

# CSIRO C3 FACILITY USAGE AGREEMENT



**Proposal Date:**

Client:	CSIRO C3 Manager	CSIRO Administrative Contact
<b>Contact:</b> <b>Address:</b>  <b>Tel:</b> <b>Fax:</b> <b>Email:</b>	<b>C3 Manager</b> C3 Manager Address Line 1 Address Line 1 Address Line 1 <b>Tel:</b> 03 XXXX XXXX <b>Fax:</b> 03 XXXX XXXX <b>Email:</b> first.surname@csiro.au	<b>Contract Manager</b> Contracts Manager Address Line 1 Address Line 1 Address Line 1 <b>Tel:</b> 03 XXXX XXXX <b>Fax:</b> 03 XXXX XXXX <b>Email:</b> first.surname@csiro.au

**Access Details**

<b>CSIRO Premises:</b>	CSIRO's premises at 343 Royal Parade, Parkville, Victoria 3052, Australia.	
<b>CSIRO C3 Facility:</b>	The CSIRO C3 Facility comprises the following: <ol style="list-style-type: none"> <li>light microscopes in the C3 suite at the CSIRO Premises;</li> <li>communal computer in the C3 suite at the CSIRO Premises;</li> <li>electronic C3 booking, CrystalTrak™, C6 and CTweb applications; and</li> <li>any other equipment, tools and materials which are made available to you by CSIRO.</li> </ol>	
<b>Your Materials:</b>	You will provide the following at your own expense: <ol style="list-style-type: none"> <li><b>Samples:</b> macromolecular samples submitted by you to undergo C3 Services;</li> <li><b>Special Reagents:</b> any chemicals required to be used in the C3 Services for your Samples that are not in general crystallisation usage, as determined by the CSIRO C3 Manager; and</li> <li>any other materials provided by you to CSIRO.</li> </ol>	
<b>C3 Services:</b>	CSIRO will provide a robotic protein crystallisation service for your Samples, as follows: <ol style="list-style-type: none"> <li>initial screening of Samples against standard crystallisation screens within Plates;</li> <li>refinement of crystallisation conditions within Plates;</li> <li>automated imaging, and storage of Plates up to a maximum of 3 months (imaging scheduling and Plate storage timeframes will be at the discretion of the CSIRO C3 Manager, who will endeavour to accommodate your reasonable timing requests and will send you a reminder prior to the expiry of the Plate storage period);</li> <li>online access via CTweb application to experimental Results and C3 booking, CrystalTrak™ and C6 applications (no other reports will necessarily be provided); and</li> <li>if requested, preparing reagent plates or blocks for secondary or fine screening.</li> </ol> You and CSIRO may agree to additional services in writing.	
<b>Deliverables:</b>	<ol style="list-style-type: none"> <li><b>Plates:</b> each Plate being an individual experimental crystallisation plate, reagent storage plate or block produced as part of the C3 Services; and</li> <li><b>Results:</b> experimental results from the C3 Services provided for your access via CTweb application.</li> </ol>	
<b>Facility Access:</b>	You may access C3 booking, CrystalTrak™ and C6 applications online to make bookings and access Results. Any of your Personnel who have signed a CSIRO C3 Visitor Acknowledgement are also permitted to access the following during business hours with a visitor badge provided by CSIRO and supervised by CSIRO employees: <ol style="list-style-type: none"> <li>the light microscopes in the CSIRO C3 Facility, for the purpose of manually inspecting and manipulating your crystallisation Plates, including production of seed stock;</li> <li>the communal computer in the CSIRO C3 Facility, for the purpose of accessing C3 booking, CrystalTrak™ and C6 applications to view your Results and design follow-on experiments;</li> <li>the C3 suite at the CSIRO Premises to submit and retrieve Samples and Plates; and</li> <li>common areas of the CSIRO Premises as necessary to access the above.</li> </ol>	
<b>Fee:</b>	Please refer to current pricing as described on the website <a href="http://crystal.csiro.au/About/Pricing-and-Policy.aspx">http://crystal.csiro.au/About/Pricing-and-Policy.aspx</a>	
<b>Agreement Period:</b>	<b>Agreement Start Date:</b> 16 March 2014	<b>Agreement End Date:</b> 15 March 2016

**Agreement**

<b>Agreement:</b>	This proposal to enter into an <b>Agreement</b> (which will consist of this cover page, the terms overleaf and any attachments) is valid for 60 days from the Proposal Date shown at the top of this cover page. To accept this proposal, please have your organisation's authorised representative sign below and return all pages of the Agreement by fax or email to the CSIRO Administrative Contact at the contact details specified above. By signing below you confirm having read and accepted the Agreement.	
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Signed on behalf of **CSIRO:**

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

Signed on behalf of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Date]

# TERMS OF ACCESS

## 1. Definitions

**'C3 Visitor Acknowledgement'** means an acknowledgement in the form annexed to this Agreement.

**'Confidential Information'** means confidential information in any form that one of us discloses to the other in connection with this Agreement. Information is not confidential if it is: (a) publicly available; (b) rightfully known by the recipient before disclosure by the discloser; (c) independently created by the recipient without access to the discloser's confidential information; or (d) lawfully acquired from a source other than the discloser.

**'CSIRO'** means the Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230.

**'CSIRO Background IP'** means any IP which is or has been created by CSIRO independently of the work it is doing for you under this Agreement and which is provided for your use as part of the Deliverables.

**'CSIRO Research Tools'** means skills, methodologies, know-how, software, hardware, technology, equipment, data and experience used by CSIRO Personnel in the course of carrying out the C3 Services, and any IP in them.

**'General Crystallography Research'** means general research, development and promotion of the CSIRO C3 Facility that is not specific to your Samples and does not use them or Confidential Information about their composition or identify that they crystallised under any particular conditions in the course of the C3 Services.

**'IP'** means any rights in any existing or future copyright work, patentable invention, design, circuit layout, new plant variety, trademark, know-how or trade secret.

**'Non-Commercial Organisation'** means: (a) an educational institution; (b) a government department; (c) a charitable institution; or (d) a non-profit institution, which meets all of the following conditions:

- (i) it was organised and is operated solely for non-profit purposes; and
- (ii) none of its income is distributed or made available for the personal benefit of any of its members.

**'Non-Commercial Project'** means a project which meets all of the following conditions: (a) you are a Non-commercial Organisation; and (b) only Non-commercial Organisations fund the project; and (c) only Non-commercial Organisations have rights over the Results of the project.

**'Personnel'** means officers, employees and students.

**'Service IP'** means any IP created by CSIRO in the course of carrying out the C3 Services for you under this Agreement, which is specific to your Samples and is provided for your use as part of the Deliverables. Service IP does not include any improvements made to CSIRO Background IP or CSIRO Research Tools in the course of carrying out the C3 Services.

**'you'** or **'your'** means the Client identified on the cover page.

**'us'** or **'we'** means you and CSIRO severally, not jointly.

Other capitalised expressions used in this Agreement have the meanings given to them on the cover page.

## 2. C3 Services

- 2.1. CSIRO will carry out the C3 Services with professional care and skill.
- 2.2. CSIRO may keep copies of any Results and may reproduce and use such Results for record keeping and General Crystallography Research.
- 2.3. The knowledge and skills that CSIRO staff will use to perform the C3 Services have been developed in the course of providing the same or similar services to other clients. CSIRO may develop further knowledge and skills

while performing the C3 Services. CSIRO can use such knowledge and skills for other clients.

## 3. Your Materials

- 3.1. You are responsible for ensuring that your Materials are provided on time, safely transported to and from the CSIRO Premises, and are suitable to enable CSIRO to carry out the C3 Services. If your Materials are damaged, defective or otherwise unsuitable for the C3 Services and CSIRO carries out any part of the C3 Services before discovering your Materials are unsuitable, then CSIRO may charge you for any costs it has incurred, including the cost of any additional work required due to the unsuitability of your Materials.
- 3.2. If CSIRO requires the replacement of your Materials to continue carrying out the C3 Services then: (a) you must provide replacement Materials within a reasonable time; and (b) CSIRO may charge you for all work already carried out by CSIRO.
- 3.3. You will ensure that your Materials are suitably packaged and labelled with: (a) your name and contact details; (b) the name of the CSIRO C3 Manager; (c) a full description of the contents; and (d) any relevant warnings or instructions for handling, testing, storage, transportation and disposal. You will also advise CSIRO of any hazardous or otherwise dangerous components or properties of your Materials. If you do not comply with the above and CSIRO has to take measures to safeguard the health and safety of CSIRO staff, CSIRO laboratories or the public, then CSIRO will charge you for the cost of taking these measures.
- 3.4. CSIRO relies on your representation that you are entitled to provide your Materials and any IP in them for use by CSIRO in accordance with this Agreement.
- 3.5. CSIRO is not obliged to return or store your Materials for longer than the storage period specified on the cover page unless agreed in advance in writing with the CSIRO C3 Manager.

## 4. Your use of Deliverables

- 4.1. CSIRO assigns the Service IP to you on the date the Fee is fully paid.
- 4.2. You grant CSIRO an irrevocable, non-exclusive, royalty-free licence to use the Service IP for General Crystallography Research. This licence commences on the date the Service IP is assigned to you.
- 4.3. CSIRO grants you a non-exclusive, royalty-free licence to use the CSIRO Background IP as necessary to use the Deliverables. This licence commences on the date the Fee is fully paid.
- 4.4. You must not use the Deliverables in humans without CSIRO's prior written consent.
- 4.5. On provision of your Samples to CSIRO, you will notify the CSIRO C3 Manager whether the relevant Deliverables will be used in Non-commercial Projects only, or whether they will be used in any other manner. You will ensure that the Deliverables are only used in connection with the project type notified to the CSIRO C3 Manager. CSIRO relies on your representation that the Deliverables will only be used in connection with the project type notified to the CSIRO C3 Manager. If you specify use in Non-commercial Projects and the Deliverables are subsequently used in any other way, then: (a) you will immediately notify CSIRO; and (b) CSIRO may (without limiting its other rights) require immediate payment of the applicable additional Fees.

## 5. Facility Access

- 5.1. CSIRO will make the CSIRO C3 Facility available to you for Facility Access during the Agreement Period. You are being given a licence only to use the CSIRO C3 Facility and not exclusive possession of the CSIRO C3 Facility. Your Personnel will only be given physical access to the CSIRO Premises if they have signed a C3 Visitor Acknowledgement and provided it to CSIRO. You will ensure that those Personnel comply with the terms of this Agreement.
- 5.2. You must use the CSIRO C3 Facility with all due care and skill and only for the purpose of Facility Access.
- 5.3. You and your Personnel will comply with all lawful and reasonable directions given by CSIRO, its Personnel or contractors concerning: (a) the security and safety of any person on the CSIRO Premises; (b) the use of the CSIRO C3 Facility or of any other equipment, materials or facilities (such as laboratories); and (c) the use of any computer, electronic or telecommunication device, software, database or on-line services.
- 5.4. You must ensure that after each time your Personnel access the CSIRO C3 Facility it is left in the same state of cleanliness and repair as it was in immediately before that access.
- 5.5. You must reimburse CSIRO for costs of repairing or replacing any part of the CSIRO C3 Facility or CSIRO Premises which is damaged by you or your Personnel.

## 6. Payment

- 6.1. You must pay CSIRO the Fee. The Fee is on a per-Plate basis regardless of Plate content.
- 6.2. All invoices issued by CSIRO are to be paid within 30 days after the date of the invoice. For GST purposes all invoices or receipts issued by CSIRO are tax invoices.
- 6.3. If you do not pay on time then CSIRO may stop working on the C3 Services and you must pay interest on the outstanding amount. Interest is calculated daily at the Westpac Bank Indicator Lending Rate plus 2% per annum from the due date until the date the outstanding amount is paid.
- 6.4. Goods and services supplied to Australian residents or for use in Australia are subject to tax under the GST law. Goods or services supplied to you under this Agreement will be treated as GST-free supplies under the GST law in reliance on your assurances that: (a) you are a non-resident for Australian income tax purposes; (b) you are not registered or required to be registered for GST purposes in Australia; and (c) you require the goods and services solely for use in your business or operations outside of Australia. If goods or services supplied to you are subsequently classified as taxable because any of your assurances are incorrect, you must reimburse CSIRO on demand for the GST payable (including any interest, fine, penalty or other amount imposed upon CSIRO for failing to collect the GST).
- 6.5. The Fee does not include freight, packing and transit insurance charges. If CSIRO has to pay any such charges, then you will be invoiced separately and must reimburse CSIRO for these charges.
- 6.6. You are responsible for obtaining any necessary import licences or permits and for paying any customs or import duties or taxes on such importation.
- 6.7. The Fee must be paid to CSIRO in full, without any deduction, withholding, set-off or counterclaim for taxes, excises or duties. If any taxes, excises or duties are imposed then: (a) you will bear and pay all deductions and withholdings of any taxes, excises or duties directly to the relevant authorities; and (b) separately pay CSIRO enough to ensure that CSIRO receives the full amount of the Fee on the due date.

- 6.8. All international conventions that might import contractual terms into this Agreement are excluded, including the United Nations Convention on Contracts for the International Sale of Goods.

## 7. Confidential Information

- 7.1. Each of us must keep the other's Confidential Information confidential for a period of 5 years commencing on the Agreement Start Date.
- 7.2. Each of us may only disclose the other's Confidential Information: (a) if required by law, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure; or (b) if the discloser has authorised the disclosure in writing; or (c) to our Personnel who have been made aware of the obligations of confidentiality under this Agreement. We are each responsible for ensuring that our own Personnel comply with these obligations.

## 8. Publication

- 8.1. You will provide the CSIRO C3 Manager with a copy of any publication relating to the Deliverables, within 30 days of its publication.
- 8.2. In all publications relating to the Deliverables, you will: (a) cite the source of the Deliverables (ie. the CSIRO Collaborative Crystallisation Centre); and (b) acknowledge any contribution by CSIRO Personnel to the publication in accordance with applicable conventions of authorship and attribution (eg. the Australian Code for the Responsible Conduct of Research issued by the National Health and Medical Research Council and the Australian Research Council).
- 8.3. You authorise CSIRO to list on the CSIRO C3 website the name and contact details of your Contact identified on the cover page. CSIRO relies on your representation that you have procured your Contact's consent.

## 9. Liability and insurance

- 9.1. You acknowledge that any use by you or your Personnel of the CSIRO C3 Facility, CSIRO Premises, C3 Services or Deliverables is at your risk. This clause does not prevent you from taking legal action against CSIRO.
- 9.2. CSIRO does not give any assurance that the CSIRO C3 Facility or any of the C3 Services provided by CSIRO (including advice or information provided by CSIRO) will be suitable for your purposes.
- 9.3. All terms, conditions and warranties (including any warranty as to merchantable quality or fitness for purpose) implied by common law or statute as to the quality of the CSIRO C3 Facility, CSIRO Premises, C3 Services or Deliverables ('implied warranties') are excluded unless the exclusion of any such implied warranties would contravene the law or cause any part of this Agreement to be void.
- 9.4. CSIRO's liability to you for breach of any implied warranties is limited, at CSIRO's option, to either re-performing its obligations under this Agreement or refunding the Fee.
- 9.5. CSIRO will not be liable to you for any indirect or consequential damage suffered by you in any way arising from your use of the CSIRO C3 Facility or any of the C3 Services.
- 9.6. You must maintain adequate insurance to cover: (a) damage caused by you or your Personnel to the CSIRO C3 Facility or CSIRO Premises; (b) injury to you or your Personnel while on the CSIRO Premises; and (c) loss or damage to any property that you bring into the CSIRO C3 Facility or onto the CSIRO Premises.
- 9.7. CSIRO will maintain adequate public liability insurance.

## **10. Resolving Disputes**

- 10.1. If there is a dispute between us relating to this Agreement that is not settled within 30 days of receipt of written notice of the dispute, then it will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.
- 10.2. The appointing authority will be the Australian Centre for International Commercial Arbitration. There will be a single arbitrator. The place of arbitration will be Melbourne, Victoria, Australia. The language of the arbitration will be English.
- 10.3. Any arbitration will be final and binding, including any award as to costs. Offers of settlement or any matter disclosed in the course of arbitration must be treated as without prejudice and not an admission of liability. The arbitration and the decision of the arbitral tribunal will be confidential.
- 10.4. Nothing in this clause will prevent either of us from seeking an injunction or other urgent interlocutory relief.

## **11. Termination**

- 11.1. This Agreement ends on the Agreement End Date.
- 11.2. This Agreement can be terminated at any time before the Agreement End Date by CSIRO giving you written notice if you or your Personnel do not comply with its terms.

## **12. Use of CSIRO Name**

You must not use CSIRO's name or trade marks in a manner that suggests that CSIRO endorses, or is associated with, your business, products or services.

## **13. General**

- 13.1. This Agreement records our entire agreement and supersedes all earlier agreements and representations that may have been made between us relating to the subject matter of this Agreement.
- 13.2. The terms in this Agreement override any contrary terms contained in any invoice, purchase order or other documentation issued by either of us to the other relating to the subject matter of this Agreement.
- 13.3. This Agreement is governed by the laws of Victoria, Australia and each of us submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.



# C3 VISITOR ACKNOWLEDGEMENT



## Visitor

Name:	
Address:	
Tel:	
Fax:	
Email:	

## Institute

Name:	
Address:	

This acknowledgement is given by the Visitor identified above.

I acknowledge that:

1. I am an officer, employee or student of the Institute identified above.
2. I have been given a copy of the CSIRO C3 Facility Usage Agreement between my Institute and CSIRO ("Agreement"). I have read and understood that Agreement and am required to act in a manner consistent with it. Capitalised expressions that are used but not defined in this acknowledgement have the meanings given in the Agreement.
3. I have been authorised by my Institute and CSIRO to use the CSIRO C3 Facility for the purpose of Facility Access.
4. I am required to use the CSIRO C3 Facility with all due care and skill and only for the purpose of Facility Access.
5. I am required to comply with all lawful and reasonable directions given by CSIRO, its Personnel or contractors concerning: (a) the security and safety of any person on the CSIRO Premises; (b) the use of the CSIRO C3 Facility or of any other equipment, materials or facilities (such as laboratories); and (c) the use of any computer, electronic or telecommunication device, software, database or on-line services.
6. After each time I access the CSIRO C3 Facility I am required to ensure that it is left in the same state of cleanliness and repair as it was in immediately before my access.
7. I will maintain the confidentiality of all CSIRO Confidential Information and CSIRO IP which I create or become aware of in connection with my access to the CSIRO C3 Facility, and will not disclose it either within or outside CSIRO unless I have explicit authority to do so.
8. On cessation of my access to the CSIRO C3 Facility, I will hand over to CSIRO all physical and electronic materials in my possession which belong to CSIRO or embody or contain any CSIRO IP or Confidential Information.
9. If I cease to be an employee, officer or student of the Institute: (a) I will immediately inform CSIRO; (b) any rights I had to use the CSIRO C3 Facility under the Agreement will terminate; and (c) if I wish to continue to use the CSIRO C3 Facility I must enter into a separate written agreement with CSIRO.

In providing this acknowledgement, I understand that a breach of its terms may constitute a breach of the Agreement and may result in cessation of my access to the CSIRO C3 Facility.

Signed by the Visitor:

in the presence of:

\_\_\_\_\_  
[Signature of **Visitor**]

\_\_\_\_\_  
[Signature of **witness**]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Name of **witness**]