

# GENERAL TERMS AND CONDITIONS SCHEDULE

28 April 2015

## 1 Definitions and Interpretation

### Definitions

**ACT** means the Australian Capital Territory.

**Agreement** means the written agreement between the Company and Customer to which this Schedule is attached and of which this Schedule forms part.

**Commencement Date** means the date so specified in the Signing Page.

**Company** means Gondwana Genomics Pty Ltd

**Confidential Information** means all information of a confidential nature that a party first becomes aware of as a result of disclosure by the other party, or its involvement with the other party for the purposes of this Agreement, but excluding information that:

- (a) the party creates independently;
- (b) is public knowledge (other than as a result of a breach of confidentiality by that party); or
- (c) is obtained without restriction from a third party through no breach of confidentiality by that third party.

**Consequential Loss** means and includes: (a) loss of revenue, loss of profits, loss of anticipated savings, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair or replacement), loss of opportunity or expectation loss; and (b) any other form of consequential, special, indirect, punitive or exemplary loss, damages or liability.

**Customer** means the Customer so specified in the Signing Page.

**End User** means a person who uses any Services or the results of services.

**Fees** means the charge(s) for the Services as referred to in the Fee Schedule.

**Fee Schedule** means the schedule so called which forms part of this Agreement and details the fees to be paid by the Customer to the Company.

**Gondwana Bank Account** means the Australian bank account of Gondwana, which is specified by Gondwana from time to time in writing to the Customer, into which the Customer may be required to deposit payment of Gondwana invoices

**Insolvency Event** means:

- (a) any step is taken to enter into any scheme of arrangement with creditors;
- (b) any step is taken to appoint a receiver or manager, a liquidator, an administrator or other like person;
- (c) the suspension of payment of debts generally; or
- (d) presumed insolvency for the purposes of any provision of the *Corporations Act 2001 (Cth)* or equivalent laws in other States.

**Intellectual Property Rights** means any intellectual or

industrial property rights (including any registered or unregistered trademarks, patents, designs or copyright).

**Loss** means any loss, cost, liability or damage, including reasonable legal costs on a solicitor/client basis and includes Consequential Loss, unless otherwise stated.

**Services** means any services provided or to be provided by the Company pursuant to this Agreement.

**Services Schedule** means the schedule so called which forms part of this Agreement and details the Services to be performed by the Company.

**Signing Page** means the page which forms part of this Agreement signed, where this agreement is made in one part, for both parties, and, where this agreement is made in counterparts, signed for each party.

**Tax** means any value-added or goods and services tax, withholding tax, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time, but does not include any tax on income or capital gains.

### Interpretation

(a) The expressions 'Company' and 'Customer' will include respective successors and permitted assigns and novatees.

(b) A reference to a person includes a reference to a person, firm, corporation or other legal entity.

(c) A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.

(d) The singular includes the plural and vice versa.

(e) Different grammatical forms of the same word have the corresponding meaning.

(f) A reference to a clause is to a clause in this Agreement, unless otherwise stated.

(g) Examples or words of inclusion are illustrative only and do not limit the generality of the relevant subject.

(h) Capitalised expressions not defined in this schedule bear the meaning assigned elsewhere in this Agreement.

(i) A reference to any amount in a currency which is not specified, is a reference to currency in United States Dollars (USD).

## 2 Services

2.1 The Company will provide and the Customer will acquire the Services set out in the Services Schedule during the Term.

2.2 The Customer must provide the Company with all reasonable co-operation that the Company requires in order to provide the Services.

2.3 Unless specified otherwise in the Agreement, all Services are supplied on the basis that it will be the responsibility of the Customer to:

- (a) provide the Company with any information reasonably required by the Company;

(b) obtain all necessary permissions and consents which may be required before the commencement of the Services; and  
(c) comply with such other requirements as may be set out in the Service Schedule or otherwise agreed between the parties.

2.4 The Company reserves the right in its reasonable discretion to determine which personnel will perform the Services, replace or reassign such personnel, and sub-contract suitable third parties to perform the Services in its discretion.

2.5 The Customer shall be liable to compensate the Company for any expenses incurred by the Company as a result of the Customer's failure to comply with Clause 2.1.

2.6 If the Customer or any third party, not being a sub-contractor of the Company, shall omit or commit anything which prevents or delays the Company from undertaking or complying with any of its obligations under this Agreement, then the Company shall notify the Customer as soon as possible and:

(a) the Company shall have no liability in respect of any delay to the completion of any Services;

(b) if applicable, the timetable for the Services will be modified by the Company accordingly;

(c) the Company shall notify the Customer at the same time if it intends to make any claim for additional costs.

### 3 Invoices and Timing

3.1 The Customer must pay each invoice within 21 days of the date of invoice (provided the Company is entitled to issue the invoice on that date or any time prior to that date).

3.2 The Customer must pay each invoice by direct deposit to the Gondwana Bank Account, and is responsible for payment of any fees associated with the making of that deposit.

3.2 Time is of the essence for payment of invoices but not otherwise in respect of this Agreement.

### 4 Disputing invoices

4.1 If the Customer disputes any invoice it must:

(a) raise that dispute with the Company as soon as reasonably possible and in any event within 3 months of the date of invoice; and

(b) pay any undisputed amount included in the invoice in accordance with clause 4.1.

4.3 If the Customer raises a dispute under clause 4.2, the Company will conduct prompt investigations and advise the Customer of its findings.

4.4 After the Customer is advised of the results of an investigation by the Company as referred to in clause 4.3, if the parties are unable to resolve the dispute within a further 14 days, then either party may commence proceedings or take such other actions as they deem appropriate, provided that each party agrees not to commence any such proceedings or actions later than 18 months after the date of the invoice.

4.5 The Company may charge the Customer interest on any amount due but not paid by the Customer, from the time due

until paid, and at that percentage rate which is ten percent (10%) above the percentage (or maximum percentage) rate from time to time specified by the Reserve Bank of Australia as the Cash Rate Target. Interest may be computed daily and compounded so that interest is paid on interest.

4.6 If Company enlists the services of a collection agency to collect any amounts due to it from Customer under this Agreement, Customer shall be responsible for and agrees to pay all such collection costs on demand by the Company.

4.7 Unless stated otherwise, the Fees and any other charge invoiced by the Company under this Agreement is exclusive of Tax and the Customer must pay an additional amount equal to the Tax (if any Tax is payable).

4.8 In some cases the Company may specify a charge followed by another amount in parentheses or as 'without GST' and 'with GST'. In those cases, the specified charge or 'without GST' amount is exclusive of GST and the amount in parentheses or specified as 'with GST' is:

(a) the charge inclusive of GST at the rate in effect at the date of agreement; and

(b) included by way of information only, and its inclusion does not limit the Customer's obligation to pay the GST exclusive charge together with an additional amount equal to the GST determined at the applicable rate.

### 5 Warranty

5.1 The Company warrants that the Services shall be performed using reasonable skill and care, and shall be of a quality conforming to generally accepted professional industry standards and practices for the same services as the Services.

### 6 Intellectual Property

6.1 Except as otherwise expressly specified in this Agreement, this Agreement does not affect Intellectual Property Rights of a party or any third party.

6.2 Any and all Intellectual Property Rights in any material, information, know-how, systems, process or technology of any nature that is created by the Company in connection with or as a result, whether direct or indirect, of performance of the Services by the Company will become the property of the Company, and, subject to clause 9, the Customer shall make no claim in respect of the Company's use thereof.

### 7 Exclusion and Limitation

7.1 To the maximum extent permitted by law, except to the extent expressly specified to the contrary in this Agreement, the Company excludes all representations, warranties, terms, statutory guarantee, conditions and undertakings in respect of Services that the Company supplies. The Company also excludes all liability for any loss or damage, including any Consequential Loss arising in relation to the use of the results of the Services or reports, or existence of reports, whether singly or in combination with other goods or reliance of any part of the Services, whether or not it is caused by negligence, and whether or not the possibility of loss was known to the Company. However, the Services which the Company provide

may come with statutory guarantees that cannot be excluded under Australian Consumer Law, and also other conditions, warranties or representations that are implied by law and which cannot be lawfully excluded (**Prescribed Terms**).

7.2 To the extent permitted by law, a representation, warranty or Prescribed Term will not apply to any fault or failure of the Service if it has been caused by accidental or deliberate damage, neglect or misuse, whether by the Customer or another person.

7.3 The Company's liability in relation to any representation, warranty or Prescribed Terms or otherwise in connection with the Services is, to the maximum extent permitted by law, and at the Company's discretion, limited to the resupply of the Services or equivalent Services, the repair of the Services or the payment of the cost of having the Services repaired or supplied again. However, this does not exclude or restrict any rights or remedies that a person may have in relation to a "major failure" (as that term is defined in the Competition and Consumer Act 2010 (Cth), and if that law applies).

7.4 Despite any other provision, each party accepts liability for Loss suffered by the other party (excluding, to the extent lawful, Consequential Loss) arising from death or personal injury, to the extent that such Loss is caused or contributed to by a negligent act or omission of that party in connection with this Agreement.

7.5 DESPITE ANY OTHER PROVISION, THE PARTIES AGREE THAT ANY LIABILITY OF THE COMPANY TO THE CUSTOMER FOR CONSEQUENTIAL LOSS SUFFERED OR INCURRED BY THE CUSTOMER IN CONNECTION WITH THE AGREEMENT IS EXCLUDED.

7.6 DESPITE ANY OTHER PROVISION, THE PARTIES AGREE THAT ANY LIABILITY OF THE COMPANY TO THE CUSTOMER FOR LOSS UNDER OR IN CONNECTION WITH THE AGREEMENT (WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE) IS REDUCED TO THE EXTENT THAT THE CUSTOMER'S ACTS, OMISSIONS OR EQUIPMENT OR THE ACTS, OMISSIONS OF A THIRD PERSON, INCLUDING A SUPPLIER, CAUSE OR CONTRIBUTE TO THAT LOSS.

7.7 SUBJECT TO CLAUSES 7.1-7.6, THE COMPANY'S LIABILITY FOR ALL LOSSES SUFFERED OR INCURRED BY THE CUSTOMER IN CONNECTION WITH THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE, IS LIMITED IN AGGREGATE TO THE LESSER OF: (A) THE AGGREGATE OF ALL INVOICES PAID BY THE CUSTOMER IN RESPECT OF SERVICES DURING THE PRECEDING 12 MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT CAUSING THE LOSS; AND (B) AUD\$560,000.

7.8 THIS AGREEMENT IS BETWEEN THE COMPANY AND THE CUSTOMER AND THE CUSTOMER ACKNOWLEDGES THAT THE COMPANY DOES NOT HAVE CONTROL OVER END USERS. THE CUSTOMER WARRANTS THAT END USERS WILL USE THE RESULTS OF THE SERVICES SAFELY AND IN ACCORDANCE WITH THEIR ACCOMPANYING DIRECTIONS, AND WILL KEEP THE COMPANY INDEMNIFIED FOR ANY LOSS SUFFERED BY THE

COMPANY IN CONNECTION WITH AN END-USER ACT, OMISSION OR CLAIM (WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE).

## 8 Assignment

8.1 To the extent they are assignable, the Customer may assign its rights under the Agreement so long as it has the Company's prior written consent (not to be unreasonably withheld provided the Company may impose reasonable conditions including but not limited to execution of a deed of assignment with terms reasonably acceptable to the Company).

8.2 To the extent they are assignable, the Company may at any time assign some or all of its rights under the Agreement to any person.

## 9 Confidentiality and exclusivity

9.1 Each party acknowledges that it will, pursuant to this Agreement, be granted access to the other party's Confidential Information, and each party agrees:

- (a) to maintain the confidential nature of the other party's Confidential Information disclosed to the party;
- (b) not to disclose that Confidential information to any person except in accordance with these terms and conditions; and
- (c) not to use, copy or reproduce any of the other party's Confidential Information for any purpose other than as contemplated and necessary for the purpose of the providing or receiving the Services, or otherwise complying with this Agreement; and then only to the extent necessary for that purpose.

9.2 Despite any other provision, a party may disclose Confidential Information of the other party:

- (a) to those of its officers, employees or professional advisers who: (1) need the information (but only for purposes of either enabling the party to perform its obligations under this Agreement or to receive the Services), and (2) have been instructed and agree to keep the information confidential – and in such cases, the party will ensure that those persons keep the information confidential on terms no less stringent than those imposed on the party by this Agreement);
- (b) in accordance with legal compulsion or any order of any court, tribunal, authority or regulatory body, in which event the party required to disclose the Confidential Information will give as much prior notice of disclosure to the other party as reasonably possible, so as to enable the other party to act to prevent or restrict disclosure of the information.

9.3 Despite any other provision, but subject to clause 9.4, the Company may use any data obtained during the course of the Services:

- (a) to assist or vary the any services supplied by the Company to any person.

9.4 The Company must not identify to any third party the detailed nature of Services provided or to be provided to the Customer, or that the Customer is the source of any data

referred to in clause 9.3. Subject to the preceding sentence, the Company may disclose to third parties the simple fact that the Customer has engaged the Company as the Customer's preferred supplier of its specialized genomics services.

9.5 The Customer acknowledges that the Company must use its own Confidential Information to supply its services to customers, and that protection of that information is of critical importance to the business of the Company. Accordingly, while the Company is obliged to supply Services under this Agreement, the Customer agrees not to engage or utilize (except to the extent the Customer is already obliged to do so) any supplier of services the same as or substitutable for the Services, such that the Company is the preferred supplier of such services to the Customer.

## 10 Term and termination

10.1 This Agreement will operate for the Term, starting from the Commencement Date.

10.2 Either party may terminate Agreement with immediate effect by giving written notice to the other party if the other party:

- (a) breaches a material term of this Agreement and that breach is not capable of remedy or if capable of remedy is not remedied within 20 Business Days after notice is given; or
- (b) suffers an Insolvency Event.

10.3 On termination of this Agreement for any reason:

- (a) the Customer must pay all outstanding invoices within 21 days of the date of termination (including any relevant Cancellation Fee);
- (b) subject to clause 9, each party must, if requested by the other party, return all Confidential Information of the other party or if not requested then destroy such Confidential Information;
- (c) the Customer must grant the Company access to any relevant Customer premises to retrieve any materials in respect of which title has not passed to the Customer; and
- (d) the accrued rights and obligations of each party are unaffected.

10.4 Without prejudice to any other rights to which the Company may be entitled, in the event that the Customer unlawfully terminates or cancels the services agreed to in the Service Schedule, the Customer shall be required to pay to the Company as agreed damages and not as a penalty the full amount of any third party costs to which the Company has committed plus the full amount of the Fees contracted for the Services as set out in the Fee Schedule, and the Customer agrees this **Cancellation Fee** is a genuine pre-estimate of the Company's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 2.1 shall be deemed to be a cancellation of the Services and subject to this Clause 10.4.

10.5 If elements outside the control of the Company prevent completion of the Services, and the Customer terminates this Agreement pursuant to this Agreement, then the Company

reserves the right to invoice work completed to date of termination.

## 11 General

11.1 Any notice to be given by either party to the other may be served by email, personal service or by post to the address of the other party given in the Service Schedule or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

11.2 A waiver of any right under this Agreement must be in writing.

11.3 If a provision of this Agreement is void, voidable or unenforceable, it will be severed and the remainder of the Agreement will not be affected.

11.4 The Company may, in connection with this Agreement, pay commission to any of its employees or any third party.

11.5 Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the Customer and the Company and neither party has any right to bind the other in contract or otherwise.

11.6 Each party will be relieved of its obligations to the extent that it is unable to fulfil them as a result of circumstances beyond its reasonable control. If such an event occurs, the affected party must notify the other party as soon as reasonably possible.

11.7 Each party represents and agrees that: (a) this Agreement incorporates all written, verbal and other representations made on behalf of the other party, upon which the first party has relied in determining to enter into this Agreement; and (b) this Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on the matter.

11.8 The services in this Agreement is governed by the laws applicable in the Australian Capital Territory, Australia and the parties submit to the nonexclusive jurisdiction of the courts of the Australian Capital Territory, Australia.

11.9 This Agreement may only be varied in writing signed by both parties.