made in the national currency of Ukraine. Conversion of US dollars to the national currency of Ukraine will be according to the exchange rate of the Interbank Rate of Ukraine. Within Georgia, Uzbekistan, Azerbaijan, and Moldova, all cash payments will be made in U.S. Dollars or Euros where possible.

Article 6 - Cost Statements by the recipient

6.1 Quarterly cost statements (consolidated by the project manager and for each participating institution) covering each three-month period shall be submitted within 15 days by the project manager to the Center in English and Ukrainian (Russian optional, if the project is located in other CIS State), in hard copy and in electronic format on disk (Microsoft Word and Excel). The statements shall be appended to the relevant progress reports specified in Article 7. The format of the cost statements will be provided by the Center. The quarterly cost statements will include a representation that all project activities conducted by the Recipient during the preceding quarter were funded only with funding provided by the Center and that no other source of funding was utilized in carrying out such activities. If cost statements are not submitted on time, the Center may request in writing its submission. If the Center does not receive the submission within twenty days after such a written request, the Center may consider the previously claimed costs to be final and determine to make no further reimbursement.

Article 7 - Reports and other project outputs

7.1 The recipient entity(ies), represented by the project manager, shall submit the following reports in accordance with the format prescribed in Annex III, in English and Ukrainian (Russian optional, if the project is located in other CIS State), in hard copy and in electronic format on disk (Microsoft Word and Excel):

(a) Quarterly progress reports covering each three-month period following operative commencement date will be submitted within one month after the end of each reporting period. Quarterly progress reports are not required on the dates when annual progress reports are due.

(b) Technical reports will be submitted within one month after the significant results are achieved according to the milestones defined in work schedule (see Section 9 of Annex I).

(c) Annual reports will be submitted within one month following the anniversary date of the operative commencement date and will cover the previous twelve months of project activity.

(d) A draft final report will be submitted within two months of the completion of the project work plan, cessation or termination of the agreement, or the agreed completion date of the agreement, whichever will be the earliest. The Center will submit to the recipient(s) its evaluation of the work performed and the draft final report within two months after receipt by the Center of the report. The definitive final report will then be submitted to the Center within one month following the receipt of the Center's evaluation and will take into account the Center's evaluation. If the Center does not submit an evaluation within two months, the draft final report shall be considered the definitive final report.

(e) All reports shall be submitted by the project manager from the coordinating institution, as mutually agreed with all participating institutions, prepared in a suitable form for publication and satisfactory to the Center.

(f) The beginning of each period defined in accordance with (a), (b), (c), (d) of this article can be shifted by corresponding number of months, if the first advance payment will be late more than one month after the operative commencement date.

7.2 For the purposes of the agreement, "deliverables" are defined as any significant outputs of the project to be submitted in accordance with Annexes I, II, and III.

Article 8 - Ownership and exploitation of results

8.1 When intellectual property arises under this agreement, the entity which creates it will inform the other entities participating in the project and the Center's Executive Director, who will inform the Parties in a timely fashion.

8.2 The recipient entity(ies) shall hold all rights worldwide to intellectual property arising from this agreement, as set forth in Part E of Annex II, except for the rights in the Financing Party's territory enumerated in Article 15.2 of Annex II.

8.3 Exploitation of results shall be limited to applications for peaceful purposes. In this regard, the participating institutions shall ensure that any results which could result in concerns over proliferation of weapons technology and transfer of sensitive technologies will be treated in accordance with relevant laws of Recipient country(s) and international agreements and conventions to which Recipient country(s) is(are) a party.

Article 9 - Auditing and monitoring

9.1 Access by the Center and Financing Parties to carry out on-site monitoring of all activities of the project shall be granted by the participating institutions, and information and assistance shall be given for the verification and evaluation of the project activities as set out in Annex II.

9.2 Audits of costs may be carried out by the Center and the Financing Parties as specified in Annex II.

Article 10 - Amendments, variations, or additions

The provisions of the agreement and its annexes may be amended or supplemented by means of a written agreement signed by authorized representatives of the signatory parties.

Article 11 - Disputes

Disputes arising during performance of the agreement including, in particular, (i) a claim by the recipient entity(ies) for any payments deemed due; (ii) an interpretation of a provision of the agreement; or (iii) a request for relief or approval related to the agreement, shall be subject to the following procedure.

The recipient entity(ies), represented by the project manager, shall submit any claim, demand, or request in writing to the Executive Director. The written decision of the Center shall be delivered to the project manager within four weeks of the receipt of the submission.

Exceptionally, the coordinating institution may appeal the Center's decision in writing through the Executive Director of the Center to the Governing Board of the Center within four weeks of the communication of the Center's decision.

The decision of the Governing Board shall be final and binding. Pending the final settlement of disputes, the participating institutions shall, nevertheless, proceed diligently with the performance of the agreement.

Article 12 - Liability

12.1 The Center shall not be liable for any material loss, damage, or injury of any nature arising from, or in connection with, the performance of the work under the agreement solely by virtue of financing the project, including liability from direct grant payments to project grantees as set forth in Article 5.2.

12.2 The Center shall not be liable to the participating institutions or third parties for claims arising from

- (a) the publication or transmission of any report in accordance with Articles 4 and 13 of Annex II,
- (b) the application of the contents of any report by a third party, or
- (c) the handling or use of products which result from the project.

Article 13 - Termination of the agreement and Issuance of Stop Work Orders

13.1 The Center may terminate the agreement by a written notice to the recipient entity(ies), with the termination to be effective after 30 days or a longer period as determined by the Center following receipt of the notice by the recipient entity(ies). The project manager, with approval of the Center, may terminate the participation of a participating institution by a written notice, with the termination to be effective after 30 days or a longer period as determined by the Center following receipt of the notice by the recipient. Notwithstanding any termination, the submission of reports and cost statements covering the period up to termination shall be required.

13.2 The agreement may be terminated due to force majeure or to other factor beyond the control of the participating institutions.

13.3 If the agreement is terminated pursuant to paragraphs 13.1 or 13.2, costs shall be limited to the allowable costs incurred by the participating institutions prior to the termination and such other costs as the Center considers to be fair and reasonable having regard to commitments which have been reasonably entered into and which cannot be canceled or avoided.

The participating institutions shall comply with the directions of the Center in the termination notice to reduce or mitigate these costs.

Notwithstanding any termination, the following provisions of the agreement will continue to apply: Article 11 (Disputes); Article 7 and Article 8.2 (Equipment) of Annex II; and Part E of Annex II (Intellectual Property Rights).

13.4 Furthermore, if the Center terminates the agreement because of actions by the participating institutions which obviously violate the national laws of Recipient country(s) or which obviously are contrary to the stated objectives of the Center or to other conditions specified under the STCU agreement or the STCU statute, the participating institutions shall, upon demand by the Center, promptly return all payments and goods previously provided to the participating institutions. Notwithstanding the provisions of Article 13.1, termination pursuant to this paragraph shall be effective immediately upon receipt of the written notification of the termination by the recipient entity(ies). Notwithstanding any termination, Part E of Annex II will continue to apply.

13.5 If the Center determines that the participating institutions have violated (1) the national laws of Recipient country(s), (2) the objectives of the center as stated in the STCU agreement or the STCU statute, or (3) the terms and conditions of this project agreement, the Center shall have the right to issue a stop work order to the project manager and the participating institutions. Upon issuance of a stop work order, all work on the project will cease immediately. Project grantees will not be paid for work performed during the period that the stop work order is issued, the Center will review the circumstances which caused the stop work order to be issued and determine what action must be taken to remedy the situation. If and when the situation is remedied, the Center shall cancel the stop work order and thereby allow work on the project to resume. Alternatively, the Center may determine that the situation is so severe that the project agreement should be terminated pursuant to paragraph 13.4.

Article 14 - Annexes

As specified in Article 1.2, the Annexes are an integral part of the Agreement. They are:

Annex I - Work plan

Annex II - General conditions

Annex III - Formats for progress and technical reports

Article 15 - Entry into force of the agreement

This agreement shall enter into force on the operative commencement date.

Prepared in Kyiv in the English and Ukrainian languages (Russian optional, if the project is located only in other CIS State). In the event of inconsistencies between the English and other texts, the English text shall take precedence.

For the Center

For the coordinating institution

For the participating institution

Curtis Bjelajac

Denys Muzyka

Lela Urushadze

Executive Director

NSC Institute of Experimental and
Clinical Veterinary Medicine

National Center for Disease Control
and Public Health; Richard G. Lugar
Center for Public Health Research

Date of signing(REQUIRED):

Approved

Approved

Borys Stegnyy
Director

Amiran Gamkrelidze
Director

Date of signing(REQUIRED):

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