



UNIVERSITY OF  
**LEICESTER**

School of Geography, Geology and the Environment

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**SERVICES AGREEMENT**

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DATED: July, 2017

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# SERVICES AGREEMENT

(the 'Agreement')

## BETWEEN :

(1) Company, Institution, or person(s) (the 'Client') enlisting analytical services from (2).

(2) University of Leicester of University Road, Leicester LE1 7RH ('UOL').

Each a 'Party' and together the 'Parties'.

## INTRODUCTION

- (A) UOL has reasonable skill, knowledge and experience in the field of analytical services.
- (B) The Client wishes to engage UOL to provide the services set out in the prearranged agreement (the 'Quote') and UOL wishes to accept such engagement (subject to the terms and conditions contained herein).

## AGREED

### 1 Interpretation and Defined Terms

In this Agreement, the terms set out below will have the following meanings:-

- 1.1 'Intellectual Property' and/or 'IP' means all patents, registered designs, trademarks and service marks (whether registered or not), copyright, database rights, plant breeders rights, design right, know-how, information and all similar property including that subsisting (in any part of the world) in inventions, designs, performances, computer programs, semiconductor topographies, confidential information, business names, goodwill and the styles of presentation of goods or services and in applications for protection of them in any jurisdiction;
- 1.2 'Arising IP' means all (or any part) of the IP written, originated, conceived or made in the conduct of the Services and includes any results, materials, data or other outputs generated by or on behalf of the Client.
- 1.3 'Background IP' means any IP owned or controlled by either Party on or before the Contract Start Date and which is provided by a Party for use in the provision of the Services or otherwise under this Agreement.
- 1.4 'Fees' means any fees payable by the Client to UOL under this Agreement including the fees set out in the official quotation and all charges and expenses incurred by UOL in the provision of the Services.
- 1.5 'Confidential Information' means any commercial, technical and other information and data (of whatever nature and form) proprietary to the Party disclosing it (the 'Disclosing Party') which is directly or indirectly disclosed or made available by or on behalf of the Disclosing Party to the other Party (the 'Receiving Party'), whether in writing, orally, in drawings, by site visits, by access to computer software or data or in any other manner.
- 1.6 'Contract Start Date' refers to the commencement of agreed services, and begins upon receipt of sample material to the relevant laboratory.

- 1.7 'Results' means the results of the Services (if any) to be delivered to the Client as detailed in the official quotation.
- 1.8 'Services' means the services to be provided by UOL under this Agreement as detailed in the official quotation.
- 1.9 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- 1.10 References to 'including' in this Agreement in the context of a list or description of items shall be construed as meaning 'including, without limiting the generality of the foregoing'.

## 2 **Services**

- 2.1 UOL will provide the Services with effect from the Contract Start Date (upon receipt of sample materials).
- 2.2 UOL shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the university sector relevant to the Services in the United Kingdom.
- 2.3 A standard timeframe for completion of services shall be agreed with the client prior to the Contract Start Date (typically **21 working days** from the Contract Start Date). Any deviations from the standard timeframe will be agreed between the two Parties prior to the Contract Start Date.
- 2.4 Notwithstanding any other term of this Agreement, time will not be of the essence in respect of the provision of the Services.
- 2.5 The Client shall, unless otherwise agreed, provide to UOL all pertinent information, consents, licences, materials, access to premises and other permissions that are necessary for UOL's provision of the Services.

## 3 **Payment**

- 3.1 A Purchase Order (PO) must be supplied to University of UOL, for the full cost of quoted services, prior to the Contract Start Date. The requirement of a PO can only be waived with the express agreement of the University of UOL.
- 3.2 UOL will submit an invoice upon completion of the quoted services. The Fees will be paid by the Client within thirty (30) days net of the date of UOL's invoice. The Client will also pay VAT at the prevailing rate, if applicable.
- 3.3 Invoices shall be sent to the appropriate finance office/department as specified by the Client or as detailed on the PO.
- 3.4 If the Client fails to pay any Fees by the due date, UOL may, without prejudice to its other rights and remedies:-
  - 3.4.1 charge the Client interest in respect of the sum overdue in accordance with The Late Payment of Commercial Debts (Interest) Act 1998 from the due date for payment to the date of actual payment (both dates inclusive) and UOL will be entitled to reimbursement of all expenses (including legal fees) incurred with respect to collection of overdue Fees; and/or

3.4.2 suspend any further performance of the Services; and/or

3.4.3 terminate the Agreement in accordance with Clause 8.3.

## 4 Health & Safety

4.1 The Client must disclose all sample information, including a valid MSDS where available. In all cases a COSHH assessment for all samples will be performed, considering the service/preparation protocols required.

4.2 Only samples classified for handling utilising Control 1 (General ventilation, i.e., lab bench) and Control 2 (Engineering control, i.e., fume cupboard) will be accepted for services. Those requiring Control 3 (Full containment) and Control 4 (Special case) will not be accepted. Controls are as defined by the UK Health & Safety Executive (HSE) and are determined based on the following hazard phrases:

### 4.2.1 *Requiring Controls 1 and 2:*

- Harmful if inhaled
- Harmful in contact with skin
- Harmful if swallowed
- Causes skin irritation
- Causes serious eye irritation
- May cause drowsiness or dizziness
- May be fatal if swallowed and enters airway
- Toxic if swallowed
- Toxic in contact with skin
- Toxic if inhaled
- Causes severe skin burns and eye damage
- Causes serious eye damage
- May cause an allergic skin reaction
- Causes damage to organs
- May cause damage to organs
- May cause respiratory irritation

### 4.2.2 *Requiring Controls 3 and 4:*

- Fatal if swallowed
- Fatal in contact with the skin
- Fatal if inhaled
- May cause allergy or asthma symptoms or breathing difficulties if inhaled
- May cause genetic defects
- Suspected of causing genetic defects
- May cause cancer
- Suspected of causing cancer
- May damage fertility or the unborn child
- Suspected of damaging fertility of the unborn child
- May cause harm to breast-fed children
- May cause damage to organs through prolonged or repeated exposure
- Causes damage to organs through prolonged or repeated exposure

## 5 Publicity

5.1 The Client will not use the name of UOL or any representative of UOL, in any publicity, advertising or news release without the prior written approval of an authorised representative of UOL. UOL will not use the name of the Client, or any employee of the Client, in any publicity without the prior written approval of the Client (save as required for annual reporting purposes). Each Party will not during the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement disclose the other Party's Confidential Information.

- 5.2 It is University policy that anyone who has participated in a substantial way in conceiving, executing or interpreting at least a part of research submitted for publication must be given the opportunity to be included as an author of the publication.
- 5.3 External parties planning to publish analyses that have collaborated and utilised expertise of staff within UOL Analytical services are requested to explore options for co-authorship with the appropriate member of staff in the School of Geography, Geology and the Environment.
- 5.4 Where data alone are provided and the criteria for authorship are not satisfied, external parties are expected to acknowledge the facility and University in resulting publications and reports. Please acknowledge using the following wording "This research used XRF/XRD/ICPMS/C+S(Leco)/Petrology/Micromorphology (*delete as appropriate*) data acquired at University of UOL, School of Geography, Geology and the Environment – Analytical Services, UK."
- 5.5 There is an expectation that ANY publications or outputs using data gathered through UOL Analytical Services be reported back to the member of staff running that facility/service.

## 6 Confidentiality

- 6.1 Each Party will not during the term of this Agreement and for a period of five (5) years after the date of termination of this Agreement disclose the other Party's Confidential Information.
- 6.2 The obligations in Clause 5.1 shall not apply or shall cease to apply to Confidential Information which:
  - 6.2.1 has been received from a third party who is not bound by an obligation of confidentiality to the Disclosing Party;
  - 6.2.2 was already in the Receiving Party's possession prior to its acquisition from the Disclosing Party as evidenced by written records;
  - 6.2.3 was independently generated by the Receiving Party as evidenced by written records;
  - 6.2.4 is in or comes into the public domain other than by reason of a breach of this Agreement;
  - 6.2.5 is required to be disclosed by law or a court or other competent authority; or
  - 6.2.6 is disclosed with prior written consent of the Disclosing Party.
- 6.3 Upon termination or expiry of this Agreement for whatever reason, at the written request of the Client, UOL will deliver up to the Client all working papers or other material and equipment provided to it pursuant to this Agreement or prepared by it in pursuance of this Agreement. UOL will be allowed to keep one (1) copy of all papers for record purposes.
- 6.4 The Client acknowledges that UOL is deemed a public authority as defined by the Freedom of Information Act 2000 (as amended from time to time) and any subordinate legislation and/or regulations made under it (the 'FOI Legislation') and therefore recognises that UOL may be the subject of a request for information.

Without prejudice to the generality of Clause 5.2.5 above, in the event that UOL discloses any Confidential Information pursuant to the FOI Legislation (whether or not it falls within one of the exemptions to disclosure under the FOI Legislation), such disclosure shall not be deemed to be a breach of this Agreement.

## **7 Anti-Corruption and Bribery Act**

### **7.1 Each Party:**

7.1.1 shall comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010 and not engage in any activity, practice or conduct or knowingly allow anyone connected to it to do so which would constitute an offence under the Bribery Act 2010;

7.1.2 warrants and represents (without limiting the generality of Clause 6.1.1) to the other that it has not offered to give or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement;

7.1.3 shall procure that any person who is performing services or providing goods in connection with this Agreement abides by the terms of this Agreement.

7.2 The Client shall promptly report to UOL any request or demand which if complied with would amount to a breach of either this Agreement or the Bribery Act 2010.

7.3 The obligations of the Parties under this Agreement impose no further obligation on either Party:

7.3.1 to prescribe, provide favourable status for, or otherwise support the other Party's or a third party's products or services; or

7.3.2 to supply services or to provide anything other than that which is set out in this Agreement.

7.4 Breach of this Clause shall be deemed a material breach of this Agreement.

## **8 Intellectual Property**

8.1 All Background IP used in connection with the Services shall remain the property of the Party introducing it.

8.2 The Results will be owned by the Client. The Arising IP (e.g., lab methods, calibrations etc) will belong to the Party creating it.

8.3 The Party applying for patent or other IP protection for any Arising IP will pay all costs associated with the application. The Parties will cooperate with each other in executing such documents as may be reasonably required in the prosecution of such application(s) and to ensure that such application(s) will cover, to each Party's reasonable knowledge, all items of commercial interest and importance.

8.4 The Client will grant to UOL a perpetual, non-exclusive royalty free licence to use the Arising IP belonging to the Client for UOL's own academic research and teaching purposes. In full compliance of clause 4.1.

## 9 **Term and Termination**

- 9.1 This Agreement will continue until the Services have been delivered by UOL unless terminated earlier in accordance with this Clause 8.
- 9.2 Termination of this Agreement, however arising, will be without prejudice to the rights and duties of either Party accrued prior to termination. Those clauses of this Agreement which are expressly or impliedly intended to continue after termination shall continue in effect after termination.
- 9.3 Either Party may terminate this Agreement on written notice forthwith if the other Party commits a material breach of this Agreement which is not capable of remedy. Either Party may terminate this Agreement forthwith if the other Party commits a material breach of this Agreement which is capable of remedy and has not been remedied after thirty (30) days' written notice of the breach (such notice expressly referring to possible termination of this Agreement) (or seven (7) days in respect of a breach by the Client of Clause 3.2).
- 9.4 UOL may terminate this Agreement forthwith if the Client enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction), or if a petition is presented to court, or if a receiver, administrative receiver or administrator is appointed in respect of the whole, or any part of, its undertaking or assets or there are reasonable grounds for anticipating the occurrence of any of these events within the foreseeable future.
- 9.5 Either Party may terminate this Agreement on thirty (30) days' written notice to the other Party.
- 9.6 On termination of this Agreement (except for termination by the Client under Clause 8.3) the Client will pay all costs incurred within the performance of Services prior to the date of termination.

## 10 **Independent Contractor**

- 10.1 In the performance of the Services under this Agreement, UOL shall be deemed to be, and shall be, an independent contractor and, as such, UOL will not be entitled to any benefits applicable to employees of the Client.
- 10.2 Neither Party is authorised or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither Party shall be bound by the acts or conduct of the other.

## 11 **Liabilities**

- 11.1 Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall exclude or limit either Party's liability for the following:
- 11.1.1 death or personal injury resulting from negligence;
- 11.1.2 fraud or statements made fraudulently;

- 11.1.3 any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability.
- 11.2 Save as provided in Clause 10.1, UOL will not be liable for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused (even if caused by UOL's negligence and/or breach of contract and even if UOL were advised that such loss would probably result).
- 11.3 Subject to Clause 10.1, UOL's total liability for any claims, losses, damages or expenses whatsoever and howsoever caused (even if caused by UOL's negligence and/or breach of contract) shall be limited to a maximum sum equal to the total Fees payable by the Client to UOL under the Agreement, or £10,000, whichever is the greater.
- 11.4 Whilst UOL will use reasonable endeavours to ensure the accuracy of the work performed and any information and results given, UOL makes no warranty, express or implied, as to accuracy and, subject to Clause 10.1 will not be held responsible for any consequence arising out of any inaccuracies or omissions unless such inaccuracies or omissions are the result of UOL's negligence.
- 11.5 The Client acknowledges that the nature of the Services is research based and the application of any results of the Services will not be thoroughly tested. Accordingly, subject to Clause 10.1, UOL will not be liable for any claims, losses, damages or expenses whatsoever and howsoever caused arising out of any product or process that may be produced or adopted by the Client or any other party, notwithstanding that the formulation of such product or process may be based upon or derive from the Services.

## 12 **Force Majeure**

Any failure or delay by either Party in the performance of its obligations under this Agreement which is due to any supervening event beyond its control including, but not limited to, war, national emergency, flood, earthquake, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labour strike, lockout, boycott or other similar events will not be deemed a default of this Agreement or a ground for termination provided that the Party relying upon this provision gives prompt written notice thereof, and takes all steps reasonably necessary to mitigate the effects of the force majeure event.

## 13 **Third Party Rights**

The Parties to this Agreement do not intend that any of its terms will be enforceable by any person not a Party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

## 14 **Entire Agreement**

Each Party acknowledges that this Agreement including the official quotation contains the whole agreement between the Parties in respect of its subject matter and supersedes all prior arrangements, agreements, promises, statements, representations, assurances, warranties and understandings between them relating to the subject matter.

## 15 **Assignment**

This Agreement shall not be assigned by either Party without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.



## 16 **Severability**

If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

## 17 **Variation**

Any variation to this Agreement (and/or the Services) shall be in writing and approved by both Parties.

## 18 **Waiver**

No failure, delay, relaxation or indulgence on the part of either Party in exercising, or partially exercising, any right hereunder shall operate as a waiver of such rights.

## 19 **Notices**

19.1 Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, internationally recognised courier, first class post, Special Delivery post [or Airmail] or email addressed to the recipient below (or another person which the recipient has notified in writing to the sender in accordance with this Clause 18.1, to be received by the sender not less than seven (7) days before the notice is despatched).

19.1.1 For UOL – School of Geography, Geology and the Environment, University of Leicester, University Road, Leicester, LE1 7RH

19.1.2 For the Client – As detailed above.

19.2 The notice, demand or communication will be deemed to have been duly served:

19.2.1 if delivered by hand, at the time of delivery;

19.2.2 if delivered by an internationally recognised courier, first class post or Special Delivery post, forty eight (48) hours after being posted [or in the case of Airmail fourteen (14) days after being posted] (excluding days other than business days in England);

19.2.3 if delivered by email, the next business day after transmission provided that no automatic out of office message is received.

## 20 **Disputes**

20.1 All disputes will initially be referred by either Party to a representative of each Party responsible for the overall performance of this Agreement, who will meet as soon as reasonably practicable to discuss the dispute. If those representatives are unable to resolve the dispute after meeting, the dispute shall be referred to the Managing Director of the Client and the Director of the Enterprise and Business Development Office of UOL (the 'Directors'). The Directors will meet within twenty (20) working days and attempt to resolve the dispute.

20.2 Any dispute arising out of this Agreement which the Directors are unable to resolve within five (5) working days of their meeting pursuant to Clause 20.1, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen (14) days, after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an

arbitrator to be appointed by the President or a Deputy President of the Chartered Institute of Arbitrators.

21 **Governing Law**

This Agreement is governed by the laws of England and Wales and, subject to Clause 19.2, the Parties submit to the jurisdiction of the courts of England and Wales.