

PROCUREMENT POLICY AND PROCEDURES



Document Title:	<i>Procurement Policy and Procedures</i>
Document Author:	Simon Day
Responsible Person and Department:	Simon Day, Finance
Approving Body:	SMT
Date of Approval:	23 rd May 2016
Date Effective From:	23 rd May 2016
Review Date:	Annually reviewed
Indicate whether the document is for public access or internal access only Indicate whether the document applies to collaborative provision? <i>(Strikethrough text, as appropriate)</i>	Public Access Internal Access Only Applies to Collaborative Provision
Summary: This document defines the University's policy and procedures for all purchasing.	

CONTENTS

	Page
1. Aims and Responsibilities	2
2. Tendering	4
3. Purchasing	7
4. Ethical Standards and Conflict of Interest	9
5. Ethical and Environmentally Sustainable Procurement	10
6. Supplier Management	10
7. EU Procurement Thresholds and Public Contracts Regulations	10

Appendices

1. Guidance on Sustainable Procurement	11
2. Standard Terms and Conditions of Purchase	12
3. Model Contract for Services	21
4. Model Agreement for Consultancy Services	29
5. Guidelines for Use of Corporate Credit Card	30
6. Purchasing Card Guidance	31

1. AIMS AND RESPONSIBILITIES

1.1 The University's Board of Governors has approved the University's Best Value Strategy and this Procurement Policy and Procedures 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 Fair Trade 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 European Procurement Directives in conjunction with the Public Supply 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	CCS
Cleaning	CCS
Computers, peripheral equipment, computer software and printer consumables	ITS
Financial services	Finance
Furniture	Estates
Insurance	Planning
Legal services	Deputy Vice Chancellor
Media and audio visual equipment	ITS
Premises expenditure (capital and revenue)	Estates
Publicity and marketing	Student Recruitment and Marketing
Reprographic equipment	ITS
Security	CCS
Stationery	CCS
Telecommunications equipment	ITS

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	Action required	Quotes/
£0 - £3,000	Any staff authorised by Dean/Director	A sense check of the market. This might include online pricing comparisons or catalogue checks.	N/A
£3,001-£30,000	Dean/Director	At least 3 competitive quotes sought (where possible) in line with Financial Regulations.	N/A
£30,000-£100,000	Any member of SMT	Formal tender exercise to be advertised through Intend and Contracts Finder	Any member of SMT + Dean/Director
£100,001-£250,000	Vice Chancellor	Formal EU tender exercise to be advertised through Intend, Contracts Finder and the Official European Journal.	Any member of SMT + Dean/Director
Above £250,000	Board of Governors	Formal EU tender exercise to be advertised through Intend, Contracts Finder and the Official European Journal.	Any member of SMT + Dean/Director + one external Governor

2.2 Tender Procedure

Tendering must be carried out in accordance with the Tendering Procedure as detailed on the Finance Department section of the intranet. It includes a step by step guide which must be followed. Staff involved with tendering must be able to verify that the Tendering Procedure has been adhered to.

The University shall invite written tenders in unmarked envelopes.

The closing date for returned tenders must be strictly adhered to. All tenders received after the specified time must be returned to sender unless the tender envelope is postmarked prior to the closing date.

All telephone quotations shall be recorded on the tender opening form available on the Finance Department section on the intranet.

Under no circumstances should any member of staff take action to deviate from the Tendering Procedure without the express and prior approval of the Director of Finance. Any breach of the procedure must be reported to the Director of Finance.

2.3 Invitation to tender

Where there are a large numbers of suppliers it is permissible to select a reasonable number but the selection should be based on justifiable knowledge or criteria. Where only a very small number of suppliers are available, all known suppliers should be included in the invitation to tender. In cases where only one or two suppliers can be identified for a particular item and the value of the purchase exceeds £3,000, a written justification must be prepared for approval by the Director of Finance except where the purchase is through an authorised consortium. Approvals must be retained on the record for two years after the end of the financial year in which they occurred.

The invitation to tender document shall include:

- the specification for the goods or services being procured
- the terms and conditions of the tender, including the expected terms of contract
- the tender instructions

Each invitation to tender shall stipulate:

- that the University does not bind itself to accept the lowest priced tender
- that the University has discretion to accept any part or all of any tender
- that the University reserves the right to invite further tenders at its discretion if it considers that the tenders received do not provide adequate competition or for other good reasons
- that tender envelopes shall remain unopened until the closing date for tenders
- to whom enquiries should be addressed
- for how long the tender will remain valid for acceptance
- how the tender should be packaged, addressed and returned
- how many copies are required
- the final delivery date and time of day
- the method of evaluation (e.g. short-listing, calls for presentations)
- criteria for awarding the contract.

2.4 Tender Evaluation

Prior to the tender return date a panel should be organised by the Faculty or Service in accordance with the requirements stipulated under Purchasing Thresholds above.

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.

Once the preferred supplier has been selected it is permissible to enter into post tender negotiations covering all aspects of the prospective contract including price, delivery, payment terms, terms and conditions of contract and the avoidance of unfair conditions.

The lowest price tender shall normally be accepted but there are occasions when other factors may justify choosing another tender, for example whole life costs, customer service and quality. The approval of the Deputy Vice Chancellor or Director of Finance shall be required in all cases when the lowest price is not to be accepted.

2.5 Tender Documentation

All tenders are to be lodged unopened with the Finance Department. Copies of all completed Tender Opening Forms are retained by the Finance Department for a period of six years, with a copy and all other documentation in the user department

3. PURCHASING

3.1 Purchase Orders

Purchase Orders shall be made on the official University purchase order form; 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 Deputy Vice Chancellor.

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 Contracts for 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, section 19). 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 refers to environmental requirements (Appendix 2, section 20).

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, OGC 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. EU PROCUREMENT THRESHOLDS AND PUBLIC CONTRACTS REGULATIONS

European Union procurement regulations apply to written contracts for all forms of procurement or hire with a total value exceeding a threshold value. 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 EU procurement obligations. 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 EU journals.

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
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
13. do not endanger health

STANDARD TERMS AND CONDITIONS OF PURCHASE

1 INTERPRETATION

1.1 In these Conditions the following terms shall have the following meanings:

“Buyer” or the **‘University’** means The University of Winchester of Winchester SO22 4NR

“Conditions” means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller as set out in the Order or which are intended to be incorporated into the Order;

“Order” means the Buyer’s purchase order;

“Services” means the services (if any) described in the Order;

“Goods” means the goods (if any, including any instalment of the goods or any part of them) described in the Order;

“Contract” means the Order which forms the contract for the sale and purchase of the Goods and the supply and acquisition of the Services on these Conditions;

“Delivery Address” means the address stated on the Order;

“Price” means the price of the Goods and/or the charge for the Services;

“Seller” means the person so described in the Order;

“Specification” includes any plans, drawings, data or other information relating to the Goods or Services;

“Writing” includes facsimile transmission and compatible means of communication capable of being signed;

“Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection in any part of the world;

“Deliverables” means all documents, products and materials developed by the Seller in relation to the Services in any form, including the deliverables specified in the Order;

“In-put Material” means all documents, information and materials provided by the Buyer relating to the Services including (without limitation), the in-put materials specified in the Order.

1.2 Any reference in these Conditions to a statute or a provision of statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to the Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.2 These Conditions shall apply to and be incorporated into the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 The Buyer reserves the right to cancel the Order unless unconditionally accepted by the Seller in Writing within 28 days of its date.

2.5 No variation to the Order or these Conditions shall be binding unless agreed in Writing and signed by an authorised representative of the University.

3 COMMENCEMENT AND DURATION

3.1 The Services supplied under the Contract shall be provided by the Seller to the Buyer from the date specified in the Order, or if none is specified, the date of acceptance by the Buyer of the Seller's offer in accordance with condition 2.

3.2 The Services supplied under the Contract shall continue to be supplied for the period specified in the Order and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than [one] months' notice.

4 SELLER'S RESPONSIBILITIES

4.1 The Seller shall

4.1.1 provide the Services, and deliver the Deliverables to the Buyer, in accordance with the Contract and shall allocate sufficient resources to the Services to enable it to comply with this obligation.

4.1.2 observe and ensure that all employees, consultants and agents whom it engages in relation to the Services observe all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises. The Buyer reserves the right to refuse such persons access to the Buyer's premises, which shall only be given to the extent necessary for the performance of the Services;

4.1.3 notify the Buyer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and

4.1.4 before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents in relation to provision of the Services.

4.1.5 observe and ensure that all employees, consultants and agents whom it engages in relation to the Services have received equality and diversity training and observe all bullying and harassment rules and regulations that apply at any of the Buyer's premises. The Buyer reserves the right to refuse such persons access to the Buyer's premises, which shall only be given to the extent necessary for the performance of the Services;

5. SPECIFICATIONS

5.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specifications supplied by the Buyer to the Seller or agreed in Writing by the Buyer and the Seller.

5.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other Intellectual Property Rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

5.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

5.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.

5.5 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of the inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.

5.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

6 PRICE OF GOODS AND SERVICES

6.1 The Price of Goods and the Services shall be as stated in the Order and, unless otherwise so stated shall be inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies.

6.2 No increase in the Price may be made (whether on account or of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

6.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

7 TERMS OF PAYMENT

7.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be and each invoice shall quote the number of the Order.

7.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 31 days after that end of the month of receipt by the Buyer of a valid invoice or after acceptance of the Goods or Services in question by the Buyer whichever is the later.

7.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

8 DELIVERY

8.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order (or if no such date is specified then delivery shall take place within 28 days of the Order), in each case during the Buyer's usual business hours.

8.2 Where the date of delivery of the Goods or performance of the Services is to be specified after placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.

8.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

8.4 The Seller shall ensure that any delivery of Goods is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. The delivery note must be displayed prominently.

- 8.5 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:
- 8.5.1 cancel the Contract in whole or in part;
 - 8.5.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
 - 8.5.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining similar goods to the Goods in substitution from another supplier; and
 - 8.5.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods on the due date.

8.6 If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable. Nevertheless failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.

8.7 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

8.8 The Seller shall supply the Buyer in reasonable time with any instructions or other information required enabling the Buyer to accept delivery of the Goods and/or performance of the Services.

8.9 The Buyer shall not be obliged to return to the Seller any packing or packing materials for the goods, whether or not any Goods are accepted by the Buyer.

8.10 The Seller shall off-load and stack the Goods at its own risk as directed by the Buyer.

8.11 If the Goods are delivered to the Buyer in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any excess shall be and shall remain at the Seller's risk and shall be returnable at the Seller's expense.

9 RISK AND PROPERTY

9.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer is complete (including off-loading and stacking) and in accordance with the Contract.

9.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

10. WARRANTIES AND LIABILITY

10.1 The Seller warrants to the Buyer that the Goods:

- 10.1.1 will be of satisfactory quality and fit for the purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
- 10.1.2 will be free from defects in design, material and workmanship;
- 10.1.3 will be without fault and conform in all respects with the Order and/or correspond with any relevant Specification or sample supplied or advised by the Buyer to the Seller; and
- 10.1.4 will comply with all statutory requirements and regulations relating to the Sale of the Goods Act 1979 and/or Supply of Goods and Services Act 1982 and any other statute.

10.2 At any time prior to delivery of the Goods to the Buyer the Buyer shall have the right to inspect and test the Goods.

- 10.3 The Seller warrants to the Buyer that:
- 10.3.1 the Seller will perform the Services by appropriately qualified, experienced and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances and in accordance with generally recognised commercial practices and standards in the industry for similar services;
 - 10.3.2 the Services and Deliverables will conform with all descriptions and specifications provided to the Buyer by the Seller; and
 - 10.3.3 the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Seller will inform the Buyer as soon as it becomes aware of any changes in that legislation.
- 10.4 The Buyer's rights under these Conditions are in addition to the statutory terms implied in favour of the Buyer by the Sale of Goods Act 1979 and/or Supply of Goods and Services Act 1982 and any other statute.
- 10.5 Without prejudice to any other remedy, if the Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- 10.5.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
 - 10.5.2 at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 10.6 The provisions of this condition 10 shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial goods or services provided by the Seller

11 INDEMNITY & INSURANCE

- 11.1 If so specified in the Order, during the term of the Contract and for a reasonable period (being not less than 6 years thereafter), the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £10,000,000 and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.
- 11.2 The Seller shall indemnify and hold the Buyer harmless from all liability, loss, damage costs, claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
- 11.2.1 breach of any warranty given by the Seller in relation to the Goods or Services;
 - 11.2.2 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables);
 - 11.2.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 11.2.4 act or omission of the Seller or its employees, agents or subcontractors in supplying, delivering and installing the Goods; and
 - 11.2.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
 - 11.2.6 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the supply of the Goods and/or

Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Seller.

11.3 In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller.

12 TERMINATION

12.1 The Buyer shall be entitled to cancel the Order in respect of all or part of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

- 12.2.1 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 12.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller,
- 12.2.3 the Seller ceases, or threatens to cease to carry on business; or
- 12.2.4 the Buyer reasonably apprehends that any of the above events is about to occur in relation to the Seller and notifies the Seller accordingly; or
- 12.2.5 the Seller commits a material breach of any of the terms and conditions of the Contract.

12.3 The Buyer shall be entitled to refuse to accept any further deliveries of the Goods, or performance of the Services, but without any liability to the Buyer;

12.4 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Buyer accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

13 REMEDIES

13.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods and/or Services are not supplied in accordance with, or the Seller fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

- 13.1.1 to rescind the Order;
- 13.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- 13.1.3 at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or Services or to supply replacement Goods or to provide the Services again, and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 13.1.4 to refuse to accept any further deliveries of the Goods or supply of Services but without any liability to the Seller;
- 13.1.5 to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and to claim such damages as may have been sustained in consequence of the Seller's breach or breaches of the Contract.

14 CONFIDENTIALITY

14.1 The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees are subject to like obligations of confidentiality as bind the Seller.

14.2 All In-put Materials, and all other materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller shall, at all times, be and remain as between the Buyer and the Seller the exclusive property of the Buyer, but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer. They shall not be disposed of or used other than in accordance with the Buyer's written instructions or authorisation.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

15.2 The Seller shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Buyer in accordance with condition 15.1.

16 GENERAL

16.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

16.2 Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

16.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

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

16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17 HEALTH AND SAFETY

17.1 The Seller shall comply with the requirements of UK and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.

17.2 The Seller shall ensure the Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

18 LAW

18.1 The construction, validity and performance of the Contract shall be governed by the Law of England. The Contract shall be deemed to have been made in England and the parties to the Contract hereby submit to the exclusive jurisdiction of the English Courts

19 EQUALITY AND DIVERSITY REQUIREMENTS

19.1 The Seller agrees to comply with the Buyer'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 and to comply with the terms of the Equality Act 2010 and all relevant Human Rights and EU legislation

19.2 The Seller warrants that its own practices and procedures comply with the Equality Act 2010 and all relevant Human Rights and EU Legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief, gender identity, pregnancy and maternity and marriage/civil partnership. The Seller will provide a copy of their non-discrimination policy to the buyer.

19.3 The Seller will provide such information as required by the Buyer in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the Buyer or a body empowered to carry out such investigations under the relevant legislation. The Seller will provide yearly details of all or any discrimination complaints or claims and customer feedback it has received from any employee, consultant, worker, agent, customer or member of the public.

19.4 Review of the Seller's obligations under 19.1, 19.2, 19.3 and 19.4 will constitute a standing item on all contract monitoring meetings.

19.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.

19.6 Without prejudice to its remedies set out above, the Buyer may terminate the contract if notice has been given to the Seller of a substantial or persistent breach of this clause.

20 ENVIRONMENTAL REQUIREMENTS

20.1 The Seller agrees to comply with the Buyer's policies and procedures on environmental sustainability.

20.2 The Seller warrants that its own practices and procedures comply with all relevant environmental legislation.

20.3 The Seller will provide such information as required by the Buyer in relation to its compliance with environmental legislation and will co-operate with any investigation by the Buyer or a body empowered to carry out such investigations under the relevant legislation.

20.4 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the [contractor], its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.

20.5 Without prejudice to its remedies set out above, the Buyer may terminate the contract if notice has been given to the Seller of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the [contractor] has failed to remedy the breach within the stated period.

20.6 The Seller warrants that the goods supplied comply with all relevant environmental legislation

20.7 The Seller warrants that the goods supplied:

- 20.7.1 do not cause significant damage to the environment
- 20.7.2 do not consume a disproportionate amount of energy
- 20.7.3 minimises waste, including no unnecessary packaging
- 20.7.4 avoid the use of materials derived from threatened species or environments
- 20.7.5 do not involve the unnecessary use of or cruelty to animals
- 20.7.6 are where possible durable, recyclable, repairable, refillable or reusable as appropriate
- 20.7.7 do not emit toxic or polluting substances during their production, use or disposal

21. FORCE MAJEURE

21.1 Neither party shall be liable to the other for any default hereunder where such default is directly or indirectly caused by or arises out of any event beyond its reasonable control. It is hereby agreed between the parties that the mere shortage of labour, materials or utilities shall not constitute force majeure unless caused by circumstances which are themselves force majeure. Any claim that any default hereunder shall have been caused by force majeure shall be notified in writing immediately by the party making the claim to the other.

22. GIFTS

22.1 The Supplier, its servants or agents shall not offer or give or agree to give to any person connected with the University any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do anything in relation to the obtaining of the Order or the execution of the Supplier's obligations under the Order or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to the Order.

22.2 Any breach of Clause 22.1 by the Supplier, his servants or agents or the commission of any offence by the Supplier, his servants or agents under the Prevention of Corruption Acts 1889 to 1916 in relation to the Order shall entitle the University to determine the Order and recover from the Supplier the amount of any loss resulting from such cancellation.

- 1) 2.2 SHALL OBSERVE CURRENT PUBLISHED POLICIES OF THE UNIVERSITY RELATING TO HEALTH AND SAFETY, EQUALITY AND DIVERSITY, ENVIRONMENTAL SUSTAINABILITY, INFORMATION AND COMMUNICATION TECHNOLOGY AND ANY OTHER SIMILAR POLICIES ISSUED BY THE UNIVERSITY FROM TIME TO TIME;

MODEL CONTRACT FOR SERVICES

Insert Project name

THIS SERVICES AGREEMENT is made the day of 20.....

BETWEEN:

- (1) **The University of Winchester** whose address is Sparkford Road, Winchester, SO22 4NR (“the University”); and
- (2) **[name]** (“the Contractor”) of [address].

Services

1. The University engages the Contractor to provide, and the Contractor agrees to provide, the services set out in Schedule 1 (“the Services”) on the terms and conditions set out in this Agreement.

Standard of Work

2. In providing the Services to the University, the Contractor:
 - 2.1 shall exercise reasonable skill, care and diligence and shall apply the highest professional standards;
 - 2.3. shall do nothing which is likely to bring the University into disrepute or which is materially contrary to the interests of the University;
 - 2.4 may apply his own method of work and shall comply with the reasonable requests of the appointed University Representative named in Schedule 1 as to the effective performance of the Services;
 - 2.4 shall correct any errors at the Contractor’s own expense;
 - 2.5 unless otherwise agreed shall provide all equipment and materials.

Term of Agreement

4. Subject to Clause 12, this Agreement shall be deemed to commence on [date] and shall continue until [date].

Other Work

5. The Contractor will not be restricted to providing services for the University, and nothing in this Agreement will prevent the Contractor from providing services to anyone else, provided that such provision of services does not interfere or conflict with the provision of the Services to the University pursuant to this Agreement.

Remuneration and Expenses

- 6.1 The Contractor shall be paid in accordance with Schedule 2.
- 6.2 The Contractor shall be wholly responsible for all income tax and national insurance and other similar contributions or taxes (together "Taxes") which may be payable out of, or as a result of the receipt of, any fees or other monies paid or payable by the University under this Agreement.
- 6.3 In the event that the University is required to pay any Taxes in relation to such fees or other monies:-
 - 6.3.1 the University shall be entitled to withhold an amount equal to such Taxes from any sums remaining to be paid pursuant to Schedule 2; and
 - 6.3.2 to the extent that any such withholding falls short of the total Taxes to be paid, the Contractor shall indemnify the University against any such Taxes which become payable by the University.

Intellectual Property

- 7.1 Any intellectual property rights (including without limitation copyright, patents, and design rights) conferred under the laws of England and Wales in materials created by the Contractor in the course of performing the Services, or exclusively for the purpose of the performing the Services, shall vest in the University upon creation.
- 7.2 The Contractor hereby waives absolutely and irrevocably any relevant moral rights granted under the Copyright, Designs and Patents Act 1988.
- 7.3 Where, in connection with the provision of the Services, the Contractor uses any materials in which the copyright is owned by the Contractor, the Contractor shall grant to the University a perpetual, non-exclusive, royalty-free licence to use, maintain and support such materials.
- 7.4 The Contractor will use all reasonable endeavours to obtain all necessary licences and permits to use third party materials which he wishes to use or make available in the course of performing the Services and the Contractor shall use all reasonable endeavours to ensure that any licences for third party materials are perpetual and contain terms that will allow the University on termination of this Agreement to continue to use, maintain and support such third party materials on a royalty-free basis.
- 7.5 The Contractor shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the University in accordance with condition 7.1.
- 7.6 The Contractor shall indemnify the University in respect of any loss or damage to the University arising from a failure by the Contractor to obtain any requisite licence or permit in respect of third party material used or made available by the Contractor in the course of performing the Services.

Indemnity and Insurance

- 8.1 The Contractor shall maintain in force for the duration of this agreement adequate public liability and in the case of professional or intellectually based services professional indemnity insurance relating to the provision of Services pursuant to this Agreement.
- 8.2 If so specified in the Order, during the term of the Agreement and for a reasonable period (being not less than 6 years) thereafter, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance in an amount not less than £10,000,000 and shall, on the University's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium.
- 8.3 The Contractor shall indemnify and hold the University harmless from all liability, loss, damage costs, claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses

(including legal expenses) awarded against or incurred or paid by the University as a result of or in connection with:

- 8.3.1 breach of any warranty given by the Contractor in relation to the Goods or Services;
- 8.3.2 any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables);
- 8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 8.3.4 act or omission of the Contractor or its employees, agents or subcontractors in supplying, delivering and installing the Goods;
- 8.3.5 any act or omission of any of the Contractor's personnel in connection with the performance of the Services; and
- 8.3.6 any claim made against the University in respect of any liability, loss, damage, injury, cost or expense sustained by the University's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the supply of the Goods and/or Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Agreement by the Seller.

8.4 In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Contractor to the University.

Confidentiality

- 9.1 The Contractor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Contractor by the University and any other confidential information concerning the University's business or its products which the Contractor may obtain and the Contractor shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Contractor's obligations to the University and shall ensure that such employees are subject to like obligations of confidentiality as bind the Contractor.
- 9.2 All In-pur Materials, and all other materials, equipment and tools, drawings, specifications and data supplied by the University to the Contractor shall, at all times, be and remain as between the University and the Contractor the exclusive property of the University, but shall be held by the Contractor in safe custody at its own risk and maintained and kept in good condition by the Contractor until returned to the University. They shall not be disposed of or used other than in accordance with the University written instructions or authorisation.

Relationship between the parties

- 10.1 Nothing in this Agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent or employee of the other for any purpose.
- 10.2 At no time shall the Contractor represent himself or hold himself out as an employee of the University.
- 10.3 The Contractor is not entitled to the benefit of any employment contract rights granted to employees of the University nor to participate in any of the University's grievance or disciplinary procedures.
- 10.4 Save as expressly specified in writing, the Contractor shall not hold himself out as an agent of the University, and shall not have any authority to act on behalf of the University, to conclude any contracts or incur any obligation or liability on behalf of or binding upon the University, or to sign any document on the University's behalf.
- 10.5 The Contractor shall ensure that any necessary leave for him to enter or remain in the United Kingdom to perform the Services is valid and subsisting and is not subject to any restriction precluding him from performing the Services or any of them.

Assignment of interest

11. The Contractor may not sub-contract, assign, transfer, mortgage or part with this Agreement or any of its rights, duties or obligations under this Agreement without prior written consent from the University.

Termination

- 12.1 The University shall be entitled to cancel the Order in respect of all or part of the Services by giving notice to the Contractor at any time prior to delivery or performance in which event the University's sole liability shall be to pay the Contractor fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 12.2 The University shall be entitled to terminate the Agreement without liability to the Contractor by giving notice to the Contractor at any time if:
 - 12.2.1 the Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being a company) becomes subject to an administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 12.2.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Contractor,
 - 12.2.3 the Contractor ceases, or threatens to cease to carry on business; or
 - 12.2.4 the University reasonably apprehends that any of the above events is about to occur in relation to the Contractor and notifies the Contractor accordingly; or
 - 12.2.5 the Contractor commits a material breach of any of the terms and conditions of the Agreement.
- 12.3 The University shall be entitled to refuse to accept any further performance of the Services, but without any liability to the University.
- 12.4 The termination of the Agreement, however arising, shall be without prejudice to the rights and duties of the University accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 12.5 On the expiry or termination of this Agreement (however arising), the Contractor shall deliver up to the University all documents, formulae, papers, drawings, software, data, specifications, reports, notes, programs, portfolios, equipment, materials of any sort, identity cards and keys which were furnished by the University to the Contractor, or which were prepared by or on behalf of the Contractor for the University in the course of providing Services under this Agreement.

Equality and Diversity of Requirements

- 13.1 The Seller agrees to comply with the Buyer'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 and to comply with the terms of the Equality Act 2010 and all relevant Human Rights and EU legislation
- 13.2 The Seller warrants that its own practices and procedures comply with the Equality Act 2010 and all relevant Human Rights and EU Legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination on the grounds of sex, race,

disability, sexual orientation, age, religion and belief, gender identity, pregnancy and maternity and marriage/civil partnership. The Seller will provide a copy of their non-discrimination policy to the buyer.

13.3 The Seller will provide such information as required by the Buyer in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the Buyer or a body empowered to carry out such investigations under the relevant legislation. The Seller will provide yearly details of all or any discrimination complaints or claims and customer feedback it has received from any employee, consultant, worker, agent, customer or member of the public.

13.4 Review of the Seller's obligations under 19.1, 19.2, and 19.3 will constitute a standing item on all contract monitoring meetings.

13.5 Where any investigation is conducted, or proceedings are brought which arise directly or indirectly out of any act or omission of the Seller, its agents or sub-contractors and where there is a finding against the Contractor in any such investigation or proceedings, the Seller shall indemnify the Buyer with respect to all costs, charges and expenses (including legal and administrative expenses) incurred by the Buyer during or in connection with any such investigation or proceedings and further indemnify the Buyer for any compensation, damages, costs or other award the Buyer may be ordered or required to pay to a third party.

13.6 Without prejudice to its remedies set out above, the Buyer may terminate the contract if notice has been given to the Seller of a substantial or persistent breach of this clause.

Miscellaneous

14.1 This Agreement, together with its Appendices, constitutes the entire agreement between the parties and cancels and is in substitution for all previous letters and oral and written agreements relating to the subject-matter of this Agreement between the University or any of its officers and the Contractor.

14.2 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision shall not be affected thereby.

14.3 The parties to the Agreement do not intend that any term of the Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.4 The Contractor consents to the University holding and processing data relating to him or her for legal, personnel, administrative and management purposes and in particular the processing of any "sensitive personal data" as defined in the Data Protection Act 1998 in relation to him or her.

14.5 The Contractor shall not use the name, any adaptation of the name, any logo, trademark or other device of the University of Winchester, or any part of it, in any advertising, promotional or sales materials without the prior written consent of the university.

14.6 Any notice required or permitted to be given by either party to the other under the Agreement shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

Law

15 The construction, validity and performance of the Agreement shall be governed by the Law of England. The Agreement shall be deemed to have been made in England and the parties to the Agreement hereby submit to the exclusive jurisdiction of the English Courts.

AGREED by the Parties through their authorised signatories

For and behalf of the University (sign)

(name)

For and behalf of the Contractor (sign)

(name)

MODEL CONTRACT FOR SERVICES

THE SERVICES

Project name

Name of University project manager

Name of Contractor main contact

The Tasks

- Specify exactly what you want the Contractor to do, not what the Contractor is proposing
- Include programme schedule including any key milestones
- What is required and when
- What records does the Contractor need to keep e.g. time sheets, records of work done
- Any arrangements for extension of time
- Any arrangements for variation to the services
- What reports are required

MODEL CONTRACT FOR SERVICES**THE PRICE****The price for the contract**

The amount

Fixed price or daily/hourly rate

Include any arrangements for any variations to the price

Penalty clauses

Inclusive or exclusive of VAT (take advice from the Finance Department)

Payment schedule – what is to be paid when?**Method payment**

By BACS is preferred

Terms of payment.

Detail invoice requirements and when these must be paid. The University's Standard Terms are:

1. The Seller (Contractor) shall be entitled to invoice the Buyer (University) on or at any time after delivery of the Goods or performance of the Services, as the case may be and each invoice shall quote the number of the Order.
2. Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 31 days after that end of the month of receipt by the Buyer of a valid invoice or after acceptance of the Goods or Services in question by the Buyer whichever is the later.
3. The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

Expenses

What is included in the price and what is not

Detail all expenses rates

Specify that expenses will only be reimbursed on production of receipts or other evidence of actual payment of such expenses as the University may reasonably require.

MODEL AGREEMENT FOR CONSULTANCY SERVICES

The Model Contract for Services (Appendix 3) also serves as a Model Agreement for Consultancy Services with the addition of the following additional clauses:

Performance

- During the course of the Agreement the University may inspect and examine the work being performed on the University's premises without notice at any time.
- During the course of the Agreement where any part of the work is being performed on premises other than the University's premises the University may inspect and examine the work being performed giving reasonable notice to the Contractor.
- If any part of the Services is found to be defective or in any way differing from the Contract Requirements, other than as a result of a default or negligence on the part of the University, the Contractor shall at its own expense perform the Services again within such time as the University may specify.

Staff

- The Contractor shall provide its staff with a form of identity acceptable to the University which they shall display on their clothing at all times when they are on the University's premises.
- All Contractors' staff shall report to a nominated member of the University's staff on arrival and departure from the premises. Visits to the premises are not permitted without the consent of the University.
- The Contractor shall cause as little interference as possible with University activities while on the premises.
- The Contractor shall immediately remove any of its staff from the premises when required by the University.

Rights to Results of Work

- The Contractor shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material belonging to the University for its own commercial purposes except upon obtaining the prior written consent of the University and then only upon such terms as may be imposed by the University.

Data Protection Act

- The Contractor's attention is drawn to the need to protect personal data in accordance with the provisions and principles of the Data Protection Act 1998 and in particular to the need to ensure the reliability of the staff having access to the data.
- The Contractor shall indemnify the University against all claims and proceedings and all liability, loss costs and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person by the disclosure of any personal data by the Contractor, its staff or agents.
- "Personal data" has the same meaning as the Data Protection Act 1998, s.1(3)

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.