

Section 3: Our Terms & Conditions

Release date 19/04/21

AGRF will accept prepaid funds for genomics services from the Client as set out in the Schedule on the following terms and conditions (Terms).

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Terms:

"Agreement" means the agreement for Services.

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

"Client" means the individual or organisation set out in the Schedule.

"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 PGS 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 existence and terms of this PGS 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.

"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 PGS Agreement and "Parties" means both of them.

"Prepaid Genomics Services Agreement" means this agreement (PGS Agreement).

"Prepaid Genomics Services Funds" means funds paid by the Client in advance of and to be used to pay for the Services under the Agreement for Service.

"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 Service under the Agreement for Service.

"Schedule" means the table at the end of the document setting out the amount of Prepaid Genomics Services Funds, Client name and contact details and other relevant information.

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

"Terms" means these terms and conditions between AGRF and the Client, as amended from time to time and is separate to AGRF's general Terms and Conditions attached to the Agreement for Services.

2 PAYMENT AND USE OF PREPAID FEES

- 2.1 Payment is due on the earlier of 7 days from date of invoice or before the Client Material or Clinical Samples are submitted pursuant to executing an Agreement for Services. At AGRF's discretion, if payment is not received, AGRF may issue a credit note and this PGS Agreement is immediately terminated.
Prepaid Genomics Services Funds may be applied to any Service, with the undersigned responsible for indicating in writing which Services the Prepaid Genomics Services Funds are to be applied too.
- 2.2 If the Client does not indicate that the Prepaid Genomics Services Funds are to be applied to the payment of a Service prior to AGRF providing the Results of the Service, the Client must pay for the Services without drawing on the Prepaid Genomics Services Funds.
- 2.3 Should AGRF cease supplying the Service required by the Client, the Prepaid Genomics Services Funds may be applied to an alternative AGRF Service.
- 2.4 Prepaid Genomics Services Funds are not refundable other than at the discretion of the AGRF Chief Operating Officer.
- 2.5 Both Parties agree that any Prepaid Genomics Services Funds older than 12 months from the date of receipt will automatically revert to AGRF and AGRF will then cease to have any obligations or liability regarding those amounts. AGRF will provide no less than 30 days-notice of the expiration of the 12 months period. Extensions may be granted on agreement between the Client and AGRF subject to the Client making the request before the expiration of the first period of 12 months. Any extension granted will be limited to one extension period not exceeding 12 months and will be agreed in writing.
- 2.6 Should AGRF vary its prices between when the Prepaid Genomics Services Funds are paid and the provision of the Service, the current price at the time of the provision of the Service will be applied.
- 2.7 If the Client wishes to transfer any unused Prepaid Genomics Services Funds to another party, then the request must be in writing, it must be prior to the other party receiving Services from AGRF for which the other party wishes to use the Prepaid Genomics Services Funds and the other party will need to enter a Prepaid Genomics Services Agreement with AGRF.
- 2.8 On signing an Agreement for Service, the terms, and conditions of this PGS Agreement and the general Terms and Conditions of the Agreement for Service are to be read together. If there is any conflict between these terms and conditions and the terms and conditions attached to the Agreement Service, the terms and conditions attached to the Agreement for Service are to take priority.

3 CONFIDENTIALITY

- 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 PGS 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 PGS 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 PGS Agreement and will continue until the Confidential Information disclosed to it lawfully becomes part of the public domain.

4 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.

5 LIABILITIES

- 5.1 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 PGS Agreement.

6 DISPUTE RESOLUTION

- 6.1 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.
- 6.2 Any dispute, controversy or claim in relation to a Client whose premises is not located in Australia that is not resolved under clause 6.1 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.

7 PRIVACY

- 7.1 Each Party agrees that it will only share Personal Information with the other Party to the extent required to administer this PGS Agreement and that, in doing so, it will comply with the Privacy Act.
- 7.2 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 PGS Agreement only to fulfil its obligations under this PGS 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 PGS 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 PGS 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.

8 RELATIONSHIP OF THE PARTIES

- 8.1 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.
- 8.2 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.

9 TERMINATION

- 9.1 This PGS Agreement terminates upon the earlier of:
- (a) failing to pay the AGRF invoice the subject of the PGS Agreement, subject to AGRF's discretion;
 - (b) fully using the Prepaid Genomics Services Funds;
 - (c) changing the Terms of the PGS Agreement per clause 10; and
 - (d) Prepaid Genomics Services Funds not being used within the later of 12 months and any extension period as set out in clause 2.6.

10 AMENDMENT

- 10.1 AGRF may amend these Terms from time to time by notifying the Client of the amendments in writing. The Client may elect to terminate this PGS Agreement by written notice to AGRF within 30 days of receiving notice of the amendments. Under this circumstance, AGRF will refund any unused balance of the Prepaid Genomics Services Funds.

11 WAIVERS

- 11.1 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.

12 SEVERANCE

- 12.1 If at any time a provision of this PGS 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 PGS Agreement without affecting the validity of the other provisions of this PGS Agreement.

13 GOVERNING LAW AND JURISDICTION

- 13.1 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.

14 FORCE MAJEURE

- 14.1 No Party will be liable for a failure to meet its obligations under this PGS 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 PGS 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 PGS 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.

15 FAILURE TO ACT

- 15.1 A Party's failure to enforce or insist upon the timely performance of any term, condition, payment, covenant or provision in this PGS 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 PGS Agreement.