

## 1. HOW DO THESE TERMS OPERATE?

- 1.1 ANSTO operates programs providing physical and/or remote access for researchers to ANSTO's Facilities for the purposes of research that is not covered by a commercial access or services agreement. Research or experiments approved by or agreed to by ANSTO to be undertaken under such programs (**Permitted Research**) can be undertaken using the physical and/or remote access to ANSTO Facilities described in such application or proposal or other agreement (**General Access**).
- 1.2 These terms and conditions (the "**Terms**") apply to General Access by a User for Permitted Research.
- 1.3 **These Terms will apply for 5 years after the date of your agreement to these Terms and will apply to all General Access and Permitted Research by Users during that time.**
- 1.4 **You must ensure Users are aware of these Terms and are able to comply with the requirements.**
- 1.5 If there is a conflict between these Terms and a Specific Agreement, the Specific Agreement will apply to the extent of any inconsistency.

## 2. DEFINITIONS USED IN THESE TERMS

- 2.1 For the purposes of these Terms:

A reference to **you** is to the organisation, company or entity agreeing to these Terms.

**Aboriginal and Torres Strait Islander Research** means any research that impacts or is of particular significance to the culture of Aboriginal and Torres Strait Islander peoples, including the planning, collection, analysis and dissemination of information or knowledge, in any format or medium, which is about or may affect the culture of Indigenous peoples, either collectively or individually.

**AIATSIS** means Australian Institute of Aboriginal and Torres Strait Islander Studies.

**Application**, in relation to Permitted Research, means the application, request for approval, proposal or agreement submitted and approved for General Access for that Permitted Research.

**Facilities** means any facilities, locations, instrument, machinery, systems, equipment, resources or materials owned, operated or controlled by ANSTO.

**Results** means the results, technical, scientific and research information, including raw data, of the Permitted Research.

**Specific Agreement**, in relation to specific General Access or Permitted Research, means any other agreement (other than these Terms) signed by ANSTO expressly applying to that General Access or Permitted Research.

**User** means a person which is an employee or student of your organisation, or a person holding an appointment with your organisation (including a research appointment), who seeks to or is participating in Permitted Research.

**User Resources** means all goods, materials, items, chemicals, substances, samples, and compounds bought on to the Facilities by a User for any Permitted Research.

**User Terms** means any document or terms which a User signs or agrees to in relation to safety, security, conduct or confidentiality during and as part of the Application, onboarding or induction (and for which a copy is available on the ANSTO internet page, <https://www.ansto.gov.au/>).

- 2.2 In interpreting the Terms:

- (a) Headings are for convenience only, and do not affect interpretation of this Agreement.
- (b) A singular word includes the plural, and vice versa. If a word is defined, another part of speech has a corresponding meaning. A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it. A reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated and a Party to the Terms includes a permitted substitute or a permitted assign of that Party; and anything (including a right, obligation or concept) includes each part of it.

- (c) If an example is given in these Terms of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

### **3. THE ACCESS WHICH ANSTO PROVIDES**

- 3.1 ANSTO will use reasonable efforts to provide General Access for Permitted Research but does not guarantee it.
- 3.2 ANSTO may cancel, deny or defer access to or use of Facilities for a User for any reason and at any time, including during the access. The reasons for this include, but are not limited to, if:
- (a) ANSTO cannot provide access due to an event outside its control;
  - (b) ANSTO is limiting access to the relevant ANSTO Facilities for safety, security or operational reasons;
  - (c) failure by the User to comply with policies, procedures or reasonable directions or instructions or other non-compliance with the Terms;
  - (d) ANSTO reasonably believes it must do so in order to comply with any law or legal obligation; or
  - (e) ANSTO reasonably considers it necessary to do so in order to protect the safety of any person or the security of any ANSTO Facilities or the confidentiality of any ANSTO information.

ANSTO is not required to provide the reason.

### **4. WHAT MUST USERS DO TO OBTAIN ACCESS**

- 4.1 You must ensure that in relation to General Access or Permitted Research each User:
- (a) agrees to, and complies with, any User Terms;
  - (b) completes any required onboarding, safety training or induction required by ANSTO; and
  - (c) notifies ANSTO of all medical or physical conditions relevant to access to or use of Facilities, including pregnancy, pacemakers and serious allergies.

### **5. WHAT IS GENERALLY REQUIRED IN RELATION TO THE ACCESS**

- 5.1 You must, in relation to General Access:
- (a) ensure Users comply with all of ANSTO's policies and procedures notified to the User, and any reasonable specific directions or instructions provided by ANSTO, relevant to access to or use of Facilities;
  - (b) ensure Users do not damage the Facilities wilfully or by way of any negligent act or omission;
  - (c) ensure Users keep the Facilities free of accumulation of waste materials or rubbish;
  - (d) unless otherwise agreed by ANSTO in writing, ensure Users remove all equipment and materials (not belonging to ANSTO) which are used for the Permitted Research;
  - (e) ensure all approvals, permits and consents required in connection with Permitted Research (other than those required by law to be obtained by ANSTO) are obtained;
  - (f) if the General Access is provided remotely, ensure that all User Resources are provided to ANSTO prior to the agreed access times, and that full instructions in relation to the safe usage and storage of them are provided to ANSTO's personnel.
- 5.2 You acknowledge and agree that the Users are responsible for the delivery of any User Resources to and from ANSTO including the provision of information to ANSTO relating such User Resources and their intended delivery, storage and use and for obtaining any permits or licences for export/import or delivery. You must ensure that all information provided to ANSTO by a User in relation to User Resources is accurate and up to date.
- 5.3 If ANSTO is required to apply for a permit, approval or obtain the consent from a third party (such as Australian Radiation Protection and Nuclear Safety Agency) specifically for the Permitted Research, you or a User must ensure ANSTO is provided with all necessary information which ANSTO requires to enable the application to be made within the required timeframes. If ANSTO incurs any costs, expenses or fees in relation to obtaining such permits or consents from third parties, you or another User (or a Sponsor) must reimburse ANSTO for any such costs, expenses or fees, if requested by ANSTO.

### **6. WHAT IS REQUIRED IN RELATION TO PERMITTED RESEARCH**

- 6.1 You must ensure:
- (a) unless otherwise agreed by ANSTO in writing, the Permitted Research is not undertaken on a paid commercial basis or for commercial reward by you or the User (excluding, for clarity, Permitted Research which is funded by grant funding);
  - (b) ensure User Materials used in Permitted Research are as set out in any Application, and, if applicable, have a Safety Data Sheet (SDS); and

- (c) ensure that Permitted Research (including use of User Resources) is undertaken by a User:
    - (i) in a safe, careful and proper manner;
    - (ii) in accordance with any advised ANSTO's policies and procedures, and any reasonable directions or instructions provided by ANSTO;
    - (iii) in accordance with all applicable laws including work health and safety, environmental and health laws.
- 6.2 If the Permitted Research involves Aboriginal and Torres Strait Islander Research, then notwithstanding any other provision of this Agreement, the Permitted Research may not commence until ANSTO is satisfied that such research meets the AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research Requirement.
- 6.3 You acknowledge and agree that:
- (a) removal of samples after completion or cessation of Permitted Research will depend on the nature of the Permitted Research and should be undertaken in consultation with ANSTO;
  - (b) you must provide any information or complete any report in relation to the Permitted Research or access to the Facilities provided for Permitted Research, as reasonably requested by ANSTO; and
  - (c) all User Resources brought onto ANSTO Facilities by a User are at the risk of you or the User and may be damaged, consumed or lost; and
  - (d) title to all User Resources does not transfer to ANSTO, unless otherwise agreed in writing in a Specific Agreement.

## 7. HOW WILL RESULTS AND DATA ACCESS BE HANDLED

- 7.1 You acknowledge and agree to the following:
- (a) You or the User have responsibility for retention, archiving, maintaining a copy of, and curation of the Results.
  - (b) ANSTO will use reasonable efforts to archive Results held at ANSTO:
    - (i) if a data policy or procedure is advised to a User or you, for the duration specified in that policy or procedure; or
    - (ii) if paragraph (i) does not apply, 3 years from the date of completion of the Permitted Research (the **Retention Period**).

If You or a User request ANSTO to extend the Retention Period, ANSTO will act reasonably in the consideration of that request and any extension will be set out in writing.
  - (c) ANSTO does not guarantee or represent that the Results will be retained in specific form.
  - (d) After expiry of the Retention Period, and in consideration of the General Access, ANSTO may, and to the extent necessary is granted a licence to, deposit the Results in a public-access archive unless otherwise requested in writing by the User to [insert email address] at least 6 months in advance of the end of the Retention Period.
  - (e) Unless otherwise agreed in writing with ANSTO, you shall ensure a User:
    - (i) uses best endeavours to have the Results published;
    - (ii) within 30 days of any publication of the Results, notifies ANSTO of the title, authors, date of the publication and digital object identifier for the publication;
    - (iii) acknowledges ANSTO's support in all publications relating to the Permitted Research, consistent with any guidelines provided or published by ANSTO. This should include the acknowledgement statements (if any) set out on the ANSTO website for specific Facilities; and
    - (iv) follows the Australian Code for the Responsible Conduct of Research 2018 (the **Code**) when considering authorship including ensuring ANSTO employees or contractors who provided a significant contribution are acknowledged in a manner consistent with the Code.
  - (f) When considering the matters set out in clause 7.1(e), ANSTO expects that Users should discuss co-authorship with their ANSTO contact prior to undertaking the Permitted Research.
  - (g) Except as otherwise set out in these Terms, publications in relation to the Permitted Research should not include reference to ANSTO or ANSTO's trademarks without prior written approval.

## 8. HOW ARE INTELLECTUAL PROPERTY RIGHTS OWNED

- 8.1 To avoid doubt, this section applies subject to, and unless otherwise expressly stated in, a Specific Agreement.
- 8.2 **IPR** shall mean any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in or in relation to copyright, designs, patents, circuit layouts, plant varieties,

inventions, Know How, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable, all rights to apply for the same, and indigenous cultural knowledge, but does not include the moral rights of authors or similar non-assignable personal rights of any person.

- 8.3 The ownership of IPR developed or created in connection with the Permitted Research shall be owned as set out in **Table 1**. To the extent that you or ANSTO (a **Party**) may have or acquire any right, title or interest in IPR which is inconsistent with this clause, that Party assigns to the other Parties absolutely such right, title and interest as to give effect to this clause.
- 8.4 The ownership of IPR which was acquired, developed or created other than in connection with the Permitted Research will not be altered or transferred merely by virtue of its use for the conduct of the Permitted Research.
- 8.5 These Terms are not intended to affect any agreement between you and a User in relation to ownership of IP.

**Table 1: Ownership of Intellectual Property Rights**

Type of IPR	What is the IPR	Who owns this IPR
<b>ANSTO IPR</b>	IPR in all works, inventions, discoveries, methods or analyses made or employed by ANSTO relating to the methodology, methods, techniques or processes used to analyse or measure materials or relating to the use of ANSTO's Facilities	ANSTO
<b>Joint IPR</b>	IPR which is developed or created in connection with the Permitted Research which incorporates significant contributions from ANSTO employees or contractors (excluding ANSTO IPR)	You and ANSTO as tenants-in-common in proportion to respective contributions
<b>Research IP</b>	All other IPR developed or created in connection with the Permitted Research which is not ANSTO IPR or Joint IPR	You

## 9. IMPORTANT RULES IN RELATION TO CONFIDENTIAL INFORMATION

- 9.1 **ANSTO Confidential Information** means information of ANSTO that is disclosed by ANSTO to you (or a User), or observed by you (or a User), in connection with General Access or Permitted Research, which is either by its nature confidential or you or a User knows or ought to know is confidential to ANSTO or its suppliers, users, contractors, customers, students, researchers, fellows, or research partners but does not include information that:
  - (a) is or becomes public knowledge otherwise than by breach of these Terms;
  - (b) is already known prior to receipt from or disclosure by ANSTO;
  - (c) is independently developed or acquired without having had access to the information of ANSTO.
- 9.2 You must, and must ensure each User, keeps ANSTO Confidential Information confidential and does not disclose to any person except as permitted under Table 2.
- 9.3 **Research Confidential Information** means information disclosed by you or a User to ANSTO in connection with Permitted Research or General Access which ANSTO knows or ought to know is confidential to you or a User but does not include information that:
  - (a) is or becomes public knowledge otherwise than by breach of these Terms;
  - (b) is already known to ANSTO prior to receipt from or disclosure by you or the User;
  - (c) is independently developed or acquired by ANSTO without having had access to your information.
- 9.4 ANSTO shall keep Research Confidential Information confidential and shall not disclose to any person except as permitted under Table 2.
- 9.5 You acknowledge that obligations in relation to ANSTO Confidential Information may also be included in the User Terms.

**Table 2: Use or disclosure of Confidential Information**

<b>Confidential information</b>	<b>Permitted uses</b>	<b>Permitted disclosure</b>
<b>ANSTO Confidential Information</b>	To the extent it is disclosed by ANSTO for the purposes of the Permitted Research and receipt of General Access, then for such uses	As required by law. To the extent it is disclosed by ANSTO for the purposes of the Permitted Research and receipt of General Access, then to the employers or organisations affiliated with other users in the Application for the same Permitted Research.
<b>Research Confidential Information</b>	For the purposes of the Permitted Research and provision of General Access that relates to you or Users  For the use, operation or maintenance of Facilities and the operating of ANSTO's site.	To a Minister, Parliament, Government department, regulator, auditor or professional advisor of ANSTO in relation to the activities, functions or powers of ANSTO.  To a contractor or service provider, to the extent that the contractor provides services to ANSTO in connection with the Facilities or which is relevant to the General Access.  As required by law.  To the employers or organisations affiliated with other users in the Application for the same Permitted Research.

## 10. PRIVACY

- 10.1 You must comply, and must ensure Users comply, with all applicable laws relating to the privacy of personal information in connection with the General Access and Permitted Research.
- 10.2 ANSTO shall comply with all laws in Australia to which ANSTO is subject relating to the privacy of personal information in relation to exercising rights and performing obligations for the General Access and Permitted Research.
- 10.3 If ANSTO receives information about an individual under this Agreement in connection with General Access or Permitted Research, in addition to any rights under law, you agree and consent that ANSTO may:
- use that information for the purposes of processing the Application, providing the General Access and enabling the Permitted Research, and any reasonably related management, legal, or operational purposes; and
  - disclose such information to ANSTO's employees, officers, contractors, service providers, advisors and other representatives for the same purposes as set out in paragraph (a), irrespective of their location.

## 11. ANSTO'S LIABILITY IS LIMITED

- 11.1 ANSTO provides any General Access and approves, agrees to or engages in Permitted Research on an 'as is' basis, and specifically excludes all warranties, express or implied relating to the access to or use of Facilities and the Permitted Research, except those which cannot be excluded by law.
- 11.2 To the extent permitted by law, the liability of ANSTO under or in connection with the Terms and the Application, General Access or Permitted Research, whether in contract, tort (including negligence and breach of statutory duty) shall not exceed \$100,000 (excluding GST).
- 11.3 To the extent permitted by law, in no circumstances is ANSTO liable to under or in connection with the Terms or in connection with the Application, General Access or Permitted Research, to compensate you or any User or any third party for any lost revenue, lost opportunities, lost grants, lost profits or lost business, or any special, indirect or consequential loss or damage of any nature. Consequential loss means loss or damage which does not flow naturally for the breach (or other cause of action) without another intervening cause.
- 11.4 Neither ANSTO nor you nor a User will be held responsible for a failure to perform its obligations under these Terms to the extent they are caused by events or circumstances beyond their control including but not limited to acts of God, pandemics (including SARS-CoV-2 or COVID-19, and any evolutions or mutations thereof), epidemics, war, riot, civil commotion, embargoes, act of Government, export controls, catastrophe, fire, flood, accidents, strikes, shortages of transportation, fuel, energy or acts of public enemies, but not including

financial status or solvency. This applies even if the event or circumstance was known at the time of agreement to these Terms.

## 12. YOUR LIABILITY

- 12.1 Subject to clause 12.2, you indemnify ANSTO on demand from and against any loss, damage (whether personal or property), liability, compensation, or expense (including any legal costs and expenses) incurred or suffered by ANSTO as a result of or in relation to:
- (a) damage to, or loss of Facilities arising from a negligent, wilful or intentional failure by a User to use or handle Facilities or any materials, chemicals, substances or other resources in accordance with the requirements of this Agreement or ANSTO's policies and procedures notified to you or the User, or any reasonable specific directions or instructions provided by ANSTO; or
  - (b) any injury to or death of any person arising from a negligent wilful or intentional failure by a User to act in a manner required under this Agreement; or
  - (c) any injury to or death of a User during the course of the General Access or Permitted Research, to the extent such injury or death is covered by your insurances (or equivalent protections) required to be held under this Agreement.
- 12.2 Your liability to indemnify ANSTO under clause 12.1 will be reduced proportionately to the extent that such losses were caused by the negligence, wilful misconduct, violation of applicable law by or on behalf of ANSTO, or breach by ANSTO of any of its obligations under this Agreement.

## 13. INSURANCE REQUIREMENTS

- 13.1 You must hold insurance to cover the costs of injury to any User, or property damage to Facilities caused by a User, in connection with Permitted Research. The damage or loss of User Resources must also be covered by insurance held by you or the User (if required). ANSTO may require proof that such insurances are held at any time. Unless otherwise agreed to expressly in writing by ANSTO, the User Resources will not be covered for loss or damage under any property insurance (or equivalent) held by ANSTO.
- 13.2 You must hold the following insurances for the duration of these Terms:
- (a) General or public liability up to \$10 million per occurrence, covering third party personal injury or property damage caused by a User.
  - (b) Professional liability up to \$10 million per occurrence.
  - (c) Worker's compensation or personal accident insurance covering any personal injury to a User.
- 13.3 You acknowledge that a User may not be covered by insurance, or equivalent protections, held by ANSTO.
- 13.4 If a User is required to travel to ANSTO's Facilities from another location or is not covered by the Australian Medicare system, you should consider whether it is appropriate for a User to take out and maintain its own health and travel insurance.

## 14. HOW CAN THESE TERMS OR ACCESS BE TERMINATED

- 14.1 You or ANSTO may, for any reason, terminate these Terms on 90 days' notice in writing.
- 14.2 ANSTO may immediately terminate these Terms, by notice, if:
- (a) you breach these Terms or a Specific Agreement, or a User breaches the User Terms; or
  - (b) you otherwise terminate any Specific Agreement.
- 14.3 Upon termination, all access to Facilities under General Access or for Permitted Research shall immediately cease.
- 14.4 Clauses 6.3, 7, 8, 9, 10, 11, 12, 15 and 15 survive termination or expiry of these Terms.

## 15. GENERAL

- 15.1 These Terms shall be governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the jurisdiction of the courts of New South Wales, including for the avoidance of doubt, the Federal Court of Australia sitting in New South Wales.
- 15.2 If any part of the Terms shall be void, voidable or unenforceable, it is to be severed from these Terms, without affecting the validity or enforceability of the remainder of it.
- 15.3 Your rights under these Terms cannot be assigned except with the prior written consent of ANSTO.
- 15.4 Nothing in these Terms shall be construed as establishing an agency, trust, joint venture, partnership or employment relationship between you, a User and ANSTO.
- 15.5 If a dispute arises out of these Terms, the party initiating the dispute must provide notice in writing of the dispute, and must not commence litigation prior to 40 days from the date of such notice. You and ANSTO shall endeavour to resolve the dispute in good faith during such 40 day period.