

Section 3: Our Terms & Conditions

Release Date: 09/04/2021

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Terms:

"Accepted Quote" means either:

- Section 1 and Section 2 to which these Terms are attached and as duly executed; or
- any other document mutually agreed and executed by the Client and AGRF to which these Terms are attached.

"Addendum" means a document marked as 'Addendum' which is attached to or references this Agreement, as mutually agreed by the Parties.

"Agreement" means this agreement as specified in clause 1.2.

"AGRF" means the Australian Genome Research Facility Ltd (ABN 63 097 086 292).

"AGRF Background Technology" means any method, process, formula, discovery, know-how, or other Intellectual Property used by AGRF in carrying out the Service, including any development or improvement thereto.

"AGRF Material" means anything used by AGRF in conducting the Service or producing the Results of the Service, in which Intellectual Property are owned by or licensed to AGRF.

"Client" means the individual or organisation which requests the Service from AGRF, signs the Accepted Quote and/or to which the Service is provided.

"Client Background Technology" means Client Material and other Intellectual Property provided by the Client to AGRF for the purpose of or in the course of conducting the Service.

"Client Material" means any data and material which is provided by or on behalf of the Client to AGRF for the purpose of or in the course of conducting the Service, including samples but excluding Clinical Samples.

"Clinical Samples" means any physical samples obtained from patients by, or on behalf of, the Client and provided to AGRF for the purposes of the Services.

"Confidential Information" means all information regardless of form (including copies thereof) and disclosure method, disclosed by or on behalf of one Party to the other in connection to the purposes of this Agreement which by its nature is confidential, is designated by the disclosing Party as confidential or the receiving Party knows or ought to know is confidential and includes, without limitation, the terms of this Agreement, the Client Material and all information relating to a Party's business, field of business, proposed business, technology or product, including scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information disclosed by a Party to the other which has not been previously published or otherwise disclosed to the general public.

"Intellectual Property" includes but is not limited to any and all intellectual and industrial property rights throughout the world (whether subsisting now or in future) including rights of any kind in inventions, discoveries, innovations, technical information, data, prototypes, processes, improvements, circuit layouts, drawings, plans, specifications, copyright, trade marks (whether registered or unregistered), designs (whether registered or unregistered), plant varieties, internet domain names, Confidential Information, know-how and trade secrets.

"Law" means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, as applicable from time to time.

"Party" means either party to this Agreement and "Parties" means both of them.

"Personal Information" has the same meaning as in the Privacy Act.

"Privacy Act" means the Privacy Act 1988 (Cth) and to the extent applicable to a Party or the Services, includes the Information Privacy Act 2000 (Vic), the Health Services Act 1988 (Vic), the Mental Health Act 1986 (Vic), the Health Records Act 2001 (Vic) and all other applicable State and Territory privacy Laws.

"Results of the Service" means the data and results delivered by AGRF to the Client as part of the Services.

"Service" means the service(s) set out in the Accepted Quote.

"Special Terms" means any terms contained in an executed Addendum which are identified as 'Special Terms'.

“Standard” means all applicable industry standards and, in the case of AGRF, includes its ISO/IEC 17025, ISO 15189 and National Association of Testing Authorities, Australia (NATA) accreditations.

“Terms” means these terms and conditions between AGRF and the Client, as amended from time to time.

1.2 This Client Agreement (Agreement) consists of:

- (a) Addendum and Special Terms (if any);
- (b) an executed Accepted Quote;
- (c) these Terms; and
- (d) any schedules or materials attached to or incorporated by reference in any of the above.

1.3 Each separately executed Accepted Quote will form a separate agreement incorporating these Terms. To the extent of any inconsistency, the above documents will be interpreted in the order of priority as listed.

2 CONDUCT OF THE SERVICE

2.1 AGRF is not obliged to accept an order for a Service and reserves the right to refuse any requests for the Service at its absolute discretion. The Client acknowledges and agrees that AGRF has no liability to the Client for any inability to provide a Service. If AGRF cannot fulfil or rejects an order for Services, it will give the Client prompt notice, including details of any period during which it cannot supply Services.

2.2 On request of the Client and acceptance by AGRF, AGRF will use commercially reasonable efforts to carry out the Service and provide the Results of the Service to the Client in a reasonably timely manner in accordance with this Agreement.

2.3 The Service must be carried out in an expert manner and in accordance with any requirements specified in this Agreement, proper professional standards and all applicable Laws and Standards.

2.4 Client acknowledges that where the nature of the Services involves new or non-standard testing or research and developmental activities that no specific results are guaranteed by AGRF.

2.5 Client must provide Client Material and Clinical Samples to AGRF within 30 days of accepting AGRF’s quote or as otherwise agreed. AGRF will not be responsible for any delay in Services arising from a delay in provision of Client Material or Clinical Samples and may revise its prices in such instance.

2.6 Where Client Material and Clinical Samples are provided to AGRF:

- (a) Client is responsible for and warrants to AGRF that it has collected and provides all Client Material and Clinical Samples in accordance with all applicable authorisations, Laws and Standards;
- (b) Client shall provide a Material Safety Data Sheet (MSDS) or comparable documentation and handling instructions to inform AGRF of the hazards, if any, and requirements associated with such material;
- (c) Client grants AGRF a non-exclusive, non-transferable licence to use such materials for the sole purpose of carrying out the Services on the terms and conditions of this Agreement and AGRF shall not use, transfer, research or disclose such materials for any other purpose;
- (d) AGRF will use reasonable endeavours to store and use the material in accordance with the instructions of the Client. The Client will be responsible for transport and insuring the value of the materials (if any) and advising AGRF if the Client Material or Clinical Samples are irreplaceable. AGRF will not be responsible for any damage or destruction caused to the materials other than as a result of AGRF’s gross negligence or deliberate act; and
- (e) Client will retain title to the materials and upon the completion of the Services any unused materials:
 - a. will be stored by AGRF for up to 3 months or the duration required by applicable Laws and Standards (whichever is the longer); and
 - b. will be returned to the Client (if specified in this Agreement) or will otherwise be destroyed by AGRF. The Client will be responsible for any costs of the return or any requested continued storage at AGRF’s standard commercial rates.

2.7 The Parties agree that the Results of the Service, including all data relating thereto:

- (a) will be made available by AGRF for online download by the Client for a period of 30 days following completion of the Service;
- (b) Client will download the Results of the Services within the specified 30-day period or any other period as specified in this Agreement or agreed by the Parties. Client acknowledges that any access beyond this period will be charged at AGRF’s standard commercial rates;

- (c) will be stored by each Party for the duration and in accordance with the Laws and Standards as applicable to it. AGRF will retain Results of the Service in accordance with the Laws and Standards applicable to the delivery of the Service; the Client is responsible for retaining the Results of the Service in accordance with the Laws and Standards applicable to the Client.

3 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- 3.1 Each Party will treat and hold all Confidential Information disclosed by the other Party as confidential, will only use such Confidential Information for the purposes of this Agreement and will only disclose such Confidential Information to those of its personnel who have a need to access it for the purposes of this Agreement, provided that such personnel are subject to equivalent duties of confidentiality. The duty of confidentiality will not apply to Confidential Information a recipient Party can prove was previously known to it or is independently developed by it without access to the Confidential Information, is lawfully disclosed to it by a third party on a non-confidential basis, has come into the public domain through no fault of the recipient Party or is required by law to be disclosed but only to the extent legally required and provided that the recipient where lawful and practicable promptly notifies the disclosing Party of any such obligation. Each Party's obligations of confidentiality will survive expiration or termination of this Agreement and will continue until the Confidential Information disclosed to it lawfully becomes part of the public domain.
- 3.2 All Intellectual Property in the Client Background Technology and Client Material remains (as between the Parties) the property of the Client. The Client grants AGRF a non-exclusive, worldwide, royalty free licence to use (and, if required and permitted, sub-license use of) the Client Background Technology and Client Material for the purpose of conducting the Service.
- 3.3 AGRF must not use Client Material for any purpose other than delivering the Service and will, subject to any applicable retention laws and at its election, return to the Client or destroy any unused Client Material at the completion of the Service or as otherwise agreed with the Client.
- 3.4 Subject to clause 3.2, the Client acknowledges and agrees that the AGRF Background Technology, AGRF Material and all Intellectual Property in anything AGRF uses in conducting the Service or otherwise owned by or licensed to AGRF remain (as between the Parties) the property of AGRF at all times.
- 3.5 Subject to clause 3.4, ownership of the Results of the Service and the Intellectual Property therein will vest in and are hereby assigned to the Client upon delivery and payment for those Results of the Service.
- 3.6 Subject to the rights expressly granted in these Terms, neither Party will by reason of these Terms obtain title to, or any interest in, or any licence to, or any other rights in respect of the other Party's Intellectual Property.

4 PRICE AND PAYMENT

- 4.1 The price for any requested Service ("Price") will be in Australian dollars and will be as specified in AGRF's price list or a quote provided by AGRF as accepted in this Agreement or as otherwise specified by AGRF. Subject to clause 4.2, AGRF may amend its price list from time to time, except for any order that has been previously accepted by AGRF.
- 4.2 AGRF's quotes are only valid for 30 days unless agreed otherwise by AGRF. AGRF reserves the right to amend the price after this period or where delivery of Client Material or Clinical Samples is delayed.
- 4.3 Payment of the Price and any other charges in respect of the Service ("Payment") must be made by the Client within 30 days of the date of AGRF's invoice.
- 4.4 AGRF can set-off against any money owing to the Client amounts owed to it by the Client on any account whatsoever.
- 4.5 Any payments received from the Client on overdue accounts will be applied first to satisfy reasonable expenses and legal costs related to the recovery of the overdue amounts as determined through the application of clause 4.6, and then to the Payment.
- 4.6 Client is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and reasonable legal costs incurred by AGRF for enforcement of obligations and recovery of monies due from the Client to AGRF.
- 4.7 All sums outstanding become immediately due and payable by the Client to AGRF if the Client makes default in making Payment, the Client becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 4.8 AGRF will not accept cancellations or partial cancellation of the Service unless AGRF has first consented in writing to such cancellation or partial cancellation. AGRF will issue an invoice for the work completed or part completed as well as for any committed and unavoidable costs, prior to cancellation and the Client will be liable to make Payment, in accordance with clause 4.3.
- 4.9 Client is responsible for promptly assessing the Results of the Service upon delivery and submitting any known complaints or concerns to AGRF in writing. The Client agrees that it will not withhold payment in relation to a known or readily determinable issue if it has failed to notify AGRF in writing within twenty (20) business days of the date of the supply of the Results of the Service.

- 4.10 Unless the Client advises AGRF prior to invoicing for the Services that funds already held by AGRF under a 'Prepaid Genomic Services Agreement' or other pre-payment arrangement are to be used by the Client to satisfy payment of the invoice, the invoice must be paid without the benefit of using the funds held by AGRF.
- 4.11 Any disputes in relation to an invoice must be made within 7 days of the invoice date. The undisputed amount must be paid in accordance with clause 4.3 and the disputed amount once resolved, needs to be paid within 14 days of resolving the dispute.
- 4.12 AGRF reserves the right to withhold Results of the Service, to postpone or cease delivery of other Services and to delay the return of Client Material if there are overdue accounts which are not the subject of a genuine dispute.

5 GST

- 5.1 In these Terms, 'GST' means the tax payable on Taxable Supplies under A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax and 'GST Group', 'Input Tax Credits', 'Representative Member' and 'Taxable Supply' each have the meaning given to them in the GST legislation.
- 5.2 Where AGRF makes a Taxable Supply to the Client under or in connection with these Terms or in connection with any matter or thing occurring under these Terms and the consideration otherwise payable for the Taxable Supply is not expressed to include GST, AGRF will be entitled, in addition to any other consideration recoverable in respect of the Taxable Supply, to recover from the Client the amount of any GST on the Taxable Supply.
- 5.3 The amount of a Party's entitlement to recovery, reimbursement or compensation for any of its costs, expenses or liabilities is reduced by the Input Tax Credits to which that Party (or the Representative Member of the GST Group of which that Party is a member) is entitled in respect of such costs, expenses or liabilities.

6 WARRANTIES

- 6.1 AGRF warrants that it has appropriate licences and registrations to provide the Services. To the fullest extent permitted by Law, and save as expressly otherwise stated in this Agreement, AGRF gives no warranty in respect of any Service or Results of the Service.
- 6.2 To the fullest extent permitted by Law, the Client acknowledges and warrants that it has relied on its own skill and judgment or the skill and judgment of professional advisers separately retained by it to provide advice and assistance on the suitability of the Services for specific purposes and procedures.
- 6.3 Client further warrants that:
- AGRIF can use Client Material and Client Samples as contemplated by these Terms without infringing the Intellectual Property of any other persons;
 - all regulatory Acts, guidelines and ethical codes relating to the submitted Client Material and Clinical Samples have been and will continue to be met. This includes but is not limited to those of the National Health and Medical Research Council, the Office of the Gene Technology Regulator, Quarantine, and Occupational Health and Safety;
 - it has informed AGRF, prior to receipt, if the Client Material or Clinical Samples provided under this Agreement contains any hazardous substances, or requires containment, handling, and storage subject to the Office of the Gene Technology Regulator or quarantine;
 - it has obtained any approvals and consents necessary in relation to the Service;
 - it has and will comply with all applicable statutory requirements relating to its obligations under this Agreement, including those relating to the transport of Client Material and Clinical Samples;
 - it has and will provide AGRF with all the information reasonably necessary to enable AGRF to comply with any Laws applicable to the Client and relating to the conduct of the Service (AGRIF reserves the right to charge for any increased compliance costs relating thereto); and
 - in requesting the Services and providing Client Material, it has and will continue to comply with all Laws relevant to the protection of personal information.

7 LIABILITIES

- 7.1 Except as set out in this clause, to the maximum extent permitted by Law the Client acknowledges and agrees that AGRF's liability for any breach relating to the provision of the Service, is limited at AGRF's election to supplying the Service again or to paying the cost of having the Service supplied again.
- 7.2 The Client acknowledges and agrees that it is responsible for assessing and using the Results of the Service at its own risk. Subject to the following exclusions and to the fullest extent permitted by Law, AGRF's aggregate liability for all causes under this Agreement is limited to the value of twice the fees paid by the Client to AGRF in relation to the Services. The foregoing limitation does not apply to liability arising from AGRF's gross negligence or deliberate act giving rise to:
- personal injury, sickness or death;

- (b) destruction or damage of tangible property;
- (c) fraud or wilful misconduct.

7.3 Notwithstanding this clause 7 or any other provision in this Agreement, neither Party will be liable to the other for any special, indirect or consequential loss, loss of expectation of income or profits, loss of bargain or opportunity, loss of reputation, indirect loss of or damage to data arising under or pursuant to this Agreement.

8 DISPUTE RESOLUTION

8.1 The Parties must undertake all efforts to amicably settle any disagreement or dispute arising out of or relating to these Terms and must do the following before commencing arbitration or court proceedings (except for urgent injunctive or declaratory relief):

- (a) any dispute that cannot be resolved promptly between each Party's contact person will be escalated to the Parties' senior executives for resolution; and
- (b) if the dispute cannot be resolved by the Parties' senior executives within 14 days, the Parties will attempt to resolve the dispute by mediation administered by the Australian Disputes Centre.

8.2 Any dispute, controversy or claim in relation to a Client whose premises is not located in Australia that is not resolved under clause 8.1 shall be resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules. The seat of Arbitration shall be Melbourne, Victoria, Australia. The language of the arbitration shall be English.

9 PRIVACY

9.1 Each Party agrees that it will only share Personal Information with the other Party to the extent required for the provision of the Services and that, in doing so, it will comply with the Privacy Act.

9.2 The Client is responsible for de-identifying and removing all Personal Information from the Client Materials and Clinical Samples provided to AGRF, except to the extent specified in this Agreement or otherwise agreed in writing.

9.3 To the extent that a Party receives Personal Information from the other Party, it agrees to comply with the requirements of the Privacy Act and the reasonable requests of the other Party relating thereto. Each Party agrees to:

- (a) use Personal Information received, created or held by it for the purposes of this Agreement only to fulfil its obligations under this Agreement;
- (b) ensure that any person whom it allows to access Personal Information which is received, created or held by it for the purposes of this Agreement is made aware of, and has agreed in writing, to comply with the requirements of this clause;
- (c) ensure that any subcontract made by it in connection with this Agreement contains enforceable obligations requiring the subcontractor to comply with the obligations in this clause, as if the subcontractor were that Party; and
- (d) report any actual or suspected data breaches to the other Party and in accordance with the Privacy Act.

10 ENTIRE AGREEMENT

10.1 This Agreement records the entire agreement between the Parties and supersedes all earlier written agreements and representations by the Parties about their subject matter.

10.2 All Services provided by AGRF are delivered strictly on the terms of this Agreement only, unless otherwise expressly agreed in writing by AGRF.

11 ASSIGNMENT AND SUB-CONTRACTING

11.1 A Party must not, without the prior written approval of the other Party (which must not be unreasonably withheld) assign any of its rights or powers under these Terms.

11.2 AGRF must not sub-contract the performance of the Service without the prior written consent of the Client (which must not be unreasonably withheld).

11.3 The Service provided by AGRF can be delivered from any AGRF location deemed appropriate by AGRF, with the cost of moving Client Materials and Client Samples between AGRF locations being borne by AGRF, unless otherwise agreed.

12 RELATIONSHIP OF THE PARTIES

- 12.1 Nothing in these Terms or in the obligations of AGRF and the Client pursuant to these Terms is intended to, or does, give rise to any relationship of joint venture, partnership, agency or employer and employee between AGRF and the Client and nor does it confer on a Party any power or authority to bind or represent the other Party.
- 12.2 A Party must not represent itself, and must ensure that its employees, agents, and sub-contractors do not represent themselves, as being employees, partners or agents of the other Party, joint venturers with the other Party or as otherwise able to bind or represent the other Party.

13 TERMINATION

- 13.1 This Agreement terminates upon completion of the Services.
- 13.2 If a Party is in default under this Agreement on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Agreement, the Party not in default may, subject to clause 13.3, by notice in writing to the other Party, terminate this Agreement in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of a Party.
- 13.2 Where the default is capable of being remedied, a Party must not exercise its rights of termination under 13.2 unless it has first given the other Party notice in writing specifying the default and requiring the defaulting Party to remedy it within the time (being not less than 14 days) specified in the notice and the default is not remedied within the time allowed.
- 13.3 If the Client goes into liquidation or a receiver or manager or mortgagee's or chargee's agent is appointed, AGRF may, by notice in writing, cease providing any Service or Services requested by the Client and the Client will be obliged to make a Payment to AGRF in accordance with clause 4.8, prorated to reflect the extent of the Service provided by AGRF.
- 13.4 On termination, the Client must pay for work done and approved expenses incurred by AGRF up to the date of termination; and clauses 3, 6 - 9 and 17 will survive termination and continue to apply.

14 AMENDMENT

- 14.1 AGRF may amend these Terms from time to time by notifying the Client of the amendments in writing. The amendments will be deemed to be included as part of this Agreement only in relation to any new orders submitted by the Client 30 days after receiving notice of the amendments. The Client may elect to terminate this Agreement by written notice to AGRF within 30 days of receiving notice of the amendments.

15 WAIVERS

- 15.1 A waiver by either Party in respect of any breach of a condition or provision of these Terms will not be deemed to be a waiver in respect of any other or of any subsequent breach.

16 SEVERANCE

- 16.1 If at any time a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that provision shall be read down or severed from this Agreement without affecting the validity of the other provisions of this Agreement.

17 INDEMNITY

- 17.1 Subject to the provisions of these Terms, a Party (the indemnifying Party) must at all times indemnify, hold harmless and defend the other Party, their officers, directors, employees, agents, or independent contractors (in this clause 17 referred to as "those indemnified") from and against any direct loss (including reasonable legal costs and expenses), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability arises in connection with this Agreement or the Services and was caused by:
- (a) any breach of a clause or warranty of this Agreement by the indemnifying Party; or
 - (b) any wilful, unlawful or negligent act or omission of the indemnifying Party, its employees, or agents or subcontractors.
- 17.2 The indemnifying Party's liability to indemnify those indemnified under clause 17.1 will be reduced proportionally to the extent that any act or omission of the indemnified Party, its affiliates, officers, directors, employees, agents or independent contractors contributed to the loss or liability.
- 17.3 Client will indemnify and keep indemnified AGRF from and against all actions, claims, demands, losses, damages, costs (including reasonable legal costs) and expenses for which AGRF becomes liable as a result of, or arising directly from, the use of the Results of the Service by the Client.
- 17.4 If requested in writing by AGRF, the Client must maintain and provide evidence of adequate professional indemnity, product liability and third-party liability insurance to cover its obligations and exercise of rights under these Terms.

18 GOVERNING LAW AND JURISDICTION

18.1 These Terms are governed by and must be construed according to the law applying in Victoria, Australia and each Party submits to the jurisdiction of the courts of that State.

19 NOTIFICATION

19.1 Client must notify AGRF in writing within 7 days of:

- (a) any alteration of the name or ownership of the Client;
- (b) any changes to the Client's accounts payable processes with any change, including the issuing of revised invoices, not to delay payment under clause 4.3;
- (c) any scheme of arrangement with creditors;
- (d) the issue of any legal proceedings against the Client;
- (e) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Client; and
- (f) any change in the ownership of the business name of the Client.

19.2 If there is a change of Client ownership, the Client agrees that it shall be liable to AGRF for all Services supplied to the new owner by AGRF until notice of any such change is received.

20 BRAND NAME USE

Subject to clause 21, without prior written consent, neither Party may use the other Party's name or trademarks, including in a manner that suggests that the other Party endorses, or is associated with, that Party's business, products or services.

21 SERVICE ACKNOWLEDGEMENTS

Where appropriate, the Client should acknowledge the contributions of AGRF in its publications, by simply acknowledging use of the Services and facilities of AGRF. If appropriate and with the Client's prior agreement, AGRF can make reference to Services provided to the Client.

22 FORCE MAJEURE

No Party will be liable for a failure to meet its obligations under this Agreement arising from an unavoidable delay beyond the reasonable control of the affected Party, provided that the affected Party gives written notice of the delay to the other Party as soon as possible after the affected Party becomes aware of the delay or expected delay and if such delay lasts for more than sixty (60) days, the Party not failing in or delaying performance has the option, in its sole discretion, to terminate this Agreement with no liability whatsoever as a result of such termination, on 30 days prior written notice. For the avoidance of doubt, each Party is responsible for ensuring that it has the necessary funding and that it dedicates appropriate internal resources to undertake its responsibilities as specified in this Agreement and a Party's lack of funding or non-allocation of internal resources is not cause for an unavoidable delay beyond the reasonable control of that Party.

23 FAILURE TO ACT

A Party's failure to enforce or insist upon the timely performance of any term, condition, payment, covenant or provision in this Agreement shall not constitute a waiver of any subsequent default or a waiver of that Party's right to demand timely payment of future obligations or strict compliance with this Agreement.