

Terms & Conditions



The Centre for Crocodile Research (CCR) will provide Services to the Client on the terms and conditions set out below.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Terms:

"Agreement" means these Terms and Conditions.

"CCR" means the Centre for Crocodile Research which is a trading name of Horizon Research Pty Ltd (ABN 90 164 840 840).

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

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

"Chance Discoveries" means discoveries, inventions and other forms of Intellectual Property arising from carrying out the Service.

"Client" means the individual or organisation which requests the Service from CCR, signs the Acceptance and/or to which the Service is provided.

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

"Client Material" means any material which is provided by or on behalf of the Client to CCR for the purpose of or in the course of conducting the Service.

"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.

"Consultancy Term" means the period of this Agreement defined by the Project Start Date and Expected Project Completion date as set out in the Details.

"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, trademarks (whether registered or unregistered), designs (whether registered or unregistered), plant varieties, internet domain names, Confidential Information, know-how and trade secrets.

"Rectification" means agreed correction of a defect in a Service or Deliverable to bring it into conformance with the Service or Deliverable described in the annexed project description.

"Report" means any reports of the Consultancy Services.

"Services" means the services to be provided by CCR, as specified in this Agreement.

"Terms" means these terms and conditions between CCR and the Client, as amended from time to time.



2 CONSULTANCY SERVICES

- 2.1 CCR will provide the Services and the Deliverables described by the required dates or until terminated under clause 11, whichever is the earlier.
- 2.2 CCR reserves the rights to sub-contract the Services or Deliverables to persons who are appropriately skilled, qualified and experienced to provide those Services or Deliverables as per clause 2.4. CCR will only disclose information necessary to obtain results from the sub-contracted Services or Deliverables in accordance with CCR's privacy policy. CCR shall ensure that any sub-contracting is on terms obliging the sub-contractor to maintain appropriate insurance, and comply with all obligations applicable to CCR under this Agreement. Any delegation by CCR of any or all of the Services or any other of its obligations under this Agreement does not derogate from, and shall not relieve CCR of its obligations and liabilities under this Agreement. Acts and omissions of CCR's sub-contractors shall be treated as CCR's acts and omissions.
- 2.3 Items can only be changed by written agreement between the parties.
- 2.4 The Services must be carried out in accordance with any specified requirements, proper professional standards and all applicable laws and regulations.

3 CONFIDENTIALITY, MATERIALS AND INTELLECTUAL PROPERTY

- 3.1 Each party will treat and hold all Confidential Information disclosed by the other party as confidential, including the contents of this Agreement, and 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 promptly notify 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 Client must provide Client Material to CCR in the manner and form set out in the Agreement to enable CCR to carry out the Services in the agreed timeframe. CCR will establish and maintain electronic and physical safeguards against unauthorized access, destruction, loss, accidental or unauthorized deletion, disclosure or alteration of the Client Material, Intellectual Property, documentation and other records, in accordance with industry standards, and implement all reasonable data storage and security measures requested by the Client. CCR agrees to provide details of the data storage and security measures in place at the request of the Client.
- 3.3 All Intellectual Property in the Client Material remains (as between the parties) the property of the Client, but the Client by these Terms grants CCR a non-exclusive, worldwide, royalty free and licence fee free licence to use (and, if required and permitted, sub-license use of) the Client Material for the purpose of conducting the Services.
- 3.4 CCR must not use Client Material for any other purpose and will, at the Client's election, return to the Client or destroy any unused Client Material at the completion of the Service or as otherwise agreed with the Client.
- 3.5 Subject to clause 3.3, the Client acknowledges and agrees that CCR Material and CCR Intellectual Property used by CCR in conducting the Service or otherwise owned by or licensed to CCR remain (as between the parties) the property of CCR at all times. CCR owns the CCR Background Technology and the Client owns the Client

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Background Technology. Chance Discoveries pertaining to CCR Background Technology or methods or processes of providing the Service shall belong to CCR at all times, unless otherwise agreed by CCR and subject to clause 3.9. Any Chance Discoveries pertaining to or arising from any Client Background Technology belong to the Client. CCR must immediately notify the Client in writing of any Chance Discoveries that occur in connection with this Agreement, whether they pertain to CCR Background Technology or Client Background Technology.

- 3.6 Subject to clause 3.5, ownership of any materials provided by CCR to the Client which record the Results of the Service and the Intellectual Property therein will vest in the Client.
- 3.7 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 any of the other party's Intellectual Property.
- 3.8 Only after obtaining the Client's written consent, CCR retains the right to publish the results of this Agreement and acknowledges its responsibility not to disclose Confidential Information in that publication.
- 3.9 Only after obtaining the Client's written consent, CCR may use or exploit the Intellectual Property arising from a Chance Discovery made in connection with this Agreement, pertaining to CCR Background Technology, within the Client's industry or with competitors of the Client.

4 PRICE AND PAYMENT

- 4.1 The price for any requested Service ("Price") will be in Australian dollars and will be as specified in the quote/estimate provided by CCR as accepted in the Agreement or as otherwise specified by CCR. Subject to clause 4.2, CCR may amend its prices from time to time, except for any quote/estimate that is still valid, or price that has been agreed under executed Agreement.
- 4.2 CCR's quotes/estimates are only valid for 30 days unless otherwise specified or agreed by CCR. CCR reserves the right to amend the price subject outside the validity dates.
- 4.3 If CCR staff are required to travel to provide the Services or Deliverables in this Agreement, the Client agrees to pay for all reasonably incurred travel-associated costs outlined in this Agreement. Travel-associated costs will be claimed from the Client by submission of a tax invoice and supported by original copies of receipts.
- 4.4 Payment of the Price and any other charges in respect of the Service ("Payment") must be made by the Client on or before 14 days after the date of invoice. The Deliverables and all Intellectual Property in the Deliverables remains the property of CCR until the Client has made Payment.
- 4.5 All sums outstanding become immediately due and payable by the Client to CCR 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.
- 4.6 CCR will not accept cancellations or partial cancellation of the Services unless CCR has first consented in writing to such cancellation or partial cancellation. CCR will issue an invoice for the work completed or part completed prior to cancellation and the Client will be liable to make Payment, in accordance with clause 4.4.
- 4.7 All complaints or claims must be submitted to CCR in writing within 14 days of the date of the supply of the Report of the Service. Otherwise, the Client is deemed to have accepted the Report and shall not refuse to pay for the Service.
- 4.8 Any disputes in relation to an invoice must be made within 14 days of the invoice date. The undisputed amount must be paid in accordance with clause 4.4 and the disputed amount once resolved, needs to be paid within 14 days of resolving the dispute.
- 4.9 CCR must pay all appropriate income taxes and superannuation contributions.

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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 CCR 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, CCR 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 LIMITATION OF LIABILITIES

- 6.1 Except to the extent that liability arises from a wrongful (including negligent) act or omission of CCR, CCR excludes liability of the Client arising out of or suffered in connection with or as a result of the Client's use of the Results of the Services. If at any time CCR becomes aware of any potential liability of the Client arising from use and application of the results of the Services, CCR will notify the Client as soon as reasonably practicable.
- 6.2 CCR's liability shall be limited to direct loss and CCR will not bear any liability for indirect or consequential loss or damage.

7 WARRANTIES

- 7.1 To the fullest extent permitted by law, and save as expressly otherwise stated in these Terms, CCR gives no warranty in respect of any Service or Results of the Service.
- 7.2 To the fullest extent permitted by law, the Client acknowledges and warrants that it has relied on its own skill and judgment or, alternatively, on the skill and judgment of professional advisers retained by it to provide advice and assistance on the suitability of the Services for specific purposes and procedures.
- 7.3 Client further warrants that:
 - 7.3.1 CCR can use Client Material as contemplated by these Terms without infringing the Intellectual Property of any other persons;
 - 7.3.2 all regulatory guidelines and ethical codes relating to animal experimentation have been and will continue to be met during the term of the Agreement;
 - 7.3.3 it has informed CCR of all necessary information to provide the Service, or will do so upon reasonable request from CCR;
 - 7.3.4 it has obtained any consents necessary in relation to the Service;
 - 7.3.5 it has and will comply with all applicable statutory requirements relating to the Service, including those relating to the transport of Client Material;
 - 7.3.6 it will provide CCR with all the information necessary to enable CCR to comply with any statutory requirements relating to the conduct of the Service; and
 - 7.3.7 in requesting the Services and providing Client Material, it has and will continue to comply with all legal requirements relevant to the protection of personal information.

8 DISPUTE RESOLUTION

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- 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):
- 8.1.1 agree in writing as to the discrepancies in the Services and the proposed rectification to be provided by the CCR;
 - 8.1.2 any dispute that cannot be resolved promptly between each party's contact person will be escalated to the parties' senior executives for resolution; and
 - 8.1.2 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 ACICA Arbitration Rules. The seat of Arbitration shall be Darwin, Northern Territory, Australia. The language of the arbitration shall be English.

9 ENTIRE AGREEMENT

- 9.1 These Terms record the entire agreement between the parties and supersede all earlier written agreements and representations by the parties about their subject matter.
- 9.2 All services provided by CCR are delivered strictly on these Terms only, unless otherwise expressly agreed in writing by CCR.

10 RELATIONSHIP OF THE PARTIES

- 10.1 Nothing in these Terms or in the obligations of CCR 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 CCR and the Client and nor does it confer on a party any power or authority to bind or represent the other party.
- 10.2 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 another party, joint venturers with another party or as otherwise able to bind or represent another party. In addition, neither party shall represent that it has authority to act on behalf of or bind the other.
- 10.3 Unless otherwise agreed in writing, CCR may provide similar or identical Services or Deliverables to a third party and must keep documentation that proves an independent validation process was undertaken not to breach clause 3.

11 TERMINATION

- 11.1 If a party is in default under these Terms on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under these Terms, the party not in default may, subject to clause 11.2, by notice in writing to the other party, terminate these Terms 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.
- 11.2 Where the default is capable of being remedied, a party must not exercise its rights of termination under 11.1 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.
- 11.3 If the Client goes into liquidation or a receiver or manager or mortgagee's or chargee's agent is appointed, CCR 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 CCR in accordance with clause 4.8, prorated to reflect the extent of the Service provided by CCR.

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11.4 Either party can terminate this Agreement by providing the other party four weeks' written notice of its intention to do so.

11.5 On termination, the Client must pay for work done and expenses incurred by CCR up to the date of termination; and clauses 3, 6 - 8 and 15 will survive termination and continue to apply. CCR must provide to the Client any documents which record the results of the work done as at the date of termination. The Client will be liable for paying CCR's reasonable costs associated with collating those results.

12 AMENDMENT

This Agreement can only be varied if both parties agree to the variation in writing.

13 WAIVER

13.1 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.

13.2 A waiver of any rights or obligations under this Agreement will only be effective if agreed in writing.

Forbearance by a party in enforcing its rights will not prevent the party later enforcing its rights, even if the defaulting party relied on that forbearance. A waiver of one term of this Agreement will not affect the enforceability of other terms of this Agreement.

14 SEVERANCE

If at any time a provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the parties agree to sever it from this Agreement and that remaining provisions have full effect.

15 INDEMNITY AND INSURANCE

15.1 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 15 referred to as "those indemnified") from and against any 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 the Terms and was caused by:

15.1.1 any breach of a clause or warranty of these Terms by the indemnifying party; or

15.1.2 any wilful, unlawful or negligent act or omission of the indemnifying party, its employees, or agents or subcontractors.

15.2 The indemnifying party's liability to indemnify those indemnified under clause 15.1 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.

15.3 Client will indemnify and keep indemnified CCR from and against all actions, claims, demands, losses, damages, costs (including reasonable legal costs on a full indemnity basis) and expenses for which CCR becomes liable as a result of, or arising directly from, the use of the Results of the Service by the Client, except to the extent that such actions, claims, demands, losses, damages, costs, or expenses are contributed to by a wrongful (including negligent) act or omission of CCR.

15.4 The Client indemnifies CCR against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against CCR) that CCR may sustain or incur as a direct or indirect result of any claim by a third party arising out of the use of any reports or results by:

15.4.1 the Client; or

15.4.2 any person who obtains the reports or results from the Client,

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except to the extent that such actions, claims, demands, losses, damages, costs, or expenses are contributed to by a wrongful (including negligent) act or omission of CCR.

15.5 CCR and the Client will not, without the prior written consent of the other, fail to:

- 15.5.1 take out all necessary statutory workers' compensation insurance and otherwise comply with all statutory workers' compensation requirements;
- 15.5.2 take out and maintain a valid and enforceable public liability insurance policy up to at least \$5 million;
- 15.5.3 take out and maintain professional indemnity insurance of \$5 million minimum.
- 15.5.4 on request by the other, provide the other, within 48 hours after that request, with evidence of the insurance cover obtained in accordance with this Clause to cover its obligations and exercise of rights under these Terms.

15.6 CCR must hold a current licence to conduct research on animals under the *Northern Territory Animal Welfare Act*. A condition of this licence is to report all animal welfare concerns to the person who accepted the Agreement. The Client indemnifies CCR against all liability that may be associated with animal welfare concerns reported by CCR to the Client, if those concerns not rectified by the Client following receipt of that report.

16 GOVERNING LAW AND JURISDICTION

These Terms are governed by and must be construed according to the law applying in the Northern Territory, Australia and each party submits to the jurisdiction of the courts of that Territory.

17 NOTIFICATION

17.1 Client must notify CCR in writing within 7 days of:

- 17.1.1 any alteration of the name or ownership of the Client;
- 17.1.2 any changes to the Client's accounts payable processes with any change, including the issuing of revised invoices, not to delay payment under clause 4.4;
- 17.1.3 any scheme of arrangement with creditors;
- 17.1.4 the issue of any legal proceedings against the Client;
- 17.1.5 the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Client;
- 17.1.6 any change in the ownership of the business name of the Client.

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

18 BRAND NAME USE

CCR must not use the Client's name or trademarks in a manner that suggests that the Client endorses, or is associated with, CCR's business, products or services. Likewise, the Client must not use the CCR name or trademarks in a manner that suggests that CCR endorses, or is associated with the Client's business, products or services.

19 FORCE MAJEURE

If CCR is delayed or hindered in or prevented from performing any of its obligations under this Agreement by reason of any event or circumstance beyond its reasonable control, and which was not caused or contributed to by it, could not have been prevented by reasonable precautions or remedied by reasonable expenditure, and could not reasonably be circumvented, CCR will have no liability to the Client in respect of such non-performance and the time for performing the same will be extended until the event or circumstance has ceased.

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20 FAILURE TO ACT

CCR's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or CCR's failure to exercise any right or remedy under these Terms or at law, or CCR's failure to insist upon timely Payment when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of CCR's right to demand timely payment of future obligations or strict compliance with these Terms.

21 GENERAL

21.1 This Agreement may only be altered or varied in writing and executed by the parties.

21.2 Rights under this Agreement may not be assigned except by written agreement between the parties.

21.3 If there is an inconsistency between these terms and conditions and any project description or other correspondence, these terms and conditions shall take precedence.