

Date

Name  
Company  
Address

**Estates Office**  
Procurement Department  
First Floor  
1-9 Old Park Hill  
Bristol  
BS2 8BB

Name: Ruth Robinson  
Procurement Manager  
Tel: 0117 33 1xxxx  
e-mail: [ruth.robinson@bristol.ac.uk](mailto:ruth.robinson@bristol.ac.uk)

Dear Sirs,

**Subject: Tender for 3<sup>rd</sup> Party Catering**

**Pro-Contract Reference: DNWA – 9GYJMZ**

You are invited to submit a tender for the above Contract.

Tenders must be submitted via the Pro-Contract system no later than **GMT 1200 hours (noon) on 29<sup>th</sup> July, 2014**. Please note that any tenders received after this time may automatically be rejected.

Please note that due to the number of responses the University of Bristol receives, it is important that all information is presented in a way which makes it easy to find and evaluate. Files names must clearly identify the name of the Potential Contractor together with the content of the document (e.g. SupplierName\_ITT). Where Potential Contractors fail to use a clear naming convention for files, the University of Bristol cannot be held responsible for failing to evaluate the information submitted.

While Potential Contractors are welcome to enclose company literature (e.g. sales pamphlets) as part of the response, the University of Bristol will not consider this as part of the evaluation process, therefore this must not be presented as the sole response to this tender.

If any documents are missing, please contact the undersigned immediately. It is the Potential Contractor 's responsibility to ensure that all documentation has been downloaded.

Yours faithfully

Ruth Robinson  
**Procurement Manager**

**Enc:**

**OJEU Ref: DNWA-9GYJMZ**

**Please return the tender response documents in the format as published**

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## SECTION 'A': Instructions for completing the tender

### 1: Tender Submission

<b>Tender Ref:</b>  <b>DNWA-9GYJMZ</b>	<b>THE UNIVERSITY OF BRISTOL</b> <i>Procurement Department</i> <i>First Floor</i> <i>1-9 Old Park Hill</i> <i>BS2 8BB</i>
<b>Tender for:</b> 3 <sup>rd</sup> Party Catering  <b>Period of Contract:</b> 3 years	<b>Due for return by NOON on:</b>  <b>29 July 2014</b>

### 2: Explanatory Notes

Following on from a previous PQQ for 3<sup>rd</sup> party catering, Potential Contractors are now invited to complete the tender in full.

The University reserves the right to assess the Potential Contractor's financial stability, technical competence and/or ability to carry out the requirements of the contract before awarding the contract.

The information provided in the tender response will be relied upon for evaluation purposes and will be taken to be true and accurate. If subsequently it is determined that any information supplied was not accurate, the University reserves the right to exclude the tender (if still under evaluation) or to terminate the contract (if the contract has been awarded and the inaccurate information has a significant bearing on the award decision).

Please note for the purposes of this tender document, the following terminology will be defined as:

<b>Contract:</b>	The agreement between the University of Bristol and the Contractor consisting of the terms and conditions and any attached Schedules, the Invitation to Tender, the Contractor's Tender and any other documents (or parts thereof) specified by the University
<b>Contractor:</b>	The person, firm or company with whom the University could potentially enter into Agreement with
<b>Pro-Contract:</b>	The University of Bristol's electronic tendering system <a href="https://tender.bris.ac.uk">https://tender.bris.ac.uk</a>
<b>Tender:</b>	A tender, the purpose of which is to award the named contract to the successful Potential Contractors /s
<b>The University (of Bristol):</b>	The University of Bristol and its affiliates, to include but not exclusive to Employees, Professional Advisors and/or Officers now or at any time within the procurement process

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## (1) Commercial Information

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This section provides the University with general information regarding the Potential Contractors . The information provided is important to the selection process but will not be marked as part of the tender evaluation.

***Please provide full responses to all of the questions in this section.***

- A1. Full name of lead Potential Contractors , registered office address, including postcode, country and website:**

- A2. Lead contact name, job title, address including postcode and country, phone number including mobile number and email address:**

- A3. If the contract is to be (intended) sub-contracted, please provide the lead name applicant, the Sub-s involved and the structure and extent of the involvement of each Sub-:**

- A7. If applicable, name of parent company Potential Contractors . Please indicate if the parent company Contractor is immediate or ultimate. (If applicable, a parent company performance bond may be required):**

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## (2) Technical Capabilities

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This section is designed to select Potential Contractors who have the required technical and professional ability.

***Please provide full responses to all of the questions in this section even if the Potential Contractors is not currently operating in the United Kingdom (substituting, where relevant the appropriate Legislation/Codes of Practice etc.)***

- B1. Please give an explanation of why the Potential Contractor considers itself suitable and keen to take on this contract opportunity: (max 400 words in the box below):**

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### (3) Sustainability

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**Please provide full responses to all of the questions in this section even if the Potential Contractors is not currently operating in the United Kingdom (substituting, where relevant the appropriate Legislation/Codes of Practice etc.).** The University of Bristol encourages Contractors to register on the [CIPS Sustainability Index](#).

The University will undertake regular audits ( 6 monthly in the first year, and annually thereafter) of the Contractors' claims with regards to sustainable sourcing. Audits will be carried out by members of the Residential and Hospitality Services Dept.

- F1. Does the Potential Contractor have a written Sustainability Contract and/or environmental policy?:**

YES/NO

If yes, is the Potential Contractor registered with Sedex ( or equivalent)

- F2. Has the Potential Contractor received any national/international awards relating to the service which recognises the sustainability and environmental dimension of their work?:**

YES/NO

If yes, please provide details

- F3. The University of Bristol is a Fairtrade University and the Hospitality team aims to provide food to its Clients that are Fairtrade, organically sourced and have sourcing transparency in the supply chain wherever possible. How does the Potential Contractor ensure sustainability in the supply chain and in the procurement of supplies/ ingredients, such as Fairtrade, red tractor and accredited local Contractors? (Max 400 words in the box below):**

- F4. What processes or actions has the Potential Contractors initiated in relation to: reducing carbon emissions, energy savings, reducing/reusing and recycling waste and improving waste management practises? (Max 400 words in the box below).**

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## (4) Ability to meet the requirements of the specification

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H1. All aspects of the Specification met?:

YES/NO

If No, please outline where you think you cannot meet the Specification



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## (4) Pricing

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Prices shall be in GBP and net of VAT and Government Taxes and must be fixed for a period of 12 months from the commencement date of the contract.

Attached in Schedule 1 is a price list for you to complete. Please ensure all prices are inclusive of all relevant fees and VAT

### I1. Included Priced Menu:

YES/NO
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## SECTION 'B': Checklist and Declaration

Thank you for taking the time to complete this tender. To ensure that this submission is evaluated properly, the University of Bristol requires a fully completed response, therefore before returning, please check that all applicable questions have been answered in full and the relevant documentation has been uploaded to Pro-Contract (<https://tender.bris.ac.uk>). Please use the checklist below for guidance: (Please tick each box where documentation has been uploaded and N/A where there is no enclosure).

Checklist	Completed (Yes / No)	Attached Supporting Information (Yes/No/N/A)
Completed Section 1 – Commercial Information		
Completed Section 2 – Technical Requirements		
Completed Section 3 – Sustainability		
Completed Section 4 – Specification adherence		
Completed Section 5 – Pricing		
Signed the declaration (any unsigned tenders will not be accepted. NB: An electronic signature will be sufficient)		
Sign to agree to the Certificate of Undertaking and Absence of Collusion (see Annex 2)	Signature: Name: Date:	
Sign to agree to the 'Certificate of Bona Fide Tender' (see Annex 3)	Signature: Name: Date:	
Sign to agree to the 'Terms and Conditions' (see Annex 4)	Signature: Name: Date:	

**DECLARATION:**

By responding and submitting this tender through Pro-Contract, the Potential Contractors declares that to the best of their knowledge the answers submitted in this tender are correct. The Potential Contractors understands that the information will be used in the procurement process to assess its suitability against the University's requirement; understands that the University may reject this tender if there is a failure to answer all relevant questions fully or if false/misleading information is provided and understands that knowingly making a false declaration on this form may result in legal action being taken against them.

**Sign to confirm  
agreement**

(Inserting Signature, Name  
and Position, on behalf of  
and date)

**THANK YOU FOR YOUR INTEREST IN THIS PROCUREMENT.**

## SECTION 'C': Guide to the competitive process

### C1 Guidance on the tender process

There are key stages that all Potential Contractors should be aware of throughout the tender process:

#### Qualification

All Potential Contractors must comply with the conditions of qualification, including the requirement to be fully compliant with Clause 23 of the [Public Contracts Procurement Regulations 2006 as amended](#). Any Potential Contractors who do not fully comply to these regulations may not be shortlisted to the next stage of the process.

#### Commercial Requirements

All Potential Contractors must complete section A1. This section is not scored as part of the selection criteria.

#### Selection Criteria

All Potential Contractors must complete each section as part of the evaluation process. Certain requirements detailed within the tender, for example financial reports and insurance covers, will be reviewed as part of the due diligence period before any award of contract. If the requirements are not met, the University reserves the right to reject the tender submission.

#### Technical Criteria

All Potential Contractors must be able to demonstrate the ability and capacity to undertake the contract which will be demonstrated within this section of the tender.

### C2 Procurement Timetable

The proposed timetable for this procurement is as follows:

**Note: The University is not bound by the timetable shown below and is merely used for planning purposes. Any changes to the timetable will be communicated to all Potential Contractors via Pro-Contract.**

19 <sup>th</sup> June 2014	Advertisement in OJEU
28 <sup>th</sup> July 2014	<b>Closing date for receipt of tender's</b>
6 <sup>th</sup> August 2014	Presentations
7 <sup>th</sup> – 14 <sup>th</sup> August 2014	Day to be agreed for samples to be tasted from all suppliers
22 <sup>nd</sup> August 2014	Complete Tender evaluations
26 <sup>th</sup> August 2014	Award Decision Notice and Preferred supplier/s and unsuccessful supplier/s notified (commencement of standstill period)
6 <sup>th</sup> September 2014	Award of Contract
1 October 2014	Contract Commences / Go Live

### C3 Intention to Bid (or otherwise)

The Potential Contractor should indicate via Pro-Contract whether or not they intend to submit a tender in response to this opportunity.

### C4 Pre and Post tender Clarification

Questions and answers and tender clarifications will be posted via 'discussions' on Pro-Contract, with automatic e-mails sent to Potential Contractors informing them of a new "discussion". Potential Contractors registering after a "discussion" has been posted will not receive email notification but will have sight of the conversation.

In compliance with E.U. guidelines on equal, transparent and fair treatment of Potential Contractors, any responses to requests for clarification will be distributed to **all** of the participating Potential Contractors, rather than solely to the Potential Contractors that requested the information. However, should the University decide that the enquiry contains sensitive data, intellectual properties or may form part of the Potential Contractors submission or the Potential Contractor does not want to share their enquiry, it is at the University's discretion to waive the right for disclosure.

### C5 Return of the tender documentation

The University uses a secure electronic tendering system called Pro-Contract.

Potential Contractor are advised to make themselves familiar with the [User Guides](#) on Pro-Contract before uploading their tenders.

In order to complete the tender, the tender must be downloaded, a proposal document completed in full and uploaded onto Pro-Contract in accordance with the submission return instructions. It is not possible to complete the tender online.

Proposals should include a detailed response the Specification, plus the completed Pricing spreadsheet.

The tender **must** be submitted via Pro-Contract at any time prior to the submission deadline. Tenders which are e-mailed, posted or faxed for example will not be considered as well as incomplete tenders. Submitting the tender should not be left until the last moment as uploading documents may take time. The server timestamps (GMT) Questionnaires when they are submitted and any tenders submitted after the stated closing date and time will not be considered. Potential Contractors are able to amend their tender submission at any point up until the deadline. Only the final version will be viewable by the University.

Where forms require a signature (either by the Potential Contractors or a third party i.e. a bank), electronically completed forms are acceptable for the procurement process, while signed hard copies will be required from Potential Contractors (s) prior to the award of contract.

For any queries relating to the use of Pro-Contract should be directed to the Signatory or to the Procurement Team at the University of Bristol.

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## **SECTION 'D': Introduction, Background Information, Specification/ Strategic Brief and Evaluation Criteria**

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### **D1 Introduction and Background Information**

The University is one of the UK's premier and most sought after academic establishments, located at the heart of one of England's most vibrant cities. The University currently has approximately 12,000 students and 5,000 staff, and is split into six academic faculties: Arts, Engineering, Medicine and Veterinary Sciences, Medicine and Dentistry, Science and Social Sciences and Law. Administrative functions such as HR, Finance and Estates are grouped within Professional Services.

The University is located in approx 300 buildings throughout the city, with the main precinct being located in the Clifton area. The Veterinary School is located approximately 20 miles from central Bristol at the village of Langford in Somerset.

Hospitality Services are the University's internal catering provider, and are the first choice for all the University's catering requirements. However, Hospitality Services is the first to recognise that changing times, healthier lifestyles and stricter working and teaching practices have reduced the necessity for formal lunching and there is a real need to offer a wider range of food styles and less formal and more flexible services throughout the University.

The University is therefore seeking to work in partnership with local Contractors who would be able to provide a distinctive range of high quality food styles, which would both complement the current internal catering offering and also align to our food safety, sustainability and ethics policy frameworks. This approach will enable the University to regulate the provision of catering Contractors and, at the same time, enable Hospitality Services to provide its customers with a range of comparable high street catering services that meet the discerning and diverse needs of our community.

The University is therefore planning to appoint up to 3 Contractors as a result of this tender to provide a delivered catering service to the University.

### **D2 Outline Specification and Strategic Brief**

#### **About the Specification**

##### **D 2.1 Scope**

To provide an agreed range of wholesome, healthy and value for money catering services. Contractors will provide a 'drop-off' catering service (cold buffet/sandwiches) delivered directly to University venues, aimed at in-house meetings i.e the orders are delivered to and collected from clients' offices, or a venue within the University precinct.

**Venues:**

To include delivery to precinct/faculty buildings, but in particular this contract will not include:

- Royal Fort House (Lower ground rooms)
- Stuart House
- Halls of Residence and partnership residences, and nominated residential properties
- The Hawthorns
- Faculty (teaching) building - not within the designated café eating or seating areas
- Any external gardens and grounds (including car parks)
- Any lecture theatres and teaching spaces
- Student Union building
- Student Union building

**D 2.2 Frequency**

Orders will need to be taken and delivered Mon – Fri, 8am – 6pm,  
year round, 52 weeks a year.

**D 2.3 Quality & Food Standards**

All catering is to be supplied in accordance with the University's hospitality policies already supplied with the PQQ. In addition, the latest Ethics policy can be found below:

<http://www.bristol.ac.uk/conferences-hospitality/ethics/ethicalpolicy>.

A relevant excerpt is below:

**Buffets and Beverage Deliveries**

The most important point to consider with a buffet delivered for more-or-less immediate consumption is the time it is at ambient temperature from when preparation has finished to the time it is eaten. The only safe way to extend food service or waiting time on sites is to provide cold and hot holding units, which will maintain temperatures, but this is usually not practicable and so the time food is kept on display must be managed.

The following standards must be applied;

- Food must be delivered and displayed not more than 30 minutes before service.
- Food must be delivered in the refrigerated vehicles or suitable insulated containers. If this is not possible for delivering the food at or below 8°C, then the unit must provide it within 15 minutes travel time.
- Vehicles and/or containers used to transport foods must be kept clean and maintained in good repair and condition, to protect foods from contamination. Where necessary, they must be designed and constructed to allow adequate
- cleaning and/or disinfection.
- The food must be effectively labelled to indicate which of the 14 potential allergens may be identified, and if any of the food contains nut or nut products. The Contractor will need to be able to comply within changes in Regulation (EU no' 1169/2011). This information must be made available to those attending the buffet.

- High-risk foods must be probed and details recorded
- Cold food left over may be retained, provided it is refrigerated and only subsequently served from refrigerated storage.
- Food preparation should not take place within non-catering departments, unless adequate facilities are available.
- Information must be provided to the customer on food safety and should include advice on when the food was delivered and when it should be eaten by.

#### **Accidents and Dangerous Occurrences and Diseases**

'Accidents involving personal injury to a member of staff should be recorded in an accident book which will be kept by the Supplier. Any accidents or incidents on University property will also be recorded as per local procedures. It is the responsibility of the supplier to report where necessary any work related diseases or dangerous occurrences as identified by Food Safety and RIDDOR regulations to the Deputy Director of Residential and Hospitality Services. The supplier should inform the University within a maximum of 24 hours of such occurrence and shall:

- Conduct an investigation into the circumstances, ensuring that the client is advised and notified of the outcome of the investigation;
- Maintain the appropriate records in accordance with statutory requirements and send a report to the statutory authorities, when such is required under appropriate legislation;
- Provide a copy of the record and notification of all actions to the University'

### **D 2.4 Delivery & Collection**

#### **Delivery & Transportation**

Tenderers should include within their tender response details of how they propose to meet the following requirements:

- Food transporting (as detailed in food safety policies)
- All Contractors will be required to display clear company notices advising customer who is providing the food.
- Ensuring the delivery is clearly labelled according the University Food Safety Policy.
- Ensuring the delivery is chilled to correct temperature and delivered in the correct manner according to University Food Safety Document.
- Ensuring that access to the faculty building has been arranged in advance.
- To ensure that the delivery is delivered to the correct room within the faculty/building, as stated on the original order.



### **Collection**

The Contractor will need to ensure that anything required to be collected (eg: plates, cups etc) is collected by 10am the following day if possible. If this is not possible, the Client needs to ensure that the items for collection are removed from the meeting room and left safely in the carrying boxes, in a nearby staff break-out area, until they can be collected.

University staff are responsible for disposal of all waste. However The University also expects the supplier to assist in the reduction of litter at the University. Contractors must make provision for the removal of waste by providing appropriate bin bags ( preferably compostable / biodegradable), or collect and dispose of waste themselves. Should the supplier fail to do this as agreed, a charge of £50 will be levied to the supplier by the University to cover the cost of the University having to remove the waste for them.

Tenderers should provide details of their proposed collection and waste disposal process and how it will comply with this requirement within their tender response.

### **D 2.5 Tableware**

The supplier is to provide disposable tableware or crockery if requested. All disposable tableware must be recyclable, and biodegradable / compostable if possible.

Equipment – tables etc The Client is responsible for providing suitable space and all necessary tables

Storage - There is no real storage available on site. However, the Contractor is to liaise with the Client to arrange for space to put the delivery before it is required.

Building access/parking - there is very limited parking at the University. It is the responsibility of the Client booking to arrange access.

Health & Safety – The booker is responsible for the health and safety and security of the person delivering to University premises.

### **D 2.6 Menus**

Menu cycles – the Supplier is to provide a new menu termly for variety and avoid menu fatigue. The supplier will be required to work with the University on a termly basis to agree menus and any relevant themes / new ideas. Each updated menu will need to continue to assure the University of sustainable sourcing within that menu, and complement the University offering.

In addition, the following are excluded from sale by Contractors to the University:

- Alcohol – an application of TENS should be submitted through the Conference office if alcohol is to be provided
- Hot food
- No cooking or food preparation to take place on site
- No use of Hospitality Services' satellite kitchens
- No use of pop-up kitchens
- No barbeques or cooking with propane gas

### **D 2.7 Quality Control**

The Contractor shall permit University Hospitality staff nominated for such purpose to inspect at any reasonable time any premises, equipment, materials or food used, or proposed to be used, by the supplier in or about the direct provision of the service. If the inspection reveals deficiencies then terms and conditions of the contract will apply.

The Contractor shall implement quality control procedures for all incoming ingredients and foodstuffs to ensure that goods are within their stated expiry date; that they are free from damage and pest infestation/damage; have been stored and transported at the correct temperature and are suitable for consumption by customers.

The Contractor shall ensure that all food is handled, stored, prepared and cooked appropriately, that procedures are in place to ensure it is kept at the requisite temperature at all times including but not limited to storage prior to preparation, during cooking and at point of service.

The Contractor shall at all times comply with the requirements of the Health and Safety at Work Act 1974, together with associated regulations, approved codes of practice and guidance. In addition, Contractors must ensure staff have the appropriate protective clothing and equipment. Contractors are to provide details in their response.

### **D 2.8 Marketing**

The University will formally 'launch' the new contract with a specific event open to all University staff held on University premises. The selected Contractors will be expected to attend and support this event, and any subsequent, smaller 'roadshow' type events in specific areas should the University deem this to be necessary.

The University will work with each Contractor to ensure that menus are enticing and offer staff at the University real choice. It is anticipated that the University will host menus from each Contractor on its web site. All branding and imagery involving the University will need to be approved by the University and Brand Guidelines will be issued if required

### **D 2.9 Service Level Agreement**

The successful supplier will be required to sign a separate Service Level Agreement (SLA) that will detail response times, ordering process, complaints/escalation procedures/escalation etc. This document will be based upon the requirements detailed in this Specification, and finalised and agreed with the successful Contractors post contract award.

Contractors are required to submit an example of a suitable SLA

### **2.10 Ordering System**

The Supplier must be available to take orders and administer bookings year-round, Monday-Friday 8.00am – 6.00pm.

Each contractor will have their menus on the University system from which the Client can complete their order, which will be emailed to the Contractor via the University's purchasing system.

### **D3 Criteria for evaluating the tender**

All tender submissions will be evaluated against the Criteria listed below. Each question will be scored and these scores are then multiplied by the weighting to give a question percentage score which are then added together to give a section score. Please note Section 1 (Commercial Information) is not scored. These sections scores are then added together to provide the order of competition.

#### Presentation Date:

Potential Contractors will be required to attend a presentation day to be held at the University on the 6<sup>th</sup> August, to allow Contractors to provide a sample lunch buffet for 6 and discuss their proposal.

Presentations will be to an evaluation panel of a maximum of 10, and will take no more than one hour, to include a short presentation and questions/ answers.

Please respond to confirm if you can accommodate this date.

#### Further tasting dates:

It is likely that the University will also want to hold a sample tasting day between the 7<sup>th</sup> and 14<sup>th</sup> of August.

The Purchasing team will be inviting a range of Faculty Heads, regular Clients and Senior Management to attend. Up to a maximum of 50 people may attend to blind sample items from all Contractors that have submitted tenders.

Each Potential Contractor will be asked to provide samples of a range of items, and all will be presented for tasting on plain black trays for anonymity. All staff attending will be required to score the food tasted and must be consistent across all Contractors' samples. The University is prepared to contribute up to £200 per Contractor for the provision of the food.

The actual list of items off the menu that are to be provided for the tasting will be made available via Procontract before the 4<sup>th</sup> July.

#### Site Visits / Audit

It is likely that a representative of the University of Bristol Catering team will want to make site visits to each of the Contractors during the evaluation stage. Visits will be arranged once bids have been received and processed.

### **D4 Selection and Award Criteria**

All bids from Contractors will be evaluated in accordance with the following criteria:

- Price 30%
- Menus & Taste testing 40%
- Compliance with Sustainability Requirements 20%
- Compliance with policies 10%

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## ANNEX '1': Conditions of tender

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### ***Conditions of tender***

1. Tenders are invited for the supply of the goods and/or services as specified.
2. The University reserves the right, subject to relevant laws, and at any time, to reject any tender and/or to terminate discussions with any of the Potential Contractors.
3. The tender together with any other information provided at any time within the procurement process has been and will be provided in the interests of assisting Potential Contractors to develop their proposals. It is intended only as an explanation of the University's requirements and is not as a representation to induce any Potential Contractors to enter into any form of contract with the University.
4. The information provided does not purport to be all-inclusive or to contain all the information that the Potential Contractors may require. Potential Contractors should investigate, take professional advice to verify the information and make an independent assessment of the opportunity described.
5. The University shall not be considered to make or to have made any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the information contained in this tender and any associated documents. However, the University does not exclude any liability for fraudulent misrepresentation or any other liability not capable of being excluded by law.
6. The University shall not be liable for any loss or damage arising as a result of reliance on the information contained within this tender and any associated documents, other information subsequently or previously provided or for any expenses incurred by Potential Contractors at any time. No third party has been or will be authorised to accept or agree to accept on behalf of the University any such liability.
7. Potential Contractors remain responsible for all costs and expenses incurred by them or by any third party acting under instructions from them in connection with their tenders, regardless of whether such costs arise as a consequence of any amendments made to this tender and/or other documents issued by the University at any time. For the avoidance of doubt, the University shall have no liability whatsoever to Potential Contractors for the costs of any discussions or communications.
8. The information in this tender and any associated documents must be treated as private and confidential and must not be disclosed, copied, stored, reproduced, distributed or passed to any other person at any time except for the purpose of enabling a submission to be made. Potential Contractors must not disclose details of the tender documents other than to those who have a legitimate need to know or for the purposes of preparing the tender.
9. Other than as specified in paragraph 8, Potential Contractors shall not make any of the tender documentation available to any party without the prior written consent of the University nor use it for any purpose other than that for which it is intended.
10. Potential Contractors shall be responsible for the confidentiality of their own information.
11. The documentation supplied with or pursuant to this tender is the copyright of the University and is for the sole purpose of preparing tenders.
12. Any Potential Contractors who directly or indirectly canvasses the University in connection with this tender, except where authorised to do so, shall be disqualified as well as any Potential Contractors who, in

connection with this tender, offers any inducement, fee or reward to the University or does anything which would constitute a breach of the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Bribery Act 2010.

13. Potential Contractors must advise the University in the event of a conflict of interest arising from their tender. In such circumstances, the University may require further information but reserves the right to disqualify a Potential Contractor from further involvement in the procurement process. Potential Contractors must state whether any members of the University have a direct or indirect association or interest in their business.
14. In the event of any inconsistency, this document and enclosures will take precedence over any documents previously issued by the University in relation to this contract opportunity.
15. The laws of England and Wales shall apply to this Questionnaire. Non-UK based organisations should attempt to answer the Questionnaire and should take particular note that the contract is to be executed under English Law.
16. The University reserves the right to disregard tender it considers as non-compliant unless exceptional extenuating circumstances prevail, of which the University will be the final arbiter.
17. The University reserves the right to disregard tenders received after the time specified.
18. The University is subject to the Freedom of Information Act 2000 and provisions are in force allowing any person access to information held by the University. Potential Contractors may request an exemption but the University is unable to guarantee non-disclosure.
19. The University reserves the right, subject to the appropriate procurement regulations, to change with-out notice the basis of, or the procedures for, the competitive tendering process or to terminate the process at any time. Under no circumstances shall the University incur any liability in respect of this tender or any supporting documentation.
20. The tender sets out the information which is required by the University in order to assess the suitability of Potential Contractors to meet the requirement in terms of their technical knowledge and experience, capability/capacity, organisational and financial standing. It is the intention to shortlist and award the contract to the successful Potential Contractors /s against the requirement as advertised in the OJEU Notice (if applicable).
21. Please visit The [University of Bristol's](#) website for details on its Vision and Strategy 2009-16, its Annual Report and Financial Statements and procurement related issues.
22. The submission and accompanying documents are to be in English.
23. Where necessary, the University of Bristol may consider other payment options only where the successful has a parent or bankers guarantee.

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## ANNEX '2': Certificate of Undertaking and Absence of Collusion

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The Potential Contractor must sign the Certificate of Undertaking and Absence of Collusion below when submitting a tender for (**insert the contract name and Pro-Contract reference**) to the University of Bristol.

***Note: the Potential Contractor may be signing as a Member of a Consortium***

I/We the undersigned do hereby certify that:-

- (A) This tender is made in good faith and is intended to be genuine;
- (B) This tender has been arrived at independently and has not been fixed, adjusted or influenced by any agreement or arrangement with any other person;
- (C) The Potential Contractor has not entered into any agreement or arrangement with any (potential) competitor with relation to this tender nor entered into any communications with any competitor;
- (D) The Potential Contractor has not indicated to any person other than authorised personnel the contents of the tender except where the disclosure, in confidence, of the tender was/will be necessary required in the preparation of the tender;
- (E) The Potential Contractor has not offered to pay or given any sum of money, directly or indirectly, to any person for assisting/ having assisted in relation to any other tender;
- (F) The Potential Contractor will not take part in any of the acts mentioned above before the tender submission return date and time.
- (G) The Potential Contractor has no conflict of interest with any contact / known party at the University

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## Annex '3': Certificate of Bona Fide Tender

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The Potential Contractors must sign the 'Certificate of Bona Fide Tender' below when submitting a tender for **(insert the contract name and Pro-Contract reference)** to the University of Bristol.

***Note: this offer is made subject to the Terms and Conditions of Contract (see Annex 4)***

The Potential Contractor/s certify that this offer is made in good faith and that the Potential Contractor /s have not fixed or adjusted the amount of the offer by or under or in accordance with any agreement or arrangement with any other person. The Potential Contractor /s also certify that they have not, and undertake that they will not:

- (i) Until the Contract has been made:
  - (a) Communicate to any person other than the person inviting these offers the amount or approximate amount of the offer, except where the disclosure, in confidence of the approximate amount of the offer was necessary to obtain quotations required for the preparation of the Offer, for insurance purposes or for a contract guarantee bond;
  - (b) Enter in to any arrangement or agreement with any other person and shall refrain from making an offer or as to the amount of any offer to be submitted;
- (ii) Pay give or offer or agree to pay or to give any sum of money or other valuable considerable directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any offer or proposed offer for the Goods/supply of Goods and Services any act of thing of the sort described in (i) (a) or (b) above.

The Potential Contractor acknowledges that if they have acted or shall act in contravention of this certificate, the University of Bristol will be entitled to cancel the Contract and to recover from the Potential Contractor the amount of any loss and expense resulting from such a cancellation.

The Potential Contractor further acknowledges that any contract entered into as a result of this Invitation to Tender will be subject to the University of Bristol's Conditions of Contract for the provision of Goods and Services included herein.

In this certificate, the word 'person' includes any person and anybody or association, corporate or unincorporated; 'any agreement or arrangement' includes any transaction, formal or informal and whether legally binding or not.

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## Annex '4': Terms and Conditions

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**UNIVERSITY OF BRISTOL**

**AGREEMENT**

**relating to**

**PROVISION OF GOODS AND SERVICES**



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THIS AGREEMENT is made the                      day of                      201

BETWEEN

(1) The University of Bristol of Senate House, Tyndall Avenue, Bristol BS8 1TH (“University”)

AND

(2) [NAME OF THE ] a company registered in England and Wales under company number  
♦                      whose registered office is at ♦                      (“”)

## IT IS AGREED AS FOLLOWS

### Recitals

- (A) The University wishes to be supplied with the Goods and provided with the Services.
- (B) The University has selected the to supply the Goods and provide the Services and the undertakes to supply and provide the same in accordance with the terms set out below.

## NOW IT IS AGREED as follows:

### 1.1 Definitions and Interpretations

In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings.

- 1.1.1 “Agreement” means the agreement between the University and the consisting of these Clauses and any attached Schedules, the Invitation to Tender, the ’s Tender and any other documents (or parts thereof) specified by the University;
- 1.1.2 “Approval” and “Approved” means the written consent of the University Representative;
- 1.1.3 “Clause” means a clause within the Agreement;
- 1.1.4 “University Property” means any property, other than real property, issued or made available to the by the University in connection with the Agreement;
- 1.1.5 “Commencement Date” means ♦                      201 ♦                      ;

- 1.1.6 **“Confidential Information”** means all technical business or similar information relating to the Goods and/or Services including records, reports, documents, papers, software and other materials however originating relating to the Goods and/or Services or to the business affairs of the University;
- 1.1.7 **“”** means the person, firm or company with whom the University enters into this Agreement;
- 1.1.8 **“’s Representative”** means the individual authorised to act on behalf of the for the purposes of the Agreement;
- 1.1.9 **“Default”** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-s in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other;
- 1.1.10 **“Effective Date”** means [the date of this Agreement] [♦ 201 ♦ ];
- 1.1.11 **“Equipment”** means the ’s equipment, plant, materials, and such other items supplied and used by the in the performance of its obligations under the Agreement;
- 1.1.12 **“Extension”** means the extension of the duration of the Agreement agreed in accordance with Clause 22;
- 1.1.13 **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- 1.1.14 **“Force Majeure Event”** means any cause materially affecting the performance of the Services under this Agreement arising from any act of God, war, riot, fire, flood or any disaster affecting either of the parties but will not mean any labour dispute between the Service Provider and the Service Provider’s employees, agents or sub-s;

- 1.1.15 **“Goods”** means any such goods as are to be supplied by the (or by the 's sub-) under this Agreement as specified in the Specification;
- 1.1.16 **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body seeking to comply with its contractual obligations, complying with all applicable laws and regulations and engaged in the same type of undertaking and under the same or similar circumstances and clauses as the Service Provider;
- 1.1.17 **“Information”** has the meaning given under section 84 of the Freedom of Information Act 2000;
- 1.1.18 **“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
- 1.1.19 **“Invitation to Tender”** means the University's invitation to s to submit tenders for the supply of the Goods and provision of the Services dated ♦ ;
- 1.1.20 **“Key Personnel”** means those persons named in the Specification as being key personnel;
- 1.1.21 **“Law”** means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Service Provider is bound to comply;
- 1.1.22 **“Month”** means calendar month;

- 1.1.23 **“Party”** means a party to this Agreement and “Parties” shall be construed accordingly;
- 1.1.24 **“Premises”** means the location where the Goods are to be delivered or the Services are to be performed, as specified in the Specification;
- 1.1.25 **“Price”** means the price exclusive of any applicable Tax, payable to the by the University under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with Clause 19;
- 1.1.26 **“Pricing Schedule”** means the details of the Price set out in Schedule 2;
- 1.1.27 **“Quality Standards”** means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the would reasonably and ordinarily be expected to comply as supplemented by the Specification;
- 1.1.28 **“Regulatory Bodies”** means those regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement and “Regulatory Body” shall be construed accordingly;
- 1.1.29 **“Replacement ”** means any third party service provider appointed by the University from time to time, to provide any services which are substantially similar to any of the Services, and which the University receives in substitution for any of the Services following the termination or partial termination of this Agreement, whether those services are provided by the University internally and/or by any third party;
- 1.1.30 **“Schedule”** means a schedule attached to this Agreement;

- 1.1.31 **“Services”** means the services to be provided as specified in the Specification;
- 1.1.32 **“Specification”** means the description of the Goods to be supplied and the Services to be provided under the Agreement and attached as the Specification Schedule;
- 1.1.33 **“Specification Schedule”** means the Schedule containing details of the Specification;
- 1.1.34 **“Staff”** means all persons employed by the Agreement or to perform the Agreement together with the 's servants, agents and sub-s used in the performance of the Agreement;
- 1.1.35 **“Tender”** means the 's tender response to the Invitation to Tender;
- 1.1.36 **“Term”** means [♦] years from the Effective Date or such reduced period as a result of this Agreement being terminated earlier in accordance with the provisions set out herein;
- 1.1.37 **“Tax”** means Value Added Tax;
- 1.1.38 **“University Closure Days”** means the days when notice may not be served as identified on the University's website URL: <http://www.bristol.ac.uk/university/dates/>;
- 1.1.39 **“University Representative”** means the person for the time being appointed by the University as being authorised to administer the Agreement on behalf of the University or such person as may be nominated by the University Representative to act on its behalf;
- 1.1.40 **“Variation”** has the meaning given to it in Clause 50.1;
- 1.1.41 **“Working Day”** means a day (other than Saturday or Sunday) on which banks are open for domestic business in the City of London.

## 2. Commencement and Duration

- 2.1 This Agreement shall take effect on the Commencement Date and shall, subject to Clause 2.2, expire automatically on [date] / [the expiration of the Term], unless otherwise terminated in accordance with this Agreement, or otherwise lawfully terminated.
- 2.2 The University may seek to extend the duration of this Agreement in accordance with Clause 22. During the Extension, the obligations under this Agreement shall continue (subject to any Variation) or



adjustment to the Price pursuant to Clause 50 until the expiry of the period specified in accordance with Clause 22.

### **3. Inspection of Premises**

- 3.1 Unless the University may otherwise directs, the is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of this Agreement to be carried out and be satisfied in relation to all matters connected with the performance of this Agreement.
- 3.2 The University shall, at the request of the , grant such access as may be reasonable for the purpose referred to in Clause 3.1.

### **4. The Specification**

- 4.1 The quantity, quality and description of the Goods and Services to be provided by the under this Agreement shall be as specified by the University in the Specification.

### **5. The Goods**

- 5.1 If required by the University, samples of Goods shall be submitted by the to the University for evaluation and approval at the 's cost and expense and all subsequent deliveries of the Goods shall be equal in quality to or better than approved samples.
- 5.2 The Goods shall be fully compatible with the University's equipment.
- 5.3 The University relies on the skill and judgment of the in the supply of the Goods and the execution of this Agreement.
- 5.4 The must undertake its obligation in this Agreement in accordance with the Law.

### **6. Delivery**

- 6.1 The Goods shall be delivered at the times and dates specified in the Specification.
- 6.2 Unless otherwise stated in the Specification, where the Goods are delivered by the , the point of delivery shall be when the Goods are removed from the transporting vehicle. Where the Goods are collected by the University, the point of delivery shall be when the Goods are loaded on the University's vehicle.
- 6.3 Except where otherwise provided in this Agreement, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the 's Contractors or carriers at such place as the University or duly authorised person shall reasonably direct.
- 6.4 Where any access to the University's Premises is necessary in connection with delivery or installation, the and the 's sub-s or Contractors shall at all times comply with the reasonable requirements of the University's security procedures.
- 6.5 Time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the University (at the University's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all or part of this Agreement, in either case without prejudice to other rights and remedies.
- 6.6 The University shall be under no obligation to accept or pay for any Goods delivered in excess of the

quantity ordered. If the University elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the to remove them within seven (7) days of receipt by the of such notice and to refund to the University any expenses incurred by the University as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the University shall be entitled to dispose of such Goods and to charge the for the costs of such disposal. The risk in any over-delivered Goods shall remain with the until they are collected by or on behalf of the or disposed of or purchased by the University, as appropriate.

- 6.7 The University shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 6.8 Unless expressly agreed to the contrary, the University shall not be obliged to accept delivery by instalments. If, however, the University does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the University, entitle the University to terminate the whole of any unfulfilled part of this Agreement without further liability to the University.
- 6.9 If the University is affected by circumstances of Force Majeure Event, the University shall be entitled to suspend partially or totally the date or dates for delivery of the Goods until such time as the circumstances of Force Majeure Event have ceased and such suspension shall not give rise to any claim by the against the University nor entitle the to terminate this Agreement. For the avoidance of doubt where the is subject to Force Majeure Event Clause 54 shall apply.

## **7. Property and Risk**

- 7.1 Property and risk in the Goods shall without prejudice to any other rights or remedies of the University (including the University's rights and remedies under Clause 8) pass to the University at the time of acceptance of delivery.

## **8. Damage in Transit**

- 8.1 On dispatch of any consignment of the Goods the shall send to the University at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods are either damaged in transit or having been placed in transit fail to be delivered to the University, the University shall elect:
- 8.1.1 to reject the consignment; or
- 8.1.2 require the free of charge to the University, to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in this Agreement provided that:
- (a) in the case of damage to such Goods in transit the University shall within thirty days of delivery give notice to the that the Goods have been damaged;
  - (b) in the case of non-delivery the University shall (provided that the University has been advised in writing of the dispatch of the Goods) within ten (10) days of the notified date of delivery give notice to the that the Goods have not been

delivered.

## **9. Inspection, Rejection and Guarantee**

- 9.1 The shall permit the University or authorised representatives to make any inspections or tests which may reasonably be required and the shall afford all reasonable facilities and assistance free of charge at the 's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the University of any rights or remedies in respect of the Goods and, in particular, the University retains the right to reject the Goods.
- 9.2 The University may by written notice to the reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the University of the Goods concerned. If the University shall reject any of the Goods pursuant to this Clause the University shall be entitled (without prejudice to other rights and remedies) either:
- 9.2.1 to have the Goods concerned as quickly as possible and in any event within seven (7) days either repaired by the or (as the University shall elect) replaced by the with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- 9.2.2 to treat this Agreement as discharged by the 's breach and require a refund from the in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the University in obtaining other goods in replacement.
- 9.3 The issue by the University of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods.
- 9.4 Unless agreed otherwise, the shall guarantee the Goods for the shorter of twelve (12) Months from putting into service or eighteen (18) Months from delivery. If the University shall within such guarantee period or within thirty (30) days thereafter give notice in writing to the of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the shall (without prejudice to any other rights and remedies which the University may have) as quickly as possible remedy such defects (whether by repair or replacement as the University shall elect) without cost to the University.
- 9.5 Any Goods rejected or returned by the University as described in Clause 9.2 shall be returned to the at the 's risk and expense.

## **10. Labelling and Packaging**

- 10.1 The Goods shall be packed and marked in a proper manner and in accordance with the University's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract order number (or other reference number if appropriate) and the name, quantity and description of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

## **11. Manner of Carrying out the Installation Work**

- 11.1 The shall make no delivery of materials, plant or other things nor commence any work on the University's Premises without obtaining prior Approval.
- 11.2 Access to the University's Premises shall not be exclusive to the but shall be limited to such Staff and 's Contractors as are necessary to enable the performance of this Agreement concurrently with the execution of work by others. The shall co-operate with such others as the University may reasonably require.
- 11.3 The University shall have the right at any time during the progress of this Agreement to order in writing:
- 11.3.1 the removal from the University's Premises of any materials which in the opinion of the University are either hazardous, noxious or not in accordance with this Agreement; and/or
- 11.3.2 the substitution of proper and suitable materials; and/or
- 11.3.3 the removal and proper re-execution notwithstanding any previous test thereof or interim payment thereof of any work or Goods which, in respect of material or workmanship, is not in the opinion of the University in accordance with this Agreement.
- 11.4 On completion of this Agreement the shall remove the 's plant, equipment and unused materials and shall clear away from the University's Premises all rubbish arising out of this Agreement and leave the University's Premises in a neat and tidy condition, unless otherwise directed by the University.

## **12. The Services**

- 12.1 The shall provide the Services during the Term in accordance with the University's requirements as set out in the Specification and the terms of this Contract in consideration of the payment of the Price. The University shall have the power to inspect and examine the performance of the Services at the University's Premises at any reasonable time or, provided that the University gives reasonable notice to the , at any other premises where any part of the Services is being performed.
- 12.2 The shall at all times deliver the Services in accordance with the Law.
- 12.3 In the event that the University notifies the of the University's reasonably held opinion that any part of the Services do not meet the requirements of this Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the University, the shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the University.
- 12.4 Timely provision of the Goods and the Services shall be of the essence of this Agreement, including in relation to commencing the provision of the Goods and the Services within the time agreed or on a specified date.
- 12.5 Without prejudice to any other rights and remedies the University may have pursuant to this Agreement, the shall reimburse the University for all reasonable costs incurred by the University which have arisen as a direct consequence of the 's delay in the performance of this Agreement which the has failed to remedy after being given reasonable notice from the University.

### **13. Manner of Carrying Out the Services**

- 13.1 The shall provide all the Equipment necessary for the provision of the Services.
- 13.2 All Equipment brought onto the University's Premises shall be at the 's own risk. Unless otherwise agreed, Equipment brought onto the University's Premises will remain the property of the .
- 13.3 The shall maintain all items of Equipment within the University's Premises in a safe, serviceable and clean condition.
- 13.4 All Equipment shall be at the risk of the and the University shall have no liability for any loss of or damage to any Equipment unless the is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the University.
- 13.5 The University may at its option purchase any item of Equipment from the at any time, if the University considers that the item is likely to be required in the provision of the Services following the expiry or termination of this Agreement. The purchase price to be paid by the University shall be the fair market value.
- 13.6 The University shall have the power at any time during the progress of the Services to order in writing that the :
- 13.6.1 remove from the University's Premises any Equipment which in the opinion of the University is either hazardous, noxious or not in accordance with this Agreement; and/or
- 13.6.2 remove any item of Equipment in accordance with Clause 13.6.1 above, to replace such item with a suitable substitute item of Equipment.
- 13.7 Access to the University's Premises shall not be exclusive to the but shall be limited to such Staff and the 's Contractors as are necessary to the performance of the Services concurrently with the execution of work by others. The shall co-operate free of charge with such others as the University may reasonably require.

### **14. Standard of Work**

- 14.1 The shall at all times throughout the Term:
- 14.1.1 comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of the Services has not been specified in this Agreement the shall agree the relevant standard of Services with the University Representative prior to the delivery of the Services, and the shall undertake its obligations in accordance with Good Industry Practice;
- 14.1.2 warrant and represent that all Staff assigned to the performance of the Service shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services;

### **15. Licence to Occupy University Premises**

- 15.1 Any land or Premises (including temporary buildings) made available to the by the University in connection with this Agreement shall be made available to the free of charge and shall be used by the solely for the purpose of performing this Agreement. The shall have the use of such land or Premises

as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

- 15.2 The shall not use the University's Premises for any purpose or activity other than for the performance of this Contract unless given prior Approval.
- 15.3 Should the require modifications to the University's Premises, such modifications shall be subject to prior Approval and shall be carried out by the University at the 's expense. The University shall undertake Approved modification work within a reasonable period of the relevant Approval. Ownership of such modifications shall rest with the University. At the University's option, the University may make modifications to the University's Premises to return them to their original specification. Such modifications shall be carried out by the University at the 's expense.
- 15.4 The and 's employees, servants, agents, Contractors or sub-s shall observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the University, and pay for the cost of making good any damage caused by the , his employees, servants, agents, Contractors or sub-s other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 15.5 The Parties agree that there is no intention on the part of the University to create a tenancy of whatsoever nature in favour of the or its employees, servants, agents, Contractors or sub-s and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the University retains the right at any time to use in any manner the University sees fit any premises owned or occupied by it.

## **16. University Property**

- 16.1 Where the University for the purpose of this Agreement issues University Property free of charge to the such Property shall be and remain the property of the University. The shall not in any circumstances have a lien on the University Property and the shall take all reasonable steps to ensure that the title of the University to such University Property and the exclusion of any such lien are brought to the notice of all sub-s and other persons dealing with this Agreement.
- 16.2 Any University Property made available or otherwise received by the shall be deemed to be in good condition when received by or on behalf of the unless the notifies the University otherwise within five (5) Working Days of receipt.
- 16.3 The shall maintain all University Property in good order and condition and shall use University Property solely in connection with this Agreement and for no other purpose without prior Approval.
- 16.4 The shall ensure the security of all University Property, whilst in the 's possession, either on its premises or elsewhere during the performance of this Agreement, in accordance with the University's reasonable security requirements as required from time to time.
- 16.5 The shall be liable for any and all loss of or damage (excluding fair wear and tear) to any University Property, unless the is able to demonstrate that such loss or damage was caused by the negligence or default of the University. The 's liability set out in this Clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the University. The shall inform the University Representative within two (2) Working Days of becoming aware of any defects appearing in

or losses or damage occurring to University Property made available for the purposes of this Agreement.

**17. Price**

- 17.1 In consideration of the performance of the 's obligations under this Agreement by the , the University shall pay the Price set out in the Pricing Schedule in accordance with Clause 18.
- 17.2 The University shall pay the , on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Goods and Services provided in accordance with this Agreement.

**18. Payment and Tax**

- 18.1 The University shall pay the undisputed sums due to the in cleared funds within thirty (30) days from the end of the month of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the reasonable satisfaction of the University.
- 18.2 Each invoice shall contain all appropriate references and a detailed breakdown of the supply of the Goods and provision of the Services and shall be supported by any other documentation reasonably required by the University Representative to substantiate the invoice.
- 18.3 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 18.4 The University may, reduce payment in respect of any Services which the has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the University.
- 18.5 The shall not suspend the supply of the Goods and Services unless the is entitled to terminate this Agreement under Clause 29.4 for failure to pay undisputed charges.

**19. Price adjustment on extension of the Term**

- 19.1 The Price shall be firm for the Term. In the event of an extension being considered beyond this Agreement Period the University would wish to review the charges with the in the six (6) Months prior to the expiry of this Agreement.
- 19.2 If a Price variation is agreed with the University as part of its consideration relating to an extension of the Term, the revised Price will take effect from the first day of any extension of the Term pursuant to Clause 22 and shall remain firm for the period of the extension of the Term.
- 19.3 Any increase in the Price pursuant to Clauses 19.1 and 19.2 above will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a Schedule to this Contract) between the Commencement Date and the date of any notice given under Clause 19.2.

**20. Euro**

- 20.1 Any requirement of Law to account for the goods in euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the at nil charge to the University.

**21. Security**



- 21.1 The University shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The shall comply with all reasonable security requirements of the University while on the Premises, and shall procure that all of its employees, agents, servants and sub-s shall likewise comply with such requirements.

**22. Possible Extension of Term**

- 22.1 Subject to satisfactory performance by the during the Term, the University may wish to extend this Agreement for a further period of up to [ ] year(s). The University may approach the if it wishes to do so before the end of the Term. The Clauses in this Contract will apply throughout any such extended period unless otherwise stated to the contrary.

**23. Intellectual Property Rights**

- 23.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- 23.1.1 furnished to or made available to the by the University shall remain the property of the University;
- 23.1.2 prepared by or for the for use, or intended use, in relation to the performance of this Contract shall belong to the University.
- 23.2 The shall obtain Approval before using any material, in relation to the performance of this Agreement which is or may be subject to any third party Intellectual Property Rights. The shall procure that the owner of the rights grants to the University a non-exclusive licence, or if itself a licensee of those rights, shall grant to the University an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to the Replacement or to any other third party providing services to the University, and shall be granted at no cost to the University.
- 23.3 The University shall notify the in writing of any claim or demand brought against the University for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the . The shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the , provided always that the :
- 23.3.1 shall consult the University on all substantive issues which arise during the conduct of such litigation and negotiations;
- 23.3.2 shall take due and proper account of the interests of the University; and
- 23.3.3 shall not settle or compromise any claim without the University's prior written consent (not to be unreasonably withheld or delayed)
- 23.4 At the termination of this Agreement the shall immediately return to the University all materials, work or records held, including any back-up media

**24. Limitation of liability**



- 24.1 Except as provided in Clause 27 below in the case of personal injury and death, the University's maximum liability to the for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only, and will be limited to the lesser of:
- 24.1.1 where the event is covered by the University's insurance policies, the amount which the University actually recovers from its insurers under those policies, to a maximum of £1,000,000; or
- 24.1.2 the contract value.
- 24.2 In no event shall the University be liable to the for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the solely or substantially because of termination of this Agreement.
- 24.3 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of this Agreement to each party and the commercial standing of each party.

## **25. Warranties**

- 25.1 The warrants and represents that:
- 25.1.1 the has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the ;
- 25.1.2 the shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice;
- 25.1.3 the Goods shall be to the reasonable satisfaction of the University;
- 25.1.4 the Goods shall conform in all respects with any sample approved by the University in the absence of a sample, all Goods supplied shall be within the normal limits of industrial quality;
- 25.1.5 the Goods shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification and with any particulars specified in this Contract;
- 25.1.6 the Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force relating to the sale, packaging, labelling or marking of the Goods;
- 25.1.7 the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979 as amended) free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose held out by the or indicated in the Specification;
- 25.1.8 all obligations of the pursuant to this Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 25.1.9 the is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which

default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

## **26. Insurance**

26.1 The shall effect and maintain at its own cost policies of insurance for any occurrence or series of occurrences arising out of any one event arising out of the performance of its obligations under this Agreement:

26.1.1 professional indemnity insurance of a minimum of £5,000,000 (five million pounds);

26.1.2 public liability insurance (including product liability) of a minimum of £5,000,000 (five million pounds);

26.1.3 employers liability insurance of a minimum of £10,000,000 (ten million pounds), with reputable insurers in the UK insurance market for a period expiring no earlier than 6 years after completion of supply of the Goods and provision of the Services to cover the liability of the provided that such insurance is available in the market at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the 's own claims record or other acts or omissions particular to the shall be deemed to be within commercially reasonable rates.

26.2 The shall inform the University immediately if such insurance cover ceases to be available at commercially reasonable rates.

26.3 Upon request, the will provide the University with a copy of the policy of insurance effected in accordance with Clause 26.1.

## **27. Indemnity**

27.1 The shall indemnify the University from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with:

27.1.1 any act, neglect or default on the part of the , its employees or agents;

27.1.2 breach of any warranty given by the in relation to the provision of the Goods and/or Services including without limitation, the warranty set out in Clause 25;

27.1.3 breaches of this Agreement in respect of any matter arising from supply of the Goods and/or provision of the Services (including injury, loss of or damage to the University's tangible property or that of a third party, any claim or action brought against the University by a third party that any Goods or its use infringe such third party's Intellectual Property Rights and/or any other third party claim);

27.1.4 any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the University at any time in respect of the 's failure to account for or to pay any Tax relating to payments made to the under this Agreement.

Any amounts due under this Clause 27.1 shall be paid in cleared funds by the to the

University not less than five (5) Working Days before the date upon which the tax or other liability is payable by the University.

27.2 Without prejudice to any other provision of this Agreement, the will fully indemnify the University against

any claims made against it as a result of any failure by the to comply with any statutory provision to be observed or performed in connection with the provision of the Goods and/or Services.

- 27.3 Further to Clause 27.1.3 above, should the University become or in the 's opinion, be likely to become, the subject of a claim of infringement of an Intellectual Property Right, the shall at its option:
- 27.3.1 procure for the University, at no cost to the University, the right to continue to use the Software;  
or
- 27.3.2 replace or, with the prior written consent of the University, modify the Software to make its use non-infringing while yielding substantially equivalent functionality.
- 27.4 The 's liability to indemnify the University arising under Clauses 25 above shall be without prejudice to any other right or remedy of the University arising under this Contract.
- 27.5 Where this Agreement is terminated under Clause 29 below, the will promptly and fully indemnify the University against all reasonable losses, claims, damages expenses or costs suffered by the University due to the termination of this Agreement.

## **28. Termination / Insolvency**

- 28.1 The University may at any time during the Term terminate this Agreement by notice in writing with immediate effect where:
- 28.1.1 the undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- 28.1.2 the is an individual or a firm and a petition is presented for the 's bankruptcy, or a criminal bankruptcy order is made against the or any partner in the firm, or the or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the 's or firm's affairs; or
- 28.1.3 the is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- 28.1.4 where the is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 28.1.5 or any similar event occurs under the law of any other jurisdiction.
- 28.2 The shall notify the University Representative immediately when any change of control occurs. The University may only exercise its right under Clause 28.1.1 within six (6) months of:
- 28.2.1 being notified that a change of control has occurred; or
- 28.2.2 where no notification has been made the date that the University becomes aware of the change

of control;

but shall not be permitted to do so where an Approval was granted prior to the change of control of the .

## **29. Termination on Default**

29.1 The University may terminate this Agreement, or terminate the provision of any part of this Agreement without liability to the by giving written notice to the or the 's Representative with immediate effect if the commits a Default and if:

29.1.1 the has not remedied the Default to the satisfaction of the University within twenty-five (25) Working Days, or such other period as may be specified by the University, after issue of a written notice specifying the Default and requesting it to be remedied; or

29.1.2 the Default is not, in the opinion of the University, capable of remedy; or

29.1.3 the Default is a material breach of this Agreement.

29.2 Without Prejudice, failure to meet a Priority Service Level shall entitle, but not require, the University to terminate this Agreement.

29.3 If through any Default of the , data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the University for any costs charged in connection with such Default of the .

29.4 The may terminate this Agreement if the University is in material breach of its obligations to pay undisputed charges by giving the University ninety (90) days notice specifying the breach and requiring its remedy.

## **30. Break**

30.1 The University shall have the right to terminate this Agreement, or to terminate the provision of any part of this Agreement at any time by giving three (3) months' written notice to the . The University may extend the period of notice at any time before it expires.

## **31. Consequences of Termination**

31.1 Where the University terminates this Agreement under Clauses 28 or 29, or terminates the provision of any part of this Agreement under those Clauses:

31.1.1 Where the University then makes other arrangements for the supply of Goods and/or provision of the Services, the University shall be entitled to recover from the the cost of making those other arrangements and any additional expenditure incurred by the University throughout the remainder of the Term or any Extension; and

31.1.2 no further payments shall be payable by the University to the until the University has established the final cost of making those other arrangements.

## **32. Disruption**

- 32.1 The shall take reasonable care to ensure that in its performance of this Agreement it does not disrupt the operations of the University, its employees or any other employed by the University.
- 32.2 The shall immediately inform the University of any actual or Potential Contractors industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Agreement.
- 32.3 In the event of industrial action by the Staff or the 's Contractors the shall seek the University's Approval to its proposals to perform its obligations under this Agreement.
- 32.4 If the University considers the 's proposals referred to in Clause 32.3 are insufficient or unacceptable, then the University may terminate this Agreement by notice in writing with immediate effect.

### **33. Recovery Upon Termination**

- 33.1 Termination or expiry of this Agreement (save as otherwise expressly provided in this Agreement) shall:
- 33.1.1 be without prejudice to any rights and remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 33.1.2 not affect the continuing rights and obligations of the and the University under Clauses 14 (Standard of Work), 21 (Security), 23 (Intellectual Property Rights), 25 (Warranties), 26 (Insurance), 27 (Indemnity), 29 (Termination on Default), 31 (Consequences of Termination), 33 (Recovery Upon Termination), 34 (Remedies Cumulative), 35 (Set Off), 42 (Confidentiality), 43 (Data Protection Act), 44 (Freedom of Information), 51 (Publicity and Media) and 61 (Governing Law).
- 33.2 At the end of the Term (and howsoever arising) the shall forthwith deliver to the University upon request all the University's property (including but not limited to materials, documents, information, access keys) relating to this Agreement in its possession or under its control or in the possession or under the control of any permitted Contractors or sub-s and in default of compliance with this Clause the University may recover possession thereof and the grants licence to the University or its appointed agents to enter (for the purposes of such recovery) any premises of the or its permitted Contractors or sub-s where any such items may be held.
- 33.3 At the end of the Term (howsoever arising) and/or after the Term, the shall provide assistance to the University and any new appointed by the University to continue or take over the performance of this Agreement in order to ensure an effective handover of all work then in progress. Where the end of the Term arises due to the 's Default, the shall provide such assistance free of charge. Otherwise the University shall pay the 's reasonable costs of providing the assistance, and the shall take all reasonable steps to mitigate such costs.
- 33.4 The provisions of this Clause shall survive the continuance of this Agreement and indefinitely after its termination.

### **34. Remedies Cumulative**

- 34.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for

breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

### **35. Set Off**

- 35.1 Wherever under this Agreement any sum of money is recoverable from or payable by the (including any sum which the is liable to pay to the University in respect of any breach of this Agreement), the University may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the under this Agreement or under any other agreement or contract with the University.
- 35.2 Any overpayment by the University to the , whether of the Price or of Tax, shall be a sum of money recoverable by the University from the .
- 35.3 The shall make any payments due to the University without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the has a valid court order requiring an amount equal to such deduction to be paid by the University to the .

### **36. Authorised Representatives**

#### **36.1 The University Representative**

The function of the University Representative will be to liaise with and give instructions to the and its officers, employees, agents or sub-s in relation to all matters concerning the performance of the of its obligations under this Agreement and to determine any matters or issue any notices as may be the function of the University Representative under this Agreement.

#### **36.2 The 's Representative**

The 's Representative will have power on behalf of the in connection with any matter relating to the performance of this Agreement to exercise the rights, functions and obligations of the under this Agreement.

### **37. Key Personnel**

- 37.1 Key Personnel shall not be released from providing the Services without the agreement of the University, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 37.2 Any replacements to the Key Personnel shall be subject to the agreement of the University. Such replacements shall be:
- 37.2.1 of at least equal status or of equivalent experience and skills; and
- 37.2.2 suitable for the responsibilities, to the Key Personnel being replaced.
- 37.3 The University shall not unreasonably withhold its agreement under Clause 37.1 or 37.2. Such agreement shall be conditional on appropriate arrangements being made by the to minimise any adverse impact on this Agreement which could be caused by a change in Key Personnel.

### **38. Staff**

- 38.1 The University reserves the right under this Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the University:
- 38.1.1 any member of the Staff; or
- 38.1.2 any person employed or engaged by a sub-, agent or servant of the , whose admission or continued presence would be, in the opinion of the University, undesirable.
- 38.2 If and when directed by the University, the shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with this Agreement to any premises occupied by or on behalf of the University, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the University may reasonably desire.
- 38.3 The 's Staff, engaged within the boundaries of the University's establishment, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 38.4 The decision of the University as to whether any person is to be refused access to any premises occupied by or on behalf of the University shall be final and conclusive.
- 38.5 The shall bear the cost of any notice, instruction or decision of the University under this Clause 38.
- 38.6 During the Term the will employ sufficient appropriately trained, qualified and supervised Staff in order to provide the Services and to comply with its obligations under this Agreement.
- 38.7 The is responsible for the employment, including employment conditions, of its employees and will at all times be responsible for the payment of all salaries and wages, income or other taxes, national insurance contributions or levies of any kind, relating to or arising out of the employment of any persons employed by the .
- 38.8 Removal of Staff
- Unless stated otherwise in this Agreement, the University may request at any time the removal of (and the will remove) any Staff providing Services if the University:
- 38.8.1 reasonably believes that the individual is not performing the tasks required of that individual for performance of this Agreement or does not meet the appropriate professional standards; and
- 38.8.2 has previously provided the with prior written notice of the problem and a reasonable opportunity to remedy the situation and the problem has not been remedied.
- In such event the will provide replacement staff as soon as reasonably practicable. Any replacement staff will have relevant experience in relation to the role they are replacing.
- 39. Training**
- 39.1 Where indicated in this Agreement, the Price shall include the cost of instruction of the University's personnel in the use of the Goods, such instruction to be in accordance with the requirements of this Agreement in accordance with the training specified in the Specification.

**40. Health and Safety**



- 40.1 The shall promptly notify the University of any health and safety hazards which may arise in connection with the performance of this Agreement. The University shall promptly notify the of any health and safety hazards which may exist or arise at the University's Premises and which may affect the in the performance of this Agreement.
- 40.2 While on the University's premises, the shall comply with any health and safety measures implemented by the University in respect of Staff and other persons working on those Premises.
- 40.3 The shall notify the University immediately in the event of any incident occurring in the performance of this Agreement on the University's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 40.4 The shall comply fully with the requirements of the Safety Legislation and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the premises in the performance of this Agreement.
- 40.5 The shall provide to the University Representative any information relating to the 's compliance with this Clause 40 that the University may reasonably request at any time from the Commencement Date.

#### **41. Equality and Diversity**

- 41.1 The shall:
  - 41.1.1 (if so requested by the University) demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods such as use of the Job Centre or press advertisements;
  - 41.1.2 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes;
  - 41.1.3 regularly monitor the ethnic composition of the workforce;
  - 41.1.4 observe as far as possible the Commission's Code of Practice in Employment as approved by parliament in 1983; and
  - 41.1.5 provide such information as the University may reasonably request for the purpose of assessing the Consultant's compliance in respect of this Clause 41.
- 41.2 The shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 2005, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof. The shall take all reasonable steps to secure the observance of Clause 41.1 by all servants, employees or agents of the and all Contractors and sub-s employed in the execution of this Agreement.



## **42. Confidentiality**

- 42.1 Subject to Clauses 43 (Data Protection) and 44 (Freedom of Information) and the provisions of this Clause 42, or as otherwise required by law or a competent regulatory authority, the agrees at all times during the continuance of this Agreement and after its termination to keep confidential (and will procure that its employees and agents will keep confidential) the Confidential Information and that it will not disclose or permit the Confidential Information to be disclosed without the prior written consent of the University or in accordance with the order of a court of competent jurisdiction.
- 42.2 Confidential Information shall only be disclosed as is strictly necessary and each party shall procure that its personnel and third parties to which Confidential Information is disclosed treat such information as confidential. Such information shall be used only for the purpose for which it was disclosed and for carrying out the purposes of this Agreement and any Contract and shall not without prior written consent of the disclosing party be disclosed to any third party provided that either party may disclose without consent any Confidential Information to its sub-s for the operation of any System or the provision of the Goods and/or Services provided that such disclosures is on a 'need to know' basis only and the sub-undertakes to keep such Confidential Information confidential.
- 42.3 Information shall not be deemed to be Confidential Information where it:
- 42.3.1 is authorised to be disclosed by the disclosing party to the extent of the authority given; or
  - 42.3.2 is made public by the disclosing party or is or becomes part of the public domain other than by the default of the receiving party; or
  - 42.3.3 is in the possession of or is known by the receiving party without any obligation to keep it confidential prior to its receipt from the disclosing party; or
  - 42.3.4 is subsequently rightfully obtained by the receiving party from a third party; or
  - 42.3.5 is independently developed by the receiving party.
- 42.4 Notwithstanding the completion or termination for whatever reason of this Agreement, the obligations of confidentiality shall, unless otherwise agreed, continue for a period of five (5) years from such completion or termination of this Agreement.
- 42.5 Any Confidential Information referred to in Clause 42.1 shall remain the property of the disclosing party and shall be returned by the receiving party to the disclosing party if so requested.
- 42.6 The obligations of confidentiality set out above shall be deemed to be discharged provided that there is no intentional disclosure of the Confidential Information, that the party in question has taken reasonable efforts in accordance with best current commercial security practice to reduce the risk of accidental disclosure, and that, where accidental disclosure does occur despite the exercise of reasonable care, steps are taken to minimise the risk of further accidental disclosure of the same kind.

## **43. Data Protection Act**

- 43.1 The shall (and shall procure that any of its Staff involved in the provision of this Contract) comply with any notification requirements under the Data Protection Act 1998 ("the 1998 Act") and both Parties will duly observe all their obligations under the 1998 Act which arise in connection with this Agreement.

- 43.2 The warrants that in so far as applicable to supply of Goods and provision of the Services:
- 43.2.1 where the is processing personal data (as defined by the 1998 Act) as a data processor for the University (as defined by the 1998 Act) the shall ensure that it has in place appropriate security practice to maintain sufficient technical and organisational measures to ensure the security and integrity of its computer and other information systems (to prevent the unauthorised disclosure or unlawful processing of the personal data, copying or use of confidential information or personal data and against accidental loss or destruction of, or damage to, the personal data) and the warrants that it will comply with the Seventh Data Protection Principle in Schedule 1 to the 1988; and
- 43.2.2 provide the University with such information as the University may reasonably require to satisfy itself that the is complying with its obligations under the 1998 Act;
- 43.2.3 promptly notify the University of any breach of the security measures required to be put in place pursuant to the 1998 Act;
- 43.2.4 ensure that it does nothing knowingly or negligently which places the University in breach of the University's obligations under the 1998 Act; and
- 43.2.5 the will act only on the instructions of the University in respect of any personal data that it processes on behalf of the University.

#### **44. Freedom of Information**

- 44.1 The recognises that the University is subject to legal duties which may require the release of information under the FOIA or the Environmental Information Regulations 2004 or any other applicable legislation or codes governing access to information and that the University may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Agreement in any way including without limitation information provided by or relating to the .
- 44.2 If the receives directly a request for Information under any applicable code or legislation governing access to Information, the shall:
- 44.2.1 immediately pass such request together with full background details and any supporting documentation to the University; and
- 44.2.2 not act or make any representations in such a way as to prejudice the University's position in relation to such request.
- 44.3 The accepts and acknowledges that any decision to disclose Information and/or the application of any exemptions under any applicable code or legislation governing access to Information will be at the University's sole discretion.

#### **45. Mistakes in Information**

- 45.1 The shall be responsible for the accuracy of all drawings, documentation and information supplied to the University by the in connection with the provision of the Goods and Services and shall pay the University any extra costs occasioned by any discrepancies, errors or omissions therein.

#### **46. Conflicts of Interest**

46.1 The shall take appropriate steps to ensure that neither the nor any employee, servant, agent, supplier or sub- is placed in a position where there is or may be an actual conflict, or a Potential Contractors conflict, between the pecuniary or personal interests of the or such persons and the duties owed to the University under the provisions of this Agreement. The will disclose to the University full particulars of any such conflict of interest which may arise.

46.2 The provisions of this Clause shall apply during the continuance of this Agreement and for a period of two (2) years after its termination.

#### **47. Corrupt Gifts and Fraud**

47.1 The shall not solicit or accept from, nor offer or give, or agree to give, to any person, any gift or consideration of any kind as an inducement or reward for doing, or refraining from doing any act in relation to the obtaining or execution of this, or any other, contract with the University, or for showing or refraining from showing favour or disfavour to anyone in relation to this, or any such, contract. The attention of the is drawn to the criminal offence created by the Prevention of Corruption Acts 1899 to 1906 and The Public Bodies Corrupt Practices Act 1889.

47.2 The is to pay to the University the amount of the value of any such gift or consideration.

47.3 The University Representative shall have the right to require that the suspend from any further work in connection with the Agreement any person reasonably suspected of fraudulent action or malpractice.

#### **48. Offers of Employment**

48.1 For the duration of this Agreement and for a period of twelve (12) months thereafter the shall not employ or offer employment to any of the University's staff who have been associated with provision of the Goods and/or Services under this Agreement without the University's prior Approval.

#### **49. No Partnership or Agency**

49.1 This Agreement including shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship, contract of employment or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

49.2 Save as expressly provided otherwise in this Agreement, the will not be, or be deemed to be, an agent of the University and the will not hold itself out as having power to bind the University in any way.

#### **50. Amendments**

50.1 The shall not alter any of the Goods or the Services except as directed by the University, but the University shall have the right from time to time during the execution of this Agreement, by written notice to the to change the Specification and add to or omit, or otherwise vary, the Goods including the order in which the Goods are to be delivered, or to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever PROVIDED THAT such addition, omission or variation does not amount to a material change to the Specification. Such a change is hereinafter called "a Variation".

- 50.2 Any such Variation shall be communicated in writing by the University Representative to the 's Representative in accordance with the notice provisions of Clause 56. All Variations shall be in the form of an addendum to this Agreement.
- 50.3 If the is unable within the timescale reasonably directed by the University to carry out the Variation in accordance with Clause 50.1 above, the University may terminate this Agreement and recover from the the amount of any loss suffered by the University resulting from the termination.
- 50.4 If a Variation occurs, the Price may also be varied. Such Variation in the Price shall be calculated by the University and agreed in writing with the and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Clause 62.
- 50.5 The shall provide such information as may be reasonably required to enable such varied price to be calculated.
- 50.6 If, in the opinion of the , any such Variation in accordance with Clause 50.1 is likely to prevent the from fulfilling any of their obligations under this Agreement, the shall notify the University immediately, whereupon the University shall inform the within fourteen (14) days whether or not the said Variations shall be carried out. Until the University confirms such instructions in writing they shall be deemed not to have been given.

## **51. Publicity and Media**

- 51.1 Without prejudice to the University's obligations under the FOIA, the shall not make any press announcements or publicise this Agreement or any part thereof in any way, except with the written consent of the University (such consent not to be unreasonably withheld or delayed).
- 51.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 51.1 by all their servants, employees, agents, professional advisors and consultants. The shall take all reasonable steps to ensure the observance of the provisions of Clause 51.1 by its sub-s.

## **52. Assignment and sub-contracting**

- 52.1 The shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without prior Approval. Sub-contracting any part of this Agreement shall not relieve the of any obligation or duty attributable to the under this Agreement. The shall be responsible for the acts and omissions of its sub-s as though they are its own.
- 52.2 Where the University has consented to the placing of sub-contracts, copies of each sub-contract shall at the request of the University, be sent by the to the University within two (2) Working Days of such request.
- 52.3 Where the enters into a sub-contract with a supplier or for the purpose of performing this Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the to the sub- within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- 52.4 With the prior Approval (such consent not to be unreasonably withheld or delayed) the may perform

any or all of its obligations under this Agreement through agents or sub-s, provided that the shall remain liable for such performance and shall indemnify the University against any loss or damage suffered by the University arising from any act or omission of such agents or sub-s.

52.5 The University shall be entitled to:

52.5.1 assign, novate or otherwise dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in regulation 3(1) of the Public Supplies Contracts Regulations 1995); or

52.5.2 transfer, assign or novate its rights and obligations where required by law to a body assuming the whole or part of the University's business.

### **53. Counterparts**

53.1 This Agreement may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

### **54. Force Majeure**

54.1 Neither party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

54.2 On the occurrence of a Force Majeure Event the affected party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event including evidence of its effect on the obligations of the affected party and any action proposed to mitigate its effect.

54.3 As soon as practical following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Services.

54.4 If no such terms are agreed on or before the date falling three (3) months after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected party is substantially unable to comply with its obligations under this Agreement then either party may terminate this Agreement by giving thirty (30) Days' written notice to the other party.

54.5 Notwithstanding Clause 54.4, the shall use all reasonable endeavours to restore or maintain the provision of the Services. During the period in which the Force Majeure Event is continuing the University will continue to make payment for the Services in accordance with Clause 31 above to the extent that the Services can be provided.

54.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms subsisting immediately prior to the occurrence of the Force Majeure Event.

**55. Waiver**

- 55.1 The failure of either Party to insist upon strict performance of any provision of this Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.
- 55.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 56.
- 55.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

**56. Notices**

- 56.1 Any notice required by this Agreement to be given by either party to the other will be in writing and will be served personally, by fax or by sending the same by registered post or recorded delivery to the above address or such address or fax number as notified to each other.
- 56.2 Excluding University Closure Days, any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served forty-eight (48) hours after it was posted and any notice sent by fax will be deemed to have been served twenty-four (24) hours after it was despatched.
- 56.3 The shall also send a copy of any such notice marked for the attention of the University Secretary, Secretary's Office, Senate House, Tyndall Avenue, Bristol BS8 1TH.

**57. Severability**

- 57.1 Each provision of this Agreement is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of the Agreement but (except to the extent in the case of that provision) it and all other provisions of the Agreement shall continue in full force and effect and their validity, legality and enforceability shall not thereby be effected or impaired, provided that the operation of the Agreement would not negate the commercial intent and purpose of the parties under this Agreement.
- 57.2 If any provision of this Agreement is illegal or unenforceable as a result of any time period being stated to endure for a period in excess of that permitted by a regulatory authority, that provision shall take effect within a time period that is acceptable to the relevant regulatory authorities subject to it not negating the commercial intent of the parties under this Agreement.

**58. Entire Agreement**

- 58.1 Each party acknowledges that this Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement. This Agreement supersedes all prior negotiations,

representations and undertakings, whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

**59. Human Rights**

59.1 The shall comply with the provisions of the Human Rights Act 1998 ("HRA 1998") as if it were a public body as defined by the HRA 1998 as appropriate to the provision of the Goods and/or Services.

**60. The Contracts (Rights of Third Parties) Act 1999**

60.1 No person who is not a Party to this Agreement (including without limitation any employee, officer, agent, representative, or sub- of either the University or the ) shall have any right to enforce any term of this Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 60.

**61. Governing Law**

61.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**62. Dispute Resolution**

62.1 If a dispute arises between the University and the in connection with or arising out of this Agreement, the parties will each use reasonable endeavours to resolve such dispute by means of prompt, bona fide discussion at a managerial level appropriate to the dispute in question.

62.2 If such a dispute is not resolved within five (5) Working Days of it having been referred to a managerial level for discussion then either party may refer it to the senior officer of each party for resolution and the same will meet for discussion within ten (10) Working Days thereafter or such longer period as the parties may agree.

62.3 In the event that any dispute arising out of this Agreement cannot be resolved in accordance with Clause 62.1 or 62.2, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure ("the Model Procedure") unless (a) the University considers that the dispute is not suitable for resolution by mediation or (b) the does not agree to mediation.

62.4 To initiate mediation, a party must give notice in writing ("ADR notice") to the other party to the dispute addressed to its Chief Executive (or senior officer if it does not have a Chief Executive) requesting mediation in accordance with Clause 62.3. A copy of the request should be sent to CEDR.

62.5 The procedure in the Model Procedure will be amended to take account of:

62.5.1 any relevant provisions in this Agreement; or

62.5.2 any other agreement which the parties may enter into in relation to the conduct of the mediation ("Mediation Agreement").

62.6 If there is any point on the conduct of the mediation (including as to the nominator of the mediator) upon



which the parties cannot agree within ten (10) Working Days from the date of the ADR notice, CEDR will, at the request of any party, decide that point for the parties, having consulted with them.

- 62.7 The mediation will start not later than twenty (20) Working Days from the date of the ADR notice.
- 62.8 Neither party may terminate the mediation until each party has made its opening presentation and the mediator has met each party separately for at least one (1) hour. Therefore paragraph 14 of the Model Procedure will apply.
- 62.9 If the parties have not settled the dispute by the mediation within thirty (30) Working Days from the date of the ADR notice, the mediator so appointed shall provide an expert determination which shall be final and binding except where there is a manifest error of law.
- 62.10 Neither party will be prevented from, or delayed in, seeking a preliminary injunction or other judicial relief at any time if in its judgement such action is necessary to prevent irreparable damage.
- 62.11 If the parties do reach agreement as to the resolution of the dispute through the procedure set out in this Clause 62 such agreement will be recorded in writing and signed by the parties whereupon it shall become binding upon the parties.

### **63. Environmental Requirements**

- 63.1 The shall:
  - 63.1.1 when working on the University's Premises, perform this Agreement in accordance with the University's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and
  - 63.1.2 comply fully with any other acts, orders, regulations and codes of practice relating to environmental regulations, which may apply in the performance of this Agreement including (if applicable) the requirements of the Waste Electrical and Electronic Equipment Regulations 2006).



### **SCHEDULE 1**

Pricing of Menus – Please price the attached menu with fully inclusive prices of any fees, delivery and vat.  
Please also indicate if there is any minimum order / value quantity.  
If you want to add additional lines to the spreadsheet, please do so.

**Figure 1 - Menus to price. Supplied separately.**