

Standard Terms and Conditions

Capitalised terms have the meaning given them in the Service Details or these Terms and Conditions

In this Services Agreement ("this Agreement"):

"IP" means all intellectual property rights, including:

- (a) patents, plant breeder's rights, copyright, rights in circuit layouts, registered designs, trademarks and knowhow; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

but excludes Moral Rights and similar non-assignable personal rights of any person.

"Confidential Information" means any information identified as confidential and disclosed by one party to the other for the purposes of this Agreement but does not include information that is in the public domain, is already lawfully known to the receiving party, has been independently developed by the receiving party or is required to be disclosed by law.

"Moral Rights" means moral rights as defined in section 189 of the *Copyright Act 1968* as amended.

1 Services

- 1.1 ARI will carry out the Services during the Term and provide all Deliverables in accordance with these Standard Terms and Conditions.
- 1.2 The Client agrees to make available to ARI any information or materials necessary to carry out the Services.

2 Intellectual Property

- 2.1 Each party retains all rights to existing Intellectual Property used in performance of the Services.
- 2.2 Copyright in the Deliverables passes to the Client under this Agreement upon payment of the Fee.
- 2.3 The Client will respect the Moral Rights of the authors in the Deliverables.

3 Confidentiality

- 3.1 Each party will keep confidential and only use for the purposes of the Services the other party's Confidential Information unless written approval is obtained.
- 3.2 Each party may disclose such Confidential Information to its employees and agents as necessary for the performance of the Services provided such persons have been informed of the confidential nature of the information and have agreed to keep it confidential.

4 Publicity

Neither party shall use the name or logo of the other party as a consequence of or in connection with this Agreement without the prior written permission of the other party.

5 Fee and Payment

The Client agrees to pay ARI the Fee and any incidental costs (including GST) in the time and manner set out in the Services Details or as agreed in writing between the parties.

6 Risk Management

- 6.1 ARI guarantees that the Services will be:
 - (a) carried out with due care and skill;
 - (b) fit for the purpose that the Client has made known to ARI; and
 - (c) provided by the Completion Date specified in the Services Details, or as agreed in writing or within a reasonable time.
- 6.2 To the full extent permitted by law, ARI's total liability for failure to comply with any of the guarantees in clause 6.1 is limited to the re-supply of the Services or the cost of having the Services re-supplied.
- 6.3 Subject to clauses 6.1 and 6.2, the Client agrees that it will use the Deliverables at its own risk.

- 6.4 The Client releases and indemnifies ARI against any claim, judgment or award in favour of a third party which arises as a result of the use or release of the outcomes of the Services or the Deliverables by the Client where such use is outside the purpose for which the Client requested the Services, except that the Client's liability to indemnify ARI under this clause 6.4 will be reduced proportionally to the extent that any unlawful or negligent act or omission of ARI or its employees contributed to the loss or damage.
- 6.5 Each party will maintain appropriate and enforceable insurance policies to cover liability that arises out of, under or pursuant to this Agreement.

7 Termination

- 7.1 Unless terminated earlier this Agreement is for the Term.
- 7.2 If either party commits a breach of this Agreement, the other party may request in writing that the breach be remedied, and if this is not done within 30 days of the request then the other party may terminate this Agreement immediately.
- 7.3 Where this Agreement has been terminated under clause 7.2 or 8.1 ARI shall be entitled to pro rata payment for performance of Services undertaken up until the date of termination.

8 Unavoidable Delay

- 8.1 No party will be responsible for performing an obligation under this Agreement where performance is prevented due to any circumstances beyond the reasonable control of that party.
- 8.2 If such circumstances continue beyond 14 days either party may terminate this Agreement.

9 Dispute Resolution

- 9.1 If there is a dispute between the parties concerning this Agreement the disputing party shall give written notice specifying details of the dispute to the other party.
- 9.2 If the dispute is not settled by agreement within 14 days of service of the notice the dispute will be referred to the Client's Chief Executive Officer and the Managing Director of ARI, who will attempt to resolve the dispute by informal or formal dispute resolution mechanisms.

10 General

- 10.1 This Agreement constitutes the entire agreement between the parties, and may only be varied by written agreement signed by both parties.
- 10.2 Should any provision of this Agreement be held by a Court to be unlawful, invalid or unenforceable the validity and enforceability of the remaining provisions shall not be affected.
- 10.3 Neither ARI, nor any officers or employees of ARI or the University consultant shall by virtue of this Agreement be deemed to be employees of the Client.
- 10.4 The provisions of Clauses 2, 3, 4, 6, 7.2, 9, 10.4 and 11 shall survive and be of full effect after expiration or termination of this Agreement.
- 10.5 The parties may sign and deliver this Agreement by electronic or facsimile transmission. Each party agrees that the delivery of the Agreement by electronic or facsimile transmission shall have the same force and effect as delivery of original signatures and they may use such electronic or facsimile signatures as evidence of the execution and delivery of the Agreement by all parties to the same extent that an original signature could be used.

11 Governing Law

- 11.1 This Agreement will be governed by law of State of South Australia and the parties submit to the jurisdiction of the Courts of that State.