



UNIVERSITY OF

WINCHESTER

PROCUREMENT POLICY AND PROCEDURES

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UPDATED

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Summary: This document defines the University’s policy and procedures for all purchasing.	



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1. AIMS AND RESPONSIBILITIES

1.1 This Procurement Policy and Procedures document aims to:

- facilitate the acquisition of best value goods and services of appropriate quality, while preserving organisational and financial accountability
- facilitate best practice contractual arrangements which maximise value for money while meeting the requirements of users
- contribute to environmental sustainability and the achievements of the University's environmental and sustainability goals
- improve efficiency and economy across the University
- mitigate operational, commercial and compliance risks
- establish and maintain a framework to help Faculties, Academic and Professional Services (Services) achieve best practice arrangements in procurement, providing advice, guidance and support to embed professional procurement practice
- facilitate simple and clear procurement systems, processes and procedures
- ensure compliance in all areas of procurement
- provide clear information to staff involved in procurement
- provide business opportunities for local business and commerce

1.2 Legal Obligations

All procurement activity shall comply with the Public Contracts Regulations. Nothing in this Policy and Procedures must be construed as overriding such legal requirements.

1.3 Financial Regulations

The Procurement Policy and Procedures are subject to the relevant requirements of the University's Financial Regulations.

1.4 Specifications

Responsibility for writing and signing off the specification for the goods and services required lies with the purchasing budget holder.

1.5 Director of Finance

The Director of Finance is responsible for making payment to suppliers of goods and services to the University. Authority for incurring expenditure on behalf of the University is delegated to budget holders.

1.6 Deans and Directors of Professional Services

Deans of Faculty and Directors of Academic and Professional Service (Directors) are ultimately responsible for all procurement within their Faculty or Service. A Professional Service has been identified as the University central purchasing lead for specific categories and the relevant Director is responsible for procurement for that category across the University.

In exercising their responsibilities for procurement, Deans and Directors shall ensure that purchasing is carried out in a professional manner and in accordance with the Procurement Policy and Procedures and with the Standard Terms and Conditions of Purchase (Appendix 2).

Deans and Directors may delegate their responsibility as appropriate, provided that this is notified in advance to the Finance Department on the appropriate form and authorised by the Director of Finance. Delegation shall be at an appropriate level of seniority and experience and the member of staff will undertake appropriate training in relation to purchasing techniques.

1.7 Central Purchasing

The following goods and services must be procured centrally by the Professional Service indicated.

Goods or Service	Central Purchasing Responsibility
Catering	EFS
Cleaning	EFS
Computers, peripheral equipment, computer software and printer consumables	KDS
Financial services	Finance
Furniture	EFS
Insurance	Planning
Legal services	Chief Operating Officer
Media and audio-visual equipment	KDS
Premise's expenditure (capital and revenue)	EFS
Publicity and marketing	CER
Reprographic equipment	KDS
Security	EFS
Stationery	Finance
Telecommunications equipment	KDS

2. TENDERING

2.1 Tendering Thresholds

The levels of expenditure which require a tender and authorisation limits for all Faculties and Services are detailed in the table below. Tendering thresholds do not apply to purchases made from authorised corporate purchasing agreements (as they have already been tendered at the consortium level) e.g. Southern Universities Purchasing Consortium.

In an exceptional emergency, including where personal safety or safety of University property is concerned, the Director of Estates may exceed these limits, provided that her/his action is approved by the Deputy Vice Chancellor at the earliest opportunity after the work has been authorised.

Tender Price Range (including VAT)	Authority	Tender required
£0 - £3,000	Any staff authorised by Dean/Director	No
£3,001 - £30,000	Dean/Director	3 written or electronic Quotations
£30,001 - £50,000	Any member of ELT	3 written or electronic Tenders
£50,001 - £500,000	Vice Chancellor	3 written or electronic tenders EU/Above threshold tender (£213,477 inc VAT)
Above £500,000	Board of Governors	3 written or electronic tenders EU/Above threshold tender (£213,477 inc VAT)

2.2 Tender Procedure

Tendering must be carried out in accordance with the [Contractual Procurement Procedures](#) document. This document includes a step-by-step guide to the various types of tenders, which must be followed. Staff involved with tendering must be able to verify that the tendering procedure has been adhered to. Please consult the Procurement Manager before carrying out any new tender exercise if you have not previously carried out one before.

In accordance with Public Contract Regulations all tenders must be advertised through either “Contracts Finder” (above £30k inc VAT) or “Find a Tender” (above £213,477 inc VAT). These are Government tendering portals.

Planning Your Procurement Exercise

The levels of expenditure which require a tender and authorisation limits for all Faculties and Services are detailed in the table above. Tendering thresholds do not apply to purchases made from authorised corporate purchasing agreements (as they have already been tendered at the consortium level) e.g. Southern Universities Purchasing Consortium.

In an exceptional emergency, including where personal safety or safety of University property is concerned, the Director of Estates may exceed these limits, provided that her/his action is approved by the Deputy Vice Chancellor at the earliest opportunity after the work has been authorised.

When planning your procurement project, it helps to think about the various stages that you will probably need to go through. This will help you to build a programme and identify the resources and support you will need later in the project. Use the [Contractual Procurement Procedures](#) document to help you do this. In particular, there are EU and UK regulatory requirements to consider, and these differ depending on the value of the project – these thresholds along with the actions required are detailed below and considered in more detail later.

2.3 Publishing Invitations to tender

All tenders must be published via Intend, the University's electronic tendering portal. Using Intend enables us to follow best practice whilst tendering and also ensure we remain compliant in terms of managing tender returns and correspondence. The link to Intend can be found here: [In-Tend Organiser - User Login](#)

2.4 Tender Evaluation

The commercial evaluation will vary with the good or service being purchased but should normally include the following:

- delivery and installation cost
- set up costs
- life in use costs, including as appropriate maintenance, replacement parts, training, refurbishment, energy and other running costs, staffing, eventual disposal and replacement costs
- any evaluation possible of the difference in cost and capability of adding at a later date to the system, building or piece of equipment/software being evaluated
- capacity and ability of the supplier to effectively support and maintain the purchase, included their financial sustainability
- environmental impact

- health and safety considerations
- terms and conditions including warranty, payment terms, spares availability and delivery insurance.

2.5 Tender Documentation

All tender documentation and correspondence must be stored on the Intend system for a period of 6 years.

3. PURCHASING

3.1 Purchase Orders

Purchase Orders shall be made on via Agresso; no other order shall be recognised by the University. Oral orders may be raised in cases of emergency only, but shall be immediately followed by confirmation on the official purchase order form.

Purchase orders are required for all purchases except for the following categories:-

- orders placed by purchasing card
- credit card purchases
- on line purchasing
- statutory agency payments e.g. Criminal Records Bureau; HMRC; pension funds
- payroll deductions requiring payment to an external organisation
- telecoms/utility companies
- local authorities e.g. licence fees; planning applications etc
- invoices where the payee is an individual - subject to tax and NI status checks
- catering orders
- library orders placed via Talis

3.2 Urgent Orders

When it is necessary to arrange urgent supply and there is no time to issue an official order, an instruction may be placed by e-mail. The supplier shall be given the name of the person raising the order and the delivery address. The subsequent official order should be marked "confirmation of verbal/telephone order – do not duplicate".

3.3 Conditions of purchase

All purchase orders should refer to the University's Standard Terms and Conditions of Purchase (see Appendix 2) a copy of which is available on the Finance Department section on the intranet.

3.4 Corporate credit card purchasing

Corporate credit cards are issued by the Finance Department to staff with specific procurement responsibilities. The cardholder has a single transaction limit and a total card limit which must not be exceeded. The card may only be used for University business. The cardholder retains prime responsibility for all transactions recorded on the card. Guidance on the use of corporate credit cards is outlined in Appendix 5.

3.5 Purchasing Cards

Purchasing Cards to pay for goods and services may be used, particularly for low value items or 'one-off' type expenditure but are subject to the cardholder's authority limits. Rules and guidance covering the use of purchasing cards are detailed in Appendix 6.

3.6 Stocks and Stores

Stocks should be kept at the minimum level to ensure effective operations except where value for money dictates bulk purchasing.

3.7 Building Contracts

Building contracts above £500,000 are the responsibility of the Standing Committee and are administered by the Chief Operating Officer.

Proposals shall be presented to the Standing Committee in the form of investment appraisals. Investment appraisals shall comply with best practice and HEFCE guidance, including discounted cash flow, net present value and whole life costing techniques as appropriate.

Consultants may be appointed if the project, as determined by the Standing Committee, is too large or too specialised for the resources of the Estates Department. Appointments shall be subject to tendering and other procedures as required by this Procurement Policy and Procedures.

3.8 Software

There is no University model licence agreement for software. Purchasers should not, however accept the supplier's terms and conditions without question. Suppliers can and do vary terms.

3.9 Consultancy

A model licence agreement for consultancy services is attached at Appendix 4

3.10 Tendering for Goods and Services

A model contract for services is provided at Appendix 3.

3.11 Personal purchases

Personal purchasing through the University is prohibited.

3.12 Leases

In general, the University will enter into operating leases but does not enter into finance leases. All leasing agreements must be approved by the Deputy Vice Chancellor.

4. ETHICAL STANDARDS AND CONFLICT OF INTEREST

All staff with purchasing authority must be aware of the standards of ethical behaviour that apply to their purchasing activities.

4.1 Personal Interest

Any personal interest which may impinge or might reasonably be deemed by others to impinge upon impartiality in any matter relevant to purchasing duties should be declared to the Dean or Director for recording and approval before conducting the business.

4.2 Confidentiality

Information received in the course of duty should be kept confidential and details of suppliers' offers must not be divulged to competitors. Information given in the course of duty should be true and fair and never designed to mislead and never be used for personal gain.

4.3 Relationships with suppliers

While bearing in mind the advantages to the University of maintaining a continuing relationship with a supplier, any arrangement which might in the long term prevent the effective operation of fair competition and competitive pricing must be avoided.

4.4 Gifts and Hospitality

Gifts, other than items of very small intrinsic value such as business diaries, calendars, low value pens and PC mat pads, shall not be accepted. Items for personal use shall be declined. Modest hospitality is an accepted courtesy of a business relationship. However, the recipients should not allow a position to be reached whereby they might be or might be deemed by others to have been influenced in making a business decision as a consequence of accepting such hospitality. Acceptable hospitality includes, for example, a very occasional meal or a drink at a conference. More substantial items such as attending a theatre or sports event should never be accepted without the prior authority of a line manager and must not be undertaken during working time. When there is any doubt over what is and is not acceptable in terms of gifts or hospitality, the offer should be declined, or advice sought from the Director of Finance.

4.5 Inducements

Personal inducements in any form from suppliers to employees are forbidden. Any instances of such inducements being offered must be reported immediately to the Director of Finance.

4.6 Unauthorised Purchases

Authorised purchases are commitments to purchase made by an employee acting under due authority. Any employee who makes an unauthorised purchase may be held personally responsible for payments of any costs incurred. Disciplinary action may also be taken which could incur a sanction up to and including termination of employment depending on the severity of the action.

4.7 Equality and diversity

The Standard Terms and Conditions of Purchase contain requirements relating to equality and diversity that suppliers must comply with (Appendix 2). In all circumstances the supplier must agree to comply with the University's policies and procedures to prevent unlawful

discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief, gender identity, pregnancy and maternity and marriage/civil partnership.

This may be done by reference to the relevant policies on the University website. The supplier must also warrant that their own practices and procedures comply with legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination. Suppliers are welcome to participate in the University's equalities training programme. Further advice may be obtained if required from the University's Director of Equalities and Staff Development.

5. ETHICAL AND ENVIRONMENTALLY SUSTAINABLE PROCUREMENT

In line with the requirements of the University's Environment Strategy, staff involved in the procurement of goods and services shall include environmental responsibility as a factor in their purchasing decisions and ensure that they comply with environmental legislation. They should actively engage with suppliers to reduce the adverse environmental impact of the goods and services purchased whilst ensuring value for money is still maintained. Traditionally purchasing considerations went no further than the initial purchase price whereas the University now recognises as well as considering the initial outlay, staff must also consider the operational and disposal costs of the product. The Guidance on Sustainable Procurement is attached at Appendix 1 and the Standard Terms and Conditions of Purchase also refers to environmental requirements (Appendix 2).

Considerations when making a sustainable purchase include:

- Is the purchase absolutely necessary? Can the existing product be repaired or upgraded?
- Is the product from renewable sources or made from material that comes from a sustainable source?
- Use whole-life costing which reflects the total life-time costs of the product.

Staff should also give due consideration to the University's Fair-Trade policy in making procurement decisions.

6. SUPPLIER MANAGEMENT

6.1 Corporate Agreements

Where possible competitive and best value corporate purchasing agreements will be entered into and adhered to, including those negotiated by the Southern Universities Purchasing Consortium, Joint Information Services Committee, Eduserv, CCS and TUCO, and other procurement frameworks as may exist from time to time.

6.2 Approved suppliers

The University does not operate a system of approved suppliers. It is the responsibility of budget holders to ensure that goods and services are sourced from appropriate suppliers complying with the standard requirement to achieve best value.

All suppliers do, however, have to be registered on the purchase ledger in the Finance Department before an order can be placed. Requests for new suppliers are dealt with immediately.

7. PUBLIC CONTRACTS REGULATIONS

Public Contract Regulations and the University's internal Financial Regulations apply to contracts and all forms of procurement or hire with a total value exceeding threshold values detailed above. These thresholds apply irrespective of contract lengths. A breach of these regulations may be actionable by a supplier or potential supplier. Full details including the current thresholds are available on the Finance Department section on the intranet.

The Director of Finance is responsible for ensuring that the University complies with all Public Contract Regulations. It is the responsibility of each budget holder to ensure that their members of staff comply by notifying the Director of Finance of any purchases likely to exceed the thresholds referred to above. This will need to be done well in advance in order to permit advertisements in official website as stipulated by the regulations.

GUIDANCE ON SUSTAINABLE PROCUREMENT

The University aims to work with suppliers to reduce the environmental impact of the goods and services it procures whilst still ensuring best value. The University must ensure that the procurement of goods and services includes environmental performance as a factor in purchasing decisions. Procurement decisions should seek to ensure that goods and services purchased:

1. do not cause significant damage to the environment
2. do not consume a disproportionate amount of energy
3. minimise waste, including no unnecessary packaging, no single use plastics
4. avoid the use of materials derived from threatened species or environments
5. support the principles of fair trade
6. do not involve the unnecessary use of or cruelty to animals
7. are definitely needed
8. are selected in accordance with whole life costs and benefits
9. are where possible durable, recyclable, repairable, refillable or reusable as appropriate
10. do not emit unacceptable levels of toxic or polluting substances during their production, use or disposal
11. are bought from suppliers who can demonstrate sound environmental practices
12. are locally sourced where possible
13. do not endanger health

STANDARD TERMS AND CONDITIONS OF PURCHASE

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 21.8.

Contract: the contract between the Customer and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Customer: The University of Winchester.

Customer Materials: has the meaning set out in clause 5.3(j).

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings that is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by the Customer and the Supplier.

Supplier: the person or firm from whom the Customer purchases the Goods and/or Services.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- (e) A reference to **writing** or **written** includes faxes and emails.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- (a) the Supplier issuing written acceptance of the Order; or
 - (b) any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. Supply of Goods

- 3.1 The Supplier shall ensure that the Goods shall:
- (a) correspond with their description and any applicable Goods Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;
 - (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
 - (e) Be fit for any purposes of which the Customer has made the Supplier aware.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.3 The Customer may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery of Goods

- 4.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) it states clearly on the delivery note any requirement for the Customer to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

- 4.2 The Supplier shall deliver the Goods:
- (a) on the date specified in the Order or;
 - (b) to the Customer's premises at, Sparkford Road, Winchester, SO22 4NR or such other location as is set out in the Order or as instructed by the Customer before delivery (**Delivery Location**); and
 - (c) during the Customer's normal hours of business on a Business Day, or as instructed by the Customer.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier:
- (a) delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or
 - (b) delivers more than 105% of the quantity of Goods ordered, the Customer may at its sole discretion reject the Goods or the excess Goods,
- and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 6.1.
- 4.6 Title and risk in the Goods shall pass to the Customer on completion of delivery.

5. Supply of Services

- 5.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 5.3 In providing the Services, the Supplier shall:
- (a) co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
 - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
 - (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
 - (i) observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
 - (j) hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
 - (k) not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and
 - (l) comply with any additional obligations as set out in the Service Specification.

6. Customer remedies

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - (c) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
 - (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
 - (e) to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Goods are not delivered by the applicable date, the Customer may, at its option, claim or deduct 0.1% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% of the total price of the Goods. If the Customer exercises its rights under this clause 6.2 it shall not be entitled to any of the remedies set out in clause 6.1 in respect of the Goods' late delivery.
- 6.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (b) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
 - (f) to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.5 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

7. Customer's obligations

- 7.1 The Customer shall:
- (a) provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
 - (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

8. Charges and payment

- 8.1 The price for the Goods:
- (a) shall be the price set out in the Order, or if no price is quoted or specifically agreed between the parties, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

- 8.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of the Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall use reasonable endeavours to pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.
- 8.8 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

9. Intellectual property rights

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any Customer Materials or pre-existing Intellectual Property rights) shall be owned by the Supplier.
- 9.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.
- 9.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to use any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 9.4 All Customer Materials are the exclusive property of the Customer.

10. Indemnity

- 10.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
 - (a) any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);

- (b) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and
- (c) any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

10.2 This clause 10 shall survive termination of the Contract.

11. Insurance

- 11.1 During the term of the Contract the Supplier shall maintain in force, with a reputable insurance company the following insurances to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance:
- (a) product liability insurance coverage of not less than five million pounds sterling (£20,000,000) for any one, or series of claims that may arise; and
 - (b) professional indemnity insurance coverage of coverage for a period from the Commencement Date to a date of not less than six (6) years from the Commencement Date of not less than two million pounds sterling (£2,500,000) for any one, or series of claims that may arise; and
 - (c) public liability insurance coverage of not less than five million pounds sterling (£20,000,000) for any one, or series of claims that may arise.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by [clause 12.2](#).
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Equality

- 13.1 The Supplier shall perform its obligations under the Contract in accordance with:
- (a) all applicable equality laws including the Equality Act 2010 (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the Customer's Equality and Diversity Policy; and
 - (c) any other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality law.

14. Prevention of Bribery and Corruption

- 14.1 The Supplier shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "Relevant Requirements");

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with the Customer's Anti-bribery Policy as in force from time to time (the "Relevant Policies");
 - (d) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;
 - (e) promptly report to the Customer any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
 - (f) immediately notify the Customer in writing if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees as at the commencement of the Contract.
- 14.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or supplying goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 14 (the "Relevant Terms"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 14.3 Breach of this clause 14 by the Supplier shall be deemed a material breach incapable of remedy.

15. Prevention of Slavery/Forced Labour

- 15.1 The Supplier confirms that neither it nor any of its personnel (or those of its subcontractors) have been: (i) convicted of any offence; or (ii) the subject of an investigation, inquiry or enforcement proceedings involving slavery or human trafficking. The Supplier shall: (i) comply with all applicable laws relating to slavery, including the Modern Slavery Act 2015; (ii) comply with the Customer's Anti-slavery Policy as in force from time to time; (iii) maintain a complete set of records to trace the supply chain of all the Goods and Services provided to the Customer under the Contract; (iv) implement a system of training for its employees, suppliers and subcontractors to ensure compliance with this clause 15.115 (and keep a record of all such training).
- 15.2 The Supplier shall not purchase any resources and/or materials that have been sourced from entities using forced labour. The Supplier shall implement and maintain due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

16. GDPR and/or Data Protection Act 2018

- 16.1 Where any activity carried out by the Supplier in respect of the provision of the Goods or Services falls within the provisions of the GDPR and Data Protection Act 2018 (the "GDPR/DPA"), the Supplier shall comply with this, and acknowledges and agrees that it shall be acting as a data processor for the Customer, in respect of the personal data processed by the Supplier on behalf of the Customer in the provision of the Goods and/or Services and the Customer shall be the data controller.
- 16.2 The Supplier shall ensure that appropriate technical and organisational measures are established and maintained to protect against the unauthorised or unlawful processing of personal data and against loss or destruction of, or damage to, personal data processed by the Supplier on behalf of the Customer. Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the personal data processed by the Supplier and comply with the provisions of the GDPR and the DPA 2018.
- 16.3 The Supplier shall only process personal data on behalf of the Customer in accordance with the Contract, the DPA and any lawful and reasonable instructions issued by the Customer from time to time and for no other purpose whatsoever, save as required by law.
- 16.4 The Supplier shall keep the personal data processed by the Supplier under the Contract safe and confidential, and will ensure that only such of its employees, servants, agents and sub-contractors who may be required by the Supplier to assist it in providing the Goods and/or Services shall have access to the personal data.
- 16.5 The Supplier shall adopt and maintain a written security policy in relation to personal data processed by it on behalf of the Customer and shall procure that all of its employees, servants, agents and sub-contractors are aware of and abide

- by all of the provisions of such policy and the provisions of this paragraph and shall make such policy available for inspection on request by the Customer.
- 16.6 The Supplier shall permit the Customer's representatives to have access on reasonable written notice to the personal data processed by the Supplier on behalf of the Customer, including but not limited to where this is necessary in order to enable the Customer to respond to a subject access request made under the GDPR and DPA 2018.
- 16.7 The Supplier shall notify the Customer (within two Business Days days), if it receives:
- (a) a request from a data subject to have access to that person's personal data; or
 - (b) a complaint or request relating to the Customer's obligations under the GDPR and DPA 2018.
- 16.8 The Supplier shall provide the Customer with full co-operation and assistance in relation to any complaint or request made, including by:
- (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in GDPR and DPA 2018 and in accordance with the Customer's instructions;
 - (c) providing the Customer with any personal data it holds in relation to a data subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer.
- 16.9 The Supplier shall not process personal data outside the European Economic Area without the prior written consent of the Customer and, where the Customer consents to a transfer, to comply with any reasonable instructions notified to it by the UNIVERSITY.
- 16.10 The Supplier will indemnify the Customer in full against all losses, claims, costs, expenses or other liabilities awarded against, or incurred by, the Customer directly arising as a result of, any breach of this paragraph by the Supplier, its employees, servants, agents or sub-contractors.

17. Freedom of Information

- 17.1 The Supplier acknowledges that the Customer is subject to the requirements of Freedom of Information Act 2000 (the "FOIA") and the Environmental Information Regulations 2004 (the "EIR") and shall assist and co-operate with the Customer to enable the Customer to comply with these information disclosure requirements.
- 17.2 The Supplier shall and shall procure that its sub-contractors shall:
- (a) transfer any request for information in relation to the FOIA or the EIR to the Customer as soon as practicable after receipt and in any event within two Business Days of receipt;
 - (b) provide the Customer with a copy of all information in its possession or power in the form that the Customer requires within seven days (or such other period as the Customer may specify) of the Customer requesting that information; and
 - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a request for information within the time for compliance set out in section 10 of FOIA or regulation 5 of the EIR.
- 17.3 The Customer shall be responsible for determining at its absolute discretion whether any information:
- (a) is exempt from disclosure in accordance with the provisions of FOIA or the EIR; and/or
 - (b) is to be disclosed in response to a request for information.
- 17.4 In no event shall the Supplier respond directly to a request for information unless expressly authorised to do so by the Customer.
- 17.5 The Supplier acknowledges that the Customer maybe obliged under FOIA or the EIR to disclose Information:
- (a) without consulting with the Supplier, or
 - (b) following consultation with the Supplier and having taken its views into account.
- 17.6 The Supplier shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 17.7 The Supplier acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Customer may or may not have to disclose recorded information in line with FOIA 2000 and the ICO's guidance on this.
- 17.8 This clause 17 shall survive the expiry or termination of this Contract.

18. Termination

- 18.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract:
- (a) with immediate effect by giving written notice to the Supplier if:
 - (i) there is a change of Control of the Supplier; or
 - (ii) the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (iii) the Supplier commits a breach of [clause 5.3\(h\)](#);
 - (b) for convenience by giving the Supplier one month's written notice.
- 18.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

19. Consequences of termination

- 19.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 19.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 19.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

20. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 2 weeks, the party not affected may terminate this agreement by giving 2 days' written notice to the affected party.

21. General

21.1 Assignment and other dealings.

- (a) The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- (b) The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract [without the prior written consent of the Customer].

21.2 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if sent by fax, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

21.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

21.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

21.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

21.6 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

21.7 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

21.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

21.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

21.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

MODEL ITT FOR GOODS AND SERVICES

ITT DOCUMENT**Contract For *******

General Conditions of Contract for the Purchase of Goods

Tender Ref: **//*********** Year Contract with an option to extend for a further **** Years****Return Date: 12 Noon *******

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SECTION 1 – TECHNICAL SPECIFICATION

Specification

TITLE OF TENDER

Introduction

*****INSERT INTRODUCTION*****

Scope of Services Required

*****TECHNICAL SPECIFICATION*****

Award Criteria

The efficiency and effectiveness of the proposed service offer will be assessed using the following award criteria shown below:

Criteria and sub criteria	Weighting %
Price: - GIVE DETAILS	**
Experience: GIVE DETAILS	**
Technical: GIVE DETAILS	**
OTHER?	**
Presentation/Understanding - The overall ability of the supplier to understand and meet the University's requirements for this tender.	**

Evaluation method

Compliant Proposals will be assessed against the award criteria stated above. The specification contains the Statement of Requirements, containing the questions that will need to be answered in ITT responses. Some of these questions are related to compliance hurdles. All questions are grouped in to sections which state which criteria area is being assessed and the percentage of the total score that is assigned to it.

Questions will be scored on a 0 – 5 method, illustrated below:

Score	Heading	Reason
0	Unacceptable	The Bidders response is missing or has not demonstrated the capability/capacity to meet the University requirements for this aspect.
1	Marginal	The response has indicated some capacity/capability/understanding to meet this aspect of the requirements; however response does not adequately address specification/Response is standardised with no apparent understanding of the requirements of this particular specification.
3	Good	Response shows capacity/capability to meet and understand most of the University's expectations and requirements in this area
5	Excellent	This response has clearly demonstrated they meet & understand all our requirements and they have provided detailed information about how this is achieved.

Tender Response Questionnaire

The following section must be completed by all tendering suppliers. Please ensure that all questions are completed in your tender return. Clearly label which question you are answering.

Experience:

Relevant Knowledge of Team:

Management of Contract:

Price:

- i) Please detail the basis of your fees calculation, including evidence of mix of staff proposed and ability to be flexible while demonstrating cost control.

Presentation/Understanding:

- ii) The overall ability of the supplier to understand and meet the University's requirements for this tender.

Supplier Presentation

A Supplier presentation will take place on *****

Suppliers can bring up to 2 people to the session, and are asked to **confirm the names and job titles of attendees by TBC**, advising of the number of car park spaces (if required).

The session is an opportunity for suppliers to demonstrate their proposal and for the University to make an informed decision on which supplier to award the contract to.

Location details for the session will be distributed to Suppliers whom confirm attendance.

Working timetable

Winchester's working timetable for the mini competition process and the steps involved are described in the table below, though Suppliers should note that the University reserves, in its absolute discretion, the right to vary both the steps and timings.

Action	Detail	Target Date
Issue Invitation to Tender (ITT)	This Document	*****
Clarifications	Final date for receipt of clarification questions	*****
Response to ITT	The Response to the ITT needs to be returned in electronic and paper format to Uow	*****
Evaluation of ITT responses	Formal evaluation of ITT Responses	*****
Mandatory presentation	At University of Winchester	*****

Other Details

Return Date

Please ensure that all completed documents are returned by:

12 Noon on *****

In-Tender Clarification

If clarification is necessary concerning any of our system or tender requirements, correspondence must be sent to Procurement via the correspondence section of the In-Tend e-tendering system.

Scoring Criteria

In evaluating the tender, University of Winchester will seek the most economically advantageous offers in terms of the criteria detailed in the specification.

Contract Length

2 Years with an option to extend for a further 2 years subject to agreement from both parties.

SECTION 2 – CONDITIONS OF TENDER

1 Completion of Tender

- 1.1 Offers will be considered for all of the contract.
- 1.2 The tenderer must complete schedules as appropriate for the services being tendered, omissions or exceptions may invalidate a tender.
- 1.3 N/A
- 1.4 The University portal is located at: <https://in-tendhost.co.uk/winchester.aspx/Home>
- 1.5 It is recommended that the best way to upload your submission is to create a Zip File containing all necessary documents and upload that onto the In-tend system. A Zip File is also easier to handle.
- 1.7 Your tender response must be submitted through the “Submit My Return” facility in In-tend which is accessed via the “My Tenders” icon, do NOT use the correspondence facility or a standard email. To submit your return, please follow the instructions below:
1. Log In
 2. My Tenders
 3. View Tender Details
 4. View Documents
 5. Browse and Upload each part of your return (or Zip File)
 6. Once ALL your response documents are uploaded and displayed in the “My Documents for Return” use “Submit My Return”.
- 1.8 If you submit your response through the wrong channels, or submit a late or incomplete response, we may be unable to evaluate your tender.

2 Tender Preparation

- 2.1 In submitting your tender, you do so on the conditions specified or referred to herein, and on the following conditions which shall be paramount, and in the event of breach thereof, University of Winchester shall be entitled to determine any contract made pursuant to such tender and claim damages from you:-
- 2.1.1 Your tender shall be a “bona fide” tender and shall not be fixed or adjusted by, or under, or in accordance with any agreements or arrangements with any other person.
- 2.1.2 You shall keep your tender confidential and not divulge to anyone, even approximately, what your tender price is, or will be, or any of its terms or conditions, with the sole exception of information you may have to give, for example, your insurance broker, in order to compile your tender. You must stress to them that such information is given in strictest confidence.

- 2.1.3 You shall not enter into any agreement or arrangement with any person that such other person shall refrain from tendering, or between them agree as to the amount of any other tender is submitted, or of its terms and conditions.
 - 2.1.4 You must not try to obtain any information about someone else's tender or proposed tender. You may, however, obtain necessary sub-contract quotations applicable to your tender.
 - 2.1.5 You shall not offer to pay or give, or agree to pay or give, any sum of money or valuable consideration directly to any person for doing, or having done, or causing, or having caused to be done, in relation to the tender any act of a nature described in the preceding conditions.
- 2.2 This tender does not entitle you to enter University of Winchester premises. Should you require doing so to facilitate preparation of your tender, you must first contact the Procurement Officer who invited you to tender and adhere to the specific instructions provided by that person.

3 Return of Tender

- 3.1 The tender is to be sent via the University e-Procurement portal <https://in-tendhost.co.uk/winchester/asp/Home> All information and documents will be available from this portal along with detailed instructions on how to complete this tender.
- 3.2 It is a requirement that you keep your user name and password secure and do not pass it to any third parties.
- 3.3 All correspondence prior to the final submission of tender must only be sent via UOW's e-Procurement portal <https://in-tendhost.co.uk/winchester/asp/Home>.
- 3.4 University of Winchester reserves the right at its sole discretion to issue a formal general email via UOW's e-Procurement portal <https://in-tendhost.co.uk/winchester/asp/Home>, to all tenderers, drawing their attention to any relevant matters arising as a result of a request for clarification from any tenderer or otherwise amending any part(s) of the tender.
- 3.5 Please upload your tender response via tender return function on the University In-Tend portal
- 3.6 Under no circumstances whatsoever will University of Winchester be liable for or pay any expenses or costs which may be incurred (whether directly or indirectly) by the tenderer in the preparation or submission of their tender proposal.

4 Area

- 4.1 The tender provides for the services to be provided to University locations as stated in the technical specification.

5 Pricing Schedule

- 5.1 All tenderers must complete the pricing schedule in the exact format detailed in the pricing document. Failure to do this could result in disqualification.
- 5.2 You are asked to tender prices that incorporate everything necessary for the evaluation of the tender proposal.
- 5.3 The tender shall be priced in £ sterling and excluding VAT, unless otherwise stated.

6 Evaluation of Offers

- 6.1 To assist in the evaluation of offers, the tenderer shall enter on the Schedule the fixed prices the tenderer will charge. Where applicable, delivery and installation charges should be included. Where an alternative is offered, both prices should be quoted.
- 6.2 In evaluating the tender, University of Winchester will seek the most economically advantageous offers in terms of the criteria below:

Please see award criteria detailed in specification above.

7 Joint Tenders

- 7.1 Companies wishing to tender jointly as a consortium or group should clearly nominate the leading company in the consortium or group and the address to which all enquiries and correspondence should be forwarded, both prior and subsequent to the commencement of the Agreement.

8 References

- 8.1 Requests may be made to contact and inspect any references given by those invited to tender. In addition to these other references may be sought.

9 Acceptance of Tenders

- 9.1 University of Winchester is not bound to accept the lowest offer or any tender in full or in part.
- 9.2 The successful tenderer is not permitted to assign any part of the Contract without written permission from University of Winchester. Any request will not be unreasonably withheld.
- 9.3 University of Winchester reserves the right to negotiate with any or none of the tenderers.

10 Extension of Contract

- 10.1 University of Winchester may request the Contractor to enter into negotiations with a view to agreeing that this contract be extended beyond the initial contract period. If agreement to extend has not been reached between the parties within a reasonable period of the completion of the initial contract, the contract will expire accordingly.

11 Tender Validity

- 11.1 The tender proposal shall remain open for acceptance for a period of 90 days from the date specified for its return.

12 Sustainable Procurement

- 12.1 UOW's developing a Sustainable Procurement policy and is seeking information from all tenderers to assess their policies and procedures for minimising the environmental impact of their goods and services. Accordingly, these factors will be taken into account when assessing the relative merits of offers received, and tenderers must provide details of whether they have, or are working towards, an Environmental Management System, such as ISO14001, and if not, what procedures they have, or are putting in place, to adopt a similar philosophy.

SECTION 3 – CONDITIONS OF CONTRACT

PURCHASE OF GOODS & SERVICES – TERMS & CONDITIONS

1 DEFINITIONS

- 1.1 The "Contract" shall mean the contract between UOW and the Seller consisting of the Purchase Order, these General Conditions of Contract and, where applicable, the Pricing Schedule, the SLA, the Specification and any other documents (or parts thereof) specified in the Purchase Order or expressly incorporating these General Conditions of Contract.
- 1.2 The term 'General Conditions of Contract' shall mean the terms and conditions of purchase and includes any special terms agreed in writing between and the Seller.
- 1.3 The word "Goods and Services" includes all goods and services covered by the Purchase Order, whether raw materials, processed materials or fabricated products or services.
- 1.4 The term "Initial Contract Period" shall be the period stated in the Tender Schedule, which may be extended by mutual agreement up to a maximum of 60 months.
- 1.5 The term 'Intellectual Property Rights' shall mean:-
- 1.5.1 rights in inventions, patents, registered designs, design rights, know-how, trademarks and service marks (whether registered or not);
 - 1.5.2 any trade, brand or business names and any distinctive sounds used to differentiate the goods and services of a business;
 - 1.5.3 utility models;
 - 1.5.4 copyright (including all such rights in computer software and databases);
 - 1.5.5 moral rights;
 - 1.5.6 any rights or forms of protection of a similar nature to any of the above and having equivalent or similar effects to any of them
- and all or any other intellectual or industrial property rights whether or not registered or capable of registration in each case whether subsisting now or in the future in any part of the world and including all applications and rights to apply for any of the same together with all or any goodwill relating to the same.
- 1.6 The word "Packages" includes bags, cases, carboys, cylinders, drums, pallets, tank wagons and other containers.
- 1.7 The term 'Price' shall mean the price of the Goods/Services.
- 1.8 The term 'Pricing Schedule' (where applicable) shall mean the prices agreed between UOW and Seller and which are specific to a particular Service Level Agreement.
- 1.9 The term "Purchase Order" shall mean UOW's Purchase Order which specifies that these conditions apply to it, duly signed by an authorised Purchasing Official and to which these general conditions are attached.

- 1.10 The term 'Purchasing Official' shall mean Buyer's representative authorised to enter into contracts on behalf of UOW.
- 1.11 The term 'Service Level Agreement', hereinafter referred to as the 'SLA,' (where applicable) shall mean the document which contains the terms specific to a particular Contract and which will take precedence over these General Conditions of Contract in the event of any inconsistency with its terms.
- 1.12 The term "Seller" shall mean the person, firm or company to whom the Purchase Order is issued.
- 1.13 The term 'Specification' includes any plans, drawings, data, description or other information relating to the Goods.
- 1.14 The term "UOW" shall mean University of Winchester, Sparkford Road, Winchester, SO22 4NR.

2 BASIS OF PURCHASE

- 2.1 The Purchase Order constitutes an offer by UOW to purchase the Goods/Services subject to these Conditions of Contract.
- 2.2 Any of the following are deemed to constitute the Seller's agreement to comply with these General Conditions of Contract:-
- 2.2.1 any offer and/or acceptance of a Purchase Order by the Seller (notwithstanding any conditions attached to such offer or acceptance or any purported incorporation of terms other than these Conditions of Contract); or
- 2.2.2 the delivery of any Goods/Services by or on behalf of the Seller.
- 2.3 These Conditions of Contract shall apply to each Contract to the exclusion of any other terms and conditions on which any quotation has been given to UOW or subject to which the Purchase Order is accepted or purported to be accepted by the Seller. If any future contract is made with the Seller without reference to these Conditions of Contract, such contract shall be deemed to be subject to these Conditions of Contract.
- 2.4 No variation to the Purchase Order or these Conditions of Contract shall be binding unless agreed in writing by an authorised representative of UOW.

3 QUALITY

- 3.1 The quantity, quality and description of the Goods/Services supplied shall be as specified in the Purchase Order and must comply in all respects with the applicable Specification(s), supplied by UOW to the Seller or agreed in writing by UOW.
- 3.2 All Goods will be of good construction, sound materially, of adequate strength and be free from defects in design, materials and workmanship, and be fit for purpose.

4 DELIVERY

- 4.1 Time shall be of the essence and the Seller will deliver the Goods/Services in accordance with the instructions shown on the Purchase Order which will specify the quantity required and the date, time and place of delivery. A delivery note stating the number of the Purchase Order must accompany each consignment of the Goods/Services and must be displayed prominently.

- 4.2 The Seller shall furnish such programmes of manufacture and delivery as UOW may require. Quantities delivered in excess of those stated on the Purchase Order may not be accepted. Delivery by instalments shall not be accepted by UOW unless previously agreed in writing. If Goods/Services are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 4.3 If Goods are incorrectly delivered the Seller shall immediately affect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in so doing.
- 4.4 UOW may wish to agree a Liquidated Damages Clause in respect of late delivery or commissioning of the Goods/Services.

5 PRICE

- 5.1 The Price, which shall include delivery carriage paid by Seller, shall be exclusive of VAT, and shall be a firm fixed price for the duration of the Contract and shall not be varied except with the express written agreement of Buyer.

6 TERMS OF PAYMENT

- 6.1 Unless otherwise stated in the Purchase Order, payment will be made within 30 days from end of the month of receipt and agreement of invoice. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 6.2 UOW may be prepared, in certain circumstances, to make stage payments during the contract, in which case such payments will be event driven and subject to receipt by UOW of suitably worded Bank Guarantees or Performance Bonds, the cost of which shall be borne by the Seller. The Seller must indicate the discount offered for such terms.

7 LOSS OR DAMAGE IN TRANSIT

- 7.1 UOW shall advise the Seller and the Carrier (if any) in writing, otherwise than by a qualified signature on any Delivery Note, of any loss or damage within the following time limits:
- 7.1.1 Partial loss, damage, defects or non-delivery of any separate part of a consignment shall be advised within 7 days of date of delivery of the consignment or part consignment.
- 7.1.2 Non-delivery of whole consignment shall be advised within 7 days of notice of dispatch.
- 7.2 The Seller shall make good, free of charge to UOW any loss of or damage to or defect in the goods where notice is given by UOW in compliance with this condition provided that UOW shall not in any event claim damages in respect of loss of profits.

8 RIGHT TO AUDIT

- 8.1 UOW shall at all times during this agreement retain the right to request access by the Seller to information including, without limitation:-
- 8.1.1 evidence of the place of origin of the Goods;

- 8.1.2 information relating to components, parts or raw materials used in manufacturing the Goods;
- 8.1.3 as required by UOW to ensure that the Goods comply with and that UOW fulfils its obligations under all applicable legislation and industry codes of practice;
- 8.1.4 relating to any possible risks to health and safety presented by the Goods;
- 8.1.5 specifically regarding hazardous substances and any dangerous properties the Goods may have;
- 8.1.6 full instructions for use and clear and conspicuous warnings relating to any conditions which are necessary to ensure safety in use or onward sale in each case with sufficient detail to enable UOW and any end user to understand any possible risks to health and safety; and
- 8.1.7 for the purpose of enabling UOW to establish the validity of the Seller's prices.

9 INSPECTION

- 9.1 The Seller shall be responsible for the inspection and testing of the Goods and shall ensure that they are in compliance with the Contract prior to delivery to UOW.
- 9.2 UOW shall have the right to inspect the Goods at Sellers' works and those of its sub-contractors at all reasonable times and shall provide UOW with all facilities reasonably required for such inspection free of charge. The Seller shall ensure that UOW's right of access and inspection at the Seller's sub-contractor's premises are available to UOW in the Seller's sub-contracts.
- 9.3 If as a result of inspection UOW is not satisfied that the Goods will comply in all respects with the Contract and UOW informs the Seller within seven days of inspection the Seller shall take such steps as are necessary to ensure compliance. Any inspection, checking, approval or acceptance given on behalf of UOW shall not relieve Seller or its sub-contractors from any obligations or liabilities set forth in this Contract.

10 ACCEPTANCE

- 10.1 In the case of Goods delivered by the Seller not conforming with the Contract UOW shall have the right to reject such Goods at any time including a right to reject defective Goods even if the defect is minor. UOW will return such rejected Goods to the Seller at the Seller's cost and expense, and in the event that the Seller is unable to supply acceptable replacements within the time fixed by the Contract or any extension granted, UOW will be entitled to purchase alternative goods elsewhere without prejudice to any other right which UOW may have against the Seller, including but not limited to payment by Seller of any excess costs incurred by UOW in doing so.
- 10.2 The making of payment shall not prejudice UOW's right of rejection and the Seller shall immediately reimburse UOW with an amount equal to that paid by UOW in respect of the Goods and any applicable taxes. Before exercising the said right to purchase elsewhere UOW shall give the Seller reasonable opportunity to replace rejected Goods with Goods which conform to the Contract.
- 10.3 UOW shall not be deemed to have accepted any Goods until UOW has had a reasonable time to inspect or test them following delivery or if later within a reasonable time after any latent defect has become apparent.

10.4 UOW shall not be deemed to have accepted the Goods merely by virtue of its having sold the Goods to a third party upon or after delivery or its having incorporated or converted them into other products or works.

10.5 UOW shall not be deemed to have accepted the Goods by virtue of having required the Seller to repair or replace Goods under these General Conditions of Contract.

11 PACKAGES

11.1 Packages of all kinds are supplied free and non-returnable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all Packages, advice notes and delivery notes.

11.2 Where UOWW has an option to return Packages and does so, UOW will return such Packages empty in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Seller's supplying works or depot indicated by the Seller, and will advise the Seller the date of despatch. Packages returned promptly in the manner aforesaid shall be subject to a credit to UOW against future Purchase Orders or a reimbursement at the Seller's standard rate operating at the time UOW issued the Purchase Order.

11.3 Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle.

11.4 Where Goods are delivered by tank wagons these will be emptied and returned by the Seller without undue delay.

12 PASSING OF PROPERTY & RISK

12.1 The property and risk in the Goods will remain with the Seller until they are delivered at the point specified in the Purchase Order and a nominated employee of UOW signs a delivery note, when title will pass to UOW without any limitation, constraint or encumbrance.

12.2 Transit and off-loading of the Goods shall be at the Seller's risk.

13 RESPONSIBILITY FOR INFORMATION

13.1 The Seller shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it, whether such information has been approved by UOW or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by UOW.

14 CHANGES

14.1 The Seller shall not vary any of the Goods except as directed in writing by UOW.

14.2 UOW reserves the right by notice in writing to modify the delivery details, quality or quantity of the Goods and any alteration to the Contract price arising by reason of such modification shall be the subject of mutual written agreement between the parties.

15 CANCELLATION

- 15.1 Any Purchase Order may be cancelled at any time by UOW giving the Seller notice in writing. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to UOW. UOW's liability is strictly limited to work in progress, and no further loss or liability will accrue.

16 UNIVERSITY-SPECIFIC GOODS

- 16.1 Any Specification supplied by UOW to the Seller or specifically produced by the Seller for UOW in connection with a Contract, together with the Intellectual Property Rights in a Specification, shall be the exclusive property of UOW and delivered to UOW with the Goods.
- 16.2 Goods made to UOW's specification shall not be manufactured for or supplied to any other party.

17 SPARE PARTS

- 17.1 Where applicable, the Seller shall ensure that all spare and/or replacement parts, components and materials for the Goods shall be available from the Seller for 10 years from date of first use by UOW of the Goods in question.

18 ASSIGNING AND SUB-CONTRACTING

- 18.1 The Seller shall not, without the written consent of UOW, assign or contract its rights or duties under this Contract, nor allow any Goods to be made elsewhere other than in its own establishment. In the event that UOW has consented to the placing of sub-contracts copies of each sub-contract and order shall be sent by the Seller to UOW immediately it is issued. The Seller shall be responsible for all work done and Goods supplied by all sub-Contractors. Where the Seller enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Seller to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

19 FORCE MAJEURE

- 19.1 Neither party shall be liable or deemed to be in default on account of any delay in delivery or the performance of any other act under this Contract due to circumstances which could not have been contemplated and which are beyond the party's reasonable control, provided that the party claiming hereunder shall notify the other immediately specifying the cause and probable duration of the delay or non-performance and shall minimise the effects of such delay or non-performance.
- 19.2 If delivery by the Seller, or an acceptance by UOW of a delivery is delayed or prevented for any reason, beyond the reasonable control of either party UOW reserves the right to defer the delivery date or cancel the relevant Contract.
- 19.3 For the avoidance of doubt, illness or shortage of the Seller's staff or sub-contractors or the failure or delay by any of the Seller's sub-Sellers to supply goods, components, services or materials shall not be regarded as causes beyond the Seller's reasonable control.

20 HAZARDOUS GOODS

- 20.1 Hazardous Goods must be marked by the Seller with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings.
- 20.2 All information known, held by, or reasonably available to, the Seller regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to Buyer.

21 INTELLECTUAL PROPERTY RIGHTS

- 21.1 Save as provided in clause 21.3, Seller will fully indemnify UOW against all actions, claims, demands, proceedings, damages, costs, charges and expenses arising or incurred by reason of any infringement or alleged infringement of Intellectual Property Rights by the use or sale of the Goods supplied by Seller to UOW. UOW shall promptly notify the Seller in writing of any alleged infringement of which it has notice and, subject to being indemnified and secured to its satisfaction against any costs and liability which UOW may incur as a result, UOW at the Seller's request and expense, shall allow the Seller to conduct all negotiations and litigation and/or settle any claim and shall give the Seller all reasonable assistance.
- 21.2 In the event of any claim for infringement arising from the fault of the Seller UOW may (but shall not be obliged to) require the Seller at Seller's reasonable expense to either procure for UOW the right to continue using the Goods or replace them with non-infringing Goods or modify the Goods so they become non-infringing providing always that the standard and quality of the Goods is not adversely affected.
- 21.3 UOW on its part warrants that any Specification or instructions furnished or given to the Seller shall not knowingly be such as will cause Seller to infringe any Intellectual Property Rights in the execution of the Contract. UOW shall fully indemnify the Seller against all action, claims, demands, proceedings, damages, costs, charges and expenses arising or incurred by reason of any infringement or alleged infringement of Intellectual Property Rights in consequence of the Seller's authorised use or possession of the Specification or UOW's instructions provided that the Seller shall promptly notify UOW in writing of any alleged infringement of which it has notice. The Seller shall allow UOW to conduct and/or settle all negotiations, litigation and/or settle any claims and shall give UOW all reasonable assistance.

22 WARRANTY

- 22.1 The Seller warrants to UOW that it is fully qualified, equipped, organised and financed to perform its obligations under the Contract and warrants to UOW that the Goods:-
- 22.1.1 will be of satisfactory quality and fit for any purpose held out by the Seller or made known to the Seller at the time the Purchase Order is placed;
- 22.1.2 will be free from defects in design, material and workmanship;
- 22.1.3 will correspond with any relevant Specification or sample;
- 22.1.4 will comply with all statutory requirements, regulations, bye-laws and EU directives and regulations relating to the manufacture and sale of the Goods, product safety, packaging, labelling

of hazardous substances (including the appropriate British Standard or equivalent specification unless otherwise agreed); and

- 22.1.5 will comply with the general requirements of safety in terms of risk presented to the Health & Safety of persons.
- 22.2 Without prejudice to any rights that UOW may have by statute, common law or otherwise the Seller shall as soon as reasonably practicable repair or replace (as UOW shall elect) all Goods which are or become defective during the period of 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, where such defects occur under proper usage and are due to faulty design, the Seller's erroneous instructions as to use or erroneous data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties, express or implied. Repairs and replacements shall themselves be subject to the foregoing obligations for a period of 12 months from the date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement.

23 INSURANCE AND INDEMNITY

- 23.1 The Seller shall indemnify UOW against any liabilities, damages, claims, costs, losses (whether direct or indirect and including loss of profits) and expenses incurred or paid by UOW howsoever arising from any defect in the Goods or any breach by the Seller of its obligations hereunder or of any statutory duty or from any act or omission of the Seller's servants, agents or contractors.
- 23.2 The Seller shall effect and maintain with a reputable insurance company a policy or policies of insurance cover in respect of risks which may be incurred by the Seller, arising out of the Seller's performance of the Contract, in respect of death or personal injury, or loss of or damage to property or financial loss. Such policies shall include Public Liability insurance with a Limit of Indemnity of at least £20,000,000 any one event, and Professional Indemnity insurance with a Limit of Indemnity of at least £2,500,000 any one event and in all and Employer's (Compulsory) Liability Insurance with a Limit of Indemnity of at least £10,000,000 any one event,
- 23.3 The Seller shall produce to UOW, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Seller of any liabilities under this Contract. It shall be the responsibility of the Seller to determine the amount of insurance cover that will be adequate to enable the Seller to satisfy any liabilities arising under this Contract.

24 CONFIDENTIALITY

- 24.1 The Specification(s) supplied by UOW to the Seller shall remain the property of, and shall be returned to, UOW on completion of the Contract and shall not be copied, and no information relating to the Goods shall be disclosed to any third party except for the purpose of this Contract.
- 24.2 No photographs of any of UOW's equipment, installations or property shall be taken without UOW's prior consent in writing. The Seller shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) all information given by UOW in connection with the Contract or which becomes known to the Seller through its performance of the Contract or use the same other than for the purpose of executing the Contract.

- 24.3 The Seller shall not mention UOW's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without UOW's prior consent in writing.

25 TERMINATION

- 25.1 UOW shall be entitled to terminate the Contract without liability to the Seller and reserving all rights by giving notice to the Seller at any time if:-
- 25.1.1 the Seller commits a material breach of the terms and conditions of the Contract and that breach cannot be remedied; or
 - 25.1.2 the Seller commits a material breach of the terms and conditions of the Contract and that breach can be remedied but the Seller fails to do so within 30 days of receipt of a notice from UOW requiring it to do so; or
 - 25.1.3 the Seller commits more than one breach of any of the Seller's obligations and the cumulative effect of such breaches is that UOW reasonably believes that the Seller will continue to deliver a substandard performance over the one month period immediately after the service of notice specified in condition 25.1.2; or
 - 25.1.4 the Seller becomes insolvent or bankrupt or makes a composition or arrangement with its creditors or has a receiver, administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) or if execution is levied against the Seller's goods or assets or if the Seller ceases, or threatens to cease, to carry on business, or
 - 25.1.5 UOW reasonably believes that any of the events mentioned above is about to occur and notifies the Seller accordingly, or
 - 25.1.6 upon expiry of three (3) months' notice period from the date UOW issues a break notice to the Seller, and which UOW may issue at its discretion and without liability.

26 NON-WAIVER

- 26.1 The non-exercise by UOW of any of its rights hereunder in any particular incidence of breach or default by the Seller shall not constitute a waiver by UOW of such right in that or any subsequent incidence.

27 VARIATION

- 27.1 No amendment or variation of these General Conditions of Contract or any documents entered into or delivered in accordance with its provisions shall be effective unless made or confirmed in writing and signed by an authorised representative on behalf of UOW and the Seller. (See Appendix 1).

28 SEVERANCE

- 28.1 If any provision of these General Conditions of Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these General Conditions of Contract and the remainder of the provision in question shall not be affected.

29 FREE ISSUE MATERIALS

- 29.1 Where UOW for the purposes of the Contract issues materials "Free of Charge" to Seller, such materials shall be and remain the property of UOW. Seller shall maintain all such materials in good order and condition, subject, in the case of tooling, patterns and the like to fair wear and tear, Seller shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at UOW's discretion. Waste of such materials arising from bad workmanship or negligence of Seller shall be made good at Seller's expense.

30 GOVERNING LAW

- 30.1 The construction, validity and performance of the Contract shall be governed by the law of England, and both parties hereby submit to the exclusive jurisdiction of the English Courts.

31 CONSTRUCTION OF CONTRACT

- 31.1 University of Winchester may enforce the terms of this contract in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 and other rights or remedy of a third party and shall be afforded the rights and rewards of ownership as if there were a contract of supply between the supplier and UOW and as if each of the said terms and conditions (including without limitation terms and conditions relating to delivery, fitness for purpose, satisfactory quality and guarantees) were a contract between the supplier and UOW. UOW accepts no liability in respect of payment for this contract.
- 31.2 Except as provided above, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 31.3 The construction, validity and performance of the Contract shall be governed by the law of England.

32 GENERAL

- 32.1 The Seller shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this Condition as "prohibited acts"):
- 32.1.1 offer, give or agree to give to any servant of UOW any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with UOW, or for showing or not showing favour or disfavour to any Person in relation to this or any other contract with UOW;
- 32.1.2 enter into this or any other contract with UOW in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to UOW.
- 32.2 If the Seller, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916 or the

Bribery Act 2010 or the Fraud Act 2006, with or without the knowledge of the Contractor, in relation to this or any other contract with UOW, UOW shall be entitled:

33.2.1 to terminate the Contract and recover from the Seller the amount of any reasonable loss resulting from the termination;

33.2.2 to recover from the Seller the amount or value of any such gift, consideration or commission and

33.2.3 to recover from the Seller any other reasonable loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

32.3 The Seller acknowledges that UOW is a Public Authority within the meaning of the Freedom of Information Act 2000.

[NOTE: Applicants should state if any of the information supplied by them in response to this contract notice is confidential or commercially sensitive or should not be disclosed in response to a request for information under the aforementioned act. Applicants should state why they consider the information to be confidential or commercially sensitive.

This will not guarantee that the information will not be disclosed in response to Freedom of Information requests but it will be examined in the light of the exemptions provided in the Freedom of Information Act before a decision to disclose or not is made.

ANNEX A - Ethical Trading Policy For University of Winchester Contractors and Sub-Contractors

- 1 Child Labour shall not be Used
 - 1.1 Child labour shall not be used. The term “child” refers to a younger person than the local minimum legal age for employment or the age for completing compulsory education, but in no case shall any child younger than 15 (fifteen) years of age or 14 (fourteen) years of age (where local laws allows) be employed in connection with any work done for UOW.
 - 1.2 Where there is found to be any existing child labour, the Contractor (and, if relevant, its sub-Contractor(s)) shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child.
- 2 Living Wages are to be Paid
 - 2.1 Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income. Deductions from wages as a disciplinary measure shall not be permitted.
- 3 Working Hours are not to be Excessive
 - 3.1 Working hours comply with national laws and benchmark industry standards, whichever affords greater protection.
- 4 No Discrimination is to be practised.
 - 4.1 There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientations, union membership or political affiliation.
- 5 No Harsh or Inhumane Treatment is allowed.
 - 5.1 Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.
- 6 Application of this Policy.
 - 6.1 The provisions of this policy constitute minimum and not maximum standards. Persons applying this code are expected to comply with national and other applicable law and, where the provisions of law and this policy address the same subject, to apply that provision which affords the greater protection.

SECTION 4 – COMMERCIAL TERMS

COMMERCIAL TERMS

1 Orders and Invoices

- 1.1. Where invoices are not issued at the time of delivery, they shall show identical information to that given on the delivery ticket and in addition shall show the correct price per unit of each item.
- 1.2. Invoices shall be rendered to: Accounts Payable, Finance Department, University of Winchester, Sparkford Road, Winchester SO22 4NR.

2 Delivery/Invoicing

- 2.1. University of Winchester disclaims all responsibility for the security of goods delivered and left on its premises by the Seller if Seller should fail to obtain a receipt for their acceptance from a person authorised to receive them. Under no circumstances shall goods be left at any premises unattended.
- 2.2. Deliveries shall only be made during those hours when the establishment is normally open for the receipt of goods.
- 2.3. A delivery note shall be issued by the Seller in respect of each and every delivery made under the Agreement. The said note shall clearly and legibly state the full and proper description of the goods and quote the official order number.

The particulars required to be entered on any delivery note must be entered on the said ticket before the vehicle by which delivery is to be affected, commences its delivery journey. The said delivery note shall accompany the items from the place of loading to the place of delivery and it shall be handed to UOW's Agent before delivery is commenced.

- 2.4. Where a Value Added Tax Exemption Certificate is issued with the acceptance of a Tender, Value Added Tax should not be charged on invoices related to the contract.
- 2.5. The receiving establishment shall retain one copy of the delivery note/invoice. A duplicate copy may be signed and returned to the Seller by the person accepting the delivery.
- 2.6. It is the responsibility of the Seller to obtain a receipt for all goods delivered.
- 2.7. When required by UOW, the Seller shall supply the person making the delivery with a duplicate discrepancy book/pad onto which any discrepancy shall be noted. The top copy shall be left at the establishment with the invoice/delivery note.
- 2.8. Delivery is deemed not to have taken place until the goods have been offloaded off the delivery vehicle and placed in the relevant delivery area as stated on the purchase order.

3 Substitutions

- 3.1. The Contractor is expected to supply any product for which he has tendered and as is listed in the Tender Schedule attached, or, amended by agreement. If the Contractor is unable to supply the exact type of product requested he must inform University of Winchester, giving sound reason for his inability to do so, before delivery is due to be made. If the reasons given are unacceptable, then the Contractor shall supply a product to a specification acceptable to University of Winchester, and shall charge the product supplied at a price not exceeding that originally ordered.

4 Service Levels and Reports

- 4.1. The Contractor shall deliver and install on the days and times agreed with University of Winchester.
- 4.2. The Contractor shall provide management information to enable University of Winchester to satisfy itself that production is progressing to schedule to ensure delivery is on time.
- 4.3. All technical and commercial enquiries should be made to the Procurement Office.

5 Product Specification

- 5.1. All goods supplied shall be fit for purpose and in accordance with the detailed specification supplied with these documents amended, as appropriate in writing by the Tenderer before the closing date of the Tender.
- 5.2. British Standards or EU Standards shall apply.

6 Price

- 6.1. The basis of the Agreement shall be agreed fixed prices for the scheduled items including delivery, and if appropriate, installation and commissioning.
- 6.2. Where the contract includes installation on site, UOW will retain part or all of the contract price until completion of satisfactory commissioning of the goods.

7 Amendment to Prices

- 7.1. No prices may be amended after Tender, unless agreed with University of Winchester. The reasons for amendment (e.g. change in specification) must be agreed in writing.

8 Delivery

- 8.1. Delivery will be required to University locations stated in the Technical Specification with installation and fitting as required. All packing and other waste material must be removed by the Contractor. The successful Contractor will be provided with delivery and installation instructions.
- 8.2. Where the contract includes installation of goods, Seller must provide details of all services required as well as full details of space requirements, weights and any other relevant information. Seller must satisfy himself prior to acceptance of contract that the proposed site is suitable for the installation.

9. Appendix 1 – Variation to Contract Form

(See Condition 27)

Contract XX/XXXX/XX**Variation No:****Date:/...../.....****Between**

University of Winchester (hereinafter called 'UOW')

and

(hereinafter called 'the Contractor')

1. The contract is varied as follows:

2. Words and expressions in this variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous variations, shall remain effective and unaltered except as amended by this variation.

On behalf of University of Winchester ('UOW')

Signed:

Job Title:

Full Name:.....

Date:

On behalf of ('The Contractor')

Signed:

Job Title:

Full Name:

Date:

10. Appendix 2 – Non-Disclosure Agreement

The purpose of this Agreement is to establish the rights and interests of the Parties which have executed it below.

Whereas, either party may be disclosing to ('Disclosing Party'), and/or receiving from ('Receiving Party') the other party certain confidential and proprietary information including, but not limited to, business operations, processes, plans, intentions, production information, know-how, designs, trade secrets, market opportunities, customers, costs, prices, business plans, details of corporate organisation and corporate financial information and any other information or data of whatever kind whether in physical, electronic, written or oral form, all of which is referred to herein as 'information', and

Whereas, for the purpose of evaluating a potential business relationship, the parties are each willing to disclose and receive information under the term and conditions specified below:

- i. Each party agrees to maintain all information received from the other party, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such information to any third party without the prior written consent from the Disclosing Party. Each party further agrees to use the information only for the purpose set forth above. Information shall be deemed confidential regardless of the fact it is not marked as such if given in writing or, if given orally, identified as confidential orally prior to disclosure.
- ii. The Receiving Party's obligation of non-disclosure under this Agreement shall not apply to information which
 - (a) is or becomes a matter of public knowledge through no fault or action by the Receiving Party;
 - (b) was rightfully in the Receiving Party's possession prior to receipt from the Disclosing Party;
 - (c) subsequent to disclosure, is rightfully obtained by the Receiving Party from a third party who is lawfully in possession of such information without restrictions.
 - (d) is independently developed by the Receiving Party without resort to information which is confidential under this Agreement, and can so be provided by written records; or
 - (e) is required by law or judicial order, provided that prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable in order to afford to Disclosing Party an opportunity to seek a protective order and that if such order cannot be obtained disclosure may be made without liability.

Whenever requested by the Disclosing Party, the Receiving Party shall immediately return to the Disclosing Party all manifestations of its information or, at the Disclosing Party's option, shall destroy all such information as the Disclosing Party may designate. The Receiving Party's obligation of confidentiality shall survive this Agreement for a period of five (5) years from the date this Agreement is executed by the last party to sign, and thereafter shall terminate and be of no further force or effect.

- iii. The Receiving Party agrees that this Agreement shall not be assigned without prior written consent from the Disclosing Party. No right or license is granted by the Disclosing Party to the Receiving Party except as expressly set forth in this Agreement. This Agreement is made under and shall be construed according to

the laws of England and Wales and supersedes all prior agreements between the parties, oral or written, concerning the disclosure of Information.

On behalf of University of Winchester

Name:.....Job Title:.....

Signed:.....Date:.....

On behalf of the Contractor

Name:.....Job Title:.....

Signed:.....Date:.....

Company.....

SECTION 5 – SELECTION CRITERIA AND TENDER SCHEDULES

- i) Schedule A: Company Details
- ii) Schedule B: Pricing Schedule
- iii) Schedule C: Invoicing Schedule
- iv) Schedule D: Grounds for Mandatory Exclusions

i) Schedule A: Company Details

Company Name:

Registered Address:

Trading Address:

.....

.....

.....

.....

.....

.....

.....

.....

Website:

Contact Name:

Job Title:

Telephone Number:

E-Mail Address:

Company Reg. No.:

VAT No.:

Name and Address of Parent or Holding Company (if Applicable):

.....

.....

.....

.....

ii) Schedule B: Pricing Schedule

Please complete the pricing schedule below. All tendered prices should be in £GBP and exclusive of VAT

Note: Please complete *Document 2*** with all pricing.**

iii) Schedule C: Invoicing Schedule

Discounts	Percentage (%)
Please detail below any additional discount for prompt or early payment of invoices	
7 days from approval of the equipment	
14 days from approval of the equipment	
21 days from approval of the equipment	
28 days from approval of the equipment	

Additional Discounts
Please advise any additional discount offered

iv) **Schedule D: Grounds for Mandatory Exclusion**

Please answer the following questions in full. If you have already completed questions on Grounds for Mandatory exclusions in a previous stage of this tender exercise you are not required to complete this section here.

Question number	Question	Response
2.1(a)	<p>Public Contract Regulations 57(1) and (2) The detailed grounds for mandatory exclusion of an organisation are set out on this webpage, which should be referred to before completing these questions.</p> <p>Please indicate if, within the past five years you, your organisation or any other person who has powers of representation, decision or control in the organisation been convicted anywhere in the world of any of the offences within the summary below and listed on the webpage.</p>	
	Participation in a criminal organisation.	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Corruption.	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Fraud.	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Terrorist offences or offences linked to terrorist activities	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Money laundering or terrorist financing	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
	Child labour and other forms of trafficking in human beings	Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes please provide details at 2.1(b)
2.1(b)	<p>If you have answered yes to question 2.1(a), please provide further details.</p> <p>Date of conviction, specify which of the grounds listed the conviction was for, and the reasons for conviction,</p> <p>Identity of who has been convicted</p> <p>If the relevant documentation is available electronically please provide the web address, issuing authority, precise reference of the documents.</p>	



2.2	If you have answered Yes to any of the points above, have measures been taken to demonstrate the reliability of the organisation despite the existence of a relevant ground for exclusion ? (Self Cleaning)	Yes <input type="checkbox"/> No <input type="checkbox"/>
2.3(a)	Regulation 57(3) Has it been established, for your organisation by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of any part of the United Kingdom or the legal provisions of the country in which the organisation is established (if outside the UK), that the organisation is in breach of obligations related to the payment of tax or social security contributions?	Yes <input type="checkbox"/> No <input type="checkbox"/>
2.3(b)	If you have answered yes to question 2.3(a), please provide further details. Please also confirm you have paid, or have entered into a binding arrangement with a view to paying, the outstanding sum including where applicable any accrued interest and/or fines.	

Please Note: The University reserves the right to use its discretion to exclude a potential supplier where it can demonstrate by any appropriate means that the potential supplier is in breach of its obligations relating to the non-payment of taxes or social security contributions.

Modern Slavery Act 2015

The University of Winchester takes its responsibility around Modern Slavery extremely seriously. With this in mind we require all suppliers to answer the following questions:

Section 7 Modern Slavery Act 2015: Requirements under Modern Slavery Act 2015		
7.1	Are you a relevant commercial organisation as defined by section 54 ("Transparency in supply chains etc.") of the Modern Slavery Act 2015 ("the Act")?	Yes <input type="checkbox"/> N/A <input type="checkbox"/>
7.2	If you have answered yes to question 7.1 are you compliant with the annual reporting requirements contained within Section 54 of the Act 2015?	Yes <input type="checkbox"/> Please provide the relevant url ... No <input type="checkbox"/> Please provide an explanation

FORM OF OFFER

..... (the Tenderer) of
.....

AGREES

1. that this Offer and any contract arising from it shall be subject to the Conditions of Tender and Conditions of Contract issued with the Invitation to Tender; and
2. to supply goods/services of the exact quality, sort and price specified in the Tender Schedule in such quantities to such extent and at such times and locations as ordered,
3. that this Tender is made in good faith and that we have not fixed or adjusted the amount of the Tender by or in accordance with any agreement or arrangement with any other person. We certify that we have not, and we undertake that we will not
 - (a) communicate to any person other than the person inviting these Tenders the amount or approximate amount of the Tender, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain quotations required for the preparation of the Tender, for insurance purposes or for a contract guarantee bond;
 - (b) enter into any arrangement or agreement with any other person that he shall refrain from making a Tender or as to the amount of any Tender to be submitted;
4. that Acceptance of this Offer by UOW is effective upon the receipt of valid Purchase Order raised by UOW incorporating UOW's Standard Terms & Conditions for the Purchase of Goods, and where there is any conflict between these Conditions and UOW Standard Terms and Conditions it is intended that these Conditions shall prevail.

Name (print)

Signature

Title

Company

Date

Consultancy agreement

(1) University of Winchester

and

(2) [Name of Consultancy]

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THIS AGREEMENT is made on [date]

PARTIES

- (1) University of Winchester a company limited by guarantee registered under the laws of England and Wales (company number 05969256), whose registered office is at Sparkford Road, Winchester, SO22 4NR (the **University**); and
- (2) [Name of Consultancy], a company incorporated in England with registered number [insert company number] whose registered office is at [address] (the **Consultancy**).

BACKGROUND

- A The University wishes to engage the Consultancy to provide [insert description] services to the University on the terms and conditions of this Agreement.
- B The Consultancy is willing to provide [insert description] services to the University on the terms and conditions of this Agreement.

THE PARTIES AGREE:

1 Definitions and interpretation

- 1.1 In this Agreement, unless the context requires otherwise, the following words and phrases have the meanings set opposite them:

Agreement	this Agreement including the schedule;
Bribery Legislation	the Bribery Act 2010, associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all applicable UK legislation, statutory instruments, regulations, codes and sanctions relating to anti-bribery and anti-corruption and all relevant legislation in any other relevant jurisdiction;
Business Day	a day other than a Saturday or Sunday, on which banks are open for normal business in England;
Commencement Date	[enter date] (notwithstanding the date(s) of execution of this Agreement);
Confidential Information	all information or data (in whatever form) of a confidential or proprietary nature disclosed to or received by the Consultancy and/or the Individual (by any means) or to which the Consultancy and/or the Individual has access, whether or not labelled or designated as confidential, relating to the products, services, business or proposed business, finances, transactions, workforce and affairs of the University or any customer, supplier, employee or client of any

such company, including Intellectual Property Rights, trade secrets, information in respect of which the University is bound by an obligation of confidentiality to a third party and any other information which is designated as confidential by the University or which the Consultancy and/or the Individual should reasonably be aware is confidential;

Deemed Employment Engagement

an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies;

Engagement

the engagement of the Consultancy by the University in accordance with the terms of this Agreement;

Fee

the meaning given to it in Clause 6.1;

Individual

[Insert name and address of individual]

Insurance Policies

commercial general liability insurance cover, and employer's liability insurance cover and public liability insurance cover;

Intellectual Property Rights

any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, the right to sue for passing off, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not,
- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future, and
- (e) wherever existing;

Interest Rate

two per cent. per annum above the base rate of the Bank of England base rate from time to time;

Personal Data

any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to:

- (a) an identifier such as a name, an identification number, location data or an online identifier, or
- (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual;

Services

the services defined in the schedule to this Agreement and such other services as may be agreed from time to time between the Consultancy and the University;

Termination Date

the date of termination of this Agreement for whatever reason;

University Representative

[name/title of UoW officer who Consultancy will report directly to];

Work

without limitation any and all works of authorship, products, materials, discoveries, inventions, research, processes, systems, programs (including software programs and source code), formulae, component lists, operating and training manuals, databases, instructions, manuals, brochures, catalogues, process descriptions, know-how, data, diagrams, charts, results, reports, information, methodologies, ideas, concepts, designs, documents, models, prototypes, sketches, drawings, plans, photographs, specifications and studies created or developed by the Consultancy and/or the Individual in providing the Services (either alone or jointly with others).

1.2 In this Agreement:

- 1.2.1 the schedule is incorporated into and forms part of this Agreement.
- 1.2.2 any reference to this Agreement or to any other document will include its Schedules, appendices and annexes (if any) and any permitted variation or amendment to this Agreement or such other document;
- 1.2.3 any reference to a Clause or Schedule is, except where expressly stated to the contrary, reference to the relevant Clause of or Schedule to this Agreement;
- 1.2.4 the table of contents, background section and any Clause, Schedule or other headings and the use of bold type in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- 1.2.5 a reference to any statute, statutory instrument, order, regulation or other similar instrument (including any EU order, regulation or instrument) will be construed as including references to any

statutory modification, consideration or re-enactment of that provision (whether before, on or after the date of this Agreement) for the time being in force, including all instruments, orders or regulations then in force and made under or deriving validity from that legislation;

- 1.2.6 the words 'include', 'including', 'in particular' or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.7 the use of the singular includes the plural and vice versa and a reference to one gender includes a reference to the other gender;
- 1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.9 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.10 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.11 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

2 Commencement and duration of engagement

Subject to the terms of this Agreement, the Consultancy's engagement will commence on the Commencement Date and will continue until earlier of **[insert date]**, when it will automatically terminate. The University may at any time prior to the completion of the Services give to the Consultancy not less than **[insert number]** months' notice in writing terminating this Agreement.

3 Provision of services

- 3.1 During the Engagement, the Consultancy will, and (where appropriate) will procure that the Individual will:
 - 3.1.1 provide the Services to the University with all due care, skill and diligence and use its or the Individual's best endeavours to promote the interests of the University;
 - 3.1.2 provide the Services to the University on such days and at such times and in such places as may be required by the University from time to time for up to **[number] [hours per week / days per month]** together with such additional time as may be necessary for the proper provision of the Services except that the University reserves the right to alter the number of days that it requires the Consultancy to provide the Services at its absolute discretion by giving to the Consultancy not less than **[number]** months' prior written notice of such alteration;
 - 3.1.3 keep the University Representative informed of progress on projects in which the Consultancy and/or the Individual is engaged by reference to the agreed milestones set out in the schedule and will produce all such information and reports in such form as the University Representative may require from time to time.
- 3.2 The Consultancy acknowledges that the University will be relying upon its and the Individual's skill, expertise and experience in the **[insert area of expertise]** field and undertakes to the University that:

- 3.2.1 it will, and will procure that the Individual will, provide the Services in the manner and to the standard specified by the University;
 - 3.2.2 all advice and information given, all representations and statements made, and all documents provided by the Consultancy and the Individual will be accurate and appropriate for their purpose;
 - 3.2.3 all intellectual property and information provided by the Consultancy and the Individual will be accurate and appropriate for its purpose.
- 3.3 The Consultancy will immediately notify the University if, for any reason, either it or the Individual is unable to provide the Services as required by the University in accordance with Clause 3.1, specifying, in writing if so required by the University, the relevant reason or reasons.
- 3.4 While the Consultancy's (and the Individual's) method of work is its own, the Consultancy will, and will procure that the Individual will, comply with the reasonable requests of the University Representative and will work and co-operate with any servant or agent or other consultant of the University as may be necessary for the provision of the Services.
- 3.5 The Consultancy will not, and will procure that the Individual will not:
- 3.5.1 hold itself and/or the Individual out as having authority to bind the University; nor
 - 3.5.2 have any authority to incur any expenditure in the name of or on behalf of the University,
- unless the Consultancy or the Individual has obtained the prior written consent of the University
- 3.6 The Consultancy may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions that are reasonably incidental to the provision of the Services provided that the University will not be liable to pay the cost of such functions.
- 3.7 The Consultancy will, and will procure that the Individual will at all times comply with the University's health and safety policies and procedures.
- 3.8 The Consultancy will, at its own cost, keep any instruments, equipment, and/or computer equipment and electronic devices it or the Individual provides in relation to the provision of the Services in a safe and proper operating condition.
- 3.9 Where the Consultancy is obliged to provide computer equipment in relation to the provision of the Services, it is a condition of this Agreement that:
- 3.9.1 such computer equipment, including any storage devices and storage media used with it, are free of any virus or malware; and
 - 3.9.2 the Consultancy will, and will procure that the Individual will, on the Commencement Date and from time to time as required by the University, make such computer equipment available for audit by the University's IT department, or equivalent person, for verification of Clause 3.9.1; and
 - 3.9.3 the Consultancy will not, and will procure that the Individual will not, connect such computer equipment to the University's computer network.
- 3.10 Where necessary for the provision of the Services, the University will supply the necessary computer software for loading onto such computer equipment. All such computer software remains the University's property at

all times and upon termination of this Agreement the Consultancy will, and will procure that the Individual will, surrender such software in accordance with the provisions of Clause 19 (Obligations on termination).

- 3.11 If the Individual is required to travel abroad in connection with the provision of the Services, the Consultancy will be solely responsible for compliance with any necessary insurance, inoculation and/or immigration requirements.
- 3.12 The Consultancy will, and will procure that the Individual will, promptly give to the University all information, documentation and materials as it may reasonably require from time to time in order for the University to determine from time to time whether the Engagement is a Deemed Employment Engagement and, if the University does so determine, in order for the University to comply with any obligation to deduct tax and National Insurance contributions (NICs) from the Fee. The Consultancy will also, and will procure that the Individual will also, promptly advise the University of any material change to any information, documentation or materials previously provided under this clause, and will also promptly give to the University any other information, documentation and/or materials which the Consultancy or the Individual considers (or ought reasonably to consider) relevant to determining whether the Engagement is a Deemed Employment Engagement.
- 3.13 The Consultancy will, and will procure that the Individual will, comply with the University's status disagreement process, notified to the Consultancy from time to time, for resolving any disagreement over any determination made by the University as to whether the Engagement is a Deemed Employment Engagement.

4 Right to provide a substitute

The Consultancy may at any time, with the prior written approval of the University, appoint a substitute with equivalent skill and expertise to perform the Services instead of the Individual (the **Substitute**). The Consultancy will be required to produce to the University evidence of undertakings between it and the Substitute, including with regard to confidentiality in accordance with Clause 11 before the Substitute may be approved. If the University accepts the Substitute, the Consultancy will provide an overlap period of up to **[ten]** working days during which the Individual will ensure that the Substitute fully understands the requirements of the University and the work involved in the provision of the Services. The Consultancy will not charge the University any extra fee for this overlap period. The Consultancy will continue to invoice the University in accordance with Clause 6.2 and will be responsible for the remuneration of the Substitute. Any reference in this Agreement to the 'Individual will include any Substitute appointed in accordance with this clause, except where expressly stated to the contrary.

5 Outside interests and protection of business interests

- 5.1 The Consultancy warrants that:
- 5.1.1 neither the Consultancy nor the Individual will, as a consequence of entering into and performing this Agreement, be in breach of any express or implied terms of any contract, agreement or other arrangement with, or any obligation to, any third party binding upon the Consultancy and/or the Individual; and
- 5.1.2 there is no contract, obligation, or other arrangement or interest that will or may give rise to any conflict of interest between the Consultancy and/or the Individual and the University in relation to the provision of the Services.

- 5.2 The Consultancy will, and will procure that the Individual will, use all reasonable endeavours to avoid a conflict of interest arising between the Consultancy and/or the Individual and the University and the Consultancy undertakes to notify the University as soon as reasonably practicable should any actual or potential conflict of interest arise.
- 5.3 Subject to Clauses 5.4 and 5.5, the Consultancy and the Individual and any of the Consultancy's directors may have any interest in or advise or act as a consultancy to any business provided that the Consultancy will not, and will procure that the Individual will not, during the period of the Engagement without the prior written consent of the University undertake any other activities or accept other employment or engagement with any business which may interfere with or detract from the proper provision of the Services or prejudice the interests of the University. In the event of a conflict between the Consultancy's or the Individual's obligations to the University under this Agreement and obligations to any third party, obligations to the University will take precedence.
- 5.4 The Consultancy will not, and will procure that the Individual will not, during the Engagement and for the period of 12 months after the Termination Date use, or otherwise turn to its or the Individual's advantage, its or the Individual's knowledge of or any connection with any of the customers of or suppliers to the University which it or the Individual acquired during the Engagement so as to take any direct or indirect advantage of the business and other connections of the University except for the University's advantage except where the Consultancy has a pre-existing relationship with the customers or suppliers as at the Commencement Date.
- 5.5 The Consultancy will not, and will procure that the Individual will not, receive or obtain directly or indirectly any discount, rebate, commission or other benefit in respect of any goods or services supplied to or acquired by the University or any other business transacted by it and if it and/or the Individual does receive any such discount, rebate, commission or other benefit the Consultancy and/or the Individual will account to the University for it immediately.
- 5.6 The Consultancy will not without the prior written consent of the University, whether as principal, employee, agent, consultancy or otherwise, either during the Engagement or at any time during the period of 12 months following the Termination Date directly or indirectly solicit or endeavour to solicit away from the University or employ or engage any person with whom the Individual and/or the Consultancy has had dealings or contact (other than on a *de minimis*) basis in the course of the Engagement and who is at the Termination Date, or was at any time during the period of 12 months prior to the Termination Date, employed or engaged by the University in an executive and/or senior managerial capacity.
- 5.7 The Consultancy will not without the prior written consent of the University, whether as principal, employee, agent, consultancy or otherwise, either during the Engagement or at any time during the period of 12 months following the Termination Date, in competition with any business or businesses of the University, carried on at the Termination Date directly or indirectly solicit or endeavour to solicit the custom of any person, firm or company who at any time during the 12 months prior to the Termination Date was a customer of the University and with whom or with which the Individual and/or the Consultancy dealt or has had contact (other than on a *de minimis* basis) or for whom or for which the Individual was responsible on behalf of the University within the said period other than clients or customers with whom the Consultancy had already had dealings prior to the Engagement and/or whom the Consultancy introduced to the University.
- 5.8 The Consultancy acknowledges (having taken appropriate legal advice) that the provisions of this Clause are fair and reasonable and necessary to protect the goodwill and interests of the University and will constitute separate and severable undertakings given for the benefit of the University.
- 5.9 The Consultancy warrants that the Individual has given undertakings to the Consultancy in the same terms as this Clause 5.

6 Fees

- 6.1 The University will pay to the Consultancy, in consideration of the provision of the Services, a consultancy fee of £[insert] per day exclusive of Value Added Tax (if applicable), less any deductions for tax or National Insurance contributions (NICs) as required by law in accordance with the determination made by the University as to whether the Engagement is a Deemed Employment Engagement (the Fee), within 30 days of receipt of an invoice submitted in accordance with Clause 6.2.
- 6.2 The Consultancy will render invoices as set out in the schedule to the University in respect of the Fee, which gives details of the Services that have been provided, the amount of the Fee payable and, where the Consultancy is registered for VAT, will show any VAT separately.
- 6.3 The Consultancy will keep time sheets showing the hours worked by the Individual in respect of the provision of the Services and will if so requested produce them to the University for accounting purposes.
- 6.4 Where the University disputes in good faith on reasonable grounds any sum invoiced by the Consultancy, the University may withhold payment in respect of the amount under dispute, pending resolution of the dispute.

If any invoice (or any part of an invoice) remains unpaid at the due date for payment, such invoice will bear interest at the Interest Rate from the day after the due date for payment up to (and including) the date of payment of the invoice in full. If: (i) any sum invoiced by the Consultancy is disputed by the University in accordance with Clause 6.4 and (ii) the parties agree that such sum will not be payable by the University to the Consultancy, then interest will be deemed not to have accrued in respect of that sum.

- 6.5 Payment by the University will be without prejudice to any claims or rights which the University may have against the Consultancy and/or the Individual and will not constitute any admission by the University as to the provision of the Services by the Consultancy and/or the Individual under this Agreement.
- 6.6 The University will be entitled to deduct from the Fee (and any other sums) due to the Consultancy any sums that the Consultancy and/or the Individual may owe to the University at any time, including any sum under dispute in accordance with Clause 6.4, subject to such deductions being notified to the Consultancy in writing not less than seven days before they are made.
- 6.7 For the avoidance of doubt, in the event that no Services are required, or if the Consultancy fails to provide the Services via the provision of the Individual (whether by reason of illness, accident or other incapacity, or for any other reason), no Fee will be payable.

7 Expenses

The Consultancy will be responsible for all out-of-pocket expenses and normal overhead expenditure incurred by it in the performance of its duties under this Agreement. For the avoidance of doubt the Consultancy will not be reimbursed separately for these expenses.

8 Tax and National Insurance contributions

- 8.1 The Consultancy will, as far as is required by law, be responsible for and will account to the appropriate authorities for all income tax liabilities and National Insurance contributions (NICs) or similar contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with fees paid and/or benefits provided as a result of the performance of the Services and/or any payment or benefit received by the Individual and/or any Substitute in respect of the Services.

- 8.2 Where the Engagement is a Deemed Employment Engagement, the University will be permitted to make any such deductions for tax or NICs from the Fee as required by law in accordance with the determination made by the University, as set out in Clause 6.1.
- 8.3 If any claim, assessment or demand is made against the University for payment of any income tax or NICs or other similar contributions arising from or due in connection with either the performance of the Services or any payment or benefit received by the Consultancy and/or the Individual in respect of the Services, the Consultancy will, where such recovery is not prohibited by law, indemnify the University against any liability, claim, assessment or demand. The Consultancy will further indemnify the University against all costs and expenses and any penalty, fine or interest incurred or payable or paid by the University in connection with or in consequence of any such liability, assessment or claim.
- 8.4 The University may, at its sole discretion, satisfy the indemnity in Clause 8.3 (in whole or in part) by way of deduction from any payments to be made by the University to the Consultancy.
- 8.5 The Consultancy warrants that it is not, nor will it prior to the cessation of this Agreement become, a managed service company within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.
- 8.6 The Consultancy warrants that the Individual has a material interest in the Consultancy, within the meaning of section 51(3)–(4) of the Income Tax (Earnings and Pensions) Act 2003.

9 No employment or benefits

- 9.1 While acting as a consultant for the University, the status of the Consultancy will be that of an independent contractor and as such the Consultancy and/or the Individual and/or anyone else who works for the Consultancy will not be entitled to any pension, bonus, holiday, sickness or other fringe benefits from the University and nothing in the terms of this Agreement will render the Consultancy or the Individual an agent, officer, employee, worker or partner of the University and the Consultancy will not hold itself out as such, and will procure that the Individual will not hold himself out as such.
- 9.2 The Consultancy will be fully responsible for, and will indemnify the University for and in respect of any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual, anyone engaged by Consultancy and/or any Substitute against the University arising out of or in connection with the provision of the Services.

10 Liability, indemnity and insurance

- 10.1 The Consultancy will be liable for any loss, liability, costs (including reasonable legal costs), damages or expenses incurred by the University in connection with the provision of the Services including for breach by the Consultancy of applicable data protection legislation and will accordingly maintain in force at all times during the term of this Agreement and for a period of [5] years after the termination or expiry of this Agreement at its own cost, full and comprehensive Insurance Policies in respect of the provision of the Services.
- 10.2 The Consultancy will ensure that the Insurance Policies are taken out in its name with reputable insurers acceptable to the University and that the level of cover and other terms of insurance are acceptable to and agreed by the University.
- 10.3 The Consultancy will produce for inspection by the University on the Commencement Date and at any time on request by the University a copy of the Insurance Policies and/or relevant renewal confirmation.
- 10.4 The Consultancy agrees to indemnify and keep indemnified the University against any loss or costs (including legal costs on an indemnity basis), charges and other expenses of any nature whatsoever incurred or suffered

by the University whether direct or consequential (including such arising in consequence of a claim brought against the University by one of its employees or a third party) in consequence of any breach of the undertakings in Clause 3.2 or of any of the terms of this Agreement and/or any negligence on the part of the Consultancy and/or the Individual in connection with the provision of the Services.

11 Confidential Information

11.1 Except in the proper performance of its obligations under this Agreement, the Consultancy will not, and will procure that the Individual will not, during the period of this Agreement or at any time after the Termination Date, without the prior written approval of the University (such approval not to be unreasonably withheld), use for its or the Individual's own benefit or for the benefit of any other person, firm, company or organisation or directly or indirectly divulge or disclose to any person (and must use best endeavours, and will procure that the Individual will use best endeavours, to prevent publication or disclosure of) any Confidential Information which has come, or may come, to the Consultancy's or the Individual's knowledge during or in connection with the Engagement.

11.2 The Consultancy will not, and will procure that the Individual will not, during the period of this Agreement make (otherwise than for the benefit of the University) any notes, memoranda, records, tape recordings, computer programs or any other form of record relating to any matter within the scope of the business of the University or concerning any of the dealings or affairs of the University.

11.3 The restrictions contained in this Clause 11 will not apply to:

11.3.1 any Confidential Information which is already in or (otherwise than through the Consultancy's or the Individual's unauthorised disclosure) becomes available to, or within the knowledge of, the public generally; and

11.3.2 any use or disclosure authorised by the University or required by law.

11.4 The Consultancy warrants to the University that the Individual has given or will give written undertakings, in the same terms as those contained in this Clause 11, to the Consultancy.

12 Intellectual property

12.1 The Consultancy warrants to the University that it:

12.1.1 has obtained from the Individual a written and valid transfer in favour of the Consultancy by way of present and future assignment with full title guarantee of all the Intellectual Property Rights in the Work:

- (a) existing anywhere in the world;
- (b) relating to their use in any sector and for any purpose;
- (c) for the full term of such rights and any renewals;
- (d) including (with effect from their creation) all Intellectual Property Rights created or developed in future by the Individual in respect of the Services.

12.1.2 has obtained from the Individual a written waiver in favour of the Consultancy of their moral rights in the Work under the Copyright Designs and Patents Act 1988 (and all analogous legislation worldwide) to the extent permitted by law;

and the Consultancy agrees to provide to the University a copy of the above transfer(s) and waiver(s) on or before the Commencement Date or, if later, the date on which the relevant individual starts to provide the Services.

- 12.2 In consideration of the University paying the Fee to the Consultancy, the Consultancy hereby transfers to the University by way of present and future assignment with full title guarantee all the Intellectual Property Rights in the Work:
- 12.2.1 anywhere in the world;
 - 12.2.2 in any sector and for any purpose;
 - 12.2.3 for the full term of such rights and any renewals;
 - 12.2.4 including (with effect from their creation) all Intellectual Property Rights created or developed in future by the Consultancy and/or the Individual in respect of the Services.
- 12.3 For Work in respect of which Intellectual Property Rights are assigned to the University pursuant to Clause 12.2, the Consultancy will waive its, and will procure the waiver by all third parties of their, moral rights in such Work under the Copyright, Designs and Patents Act 1988 (and all analogous legislation worldwide) to the extent permitted by law.
- 12.4 The Consultancy will, at the expense of the University, at any time either during or after the Engagement give assistance and do all acts and things as may be in the opinion of the University necessary or desirable to give the full benefit of this Agreement to the University including registration of the University as applicant or (as applicable) proprietor of the Intellectual Property Rights; and assisting the University in obtaining, defending and enforcing the Intellectual Property Rights, and assisting with any other proceedings which may be brought by or against the University against or by any third party relating to the Intellectual Property Rights. The Consultancy confirms that the Individual has given or will give written undertakings in the same terms to the Consultancy.
- 12.5 The Consultancy hereby irrevocably and by way of security appoints the University Representative for the time being of the University to be its attorney for the purposes of the Powers of Attorney Act 1971, with authority to do all such things and to execute all such documents in its name and on its behalf, as may be necessary to secure that the full benefit and advantage of Clauses 12.2, 12.3 and 12.4 of this Agreement and a letter signed by any director or secretary of the University certifying that any thing or any document has been done or executed within the authority conferred by this clause will be conclusive evidence of it.
- 12.6 The Consultancy warrants that it will not in the course of providing the Services infringe the Intellectual Property Rights of any other person. The Consultancy confirms that the Individual has given a written warranty in the same terms to the Consultancy.
- 12.7 The Consultancy will indemnify and keep indemnified and hold harmless the University from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the University as a result of or in connection with any action, demand or claim that any of the Intellectual Property Rights or Work provided under this Agreement infringe the intellectual property rights of any third party.
- 13 Data protection and freedom of information**
- 13.1 In order for the University to enter into and perform its obligations under this Agreement, the Consultancy will provide the University with certain personal data relating to the Individual that the University will process in accordance with the University's data protection privacy notice issued to the Individual.

- 13.2 The Consultancy will comply, and will procure that the Individual complies, with the University's data protection policy and other relevant policies, including in relation to criminal records information, internet, email and communications, information security, bringing your own device (BYOD).
- 13.3 Without prejudice to the generality of Clause 13.2, the Consultancy will, and will procure that the Individual will, in relation to any Personal Data processed in connection with the Engagement:
- 13.3.1 co-operate fully with the University in order to enable the University to comply with its obligations under applicable data protection legislation;
 - 13.3.2 keep the Personal Data confidential;
 - 13.3.3 implement and maintain appropriate technical and organisational measures, reviewed and approved by the University if it so requires, to protect against unauthorised and unlawful processing of Personal Data and against accidental loss and destruction of, or damage to, Personal Data;
 - 13.3.4 process any Personal Data disclosed to the Consultancy and/or the Individual by or on behalf of the University only:
 - (a) on the written instructions of the University;
 - (b) for the purposes of providing the Services; and
 - (c) for the purposes for which that Personal Data was obtained and is processed by the University;
 - 13.3.5 maintain complete and accurate records and information to demonstrate compliance with applicable data protection legislation and immediately provide such evidence of compliance by the Consultancy and/or the Individual with the obligations under this Clause 13.3 as the University may from time to time reasonably request;
 - 13.3.6 immediately upon notification by the University, take all appropriate action to enable the University to properly comply with any request from a data subject in relation to access to and/or rectification or erasure of Personal Data;
 - 13.3.7 immediately notify the University of any data breach relating to Personal Data or any communication which relates to the University's or the Consultancy's compliance with applicable data protection legislation about which the Consultancy and/or the Individual becomes aware; and
 - 13.3.8 at the University's written request, delete or return all Personal Data and any copies on termination of the Engagement, unless required to store the Personal Data under applicable data protection legislation;
- 13.4 The University will process Personal Data and sensitive personal data (also known as 'special categories of personal data') and [criminal records] data relating to the Individual in accordance with its data protection policy and its [criminal records information policy] available from [insert title] and the data protection privacy notice to be provided to the Individual.
- 13.5 The University may monitor the activities of all staff (including consultants providing services to it) in accordance with its policies relating to *email*, internet and communications systems and monitoring at work], available from [insert title].
- 13.6 The Consultancy acknowledges that the University is subject to the requirements of the Freedom of Information Act 2000 (the **FOIA**) and the Environmental Information Regulations 2004 (the **EIRs**) and that, in

accordance with the University's obligations under the FOIA and the EIRs, the University may be required to disclose confidential information or Personal Data about the Individual.

- 13.7 In the event that the University receives a request for information pursuant to FOIA or the EIRs, the Consultancy acknowledges that responsibility for determining whether the information requested should be disclosed or may be withheld in accordance with FOIA or the EIRs lies with the University at its absolute discretion.
- 13.8 The University will inform the Consultancy as soon as reasonably practicable of the receipt of any request for information that may include personal data about the Individual, and will consider whether it has a lawful basis for disclosing the Individual's personal data (and, if applicable, whether it can rely on a specific condition for disclosing the Individual's special categories of personal data) in accordance with the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018.

14 Anti-bribery and corruption

14.1 The Consultancy will, and will procure that the Individual will:

14.1.1 comply with the Bribery Legislation;

14.1.2 not engage in any activity, conduct or practice which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, conduct or practice had been carried out in the United Kingdom;

14.1.3 ensure that it has in place adequate procedures to ensure compliance with the Bribery Legislation and comply with any University policies relating to prevention of bribery and corruption (as updated from time to time).

14.2 Without limitation to the above sub-clause, neither party will make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or other improper payment to be made or received on its behalf, either in the United Kingdom or elsewhere, and each party will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

14.3 Each party will ensure that:

14.3.1 all of that party's personnel;

14.3.2 all others associated with that party; and

14.3.3 all of that party's subcontractors

involved in performing the Services or with this Agreement comply with the obligations set out in Clauses 14.1 and

14.2.

14.4 In this Clause 14, the expressions '**adequate procedures**' and '**associated**' will be construed in accordance with the Bribery Act 2010 and documents published under it.

15 Tax evasion facilitation prevention

15.1 For the purposes of this Clause 15:

15.1.1 the expressions '**Associated With**', '**Prevention Procedures**', '**UK Tax Evasion Offence**' and '**Foreign Tax Evasion Offence**' will be construed in accordance with Part 3 of the Criminal Finances Act 2017 (**CFA 2017**) and guidance published under it;

15.1.2 **Corporate Failure to Prevent Offence** means an offence under section 45 and/or section 46 of CFA 2017 and any other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to preventing the facilitation of tax evasion and any similar or equivalent laws in any other relevant jurisdiction;

15.1.3 **Consultancy Associated Persons** means all or any of the following:

(a) persons Associated With the Consultancy (**Consultancy's Associates**); and

(b) persons Associated With any of the Consultancy's Associates;

in each case, involved in performing services for the Consultancy or on the Consultancy's behalf in connection with the Services and this Agreement.

15.2 The Consultancy will ensure that the Consultancy and the Consultancy Associated Persons will not by any act or omission commit, or cause, facilitate or contribute to the commission by any person including the University, of a:

15.2.1 Corporate Failure to Prevent Offence;

15.2.2 UK Tax Evasion Offence; or

15.2.3 Foreign Tax Evasion Offence

in connection with the performance of the Services and this Agreement.

15.3 The Consultancy will not and will ensure that all Consultancy Associated Persons will not, solicit or engage with or take steps to solicit or engage with any person Associated With the University to facilitate the commission of a UK Tax Evasion Offence or a Foreign Tax Evasion Offence in connection with the performance of the Services and this Agreement.

15.4 The Consultancy will, and will procure that Consultancy Associated Persons will, pay, in full and in a timely manner, all taxes due and payable relating to all monies, remuneration, profit and value received or payable by the Consultancy and/or any Consultancy Associated Persons in connection with the performance of the Services and this Agreement.

15.5 Without prejudice to Clause 15.2, the Consultancy will ensure that:

15.5.1 the Consultancy and all relevant Consultancy Associated Persons have in place such **Prevention Procedures** as it is reasonable in all the circumstances to expect the Consultancy and such persons to have in place to prevent any breach of this Clause 15 and the Consultancy will provide the University on request with copies of these policies (and prompt notice of any material changes to the same from time to time); and

15.5.2 the Consultancy and all relevant Consultancy Associated Persons will comply with the University's Prevention Procedures as notified to the Consultancy from time to time.

- 15.6 The Consultancy warrants and represents that Consultancy has not, and no Consultancy Associated Person has:
- 15.6.1 been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence;
 - 15.6.2 received any court orders, warrants or oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence; or
 - 15.6.3 received any report (including a report from auditors, any Consultancy Associated Person or any other person) or discovered any evidence suggesting that the Consultancy or any Consultancy Associated Person has committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence.
- 15.7 The Consultancy must immediately notify the University as soon as the Consultancy becomes aware of any allegation, investigation, evidence or report relating to a breach or possible breach of any of the requirements in this Clause 15.

16 Obligations of the University

- 16.1 During the Engagement the University will afford the Consultancy and the Individual such access to its premises during its normal working hours only and to information, records and other materials of the University as may be necessary to enable the Consultancy and the Individual to provide the Services.
- 16.2 The University will:
- 16.2.1 advise the Consultancy and the Individual of the rules and regulations from time to time in force for the conduct of personnel at its premises and the Consultancy will ensure that the Individual complies with any such rules and regulations;
 - 16.2.2 make available such working space and facilities at its premises as the University deems necessary for the Consultancy and the Individual to provide the Services; and
 - 16.2.3 confer with the Consultancy and the Individual to schedule work to the best convenience of both parties.
- 16.3 The University will communicate to the Consultancy on the Commencement Date the identity of the person(s) or the department within the University who will act as the sole contact point and channel of communication for the provision by the Consultancy of the Services during the Engagement. The University will inform the Consultancy immediately any change in the identity of such person(s) or department.

17 Statements

The Consultancy will not, and will procure that the Individual will not, without the prior written consent of the University, such consent not to be unreasonably withheld, at any time whether during the Engagement or at any time after it ends make any public statement in relation to the University or its businesses, affairs, customers or clients or officers and employees and will not after the Termination Date represent itself and/or the Individual, and will procure that the Individual will not represent the Individual, as continuing to be engaged by or connected with the University.

18 Termination

- 18.1 Notwithstanding the provisions of Clause 2, the University may terminate this Agreement with immediate effect without liability to pay any fees, compensation or damages by written notice to the Consultancy if, at any time:
- 18.1.1 except in the circumstances set out in Clause 18.1.4, the Consultancy or the Individual commits any serious or repeated breach or non-observance of any of the terms or conditions of this Agreement; or
 - 18.1.2 the Consultancy and/or the Individual is in the reasonable opinion of the University Representative negligent or incompetent in the performance of the Services; or
 - 18.1.3 the Consultancy and/or the Individual is guilty of any act of fraud or dishonesty or acts in any manner which, in the opinion of the University Representative, brings or is likely to bring the Individual, the Consultancy and/or the University into disrepute and/or is materially adverse to the interests of the University; or
 - 18.1.4 the Individual is prevented by illness, injury or otherwise from providing the Services for an aggregate period of [insert number] Business Days in any period of [xx] months;
 - 18.1.5 a bankruptcy order is made against the Individual or the Individual compounds with or enters into any voluntary arrangement with creditors such that in the reasonable opinion of the University Representative the Consultancy is no longer able to provide the Services; or
 - 18.1.6 the Individual is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
 - 18.1.7 the Consultancy makes a resolution for its winding up, makes an informal arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding up order is made or an administrator or receiver is appointed in relation to the Consultancy such that in the reasonable opinion of the University Representative the Consultancy is no longer able to provide the Services; or
 - 18.1.8 any of the warranties set out in this Agreement being found to be inaccurate, misleading or untrue.

19 Obligations on termination

- 19.1 The Consultancy will, and will procure that the Individual will, immediately on the termination of this Agreement for any reason and at the request of the University at any time during the Engagement surrender to a person duly authorised by the University all computer programs, reports, manuals, files, notes, accounts, documents, correspondence, books, materials, papers and information (on whatever media and wherever located) any keys and any other property of the University or its business contacts that have been made or received by the Consultancy and/or the Individual during the course of providing the Services (whether under the terms of this Agreement or any other agreement or arrangement between the University and the Consultancy) and which are in the Consultancy's and/or the Individual's possession or under the Consultancy's and/or the Individual's control and which are the property of the University.
- 19.2 Immediately on the termination of this Agreement for any reason the Consultancy will, and will procure that the Individual will, having first returned the information to the University as required by Clause 19.1, irrevocably delete any remaining information relating to the business of the University stored in any magnetic

or optical drive or memory and all matter derived from such sources which is in its possession or under its control and is outside the premises of the University.

- 19.3 On the termination of this Agreement, the Consultancy will, and will procure that the Individual will, at the University's request, provide a signed statement that it has and the Individual has fully complied with this Clause 19.

20 Restrictions on assignment/sub-contracting

The University may freely assign, delegate, sub-contract or otherwise transfer its rights and obligations under this Agreement to any company with which it may merge or to any company to which it may transfer its assets and/or undertaking, provided that it gives prior written notice to the Consultancy. The Consultancy may not assign this Agreement or any of its rights and obligations under it without the prior written consent of the University. Where such consent is given, the Consultancy will not be relieved of liability for any non-performance by any assignee, agent or sub-contractor. Notwithstanding any sub-contracting, the Consultancy will remain primarily responsible for the acts and omission of its agents or sub-contractors as though such acts or omissions were its own.

21 Notices

- 21.1 Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement or email address set out below). Notices may be given, and shall be deemed received:

21.1.1 by first-class post: two Business Days after posting;

21.1.2 by airmail: seven Business Days after posting;

21.1.3 by hand: on delivery;

21.1.4 by email to [address] in the case of the Consultancy and [address] in the case of the University: on receipt of a delivery return email.

- 21.2 This clause does not apply to notices given in legal proceedings or arbitration.

22 Entire agreement

- 22.1 The parties agree that this Agreement and any documents entered into pursuant to it, together with the undertakings from the Individual to the Consultancy referred to in Clause 5.9 above, constitutes the entire agreement between them relating to the Engagement and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

- 22.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

- 22.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

23 Further assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

24 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party, except where the University determines it appropriate to vary the Engagement's status as a Deemed Employment Engagement.

25 Set off

Except as expressly set out in this Agreement, each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

26 No partnership or agency

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

27 Remedies and waiver

Any remedy or right conferred upon the University for breach of this Agreement will be in addition to and without prejudice to all other rights and remedies available to it. No failure, delay or omission by the University in exercising any remedy, right, power or privilege under or in relation to this Agreement will operate as a waiver of that or any other right, power, remedy or privilege of the University, nor will any single or partial exercise of any right, power, remedy or privilege preclude any other or further exercise of that or any other right, power, remedy or privilege.

28 Equitable relief

Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

29 Severance

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

30 Legal expenses

Each party to this Agreement will be responsible for their own legal and other costs and expenses in connection with the negotiation, preparation, execution and implementation of this Agreement.

31 Third party rights

31.1 The Contracts (Rights of Third Parties) Act 1999 will not apply to this Agreement and no person other than the University and the Consultancy will have any rights under it. For the avoidance of doubt the terms of this Agreement may be varied, amended or modified (whether in whole or in part) or this Agreement may be suspended, cancelled, terminated by agreement in writing between the University and the Consultancy or this Agreement may be rescinded in each case without the consent of any Third Party.

31.2 For the purposes of this Clause a '**Third Party**' means any person who is not a party to this Agreement.

32 Governing law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

33 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

EXECUTED as a deed by the parties and delivered on the date set out at the head of this Agreement.

INSERT EXECUTION PROVISIONS HERE - tbc

THE SCHEDULE

This Schedule describes the services to be performed by the Consultancy on the terms and conditions of this Agreement (the **Services**). Defined terms used in this Schedule shall have the meanings set out in the Agreement unless the context requires otherwise.

[Insert details of services or advice to be provided by the Consultancy to the University including:]

- *[Services to be provided by the Consultancy to the University;]*
- *[Location(s) where the Services are to be performed and any travel required;]*
- *[Milestones for completion of particular Services/projects;]*
- *[Reporting procedure]*
- *[Individual(s) responsible for the provision of the Services].*

[Set out detail of instalments for payment of the Fee]

GUIDELINES FOR USE OF CORPORATE CREDIT CARD

- 1) The card should be used exclusively for University business. Personal items should not be charged to the card.
- 2) The cardholder must keep personal possession of the card at all times; it must not be lent out. Similarly, the credit card number must not be disclosed to anyone except a supplier when making a purchase. The cardholder retains prime responsibility for all transactions recorded on the card.
- 3) The cardholder has a single transaction limit and a total card limit. These limits must not be exceeded.
- 4) The cardholder must keep full records of the transactions made. Each month the account statement must be forwarded to the cardholder along with a 'Natwest Business Card Expenses' form. The cardholder enters details of the transactions shown on the statement and provides supporting documentation. The form is then signed by the cardholders' line manager. The form is then returned to the Finance Department by the end of that month.
- 5) A nominated official in the Finance Department will ensure that the form is:-
 - Promptly sent out to the cardholder
 - Promptly sent back to the Finance Department
 - Properly authorised with full supporting documentation
- 6) A nominated official in the Finance Department will:-
 - Enter the transactions onto the financial system
 - Contact Nat West regarding any items charged to the card in error
 - Ensure payment is made by the bank
- 7) The card must be returned to the Finance Department when the cardholder leaves the employment of the University. The card is then cut up by the nominated official in the Finance Department who also writes a letter to Nat West to notify them that the card is no longer valid.
- 8) If the card is lost or stolen, the cardholder must inform Nat West immediately on 0870 909 3701. The loss/theft must also be notified to the Finance Department.
- 9) The Director of Finance can obtain the immediate return of the card from the cardholder at any time.

Cardholders name.....
Single transaction limit.....
Card limit.....
Line Manager.....

I have read the above conditions and agree to adhere to them; I also confirm receipt of the card.

Cardholders signature.....

PURCHASING CARD GUIDE

Purchasing Cards are similar to personal credit/debit cards and can be used as an alternative method of payment for low value orders. They should not be used when the requirement can be met using a purchase order. Currently the University of Winchester does not use these cards but were it to, detailed procedures will need to be established.

The Card can be used to pay for goods:

- ordered by telephone
- ordered via the Internet
- in person at the point of sale

Misuse of the Card

The card will only be used to procure goods and services on behalf of the University and must only be used by the named cardholder. All statements will be checked and any misappropriation of University funds will be treated in accordance with the rules and procedures for gross misconduct.

It will be the responsibility of the cardholder to ensure that:

- the card is kept in a safe place at all times
- the card is only used by the cardholder and not others in the Faculty/Professional Service
- all paperwork is completed correctly and on time.
- there is sufficient budget and the order value is within the cardholder's credit limit
- resolve any discrepancies/disputed transactions
- should the cardholder leave the University, the purchasing card must be returned to the cardholder's line manager who must witness that the card is destroyed.

Credit Limits

Credit limits (maximum single transaction limit and overall limit) are agreed prior to the card being issued.