



TERMS and CONDITIONS of MONASH HISTOLOGY PLATFORM
MHP-REF-0063

Terms and Conditions of Monash Histology Platform

The services and materials provided by Monash University to You are subject to the following terms and conditions. 'You' or 'Your' refers to you the client; and 'Us', 'Our' or 'We' refers to Monash University acting through its Monash Histology Platform.

1. In these Terms and Conditions unless expressed or implied to the contrary:
 - a. **Background IP** means Intellectual Property owned or controlled by a Party, including Intellectual Property developed prior to or independently of these Terms and Conditions, which a Party determines, in its sole discretion, to make available for the carrying out of the Services;
 - b. **Business Day** means any day other than a Saturday, Sunday or public holiday under the *Public Holidays Act 1993* (Vic).
 - c. **Client Materials** mean any equipment, materials, data or information supplied to Us by or on behalf of You as specified in the Service Agreement/Quotation;
 - d. **Confidential Information** means information disclosed to a Party (**Receiving Party**) in any form by the other Party (**Disclosing Party**) in relation to the Services which is by its nature confidential, or the Receiving Party ought reasonably to know is confidential, or is marked as "confidential", or if disclosed orally then reduced to writing and forwarded to the Receiving Party within seven (7) days and marked as "confidential", but does not include information which: (a) is in the public domain at the time of disclosure; (b) is published or otherwise becomes part of the public domain through no fault of the Receiving Party; (c) was in the possession of the Receiving Party at the time of disclosure without an obligation of non-disclosure to the Disclosing Party; (d) is received from a third party without an obligation of non-disclosure; (e) is independently created by or on behalf of the Receiving Party by persons who had no knowledge of the disclosed information; or (f) is required to be disclosed by law;
 - e. **Deliverables** mean the materials created or prepared by Us in connection with performance of the Services and supplied to You as specified in the Service Agreement/Quotation;
 - f. **Fees** means the amount payable for the provision of the Services as specified in the Service Agreement/Quotation;
 - g. **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations;
 - h. **Intellectual Property** means all rights resulting from intellectual activity whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, design rights, circuit layouts and plant varieties and all rights and interests of a like nature, together with any and all documentation and materials relating to such rights and interests, but excluding moral rights and similar non-assignable rights of any person;
 - i. **Party** means You or Us, as the case may be, and **Parties** means both You and Us;
 - j. **Quotation** means the quotation and/or projected cost of the requested Services as communicated to You;
 - k. **Service Agreement** means the service agreement provided to You which includes a table of costs, requirement to register an iLab account and annexure setting out information related to the Services being provided;
 - l. **Services** mean the services, including any Deliverables, specified in the Service Agreement/Quotation;
 - m. **Special Terms** means the clauses (if any) in the special terms section set out after clause 23. The Special Terms prevail to the extent of any inconsistency between the Special Terms and any other clause.
2. We will provide the Services pursuant to these Terms and Conditions.
3. We will supply all personnel, equipment, materials and other things necessary to perform the Services except the Client Materials. Unless otherwise agreed in writing, We will dispose of the Client Materials or, if requested by You, return it to You upon completion of the Services or termination of Our agreement constituted by these Terms and Conditions.
4. You will promptly provide the Client Materials required to perform the Services, and all information and assistance reasonably required to enable Us to provide the Services. You will:
 - a. ensure that the Client Materials are accurate, complete and current;
 - b. ensure that You are entitled to supply the Client Materials to Us for the purpose of the Services;
 - c. ensure that the use of the Client Materials in connection with the Services is lawful and all required consents, permissions or authorisations relating to such use have been obtained;
 - d. be responsible for arranging for the packaging and delivery of all Client Materials to Us and for all associated costs. We will not be responsible for any damage to the Client Materials prior to delivery to Us;
 - e. unless specified by written notice to Us, ensure that the Client Materials, when used by Us for the Services, are not reasonably capable of constituting a threat to safety, health, life, property or the environment; and
 - f. ensure that You provide Us all relevant information regarding the Client Materials, including, without limitation, information relating to the safe, secure and appropriate transportation, use, storage and disposal of the Client Materials.

5. In consideration of the performance of the Services, You will pay to Us the Fees detailed in the Service Agreement/Quotation (or as otherwise provided) within 30 days of receipt of a tax invoice from Us. Any amount payable for anything supplied under these Terms and Conditions is expressed exclusive of GST. If GST is payable on any supply made by Us under these Terms and Conditions, You will pay to Us an additional amount equal to the GST at the time payment of the Fees are due.
6. Ownership of rights in any Background IP will remain with the contributing Party. Where the Background IP is contributed by You, You grant Us a licence to use, modify or adapt that Background IP for the provision of the Services.
7. On payment of all Fees, all rights, title and interest to, and Intellectual Property in, the Deliverables are assigned to You, unless otherwise modified by a Special Term in these Terms and Conditions.
8. The Receiving Party undertakes to keep the Confidential Information confidential and to disclose it to its employees, agents and subcontractors only on a need to know basis as required for the Services, and under the same obligations of confidence as set out under these Terms and Conditions.
9. You assume sole responsibility and risk in interpreting, using and exploiting the Deliverables (including any findings, results and recommendations therein) and shall indemnify Us and Our officers, employees and agents against any actions, proceedings, suits, claims and demands arising from such interpretation, use or exploitation by You (except to the extent that such loss or damage arises as a result of Our fraud, negligence, breach of contract or wilful misconduct).
10. You acknowledge and agree that while We will exercise reasonable care and diligence in carrying out the Services, the work involved in the Services is by its nature uncertain and that the outcomes of the Services and their ability to produce commercially useful results cannot be assured.
11. We will exercise all reasonable care and diligence in carrying out the Services but where permitted by law, We specifically exclude any condition, guarantee or warranty either express or implied as to the standard or timeliness of work, the accuracy of, or fitness for a particular purpose of, the Deliverables and shall not be liable for any damage, direct or consequential, howsoever arising under these Terms and Conditions (except to the extent that such damage arises as a result of Our fraud, negligence, breach of contract or wilful misconduct)
12. To the fullest extent permitted by law (including, without limitation, the Competition and Consumer Act 2010), Our liability under any condition, guarantee or warranty which cannot legally be excluded is limited, at the option of Us to:
 - a. in the case of goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
 - b. in the case of services: supplying the Services again or paying the cost of having the Services supplied again.
13. To the fullest extent permitted by law, We will not be liable to You for any special, indirect or consequential loss or damage, or loss of anticipated profits, revenue, data or opportunity, arising from or in any way relating to these Terms and Conditions, whether in tort (including negligence), contract, statute, equity or otherwise (except to the extent that such loss or damage arises as a result of Monash's fraud, negligence, breach of contract or wilful misconduct).
14. The arrangements constituted by these Terms and Conditions may be terminated by either Party immediately by written notice if:
 - a. the other Party commits a material breach of these Terms and Conditions which it fails to remedy within thirty (30) days of being notified of the breach; or
 - b. the other Party becomes the subject of any insolvency administration.
15. If the arrangements constituted by these Terms and Conditions are terminated by Us for any reason under clause 14, You must pay Us any Fees owing to Us for work done up to the date of termination.
16. You may request to terminate the Services prior to their completion provided that We are reimbursed for any and all costs associated with Services already completed, including but not limited to: materials purchased, labour costs, reasonable administration expenses, and any other non-refundable committed costs. For the avoidance of doubt We must make all reasonable efforts to mitigate losses associated with the termination of the Services.
17. Neither Party will be liable for any delay or failure to perform its obligations under these Terms and Conditions where such delay or failure is due to any event beyond that Party's reasonable control, including by reason of any of the following: labour disturbances,



shortages or disputes of any kind; natural disasters; national emergencies; government directives or restrictions; civil disorders; acts of war or aggression; acts of God; failure of utilities; mechanical breakdowns; technical issues; material shortages; epidemics; pandemics (including but not limited to COVID-19); death or injury to laboratory animals; or similar occurrences (**Force Majeure Event**). This clause does not apply to Your obligation to pay the Fees for any services rendered, or expenses reasonably incurred, by Us up to the date of Force Majeure Event.

18. The Party unable to perform its obligations as a result of a Force Majeure Event must:
 - a. notify the other Party promptly of any delay or failure to perform referred to in clause 17; and
 - b. use reasonable endeavours to resume performance in accordance with these Terms and Conditions as soon as practically possible.
19. These Terms and Conditions are governed by and must be construed in accordance with the laws of Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria and the courts competent to determine appeals from those courts with respect to any proceedings which may be brought at any time relating in any way to these Terms and Conditions.
20. These Terms and Conditions along with any Service Agreement/Quotation contain the entire understanding between the Parties concerning the subject matter of these Terms and Conditions and supersedes, terminates, and replaces all prior agreements (except a Monash Research Platforms Services Agreement or Master Services Agreement) between the Parties concerning the subject matter of these Terms and Conditions. In the event of an inconsistency between these Terms and Conditions and a Service Agreement/Quotation, the Service Agreement/Quotation will prevail.
21. Where applicable, You warrant that you have obtained and complied with, or will obtain and comply with, all necessary approvals (including relevant Animal Ethics Committee approval and Office of Gene Technology approval (if required)) for the receipt and use of the Deliverables from us. You warrant that you have the right to receive the Deliverables.
22. All notices to be served under these Terms and Conditions:
 - a. may be served personally, via email, or sent by express post to the address of the recipient which has been notified by the recipient to the sender; and
 - b. will be deemed to have been given:
 - i. if served personally, on the date upon which it is served;
 - ii. if sent by email, upon receipt by the sender of confirmation that the notice has been sent in its entirety to the recipient; and
 - iii. if sent by express post, two Business Days after the date of posting.
23. In the event of a dispute arising between the Parties, then the following clauses will apply:
 - A. The Parties will attempt to resolve the dispute by negotiation in good faith, initiated by one Party giving written notice of the dispute to the other Party.
 - B. If a dispute remains unresolved, and without any progress being made towards its resolution, within thirty (30) Business Days of a Party receiving written notice of the dispute, the Parties will refer the dispute to mediation. The mediator will be appointed jointly by the Parties or, where the Parties cannot agree, nominated by the then President of the Law Institute of Victoria or if not then in operation, a like organisation to be agreed between the Parties. All costs of the mediation shall be borne equally by the Parties, and the Parties shall bear their own legal costs.
 - C. In the event the dispute is not resolved by mediation within twenty (20) Business Days after the appointment of the mediator, or such further time as the Parties agree in writing, a Party may then commence proceedings in relation to the dispute. Notwithstanding the existence of a dispute, the Parties must continue to perform their obligations under this Agreement.
 - D. Nothing in this clause 23 shall be taken as preventing a Party from commencing a proceeding for urgent interlocutory relief or from terminating this Agreement in accordance with these Terms and Conditions.