

This licence is dated \_\_\_\_\_

## **PARTIES**

(1) **Land Quality Management Limited** incorporated and registered in England and Wales with company number **03476255** whose registered office is at C/O Atkinson Evans, The Old Drill Hall, 10 Arnot Hill Road, Arnold, Nottinghamshire, NG5 6LJ (“**LQM**”); and

(2) \_\_\_\_\_ of  
[Local Authority Name]

\_\_\_\_\_  
[Local Authority Address] (“**Licensee**”).

## **1. BACKGROUND**

1.1 LQM is the entire legal and beneficial owner and licensor of the licensed materials listed in Schedule 1 (the “Licensed Materials”) and is willing to license the Licensee to use the Licensed Materials on the terms and conditions set out below.

## **2. DEFINITIONS**

2.1 In this contract:

- (a) “Commencement Date” means the first Quarter Day falling after the date of this agreement.
- (b) “Fees” means the Licence Fee and Additional User Fee.
- (c) “Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- (d) “Licence Fee” means the annual fee set out in Schedule 3.
- (e) “Licence Commencement Date” means the date on which an employee of the Licensee first successfully completes the LQM/CIEH Dose-Response Roadmaps Registration Course.
- (f) “LQM/CIEH Dose-Response Roadmaps Registration Course” means a course run by LQM which explains how to use the Licensed Materials.
- (g) “LQM/CIEH Dose-Response Roadmaps Annual Update” means an annual update course run by LQM which will report on any changes to, or in the use of, the Licensed Materials.
- (h) “Purpose” means to inform the evaluation of the significance of the possibility of significant harm to human health at potentially contaminated sites in the context of Part

2A of the Environmental Protection Act 1990 by employees of the Licensee who are Registered Users.

- (i) “Quarter Day” means 1 January, 1 April, 1 July and 1 October.
- (j) “Registered User” means someone who has attended the LQM/CIEH Dose-Response Roadmaps Registration Course and subsequent LQM/CIEH Dose-Response Roadmaps Annual Update and fulfils the Registered User Requirements listed at Schedule 2.
- (k) “In writing” means any communication sent by post, courier, recorded delivery, facsimile or electronic mail transmission, and ‘written’ shall be construed accordingly.

2.2 The headings of this agreement are for guidance only and shall not affect its construction or interpretation.

2.3 Words importing the neuter gender shall include the masculine or feminine and words in the singular include the plural and vice versa in this agreement.

### **3. LICENCE**

3.1 In consideration of the payment of the Fees paid by the Licensee to LQM in accordance with clause 5 below, LQM grants the Licensee a non-exclusive, non-transferable, licence to:

- 3.1.1 use the Licensed Materials for the Purpose in accordance with the terms of this agreement;
  - 3.1.2 copy the Licensed Materials for the purposes of including such material in a report to a client but only to the extent that it is reasonably required for the understanding of that report; and
  - 3.1.3 subject to clause 4.1, make available to clients copies of materials that contain Licensed Materials on a reasonable, non-systematic basis that is not commercially prejudicial to LQM.
- 3.2 Subject to as otherwise provided in this agreement, the licence granted in clause 3.1 shall come into effect on the Licence Commencement Date and shall continue until it is terminated in accordance with this agreement.
- 3.3 Subject to clause 3.1, this agreement does not give the Licensee any right to sub-licence, assign, charge or otherwise encumber, reverse engineer, distribute, deal with, loan, sell or otherwise make available to third parties the Licensed Materials, or any Intellectual Property Rights in the Licensed Materials.
- 3.4 The Licensee acknowledges and agrees that LQM owns and retains all Intellectual Property Rights in the Licensed Materials and that the Licensee is not, other than as expressly authorised under this agreement, entitled to copy, adapt or create any information or products derived from the Licensed Materials except with LQM’s prior written consent.
- 3.5 The Licensee shall not grant sub-licences under this agreement.

### **4. OBLIGATIONS OF THE LICENSEE**

4.1 The Licensee must ensure that the following acknowledgement is displayed in a prominent position on all copies of any of the Licensed Materials (including but not limited to full or partial copies, reports, and other derivative works) made under this licence: “Copyright Land Quality Management Limited reproduced with permission under Licence number \_\_\_\_\_ All rights reserved.”.

[LQM to insert licence number]

- 4.2 The Licensee shall restrict the use and interpretation of the Licensed Materials to its employees who are Registered Users at all times during such use or interpretation. The Licence Fee includes the attendance of one employee who meets requirements 2 and 3 of the Registered User Requirements on the LQM/CIEH Dose-Response Roadmaps Registration Course. The Licensee may send additional employees who meet the Registered User Requirements set out in Schedule 2 on the LQM/CIEH Dose-Response Roadmaps Registration Course. The fee for each additional attendee shall be the “additional user fee” set out in Schedule 3 (“Additional User Fee”).
- 4.3 “Registered User” status lasts until the anniversary of the Commencement Date. In order to maintain “Registered User” status, the Registered User must participate in the LQM/CIEH Dose-Response Roadmaps Annual Update each year which may be a webinar or workshop, as appropriate. The cost of attending an LQM/CIEH Dose-Response Roadmaps Annual Update for one Registered User is included in the Licence Fee to be paid upon the anniversary of the Commencement Date under clause 5.1. The Licensee must pay the Additional User Fee upon the anniversary of the Commencement Date under clause 5.1 in respect of each additional Registered User who it wishes to attend the LQM/CIEH Dose-Response Roadmaps Annual Update.
- 4.4 The Licensee must ensure that the following information identifying the Registered User is displayed in a prominent position on all reports created or evaluations made using any of the Licensed Materials (including but not limited to full or partial copies): “Evaluation carried out by Registered User: [insert name of the registered user]”.
- 4.5 The Licensee must ensure that the Registered Users meet the Registered User Requirements listed at Schedule 2.
- 4.6 It is the responsibility of the Licensee to be satisfied that their Registered Users have a sufficiently good understanding of Part 2A of the Environmental Protection Act 1990 to be able to use the Licensed Materials effectively in the context in which they intend to use it.
- 4.7 The Licensee must use reasonable endeavours to ensure the Licensed Materials, in whatever medium (including but not limited to full or partial copies, reports, and other derivative works), are secure from unauthorised use and/or access and are only used in accordance with the terms of this agreement.

## **5. FEES AND PAYMENT**

- 5.1 On the date of this agreement, and thereafter on every anniversary of the Commencement Date on which this agreement continues in force, the Licensee shall pay to LQM the Licence Fee plus VAT at the appropriate rate, and the Additional User Fee plus VAT in respect of each additional Registered User over and above one. If the Licence Fee is not paid, the licence granted in clause 3.1 shall terminate automatically. If the Additional User Fee is not paid in respect of a particular employee, that employee shall cease to be a Registered User and their right to use the Licensed Material shall automatically cease.
- 5.2 All payments to LQM shall be made against LQM’s invoices, which LQM shall be entitled to present on the date of this agreement and on each anniversary of the Commencement Date. All payments shall be made within 30 days of the date of LQM’s invoice. All payments shall be made by the Client by a cheque or bank transfer to the account of LQM at a bank to be nominated in writing by LQM.
- 5.3 Where any payment owed by the Licensee to LQM under the Contract is overdue:
- 5.3.1 interest will be chargeable on the sum due both before and after judgment accruing daily at an annual rate of 8 per cent above the Bank of England base rate applicable from time to time, until the sum due is paid; and

5.3.2 LQM may, in its absolute discretion, suspend the licence granted at clause 3.1 above and the provision of any training (and annotate the online directories of licensees and registered users to that effect) until payment is received or arrangements as to payment or credit have been established which are satisfactory to LQM.

5.4 LQM may, at its discretion, delay the commencement of the licence granted at clause 3.1 above and/or the provision of the Licensed Materials and any training thereon until the first payment has been received.

## **6. LIABILITY**

6.1 Except as expressly stated in clause 6.5:

(a) LQM shall not in any circumstances have any liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if LQM was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) loss of goodwill;
- (vi) loss or corruption of data,

provided that this clause 6.1(a) shall not prevent claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 6.1(a);

(b) the total liability of LQM, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to 120% of the total aggregate Fees; and

(c) the Licensee agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) LQM shall have no liability in any circumstances otherwise than in accordance with the express terms of this agreement.

6.2 LQM shall use reasonable care and skill in providing the Licensed Materials to the Licensee, however, the Licensed Materials are provided on the sole basis that the information and data supplied in the Licensed Materials are derived from third party sources and as such LQM does not warrant the accuracy or completeness of such information or data. Such information is derived solely from those sources specifically cited in the Licensed Materials and LQM does not claim that these sources represent an exhaustive or comprehensive list of all sources that might be consulted.

6.3 The Licensee is solely responsible for any services they provide which uses the Licensed Materials. LQM have no responsibility to the Licensee or to any third party for the use(s) to which the Licensee put(s) the Licensed Materials.

6.4 LQM excludes, to the fullest extent permissible by law, all warranties, conditions representations or terms whether express or implied by common law, statute or otherwise, including but not limited to, any regarding the accuracy, compatibility, fitness for purpose performance, satisfactory quality or use of the Licensed Materials.

6.5 The exclusions in clauses 6.1 and 6.4 shall apply to the fullest extent permissible at law, but LQM does not exclude liability for:

- (a) death or personal injury caused by the negligence of LQM, its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

6.6 The Licensee shall indemnify LQM against all liabilities, costs, expenses, damages or losses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) (each a "Claim") suffered or incurred by LQM arising out of or in connection with the Licensee's exercise of its rights granted under this agreement or any breach by the Licensee of the terms of this agreement, including any product liability claim relating to any product manufactured, supplied or put into use by the Licensee that incorporates any of the Licensed Materials. This indemnity shall not cover LQM to the extent that a Claim results from LQM's negligence or wilful misconduct.

6.7 The Licensee shall, at its expense, carry comprehensive general liability insurance coverage of an amount adequate to support its liabilities under this agreement. The Licensee shall supply LQM with a copy of such insurance policy on request.

## **7. FORCE MAJEURE**

7.1 Neither party shall be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from any circumstances beyond its reasonable control, including but not limited to acts of God, governmental act, fire, war, riot, explosion, industrial dispute and impossibility of obtaining materials but subject always to the proviso that a party's inability to pay shall not constitute force majeure.

## **8. ASSIGNMENT**

8.1 The Licensee shall not assign or sub-contract in whole or in part any of its rights or obligations under this agreement or subject any of its rights or obligations under this agreement to any mortgage, charge, pledge, lien, option or anything equivalent.

8.2 LQM may at any time and without the consent of the Licensee assign any of its rights or obligations under this agreement or subject any of its rights or obligations under this agreement to any mortgage, charge, pledge, lien, option or anything equivalent.

8.3 For the avoidance of doubt, no associated, subsidiary, holding or affiliate organisations of the licences are entitled to use the Licensed Materials by virtue of this agreement and such organisations, if they wish to use the Licensed Materials, must enter into an licence agreement with LQM and employ their own Registered User(s).

## **9. VARIATIONS TO THIS AGREEMENT**

9.1 LQM reserves the right to amend at any time the terms of this agreement. All such amendments shall become incorporated into this agreement thirty (30) days after the Licensee has been informed of the proposed variation. Continued use of the Licensed Materials will constitute acceptance of the variation. If the Licensee does not find the changes made in accordance with this Clause 9 acceptable the Licensee, may, within thirty (30) days of been informed of the proposed variation, terminate this agreement by giving notice in writing to LQM.

**10. DURATION AND TERMINATION**

- 10.1 This agreement shall come into force on the Commencement Date and shall remain in force until terminated earlier in accordance with its terms.
- 10.2 LQM shall have the right to terminate this agreement on giving the Licensee not less than 30 days written notice of termination.
- 10.3 The Licensee may terminate this agreement by giving LQM 30 days notice at any time. However, in the event of termination under this clause 10.3, the Licensee shall not be entitled a refund of any fees paid to the Licensee.
- 10.4 LQM may terminate this agreement with immediate effect by giving written notice to the Licensee if any of the following circumstances arises:
- (a) the Licensee fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
  - (b) the Licensee commits a material breach of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within seven days of being notified in writing to do so;
  - (c) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (d) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into, any compromise or arrangement with its creditors;
  - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee;
  - (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee;
  - (g) a floating charge holder over the assets of the Licensee has become entitled to appoint, or has appointed, an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the assets of the Licensee, or a receiver is appointed over the assets of the Licensee;
  - (i) a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets, and such attachment or process is not discharged within 14 days;
  - (j) any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in sub-clauses (c) to (i) (inclusive);
  - (k) the Licensee suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (l) there is a change of control of the Licensee.
- 10.5 On expiry or termination of this agreement for any reason and subject to any express provisions set out elsewhere in this agreement:
- (a) all outstanding sums payable by the Licensee to LQM shall immediately become due and payable;
  - (b) all rights and licences granted pursuant to this agreement shall cease;
  - (c) the Licensee shall cease to make any use of the Licensed Materials and shall, at LQM's discretion, return, destroy or delete any Licensed Materials in its possession

or under its control. However the Licensee is not required to return, destroy or delete any Licensed Materials that before termination of this agreement have been incorporated into a report relating to a matter on which the Licensee is advising (and which the Licensee requires to complete such matter and to keep records of it); and (d) the Licensee shall return promptly to LQM, at the Licensee's expense, all records and copies of any information of a confidential nature communicated to it by LQM, either preparatory to, or as a result of, this agreement, to the extent such material remains confidential.

10.6 The expiry or termination of this agreement for any reason shall not affect any provision of this agreement which either expressly or by implication is intended to survive or operate in the event of expiry or termination and shall be without prejudice to the provisions of this clause 10 and to any rights of either party which may have accrued by, at or up to the date of such expiry or termination.

## **11. CONFIDENTIALITY**

11.1 The Licensee shall keep secret and confidential

- (a) the terms of this agreement; and
- (b) any information of a confidential nature communicated to it by LQM, either preparatory to, or as a result of, this agreement,

and shall not use the same for any purpose except for the purpose of exercising or performing its rights and obligations under this agreement and shall not disclose the same to any person other than any of its officers or employees who need to know such information for the purposes of carrying out the Licensee's obligations under this agreement or its professional advisors, provided that prior to disclosure to any such officer, employee or professional advisor it informs such person of the confidential nature of the information and is responsible for such person's compliance with the confidentiality obligations set out in this clause 11 and, if necessary, shall promptly enforce such obligations either on its own motion or at the request of LQM.

11.2 The provisions of clause 11.1 shall not apply to such information that:

- (a) was known, or available on a non-confidential basis, to the Licensee before it was disclosed to it by LQM;
- (b) is or becomes generally available to the public (otherwise than through a breach of this clause 11);
- (c) the parties agree in writing is not confidential or may be disclosed; or
- (d) the Licensee is required to disclose by law, court order or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, it gives LQM as much notice of such disclosure as possible and takes into account the reasonable requests of LQM in relation to the content of such disclosure.

11.3 The provisions of this clause 11 shall remain in force notwithstanding expiry or earlier termination of this agreement.

## **12. RIGHTS OF THIRD PARTIES**

12.1 Nothing in this agreement confers or purports to confer on any third party any benefit or right to enforce any term of this agreement.

## **13. ENTIRE AGREEMENT AND GOVERNING LAW**

13.1 This agreement constitutes the entire agreement between the parties in respect of its contents and supercedes all communications, negotiations, representations and agreements (whether written or oral) of either party with respect thereto made prior to the date of this

agreement. Any terms contained in any other documents which are inconsistent with or different from the terms of this agreement shall be void and of no effect. For the avoidance of doubt, this does not include any variation carried out in accordance with section 9.

13.2 The construction, validity and performance of this agreement shall be governed by and construed under the law of England and Wales and for all matters arising under out of or in connection with this agreement the parties shall submit to the exclusive jurisdiction of the courts of England and Wales.

**14. SEVERABILITY AND WAIVER**

14.1 If any provision of this agreement is invalid, it is hereby agreed that all valid provisions that are severable from the invalid provision shall remain in full force and effect.

14.2 No waiver of any term, provision or condition of this agreement shall be effective unless in writing and signed by an authorised representative of the waiving party. No waiver by either party or any breach by the other party of any of the provisions of this agreement on any one occasion shall be construed as a waiver of that or any other provision on any other occasion.

**15. INADEQUACY OF DAMAGES**

15.1 Without prejudice to any other rights or remedies that LQM may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Licensee. Accordingly, LQM shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

**16 NO PARTNERSHIP OR AGENCY**

16.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of another party, nor authorise either party to make or enter into any commitments for or on behalf of the other party.

|   |       |
|---|-------|
| Signed on behalf of _____ by<br><span style="margin-left: 100px;">[Local Authority Name]</span> | Date  |
| POSITION _____<br><span style="margin-left: 100px;">[Position]</span>                           | _____ |
| Authorised Officer _____<br><span style="margin-left: 100px;">[Signature]</span>                | _____ |
| Signed for and on behalf of Land Quality<br>Management Limited                                  | Date  |
| Company Secretary _____   | _____ |



SCHEDULE 1

The Licensed Materials

1. The LQM/CIEH Dose-Response Roadmaps together with all related documents, spreadsheets, data, database content or other multimedia content, information and material owned and provided by LQM to the Licensee.

SCHEDULE 2

Registered User Requirements

1. Each Registered User must have attended the LQM/CIEH Dose-Response Roadmaps Registration Course and, where appropriate, LQM/CIEH Dose-Response Roadmaps Annual Updates.
2. Each Registered User must have academic qualifications to at least degree level relevant to contaminated land management. This includes, but is not limited to, Environmental Health, Geology, Environmental Science, Environmental Engineering, Chemistry, Toxicology. It is the responsibility of the Licensee to ensure those put forward to be Registered Users have appropriate qualifications.
3. Each Registered User must have a minimum of 3 years of relevant experience, and be currently working in the field of contaminated land management under direct employment of the Licensee. It is the responsibility of the Licensee to ensure those put forward to be Registered Users have appropriate skills, experience and technical understanding.
4. The Registered User must agree to be listed on LQM's list of Registered Users available at [www.lqm.co.uk/roadmaps/registeredusers](http://www.lqm.co.uk/roadmaps/registeredusers).

SCHEDULE 3

**Licence Fee:** \_\_\_\_\_

**Additional User Fee:** \_\_\_\_\_