**LABORATORY SERVICES AGREEMENT**

This Agreement is made between the Client and the University of Adelaide in accordance with the following Details and attached Terms and Conditions.

| DETAILS | | | |
| --- | --- | --- | --- |
| University Details | **The University of Adelaide** ABN 61 249 878 937 a body corporate established pursuant to the University of Adelaide Act1971 and having its principal offices at North Terrace Adelaide in the State of South Australia 5005(“**the University**”) | | |
| Business Unit | **Adelaide Exposure Science and Health, 28 Anderson St. Thebarton SA 5031** (formerly the Occupational and Environmental Hygiene Laboratory)  Contact Person …………………..…………………………….………………. (for Prof. Dino Pisaniello)  Telephone 08 8313 4957 Fax 08 8313 4955  Email [oeh@adelaide.edu.au](mailto:oeh@adelaide.edu.au) | | |
| **Client Contact & Details** | [Insert Client Name, Address, ABN] (“**Client**”) | | |
| Client Contact & Title:  Phone: Email: | | |
| Laboratory Services Summary | Full range of available Analytical Services specified in “Analytical Service Charges” link at:  <https://health.adelaide.edu.au/adelaide-exposure-science-health/laboratory-services> | | |
| Deliverables  ***Including any goods to be provided*** | Deliverable(s): | | Delivery date(s) |
| Analytical laboratory services as requested during the term by the Client, and associated report or analysis | | Report turnaround time is approximately 10 working days from completion of Analytical Service |
| Term |  | 1 January 2018 – 31 December 2019 | |
| Fees and Payment | Fee (ex GST): | Prices of available Analytical Services are specified in “Analytical Service Charges” link at:  <https://health.adelaide.edu.au/adelaide-exposure-science-health/laboratory-services>;  Individual Fee(s) for Service to be provided in separate Statement(s) of Work and/or Purchase Order(s) | |
| Payment method: | 30 days from receipt of invoice | |
| Special Conditions (if any) | The Terms and Conditions of this Laboratory Services Agreement will take precedence over the terms and conditions contained in any separate Statement(s) of Work or Purchase Order(s) subsequently issued by the Client to the University. In the event of any inconsistency, the Terms and Conditions of this Agreement as set out below will prevail. | | |
| OFFICE USE ONLY  *(Version 15.01.2018)* | Date Received: |  | |
| Our Ref. Number: | UA160189 | |

# The Parties agree to the Details, Terms and Conditions (overleaf) and any Schedules and Annexures.

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| Signed for and on behalf of  **The University of** **Adelaide** | Signed for and on behalf of **Client** |
| …………………………………………………………………………….. | …………………………………………………………………………….. |
| by its authorised representative  Name: …………………………………………………………………. | by its authorised representative  Name: …………………………………………………………………. |
| Position: ………………………………………………………………  Date: …………………………………………………………………… | Position: ………………………………………………………………  Date: …………………………………………………………………… |

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| TERMS AND CONDITIONS |

1. **DEFINITIONS**

In this Consultancy Services Agreement, including the Details, Schedules and Annexures if any (**this Agreement**):

* 1. **Background Intellectual Property** means information, data, techniques, technology, know-how, software and materials, and intellectual property rights therein, that exist prior to the Start Date or are created, developed or acquired by a party independently of the performance of the Services.
  2. **Confidential Information** means any information which is designated as confidential or which by its nature is confidential or which is disclosed in circumstances importing an obligation of confidence, which is disclosed by one party to the other for the purposes of this Agreement but does not include information that is in the public domain, is already lawfully known to the receiving party, has been independently developed or obtained by the receiving party or is required to be disclosed by law.
  3. **Intellectual Property** or **IP** means patents, plant breeders rights, registered or unregistered trademarks and service marks, registered designs, copyrights, database rights, design rights, confidential information, know-how, applications for any of the above, and any similar right recognised in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.
  4. **Moral Rights** has the meaning given to that term in Part IX of the *Copyright* Act *1968* (Cth) and includes: (a) a right of attribution of authorship; (b) a right not to have authorship falsely attributed; and (c) a right of integrity of authorship.
  5. **Term** means the period from the Start Date to the End Date.

Other capitalised terms have the meaning given to them in the Details. Any Special Conditions set out in the Details take precedence over these Terms and Conditions in the event of inconsistency.

Any provisions attaching to a purchase order provided by the Client relating to the Services or Deliverables are excluded in their entirety and the Terms and Conditions and any Special Conditions of this Agreement apply instead.

1. **CONSTRUCTION AND INTERPRETATION**

In this Agreement, headings are for guidance only and do not affect the interpretation of the clauses. The following rules apply unless the context requires otherwise:

* 1. words importing the singular include the plural and vice versa;
  2. words importing one gender include all other genders;
  3. reference to a statute, ordinance, code or other law includes regulations, directions and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them from time to time;
  4. reference to $, dollar or AUD is to Australian currency;
  5. any agreement, obligation, representation, right or warranty on the part of or in favour of two or more persons binds or is for the benefit of them severally and not jointly or jointly and severally; and
  6. where the day on, or by which, anything is to be done, is a Saturday, Sunday, public holiday or day on which the banks are closed, in the place in which that thing is to be done, then that thing need not be done until the next day which is not a Saturday, Sunday, public holiday or day on which the banks are closed, in that place.

1. **SERVICES AND DELIVERABLES**
   1. The University will provide the Services and all Deliverables during the Term in accordance with these Terms and Conditions.
   2. Title to the Deliverables passes to the Client upon full payment of the Fee. In the case of non-payment or partial payment, the Deliverables must be returned to the University without delay upon receipt of formal notice to return. In the case of requested return, all expenses incurred for shipping the Deliverables will be paid by the Client.
   3. Until full payment of the Fee has been made the Client will not, except as expressly provided in this Agreement or with the prior written consent of the University, sell, licence or otherwise dispose of the Deliverables, grant any further security interest in or part with possession of the Deliverables or any interest in the Deliverables (nor purport or attempt to do that) nor permit any non-consensual lien over the Deliverables.
   4. Client grants to the University a security interest in the Deliverables to secure payment of the Fee.
   5. Risk in the Deliverables will pass to the Client on delivery to the Client, or on delivery to the Client’s agent, carrier or employee.
2. **DIRECTIONS FROM, AND OBLIGATIONS OF, THE CLIENT**
   1. The Client agrees to make available to the University any information or materials necessary to comply with its obligations under this Agreement.
   2. Unless agreed in writing by the Parties, all materials and equipment provided to the University by the Client, or purchased by the University with its own funds or with funds provided by the Client, for the purpose of performing the Services, will be the property of the University.
   3. The University will not be liable for any failure or delay in performance or liability where contributed to by the University's reliance on any materials, equipment, facilities, information and access to personnel provided or required to be provided by the Client.
3. **INTELLECTUAL PROPERTY**
   1. Each party retains all rights to its Background Intellectual Property used in performance of the Services.
   2. Copyright in any reports comprising part of the Deliverables passes to the Client under this Agreement upon full payment of the Fee.
   3. The Client will respect the Moral Rights of the authors in the Deliverables.
4. **CONFIDENTIALITY**
   1. Neither party will, either during the Term or for five years after the end of the Term, disclose to any third party, nor use for any purpose except providing the Services, any of the Confidential Information of the other party.
   2. Neither party will be in breach of any obligation to keep any Confidential Information confidential or not to disclose it to any other party to the extent that it is:
      1. disclosed to the receiving party's employees or agents as necessary for the performance of this Agreement provided that such employees or agents are instructed as to the confidential nature of the information;
      2. required to be disclosed by law and the receiving party has informed the disclosing party, within a reasonable time after being required to make the disclosure, of the requirement to make the disclosure and the information required to be disclosed;
      3. disclosed to the receiving party's solicitors, auditors, insurers or accountants; or
      4. approved for release in writing by an authorised representative of the disclosing party.
   3. The receiving party must:
      1. take all reasonable steps, and do anything reasonably required by the disclosing party, to keep the Confidential Information under the receiving party's control;
      2. immediately notify the disclosing party if the receiving party becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
      3. not use, copy or reproduce, nor cause or allow any other person to use, copy or reproduce, any Confidential Information other than in accordance with this Agreement; and
      4. immediately upon written request by the disclosing party destroy or deliver to the disclosing party, as directed, every copy of Confidential Information in the receiving party's possession.
5. **PUBLICATION AND PUBLICITY**
   1. Neither party will use the name or logo of the other party in connection with this Agreement, or make any press release, or public statement concerning this Agreement or the Services performed under this Agreement except with the prior written consent of the other party or to the extent required by law or by government or other public regulatory requirement.
   2. The Client must not use the results of the Services or the Deliverables to represent, expressly or implicitly, that the University supports or endorses the Client's business, goods or services. In any publication relating to the Services, Deliverables or the results, the Client will make no reference to the University.
6. **FEE AND PAYMENT**
   1. The Client agrees to pay the University the Fee in the time and manner set out in the Details or as agreed in writing between the Parties.
   2. Any change in the scope, timing, or order, of the Services or Deliverables must be agreed in writing. Where the University incurs costs additional to the Fee, then the University will be entitled to additional payment of an amount representing those additional costs which are reasonable in the circumstances.
   3. If the cost of materials has been included in the Fee quoted for the performance of the Services or provision of the Deliverables and the cost of any of those materials has increased for reasons outside the control of the University, the Fee payable to the University under this Agreement may be increased accordingly.
   4. If GST is payable on any supply by one party to the other party under this Agreement, the amounts payable by the recipient to the supplier and any other consideration (as applicable) will be increased by an additional amount if appropriate. The amount payable in respect of GST is to be calculated by multiplying the Fee or other consideration payable for the relevant supply by the prevailing GST rate. Each party agrees to do all things, including providing invoices or other documents in such form and detail that may be necessary to enable or assist the other party to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.
7. **WARRANTIES AND INDEMNITITES**
   1. The University does not give any warranty nor accept any liability in relation to the Services or the Deliverables except to the extent, if any, required by law or as specifically provided for in this Agreement.
   2. The University's liability is limited with respect to:
      1. any non-excludable guarantee or condition, in the sole discretion of the University, to the replacement or repair of goods, re-supply of Services, or cost of having Services resupplied; and
      2. any other liability, to an amount not exceeding those amounts paid by the Client under this Agreement in the 12 months immediately preceding the date when the relevant claim arose.
   3. The Client assumes sole responsibility for interpreting and applying the Deliverables and any other results of the Services and releases and indemnifies and agrees to continue to indemnify, the University and its officers, employees, agents and sub-contractors from and against all liability, losses, actions, claims, demands, proceedings, awards, settlements, compensation, damages, costs and expenses, directly or indirectly arising from, or relating to:
      1. the Client's use of, or reliance on, any part of the Deliverables or that of any other person to whom the Deliverables were provided directly or indirectly by the Client;
      2. breach by the Client of its obligations under this Agreement; or
      3. any wilful, unlawful or negligent act or omission of the Client.

The Client’s liability under the indemnity in this clause 9.3 will be reduced proportionately to the extent that any negligent act or omission of the University or its officers, employees, sub-contractors or agents contributed to the relevant loss or liability.

* 1. Each party will maintain appropriate and enforceable insurance policies to cover liability that arises out of, under or pursuant to this Agreement.
  2. Neither party will be liable to the other party for any lost profits, revenue, anticipated savings, expenditure or business opportunities, loss of or damage to data or goodwill or any indirect or consequential loss.

1. **REPRESENTATIONS**
   1. The Client agrees that it has not relied on any representation made by the University which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by the University.
   2. The Client acknowledges that to the extent the University has made any representation, which is not otherwise expressly stated in this Agreement, the Client has been provided with an opportunity to independently verify the accuracy of that representation.
2. **TERMINATION**
   1. Unless terminated earlier this Agreement is for the Term.
   2. This Agreement may be terminated at any time by mutual written agreement between the Parties.
   3. If either party commits a breach of this Agreement, the other party may request in writing that the breach be remedied, and if this is not done within 30 days of the request then the other party may terminate this Agreement immediately.
   4. The University will be entitled to immediately terminate this Agreement by written notice to the Client if:
      1. the Client becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
      2. the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
      3. the Client, being a natural person, dies; or
      4. the Client ceases or threatens to cease conducting its business.
   5. If this Agreement is terminated pursuant to clause 11.4 the University may, in addition to termination of the Agreement:
      1. repossess any of its property in the possession, custody or control of the Client;
      2. retain any moneys paid;
      3. pursue any additional or alternative remedies provided by law.
   6. Where this Agreement has been terminated other than for the University’s breach, the University will be entitled to pro rata payment for performance of Services undertaken and Deliverables provided, or part thereof, up until the date of termination and any other costs incurred by the University in connection with the termination.
   7. The provisions of clauses 3.3, 3.4, 5, 6, 7, 9, 11.5, 11.6. 11.7, 14.3, 14.7 and 14.8 will survive and be of full effect after expiration or termination of this Agreement.
3. **UNAVOIDABLE DELAY**
   1. No party will be responsible for performing an obligation under this Agreement where performance is prevented due to any circumstances beyond the reasonable control of that party (**Unavoidable Delay**).
   2. If an Unavoidable Delay continues beyond 14 days the Parties must meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution. If a mutually satisfactory resolution cannot be reached either party may terminate this Agreement.
4. **DISPUTE RESOLUTION** 
   1. If there is a dispute between the Parties concerning this Agreement the disputing party must give written notice specifying details of the dispute to the other party.
   2. If the dispute is not settled by agreement within 14 days of service of the notice the dispute will be referred to the Client's Chief Executive Officer (or equivalent or delegate) and the Deputy Vice-Chancellor and Vice-President (Research) of the University (or delegate), who will attempt to resolve the dispute by informal or formal dispute resolution mechanisms.
5. **GENERAL**
   1. This is the entire agreement between the Parties about its subject matter and replaces all oral and written prior communications and agreements between the Parties.
   2. This Agreement may only be varied by the Parties in writing.
   3. A clause or part of a clause of this Agreement that is void, voidable, unenforceable or illegal in any jurisdiction will not apply in that jurisdiction, but will apply in jurisdictions where it would not be void, voidable, unenforceable or illegal and the rest of this Agreement will still apply.
   4. A waiver by a party in respect of a breach of a provision of this Agreement must be given in writing and will not constitute a waiver of any other breach.
   5. Neither the University, nor any officers or employees of the University, shall by virtue of this Agreement be deemed to be employees of the Client.
   6. This Agreement may be signed electronically and in counterparts.
   7. South Australian law applies to this Agreement and proceedings must be commenced in the courts of South Australia or the Adelaide Registry of the Federal Court of Australia.
   8. A notice, request or other communication to a party under this Agreement, must be in writing and be delivered by hand or sent by prepaid post, fax or email to the notice address, fax number or email address of that party as specified in the Details.