

EnviroDNA- Terms of Engagement

1. Definitions

In these Terms unless the context requires otherwise:

Additional Charges means charges that are separate from the Fee and may include but are not limited to courier fees, print costs, production of iterated versions or drafts of reports, and EnviroDNA administration costs where additional services are provided by third parties.

EnviroDNA means ENVIRO DNA PTY. LTD. (ACN 614 473 166 and ABN 21 614 473 166).

Commencement Date means the date upon which EnviroDNA commences work on the Project or as agreed between the parties.

Confidential Information means information that:

- (a) by its nature is confidential;
- (b) is designated by the parties as confidential; or
- (c) the parties know or ought to know is confidential;

and includes all information about EnviroDNA and its related bodies corporate, including but not limited to, all technical, financial, commercial and other information in any form (for example: as a document or in electronic form) of or relating to them or their business affairs, which is made available or which becomes known during the term of this Contract but does not include information that was in the public domain at the time of its disclosure.

Contract means the contract formed as a result of the acceptance of a Project Proposal by the Client. It includes these Terms and the Project Proposal.

Client means the Client set out in the Project Proposal, offer or other document provided by EnviroDNA (in the absence of such information, the Client who consents to the engagement).

Equipment means any equipment, chattels, structure or articles of whatsoever kind that are temporarily stored at the Client's premises, the Project site, or provided to the Client by EnviroDNA or for the purposes of carrying out the Project, whether such equipment is owned by EnviroDNA or a third party.

Fee means the amount or rates payable in respect of the Services and/or Goods identified in the Project Proposal or if no amount or rates are specified, the amount calculated pursuant to the hourly rates or rates for certain output of EnviroDNA which are current at the time of the provision of the Services and/or Goods.

Project Proposal means the correspondence issued to the Client by or on behalf of EnviroDNA usually identified as the proposal, fee proposal, engagement letter or quote for the provision of the Services and the supply of Goods for each specific Project.

Final Output means the deliverables or Project output produced by EnviroDNA as set out in the Project Proposal.

Goods means the Final Output and any other goods supplied by EnviroDNA in connection with the Services.

Intellectual Property means EnviroDNA's rights in all intellectual property including copyright; moral rights; discoveries; inventions; present and future patent and patent applications; rights to inventions; copyright and related rights; trademarks; service marks; trade names; domain names and URLs; rights in goodwill or to sue for passing off; rights in data, metadata, discoveries, scientific output, databases, spreadsheets, presentations, training materials, research protocols, know-how, samples, and materials; designs; registered designs; rights in computer software; drawings, reports, bills of quantities, calculations; rights in the Confidential Information (including know-how and trade secrets); and any other intellectual property rights. For the avoidance of doubts, the Intellectual Property includes the Project Intellectual Property. These rights may be registered or unregistered.

Insolvency Event means any of the following analogous events:

- (a) the party, being an individual, commits and act of bankruptcy;
- (b) a party becomes insolvent;
- (c) a party disposes of whole or any part of its assets, operations or business other than in the ordinary course of business;
- (d) the party unable to pay their debts as the debts fall due;
- (e) any step is taken by a mortgagee to take possession of or dispose of the whole or any part of a party's assets, operations or business; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or party of any party's assets, operations or business.

Invoice means a tax invoice issued by EnviroDNA to the Client specifying the Fee or any part of the Fee and any ancillary costs (including Additional Charges and Reimbursable Expenses) payable by the Client to EnviroDNA for the Goods and Services.

Project means the project for which the Services will be performed and/or Goods will be provided by EnviroDNA as set out in the Project Proposal.

Project Intellectual Property means all of the Intellectual Property created in connection with the Project and in the course of providing the Services and/or Goods including but not limited to:

- (a) the Final Output;
- (b) any data, project output, computer files, spreadsheets, photographs, tested eDNA samples, or imagery of whatsoever kind;
- (c) any practice, concept, product or process (whether or not such practice, concept, product or process is capable of being patented or registered), except where that intellectual property, project output or associated rights are expressly delineated as belonging to the Client in the Project Proposal or otherwise agreed between the parties in writing.

Reimbursable Expense means all costs and expenses (in addition to the Fee) that are incurred by EnviroDNA in the performance of the Services which are approved by the Client or designated as such in the Project Proposal.

Services means the services to be provided by EnviroDNA to the Client as described in the Project Proposal.

Terms means the terms and conditions set out in this document.

Workflow Schedule means any schedule, timeline or program for performance of the Services or provision of the Goods (if any) as set out in the Project Proposal.

2. Acceptance of Terms and Engagement

- 2.1. These Terms apply to the sale of Goods and/or Services from EnviroDNA to the Client.
- 2.2. EnviroDNA will not supply Goods and/or Services on any other terms or conditions other than those set out herein unless agreed in writing by the parties.
- 2.3. The Client is deemed to have agreed to these Terms and committed to the Project by:
 - (a) providing instructions to EnviroDNA regarding the Project after receiving the Project Proposal attaching these Terms; or

- (b) otherwise accepting the Project Proposal and Terms by confirming the Engagement (either verbally or in writing).
- 2.4. If EnviroDNA accepts an engagement as specified in clause 2.3, the parties will have created a binding Contract and EnviroDNA will supply the Services and/or Goods to the Client, and the Client will pay the Fee to EnviroDNA as specified in the Project Proposal or Invoice in accordance with the Contract.
3. **Fee and Payment Terms**
- 3.1. Unless otherwise agreed between the parties in writing, EnviroDNA requires a 50% deposit of the Fee to be paid prior to commencing the Services (**Deposit**) with the balance of the Fee (remaining 50%) being payable upon completion of the Project.
- 3.2. Depending upon Project scale, EnviroDNA may agree to an alternative schedule for payment of the Fee but only in circumstances where such payment schedule is agreed in writing between the parties or expressly delineated in the Project Proposal.
- 3.3. The Client shall pay EnviroDNA the Fee and any Reimbursable Expenses as identified in the Invoices within 7 days of receipt of the Invoice unless otherwise stated in the Project Proposal.
- 3.4. If the Client fails to make payment of any amount within 30 days of the date of the Invoice, the Client must pay to EnviroDNA:
- (a) interest on the full amount outstanding at the rate equal to 4% higher than the penalty interest rate fixed by the Attorney-General of Victoria pursuant to s2(1) of the *Penalty Interest Rate Act 1983 (Vic)*, calculated monthly for the period from the due date until payment is received; and
- (b) any reasonable administration costs incurred by EnviroDNA associated with or incidental to the failure to make payment including but not limited to one-off charges of \$25 for the issuing of financial statements, payment reminders and debtor telephone calls.
- 3.5. If notice of outstanding amounts has been given to the Client and, notwithstanding the notice, the Client fails to pay any amount due to EnviroDNA, EnviroDNA will be at liberty to suspend the Project or performance of services or provision of goods (whether as part of the Project or any other engagement) until such time as outstanding amounts have been paid in full.
- 3.6. The Client must reimburse EnviroDNA for the full amount of any bank or other fees associated with any dishonoured payments or cheques and hereby indemnifies EnviroDNA against any legal, debt recovery or other expense associated with any action by EnviroDNA to recover monies owing from the Client.
- 3.7. The Client may not withhold, make deductions from, or set-off payment of any of the Fee due to EnviroDNA for any reason.
- 3.8. All Fees, Reimbursable Expenses, Additional Charges and all other expenses payable under this Contract in relation to the supply of goods and services are exclusive of goods and services tax (**GST**), unless stated otherwise, and GST will be payable by the Client to EnviroDNA.
4. **EnviroDNA's Responsibilities and Workflow Schedule**
- 4.1. EnviroDNA will provide the Client with the Services as set out in the Project Proposal to complete the Project.
- 4.2. EnviroDNA will exercise reasonable care, skill and ability when performing the Services and/or providing the Goods, however, EnviroDNA does not warrant that any specific outcome or scientific conclusion will be supported by or contained in the Final Output.
- 4.3. EnviroDNA is unable to commence and/or progress the Project until it receives from the Client:
- (a) the Deposit paid in full;
- (b) any required access to the Project site; and
- (c) all relevant Project documentation, water samples, directions and information (where required to be provided by the Client and identified by EnviroDNA to the Client),
- and in circumstances of delay, the Commencement Date, the Workflow Schedule, and/or the date for delivery of the Final Output will be modified accordingly.
- 4.4. The Client shall promptly provide EnviroDNA with all information, documentation, electronic files, details, access, approvals, authorities, licenses and permits required for EnviroDNA to provide the Services and complete the Project.
- 4.5. Payment of the Deposit will secure the Project resources and, if requested by the Client but not contained in the Project Proposal, a Commencement Date and/or Project completion date will be agreed. In circumstances where EnviroDNA has issued a Project completion date, Final Output date, or Workflow Schedule but has not yet received the required Client information and/or samples, such dates will be reviewed and subject to confirmation once EnviroDNA receives all of the required Client information and/or samples.
5. **Client's responsibilities and warranties**
- 5.1. The Client:
- (a) warrants that it has the right to use any third-party information or material provided to EnviroDNA (for example, data, scientific output, literature or other copyright protected works), and is not infringing any Intellectual Property rights of any third-party;
- (b) must provide EnviroDNA with all resources, including but not limited to information, documentation, approvals, site relevant permits, and licences to enable EnviroDNA to perform the Services and complete the Project;
- (c) must use all reasonable endeavours to ensure that there are no circumstances which may affect EnviroDNA's ability to provide the Services and/or the Goods; and
- (d) must provide EnviroDNA with any details of any required specifications or properties of the Services and/or Goods at the time of the engagement of EnviroDNA by the Client.
- 5.2. The Client warrants that the Project documentation, details, resources and information provided to EnviroDNA will be accurate and current, to the best of its knowledge. The Client further warrants that it has disclosed any known limitations, defects, latent conditions or restrictions with the Project site and Project information which may affect or impact the Project or the Final Output.
- 5.3. If there are any errors in any specifications or other information provided by the Client to EnviroDNA as set out in this clause 5, EnviroDNA will be entitled to vary the Fee.
- 5.4. The Client warrants that it holds insurance cover for any loss or damage in an adequate amount to cover the risks it bears under this Contract (including but not limited to cover for business interruption and environmental damage) as required by statute or otherwise as is reasonable in the circumstances.
- 5.5. The Client acknowledges that the Services and the Project entail scientific research which is uncertain in nature and so no specific outcome, conclusion, data or hypothesis can be guaranteed by EnviroDNA.
- 5.6. EnviroDNA will be entitled to rely on the warranties given by the Client as set out in this clause 5.

6. Variations and Cancellations

- 6.1. If the performance of the Services is delayed by an act, omission or default of the Client or its employees, agents, consultants or contractors, then EnviroDNA may require the Client to pay EnviroDNA for the costs and expenses incurred by EnviroDNA as a result of the delay and accordingly add to the Fee any Additional Charges incurred to EnviroDNA.
- 6.2. If the Client causes a significant delay to the Workflow Schedule or the Project which would render it wholly impractical to continue the Project (or significantly delay other EnviroDNA clients, projects or engagements), then EnviroDNA may cancel or suspend the Project and retain the Deposit or a portion of the Deposit commensurate to the costs of the Services and/or Goods rendered to the date of cancellation (at its sole discretion). In circumstances where the value of the Services and/or Goods rendered up to the time of cancellation exceeds the Deposit, EnviroDNA reserves the right to charge this additional amount to the Client.
- 6.3. If the Client wishes to make changes to the Project, the Services and/or the Workflow Schedule the Client must notify EnviroDNA in writing of those changes, and if those changes result in additional work or time required by EnviroDNA, EnviroDNA may vary the Final Output delivery date, Workflow Schedule and the Fee to include any Additional Charges and/or Reimbursable Expenses incurred by EnviroDNA as a result of those changes.
- 6.4. EnviroDNA will be entitled to Additional Charges and/or to vary the Fee as agreed between the Client and EnviroDNA or, if no agreement is reached, then as reasonably determined by EnviroDNA (taking into account the cost of comparable goods and services), if:
 - (a) EnviroDNA is required to perform services different or additional to those specified in the Project Proposal;
 - (b) the nature of the Services or the Project changes from that provided by the Client or its agent to EnviroDNA at the Project Proposal stage and there is a consequent increase in the total delivery cost of the Project;
 - (c) the costs associated with the provision of the Services or provision of the Goods is directly or indirectly increased due to the imposition of, or increase in, the amount of any government or statutory authority tax (other than income tax), fee or charge; or
 - (d) the Services are suspended other than by reason of a breach, negligence or omission by EnviroDNA.
- 6.5. In circumstances of a cancellation or suspension by the Client of the Project, the Services, and/or the Final Output delivery then, in the absence of any breach of these Terms by EnviroDNA, the Client will be liable for a portion of the Fee as reasonably determined by EnviroDNA in its sole discretion taking into account any loss, expenses or costs to EnviroDNA (including consequential loss, third party Equipment hire, and cancellation fees).

7. Liability

- 7.1. EnviroDNA will not be liable to the Client or any other person for any liability or claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any consequential loss or any other remote abnormal or unforeseeable loss whether or not in the reasonable contemplation of the parties, in relation to the Project and providing the Services and/or Goods. This includes, but is not limited to:
 - (a) any claims or liability which may arise as a result of the Client providing incorrect information or instructions; and
 - (b) any claims or liability for infringement of any third-party intellectual property rights.
- 7.2. The Client agrees that, the maximum liability of EnviroDNA to the Client arising out of or in connection with the Project or the Services is, to the extent permitted by law, limited in the aggregate to the amount of the Fee payable under the Project Proposal. In the event of a breach by EnviroDNA causing loss, EnviroDNA's liability to the Client for such breach shall be limited to the cost of EnviroDNA supplying the Service and/or Goods again.
- 7.3. EnviroDNA shall not be liable to the Client for:
 - (a) acts, omissions or defaults of other contractors or consultants engaged by the Client (including consultants or contractors engaged by EnviroDNA as the agent for the Client);
 - (b) any changes, alterations or additions to the Project and/or the Services made by others without the express approval of EnviroDNA;
 - (c) the accuracy of any cost or time estimates;
 - (d) business interruption, any loss of use, opportunity or production, loss of interest, earnings, profit or anticipated profit, loss of contracts, loss of goodwill, holding or financial costs, or any indirect or consequential loss or damage;
 - (e) any loss, damage or claim to the extent that such loss, damage or claim was caused or contributed to by the Client or its employees, agents, consultants or contractors; and
 - (f) any liability to a third-party for any claim whatsoever arising out of, or in connection with, the Services, the Goods, the Project, or the Final Output.

8. Indemnity

- 8.1. The Client agrees to indemnify EnviroDNA and each of its current and former officers, servants and agents, heirs and assigns against any claims, loss, damages and liabilities of any kind (including legal costs) arising from or incidental to:
 - (a) a breach by the Client of the Contract including but not limited to a breach of any of the warranties set out at clause 5;
 - (b) any exploitation or use of the Intellectual Property or the Project Intellectual Property, and infringement of any third-party intellectual property rights;
 - (c) negligence, mistake, omission or failure of performance by the Client or any of its agents;
 - (d) the Client providing incorrect information or instructions, or misrepresenting the Project site or environment the subject of the Project;
 - (e) the Client instructing EnviroDNA to represent, amend, manipulate or configure the Final Output in a way which is or has the potential to be misleading and/or deceptive or inaccurately represent or depict the Project site, its environmental characteristics, any scientific conclusions, the Client's products or services in any way.

9. Termination

- 9.1. The parties may terminate the Contract upon 14 days' written notice to the other party.
- 9.2. EnviroDNA may immediately terminate the Contract or suspend the performance of the Contract if:
 - (a) the Client breaches a term of the Contract (including these Terms) which is not capable of remedy;
 - (b) the Client is in breach of any other obligations under the Contract and the breach has not been remedied within 14 days (or any longer period as EnviroDNA may allow) of being notified in writing of the breach to be remedied;
 - (c) there is a failure to comply with any payment obligation;
 - (d) the Client causes a significant delay to the Workflow Schedule or the Project, without a reasonable excuse; and

- (e) if an Insolvency Event occurs.
- 9.3. If the Contract is terminated for any reason:
- (a) subject to the provisions of clause 5, the Client must immediately pay to EnviroDNA a pro-rata payment for the Services and Goods (including any incurred Additional Charges or Reimbursable Expenses) provided by EnviroDNA up to the date of termination, and any other money owed by the Client to EnviroDNA under this Contract as at the date of termination; and
 - (b) termination will not affect any accrued rights or liabilities of the parties.
10. **Intellectual Property**
- 10.1. The Client acknowledges and agrees that:
- (a) the Project Intellectual Property and the Intellectual Property are the sole property of EnviroDNA and/or its related bodies corporate;
 - (b) this Contract does not confer on the Client any right or title to any of the Intellectual Property or Project Intellectual Property; and
 - (c) they will credit all published Final Output or data, conclusions or findings from the Project to EnviroDNA.
- 10.2. Where required, the Client agrees to assign to EnviroDNA all Project Intellectual Property, and all legal and statutory rights and remedies and any actions available to the Client in relation to the Project Intellectual Property.
- 10.3. For the avoidance of doubt, all intellectual property rights of the parties existing before the date of this Contract will be retained by the relevant party.
- 10.4. Upon payment of the Fee, EnviroDNA may grant a non-exclusive and non-transferable licence to the Client to use the Final Output and/or EnviroDNA's Project Intellectual Property for promotional or marketing purposes. EnviroDNA reserves the right to charge an additional amount to the Client in circumstances where providing copies or access to Project Intellectual Property incurs additional costs.
- 10.5. The Client agrees to allow EnviroDNA to photograph the Project site during all stages of the Project including when the Project is complete and all such photographs and images originating from such photographs will remain EnviroDNA's absolute property. Photographs will be used for business purposes, including, but not limited to: press, publications, online, social media, marketing, advertising, and print. EnviroDNA will obtain the prior consent of the Client for any disclosure of the Client's personal information or information which is expressly designated by the Client as being commercially sensitive.
- 10.6. The Client warrants that, unless otherwise provided in the Project Proposal, the Client's requirements, instructions, materials, documents and methods of working provided or directed by the Client, shall not infringe the intellectual property rights of any third-party.
11. **Confidentiality & Non-Disclosure**
- 11.1. The Client must not at any time, or for any reason, whether during the term of this Contract or after its termination disclose to any person or use for their own or another person's benefit any Confidential Information and/ or Intellectual Property.
- 11.2. The Client must keep all Confidential Information and Intellectual Property secret and must not use any of it for any purpose other than for the Project and the performance of its obligations under the Contract, except with the consent of EnviroDNA for a disclosure on a need-to-know basis to its subcontractors or suppliers who undertake in writing not to disclose or otherwise misuse the Confidential Information and/or Intellectual Property.
- 11.3. If the Project or the Contract is completed or otherwise terminated, the Client must return or destroy (at EnviroDNA's request), at its own costs, all documents or other media which contain any Confidential Information and/or Intellectual Property.
- 11.4. In circumstances where agreement has been reached for the disclosure or publication by the Client of any Project Intellectual Property and/or Final Output, the Client must provide a copy of the proposed disclosure or publication for approval by EnviroDNA prior to disclosure or publication.
12. **General**
- 12.1. **Ongoing Services:** Unless otherwise agreed in writing between the parties, these Terms will continue to apply to all future services provided to the Client by EnviroDNA.
- 12.2. **Severability & Waiver:** A term or part of a term of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining terms or parts of terms continue in force. The failure of EnviroDNA to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect EnviroDNA's right to subsequently enforce that provision.
- 12.3. **Entire Agreement:** This Contract contains the whole agreement between the parties in respect of the subject matter of the Contract. The parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated **into** this Contract.
- 12.4. **Survival:** If this Contract is terminated for any reason such termination will not affect any accrued rights or liabilities of either party nor will it affect the coming into force or the continuance in force of any provision of this Contract (in so far as it imposes obligations on the Client) which is expressly or by implication intended to come into force or continue on or after the termination.
- 12.5. **Subcontracting:** EnviroDNA may sub-contract all or any part of its rights and obligations under the Contract without the Client's consent.
- 12.6. **Jurisdiction:** The Contract between EnviroDNA and the Client is made in the State of Victoria, and the parties agree to submit all disputes arising between them to the courts of such State.
- 12.7. **Variation:** EnviroDNA may change these Terms at any time if it has given to the Client at least 30 days' notice in writing of the proposed change. Clauses contained in these Terms may be amended, excluded or supplemented by express written provision contained in the Project Proposal. In circumstances of a conflict between the Project Proposal and these Terms, the Project Proposal shall prevail.
13. **Interpretation**
- In these Terms:
- (a) words importing the singular import the plural and vice versa;
 - (b) a reference to a particular gender is a reference to all genders;
 - (c) a reference to a party includes that party's successors, administrators and assigns; and
 - (d) a reference to a document includes all amendments or supplements to or replacements of that document.