

STATE OF NORTH CAROLINA
WAKE COUNTY
SERVICE AGREEMENT-TESTING OR FABRICATION
CNR-2021-0113



Došlo na právní oddělení ČZU dne:
17. 12. 2020

THIS SERVICE AGREEMENT (hereinafter referred to as the "Agreement") is made as of the date of the last signature below by and between

NORTH CAROLINA STATE UNIVERSITY, c/o , Registered Office: Campus Box 8005, Raleigh, NC 27695, Registration and Tax Identification Number: 56-6000756, Represented by Zachary Arcaro (hereinafter referred to as "NC State") and

CZECH UNIVERSITY OF LIFE SCIENCES PRAGUE, Registered Office: Kamýčka 129, Praha - Suchbátka 165 00, Registration Number: 60460709, Tax Identification Number: CZ60460709, Represented by Ing. Jakub Kleindienst, bursar (hereinafter referred to as "Client").

NC State and Client each may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, NC State has developed testing, measurement, composition, fabrication, and analysis expertise and possesses related technologies, equipment, and facilities which it utilizes to fulfill its mission as a land-grant institution by providing specialized services to various constituencies, including private companies and other public entities, for the benefit of the State of North Carolina; and

WHEREAS, the services contemplated herein are of mutual interest and benefit to NC State and Client, and will further the instructional, research, and public service objectives of NC State in a manner consistent with its status and mission as a public educational institution.

NOW, THEREFORE, in exchange of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Scope of Services.** NC State will supply Client with the services described in **Exhibit A** (the "Services"). Client may provide proprietary materials ("Client Materials") for use by NC State in performance of the Services. Client and NC State acknowledge that the selection of Services procedures, sites, and equipment, and the assignment and supervision of personnel to be used in the conduct of the Services hereunder rest under the sole and exclusive direction of NC State, and that the Services do not include analyzing or interpreting data, as such analysis would require the Parties to initiate a separate sponsored research agreement through NC State's Office of Sponsored Programs.
2. **Term.** NC State shall commence providing the Services immediately after the entry into force of the Agreement and shall complete its performance of the Services on or about February 28, 2021 (the "Term"), unless the Term is modified by the mutual written agreement of the Parties.
3. **Payment.** In consideration of NC State's performance of the Services, Client shall pay to NC State an amount **Sixteen Thousand, Four-hundred seventy US Dollars (\$16,470.00)** (the "Payment"). The price will be negotiated as the highest allowable, inclusive of all fees and other

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costs associated with the performance of this Agreement. The price includes transportation, putting the Goods into service and provision of necessary training of assigned Client's staff. The price includes incidental administrative fees, taxes, duties, expenditures for approval procedures, executions of required tests, approval statements, certificates and attests, transfers of rights, insurance, transportation, etc. Local import fees and taxes are the responsibility of Client.

The price will be paid by the Client in dollars on the basis of provided tax receipt – invoice, by means of wire transfer to the NC State's bank account. The NC State is obliged to issue the invoice within 15 days of proper and timely delivery and receipt of the Services by the Client, according to this Agreement based on the delivery Protocol.

The tax receipt – invoice must contain all particulars of a proper accounting and tax document in sense of relevant legislative requirements, in particular, Act. No. 235/2004 Sb., on value-added tax, as amended. In the event that the invoice does not meet all requirements, the Client is entitled to return it to the NC State within the payment due term for completion thereby not incurring delay in maturity date. The payment due date starts to run afresh from the date of re-delivery of duly completed or corrected invoice to the NC State.

The invoice maturity term is 30 days from the date of its demonstrable delivery to the Client. The seller is obliged to deliver the invoice to: Czech University of Life Sciences in Prague, Faculty of Environmental Sciences, Kamýcká 129, Postal Code 165 00, Prague - Suchbát. Different delivery will not be considered proper with the Client not obliged to pay the invoice delivered in another way.

The payment date is considered the day the invoiced amount is debited from the Client's bank account and credited to the NC State's bank account.

Late payment may be subject to late payment penalty and interest in accordance with applicable law, as well as collections and attorneys' fees. NC State is under no obligation to provide to Client any financial reporting, supporting documentation, or justification of expenditures made in performance of the Services as a condition of payment.

Payment not received within 30 days of invoice shall be deemed late and subject to collections and attorney's fees.

For checks, use the below address. For electronic funds transfer, contact a representative using the below information:

North Carolina State University
Campus Box 7203
Raleigh, NC 27695-7203
Email: receivables@ncsu.edu
Phone: 919-515-2159

For credit card payments, please use the link below:

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<https://controller.ofa.ncsu.edu/non-student-credit-card-payments/>

4. **Services Coordinator.** NC State shall provide the Services under the supervision of **Zachary Arcaro** (the "**Services Coordinator**"). If for any reason the Services Coordinator is unable to continue to serve, and a successor available to both Parties is not available, this Agreement may be terminated as hereafter provided. The Services Coordinator and Client shall not enter a consulting arrangement with each other with respect to the Services or this Agreement during the Term, in accordance with the Conflict of Interest Policies of NC State.
5. **Deliverables.** NC State shall deliver to Client the data, information, results, materials, or product of its Services (the "**Deliverables**"), as described in Exhibit A, and hereby assigns to Client all right, title, and interest in the Deliverables. In the event Client desires that NC State conduct research on or with respect to the Deliverables or any other aspect of the Services, Client may initiate a separate sponsored project agreement through NC State's Office of Sponsored Programs.
6. **Intellectual Property.** It is not anticipated that intellectual property will arise in NC State's performance of the Services. However, in the event of an invention by at least one employee of NC State, the intellectual property shall be owned as follows: (a) NC State shall have no right, title or interest in any invention arising from performance of the Services which involve the use of, composition of, or improvement to Client Materials or Client's Confidential Information, and (b) Client shall have no right, title or interest in any invention arising from performance of the Services which cover a scientific or analytical measurement process, technique, procedure, medium, device or other process which is not unique to Client Material or does not derive from Client's Confidential Information.
7. **NO WARRANTY.** NC STATE MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY GOODS OR SERVICES PROVIDED. NC State makes no representation or warranty that the Deliverables do not or will not infringe third party intellectual property rights. Client acknowledges that the avoidance of such infringement in the use of the Deliverables related to this Agreement shall remain the responsibility of Client.
8. **Termination.** This Agreement shall enter into force and effect on the date of signing of the Agreement by authorized representatives of both Contracting Parties and effective on the date of publication of the Contract in the Register of Contracts in accordance with Act No. 340/2015 Coll., on special conditions for effectiveness of certain contracts, publishing of such Contracts and register of contracts (the Law on Register of Contracts), as amended. The Agreement can be terminated:
 - a) by written consent of Contracting Parties,
 - b) written termination notice,

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Withdrawal from the Agreement is possible only for reasons set out in the Agreement or by law. Contracting Party affected by a breach of duty may unilaterally withdraw from the Agreement when a substantial breach of Agreement is considered primarily:

- a) on the Client's side, failure to pay the price under this Agreement within 30 days of the due date of the relevant invoice,
- b) on the NC State's side, failure to properly deliver the subject matter of this Agreement in a timely manner
- c) on the NC State's side, proceeding in the delivery of the Agreement contrary to provisions of this Agreement, with instructions of the authorized representative of the Client or legislative regulations.

Termination of the Agreement shall terminate all contractual obligations of the Parties. Conclusion of Agreement validity or its termination shall not result in dismissal of claims for damages determined in the event of breach of contractual obligations incurred prior to the termination of the Agreement and obligations of Parties which, by virtue of the Agreement or by virtue of their nature, should remain in effect, or those, stipulated by law.

8.1.

9. **Liability.**

- a. Client will defend, indemnify, and hold harmless NC State, its trustees, officers, employees, and agents from and against all claims, demands, loss, liability, expense, or damage (including attorneys' fees) arising out of injuries (including death) or property damage suffered by any person as a result of a defect in the specifications or Client Materials provided under this Agreement or from Client's use or possession of the data, information, results, materials, or Deliverables provided by NC State under this Agreement.
- b. Notwithstanding any other provision of this Agreement, NC State's liability, as an agency of the State of North Carolina, for any injury or property damage arising out of this Agreement or NC State's performance of the Services is subject to the immunities, procedures, and limitations of the North Carolina Tort Claims Act, Article 31 of Chapter 143 of the North Carolina General Statutes. NC State does not waive its sovereign immunity or any rights or defenses under the North Carolina Tort Claims Act.

10. **Hazardous Materials.** All Client Materials must be accompanied by the appropriate environmental and safety information for those materials as required by law. Client shall be responsible for and pay the costs of disposal of Client Materials remaining at the termination of this Agreement. Client shall arrange for disposal or removal of any remaining Client Materials prior to receipt of any final Deliverables. NC State may decline to accept projects imposing undue risk. NC State will observe all applicable safety precautions and governmental requirements concerning handling of Client-provided materials.

11. **Export Controls.** Client does not anticipate providing to NC State any information, data, software, technology, or materials that are Export Controlled under the Export

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Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) or the International Traffic in Arms Regulations (ITAR), 22 CFR § 120-130 ("Controlled Material"). Client will provide NC State at least five (5) business days' advance written notice of its intention to deliver any Controlled Material. NC State and Client each agree to take such measures as may be necessary to ensure that any Controlled Material received in the performance of this Agreement shall not be exported from the United States or re-exported from any other country without first complying with applicable Export Control laws and regulations.

12. **Confidentiality.** Any confidential or proprietary information disclosed by Client to NC State ("Confidential Information") shall be disclosed in writing and designated as confidential and/or proprietary, or if disclosed orally, shall be confirmed in writing and designated confidential and/or proprietary within thirty (30) days of such disclosure. NC State shall use the Confidential Information only for the purpose of this Agreement and further agrees that it will not disclose or publish such Confidential Information except that the foregoing restrictions shall not apply to:
- a. Confidential Information which is or becomes publicly known through no fault of NC State;
 - b. Confidential Information learned from a third party entitled to disclose such information;
 - c. Confidential Information already known to or developed by NC State prior to receipt hereunder, or information independently developed at any time by NC State personnel not privy to the Confidential Information, as shown by NC State's written records; or
 - d. Confidential Information required to be disclosed by operation of law (including, but not limited to, the North Carolina Public Records Act) or court order.

The obligation of confidentiality imposed by this Section shall expire three (3) years following the expiration or termination of this Agreement. NC State will use a reasonable degree of care to prevent the inadvertent, accidental, unauthorized, or mistaken disclosure or use by its employees of Confidential Information. For avoidance of doubt, written Deliverables shall be considered Confidential Information for the purposes of this Agreement and treated as provided in this Section.

13. **Non-Analysis.** Other than as specifically set forth in Exhibit A, NC State agrees not to perform or permit others to perform any test, analysis, or other evaluation of Client Materials for the purposes of determining the chemical character, components, or physical characteristics or the method of manufacture thereof without Client's prior written consent. NC State will not share samples, or any portion thereof, with any third party without Client's prior written consent.
14. **Use of Names.** Neither Party will use the name, marks, or symbols of the other for any commercial purpose without the express written permission of the other Party.
15. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent

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by registered or certified U.S. mail and addressed to the Party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to NC State: Center for Geospatial Analytics
North Carolina State University
Attn: Zachary Arcaro
Campus Box 7106
Raleigh, NC 27695-8005
zearcaro@ncsu.edu
919-513-4000

If to Client: Czech University of Life
Sciences Prague
Kamýcka 129
Prague - Suchdol 165 00
Ing. Jakub Kleindienst
Bursar
kleindienst@rektorat.czu.cz

16. **Independent Contractor.** Nothing herein is intended or shall be construed to establish any agency, partnership, or joint venture between Client and NC State.
17. **Force Majeure.** Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God or reason beyond that Party's reasonable control.
18. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.
19. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina, without regard to conflict of law provisions, and the exclusive venue for any legal proceedings arising from or incident to this Agreement shall be the state courts sitting in Wake County, North Carolina.
20. **Severability.** Should any provision of this Agreement be declared illegal, void, or unenforceable under North Carolina law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.

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21. **Counterparts.** This Agreement is made in 4 (four) copies, each of which is a valid original. Each Party will receive 2 (two) copies.

22. **Final provisions**

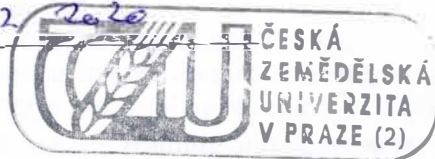
The NC State unreservedly agrees to the publishing of the full text of the Agreement in such a way that this Agreement could be information provided according to terms of Act No. 106/1999 Coll., on free access to information, as amended. The NC State also agrees to publish of the full version of the Agreement pursuant to Act No. 340/2015 Coll., on special conditions for effectiveness of certain contracts, publishing of such Contracts and register of contracts (the Law on Register of Contracts), as amended.

The NC State acknowledges and agrees to be the person obliged under terms of Section 2 e) of Act No. 320/2001 Coll., on financial control, as amended. The NC State is required to fulfill his obligations resulting from the aforementioned Act as applied to persons bound by this Act.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date of the last signature below.

On behalf of the client

By: _____
Printed Name: Ing. Jakub Kleindienst
Title: Bursar
Date: 16. 12. 2020



NORTH CAROLINA STATE

By: _____
Printed Name: Zachary Arcaro
Title: Services Coordinator
Date: 12-3-2020

ACKNOWLEDGEMENT BY:

By: _____
Printed Name: Ross K. Meentemeyer
Title: Center Director
Date: 1 Dec 2020

ACKNOWLEDGEMENT BY:

By: _____
Printed Name: Richard Venditti
Title: Associate Dean for Research
Date: 12 3 2020

Prověřeno právním odd. ČZU v Praze

EXHIBIT A

Project Overview

Delivery of a Tangible Landscape system by NC State to Czech University of Life Sciences (CZU).

Project Scope

NC State will assemble a Tangible Landscape system for CZU equipped for basic geospatial, GIS, and environmental tasks, namely determination of slope, aspect, contours, land forms, water flow, trail planning, and comparison to user-supplied digital elevation models. Polymeric sand and wooden markers will be used for interaction. The system will allow for extensions by CZU.

NC State will prepare the software and hardware parts, build the system, and test its functionality. This system will be then packed and shipped to CZU. The electronic components will be shipped in reusable packaging.

NC State will provide 20 hours of training and support for the first build of the system at a CZU location. The training and support will be done remotely using video conferencing. Individual sessions will be scheduled based on mutual agreement between NC State and CZU personnel.

NC State does not provide warranty on the hardware parts of the system. NC State will provide instructions on updating the software parts of the system as part of the Training/Support.

Deliverables

- Packed Tangible Landscape system ready to be built.
- Polymeric sand for interaction (10 kg).
- Reusable packaging for electronic components.
- Shipping of the material by NC State to a CZU.
- 20 hours of remote training and/or support of CZU personnel by NC State personnel to build and run the Tangible Landscape system.

Timeline

November-December 2020 - Assembly

January 2021 - Shipping

February 2021 - Training/Support

The system delivery as well as the overall timeline may be delayed due to COVID-19.

Budget Estimate

CZU will cover the cost of the materials and work estimate at a total of 16,470.00 USD.

Budget may need to be adjusted due to COVID-19. Local import fees and taxes are the responsibility of CZU.