

DATED 20th October, 2005

(1) THE UNIVERSITY OF OXFORD
(2) UNIVERSITY OF PUERTO RICO AT MAYAGUEZ
MAYAGÜEZ, PUERTO RICO

**PRO FORMA
AGREEMENT
for the Supply of Services**

THIS AGREEMENT dated 20TH October, 2005 ("the Effective Date") is made **BETWEEN:**

- (1) **THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF OXFORD**, whose administrative offices are at Wellington Square, Oxford OX1 2JD ("the University") and
- (2) **UNIVERSITY OF PUERTO RICO AT MAYAGUEZ , MAYAGÜEZ, PUERTO, RICO** of/ whose **Registered Office/principal place of business is 259 Blvd. Alfonso Valdés, Mayagüez, PR 00680** ("UPRM").

1. SUPPLY OF THE SERVICES

- 1.1 Within the constraints of the funding provided by UPRM under clause 2, the University shall use all reasonable endeavours to provide UPRM with the services which are described in the First Schedule to this Agreement (the "Services").
- 1.2 The University will use all reasonable endeavours to provide the Services in conformity with the following timetable: 30th October 2005 until 6th November 2005

2. PAYMENT FOR THE SERVICES

- 2.1 UPRM will make payment to the University for the supply of the Services on the dates and in the amounts set out in the Second Schedule to this Agreement. Payment shall be made from Account number 533543 at the Center for Research and Development, UPRM.
- 2.2 Payment shall be made to the University's account, number 50051675, sort code 20-65-20 at Barclays Bank Plc, PO Box 333, Oxford, OX1 3HS.

3. CONFIDENTIALITY

- 3.1 The work produced in performance of the Services and any information about or belonging to UPRM which is disclosed to the University directly in connection with the Services, are confidential to UPRM ("UPRM Information"). The University will use all reasonable efforts not to disclose the UPRM Information to any third party unless reasonably necessary to perform the Services. The University's duty to protect UPRM Information received pursuant to this Agreement shall continue for a period of six (6) months from the date the UPRM Information in question is received by the University.
- 3.2 Clause 3.1 imposes no obligation on the University with respect to UPRM's Information which was already known to the University and not impressed with any prior obligation of confidentiality by UPRM; is or becomes publicly known without the fault of the University; is obtained by the University from a third party where the University has no reason to believe there has been a breach of confidentiality to UPRM; the University can establish by reasonable proof was independently developed without reference to the UPRM's Information; is approved for release in writing by UPRM; or the University is required to disclose pursuant to an order of any competent body.

4. **ASSIGNMENT**

Neither party may assign any of its rights and obligations under this Agreement without the prior written consent of the other.

5. **TERMINATION**

- 5.1 This Agreement may be terminated by either party for any breach of the obligations set out in this Agreement, by giving thirty (30) days' written notice to the other of its intention to terminate. The notice shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied and is remedied within the thirty-day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be fully remedied but not within the thirty day notice period, then termination shall also not be effective if the party involved begins to remedy the breach within that period, and then continues diligently to remedy the breach until it is remedied fully. If the breach is incapable of remedy, then the termination shall take effect at the end of the thirty-day notice period in any event.
- 5.2 The termination of this Agreement under clause 5.1 shall mean the termination as from the effective date of termination of the obligations imposed on the parties under clauses 1 and 2. Clauses 3.1 to 3.3 shall survive for three years after the termination. The remaining clauses shall survive termination indefinitely.

6. **LIMITATION OF LIABILITY**

- 6.1 The University will make every effort to supply the Services with reasonable care and skill. However, the University is a charitable foundation devoted to education and research; and in order to protect its assets for the benefit of those objects, the University imposes the following conditions on the supply of the Services, and the following limits on the University's liability. None of the succeeding sub-clauses will operate to exclude or restrict any liability which the University may have for death or personal injury resulting from negligence.
- 6.2 The University makes no representation or warranty that advice or information given by any of its employees, students, agents or appointees who work on the supply of the Services, or the content or use of any materials, works or information provided in connection with the supply of the Services, will not constitute or result in infringement of third-party rights.
- 6.3 The University accepts no responsibility for any use which may be made of any work carried out under or pursuant to this Agreement, nor for any reliance which may be placed on such work or results, nor for advice or information given in connection with them.
- 6.4 No condition is made or to be implied nor is any warranty given or to be implied as to the quality, life or wear of any materials supplied, or that they will be suitable for any particular purpose or for use under any specific conditions.
- 6.5 UPRM undertakes to make no claim in connection with this Agreement or its subject matter against any employee, student, agent or appointee of the University (apart from claims based on fraud or wilful misconduct). This undertaking is intended to give

protection to individual researchers: it does not prejudice any right which URPM might have to claim against the University.

- 6.6 The liability of either party for any breach of this Agreement, or arising in any other way out of the subject-matter of this Agreement, will not extend to loss of business or profit, or to any indirect or consequential damages or losses.
- 6.7 In any event, the maximum liability of the University to URPM under or otherwise in connection with this Agreement or its subject matter shall not exceed the return of all moneys provided by UPRM under clause 2.1 together with interest on the balance of such moneys from time to time outstanding, accruing from day to day at the Barclays Bank plc Base Rate from time to time in force and compounded annually as at 31 December.
- 6.8 If any sub-clause of this clause 6 is held to be invalid or unenforceable under any applicable statute or rule of law then it shall be deemed to be omitted, and if as a result any party becomes liable for loss or damage which would otherwise have been excluded then such liability shall be subject to the remaining sub-clauses of this clause 6.

7. NOTICES

The University's representative for the purpose of receiving payments, reports and other notices shall until further notice be:

The Administrator
Department of Plant Sciences
University of Oxford
South Parks Road
Oxford
OX1 3RB

with a copy to: Denis Filer

UPRM's representative for the purpose of receiving invoices, reports and other notices shall until further notice be: Jeanine Vélez, UPRM

8. GENERAL

- 8.1 Clause headings are inserted in this Agreement for convenience only, and they shall not be taken into account in the interpretation of this Agreement.
- 8.2 Amounts specified for payment in this Agreement are stated exclusive of Value Added Tax. Whenever URPM is obliged to make a payment to the University under this Agreement which attracts Value Added, sales, use, and excise or other similar taxes or duties, UPRM shall be responsible for paying such taxes and duties.
- 8.3 If UPRM fails to make any payment due to the University under this Agreement then, without prejudice to the University's other rights and remedies consequent upon breach

of this Agreement, the University may charge interest on the balance outstanding, accruing from day to day at the rate of four per cent (4%) per annum above the Barclays Bank plc Base Rate from time to time in force and compounded annually as at 31 December.

- 8.4 If the performance by either party of any of its obligations under this Agreement (other than an obligation to make payment) shall be prevented by circumstances beyond its reasonable control, then such party shall be excused from performance of that obligation for the duration of the relevant event.
- 8.5 No one except a party to this Agreement has any right to prevent the amendment of this Agreement or its termination; and no one except a party may enforce any benefit conferred by this Agreement, unless this Agreement expressly provides otherwise.
- 8.6 Nothing in this Agreement shall create, imply or evidence any partnership or joint venture between the University and UPRM or the relationship between them of principal and agent.
- 8.7 Neither the University nor UPRM shall use the name of the other in any press release or product advertising, or for any other commercial purpose, without the prior written consent of the other; provided, however, that publication of the sums received from UPRM in the University's Annual Report and similar publications shall not be regarded as a breach of this clause.
- 8.8 This Agreement and its two Schedules (which are incorporated into and made a part of this Agreement) constitute the entire agreement between the parties for the supply of the Services. Any variation shall be in writing and signed by authorised signatories for both parties.
- 8.9 This Agreement shall be governed by English Law. The English Courts shall have exclusive jurisdiction to deal with any dispute which may arise out of or in connection with this Agreement.
- 8.10 If any one or more clauses or sub-clauses of this Agreement would result in this Agreement being prohibited pursuant to any applicable competition law then it or they shall be deemed to be omitted. The parties shall uphold the remainder of this Agreement, and shall negotiate an amendment which, as far as legally feasible, maintains the economic balance between the parties.
- 8.11 For the avoidance of doubt the University understands that conviction for any crime or violation of law against the national treasury, legal authority, or regarding state or federal government funds or property pursuant to the terms as stated in Puerto Rico Public Law 458 of December 28, 2000 is grounds for termination of this agreement and reimbursement of money received under this contract to UPRM.
- 8.12 The University acknowledges that this contract will be presented for registration at the Controller's Office in Puerto Rico.

AS WITNESS the hands of authorised signatories for the parties on the date first mentioned above.

SCHEDULES

1. Description of the Services
2. Payment schedule

SCHEDULE 1

Description of the Services

Training and technical advisory for the personnel, professors and students working at the MAPR Herbarium of the Biology Department, in the use of the Brahms Database.

SCHEDULE 2

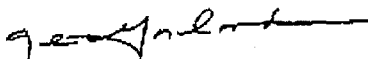
Payment Schedule

UPRM shall pay to the University following fees within 30 days of receipt of an invoice including original proof of payment of incurred of expenses (all figures in US Dollars)

1. \$3,000.00 (\$500 per day/6 days), as payment for consulting services to be performed.
2. Payment or reimbursement of the following travel expenses:
 - a) Air ticket London-San Juan for \$879.09
 - b) Ground transportation Oxford-London, for \$40.00,
 - c) per diem for \$280.00 (7 days/\$40.00/day).

**SIGNED for and on behalf of
THE CHANCELLOR, MASTERS AND
SCHOLARS OF THE UNIVERSITY
OF OXFORD**

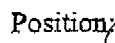
Name: Grace Garland
Research Services Manager
Life and Environmental Sciences
Position: University of Oxford

Signature: 
21.11.05

WD611-070

**SIGNED for and on behalf of
UPRM;**

Name: 

Position: 

Signature: 