

# TERMS OF SERVICES

## 1. Definitions

**'Agreement'** means these terms together with the cover page and any attachments.

**'Confidential Information'** means all information disclosed in any form or media, which is by its nature confidential or which CSIRO identifies as confidential, and includes all copies, notes and records made of such information.

**'Conflict of Interest'** means any interest you or your Specified Personnel have or any duty you or your Specified Personnel owe to third parties that may reasonably be anticipated to conflict with or restrict you or your Specified Personnel in performing the Services fairly and impartially.

**'Contract Material'** means any IP created by you in the course of carrying out the Services for CSIRO under this Agreement, including all material forming part of the Deliverables but excluding Thesis IP.

**'CSIRO'** means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230, having its principal office at CSIRO Black Mountain Science and Innovation Park, Clunies Ross Street, Acton ACT, Australia.

**'IP'** means any rights in any existing or future copyright work, patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret.

**'Student'** means a student enrolled at the Contractor.

**'Thesis IP'** means the copyright in any thesis submitted by a Student to satisfy the requirements of a postgraduate research degree.

**'we', 'us' or 'our'** means the Contractor and CSIRO severally.

**'you' or 'your'** means the Contractor.

Other capitalised expressions used in this Agreement have the meanings given to them in the cover page.

## 2. Your Services

- 2.1 You will perform the Services with due care and skill. You must not sub-contract any part of the Services without first obtaining the written permission of CSIRO other than that part specified and approved under this Agreement for subcontracting on the terms set out in Annexure A.
- 2.2 You are to deliver the Deliverables (including the Contract Material) to CSIRO by the Delivery Date. If you are unable to meet the Delivery Date then you must notify CSIRO of the delay, the reason for the delay and of the revised delivery date.
- 2.3 You will liaise with and report to the CSIRO Technical Contact on the progress of the Services as reasonably required by CSIRO during the term of this Agreement.
- 2.4 CSIRO must, at all reasonable times, be given access to the premises where the Services are being undertaken and

permitted to inspect the performance of the Services and any material in connection with the Services.

- 2.5 You confirm that: (a) your provision of the Services is not contrary to any obligation owed by you to any other person; (b) you have full power and authority to meet your obligations and grant the rights you grant to CSIRO regarding the Contract Material; and (c) there are no actual or potential Conflicts of Interest. In performing the Services and creating Contract Material you and your Specified Personnel must not: (a) plagiarise or knowingly infringe any person's IP; or (b) engage in any activity or obtain any interest which gives or is likely to give rise to a Conflict of Interest. You will immediately notify CSIRO in writing of any event which gives or is likely to give rise to a Conflict of Interest and CSIRO may suspend performance of the Agreement until the Conflict of Interest or potential Conflict of Interest is resolved to CSIRO's satisfaction.

## 3. Specified Personnel

- 3.1 You and your Specified Personnel must perform the Services in accordance with the terms of this Agreement. You must ensure the Specified Personnel are informed of and comply with the terms of this Agreement.
- 3.2 If the Specified Personnel are unable to perform the Services then you must immediately notify CSIRO and promptly provide replacement personnel acceptable to CSIRO at no additional charge.
- 3.3 If in CSIRO's reasonable opinion any of the Specified Personnel are not complying with these terms, CSIRO will consult with you regarding the non-compliance and possible steps for remedy (including your provision of replacement personnel reasonably acceptable to CSIRO). If you are unable to remedy the non-compliance or provide acceptable replacement personnel, then CSIRO may terminate this Agreement.
- 3.4 You are solely responsible for the payment of any salary or wages, leave and any other statutory entitlements of the Specified Personnel.

## 4. CSIRO Material

- 4.1 CSIRO retains ownership of any CSIRO Material that it has proprietary rights in. You must use CSIRO Material strictly in accordance with any directions given to you by CSIRO.
- 4.2 If CSIRO provides you with any material belonging to a third party, CSIRO will notify you of any conditions attached to the use of such material and you must use this material only in accordance with these conditions.
- 4.3 You are responsible for the safe-keeping of any CSIRO Material or other material that is provided to you.

## 5. Payment

- 5.1** CSIRO will pay the Fee (and any Additional Expenses) in accordance with the Payment Terms, provided that you have performed the Services and provided the Deliverables in accordance with this Agreement. The Fee (and any Additional Expenses) excludes GST.
- 5.2** You must provide a tax invoice to CSIRO for GST purposes before CSIRO makes a payment to you.
- 5.3** You are responsible for remitting any GST, income tax or superannuation contributions relating to the provision of the Services by you or the Specified Personnel. If CSIRO is obliged to pay any such taxes or contributions it will deduct an amount equal to such payment from the Fee.

## 6. Contract Material

- 6.1** CSIRO owns the Contract Material. You must execute any document and do everything reasonably required to give effect to this clause.
- 6.2** If the Contract Material makes use of pre-existing IP not belonging to CSIRO then: (i) you must identify such pre-existing IP to CSIRO before embodying that IP into the Contract Material; and (ii) you procure an irrevocable perpetual non-exclusive royalty-free licence to CSIRO to such IP to the extent necessary for CSIRO to use the Contract Material.
- 6.3** CSIRO grants to you a non-transferable, royalty-free, non-exclusive licence (with a right of sub-licence to the Approved Subcontractor) to use or reproduce the Contract Material for the purposes of and only to the extent necessary to:
- perform the Services; and
  - undertake internal non-commercial research, education, teaching and academic publication, provided that you maintain the confidentiality of any Confidential Information.

## 7. Confidential Information

- 7.1** CSIRO's Confidential Information must be kept confidential for a period of 5 years commencing on the date you sign this Agreement.
- 7.2** You must not disclose any of CSIRO's Confidential Information to anyone without CSIRO's prior written consent. You must also comply with any reasonable request by CSIRO to ensure that its Confidential Information is secure.
- 7.3** You must promptly notify CSIRO if you become aware of any unauthorised disclosure of the Confidential Information.
- 7.4** The obligation to maintain the confidentiality of Confidential Information does not apply to information which you can prove was:
- created by you or by your officers, employees or contractors independently of the Confidential Information;

- rightfully known by you or by your officers, employees or contractors as a consequence of the information being disclosed from an independent source without any limitation on its use or disclosure; or
- in the public domain (other than as a result of a breach of this Agreement).

- 7.5** You may disclose Confidential Information if required by law, but only to the extent of that legal requirement and after appropriate action is taken to protect the form and content of the disclosure.

## 8. Insurance

You must effect and maintain appropriate insurance(s) to cover your performance of the Services, including as relevant professional indemnity, public liability, and workers' compensation insurance. On request you will provide CSIRO with evidence that you have this insurance.

## 9. Dispute Resolution

- 9.1** Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (Dispute) must be dealt with in accordance with this clause. This clause does not prevent any of us from seeking urgent injunctive or similar interim relief from a Court.
- 9.2** Any of us claiming that there is a Dispute must notify each other in writing and give details of that Dispute to each other's contact person specified in the cover page.
- 9.3** If the Dispute is not resolved within 90 days from the date that the written notice of the Dispute is received, then the Dispute must be submitted to mediation in accordance with, and subject to, the Resolution Institute Mediation Rules. The mediation must take place in Sydney, Australia and be administered by the Resolution Institute.
- 9.4** If the Dispute cannot be resolved within 90 days (unless this period is extended by our mutual agreement in writing) from the date it is submitted for mediation, then the Dispute must be resolved by arbitration in accordance with the Resolution Institute Arbitration Rules.
- 9.5** There is to be one arbitrator and the place of arbitration is Sydney, Australia. Unless we agree upon an arbitrator, either of us may request a nomination from the Chair of the Resolution Institute. All hearings will take place in private unless agreed otherwise in writing. The decision of the arbitrator (including any award as to costs) will be final and binding. CSIRO may, if required, disclose any information regarding the arbitration to its responsible government Minister, House of Parliament or a Committee of Parliament.

**10. Termination**

- 10.1** This Agreement can be terminated at any time by CSIRO giving you written notice if: (i) you or your Specified Personnel have breached its terms and that breach is not remedied within 30 days after written notice is received; (ii) there is a delay in the delivery of the Deliverables and either you have failed to notify CSIRO of that delay or you have notified CSIRO of the delay but the revised delivery date is not acceptable to CSIRO; or (iii) you or your Specified Personnel are unable to resolve a Conflict of Interest to CSIRO's satisfaction within 30 days of you notifying CSIRO of the Conflict of Interest.
- 10.2** On termination of this Agreement you must immediately return all CSIRO Materials in your possession and must hand to CSIRO any Contract Material created up to the date of termination.

**11. Use of CSIRO Name**

- 11.1** You must not use CSIRO's name (that is, "CSIRO" or "Commonwealth Scientific and Industrial Research Organisation") in a manner that suggests that CSIRO endorses or is associated with your business, products or services. In no case may you use CSIRO's logo without first receiving CSIRO's prior written consent.

**12. General**

- 12.1** This Agreement and the circumstances surrounding it do not create any relationship of employment, partnership, agency between you, your Specified Personnel and CSIRO.
- 12.2** This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made by either of us in relation to this Agreement.
- 12.3** The terms in this Agreement override any contrary terms contained in any invoice or other documentation issued by you to CSIRO in relation to the Services.
- 12.4** This Agreement is governed by the law applicable to the State or Territory given in the CSIRO address specified at the top left corner of the cover page.