STAFFORDSHIRE UNIVERSITY

CONDITIONS OF CONTRACT FOR SERVICES

1. INTERPRETATION

1.1 In these Conditions:-

1.1.1 "the Contract" means the agreement concluded between the Company and the Contractor subject to these Conditions, including all specifications, patterns, Contractor's samples, plans, drawings and other documents which are incorporated or referred to therein;

1.1.2 "the Contractor" means the person who by the Contract undertakes to supply the Services to the Company as is provided for in the Contract. Where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners;

1.1.3 "the Company" means Staffordshire University HEC or Staffordshire University Enterprises Limited or Octagon Computer Centre Limited, as the case may be.

1.1.4 "the Services" means all work which the Contractor is required to supply under the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied there under.

1.1.5 "the Contract Price" means the price exclusive of Value Added Tax payable to the Contractor by the Company under the Contract for the full and proper performance by the Contractor of its part of the Contract;

1.1.6 "Order" means the Company's purchase order to which these Conditions are annexed.

1.1.7 "Premises" means the location where the Services are to be performed as specified in the Order.

1.1.8 unless the context otherwise requires, reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument.

1.2 The headings to these Conditions shall not affect their interpretation.

1.3 Any decision, act or thing which the Contractor is required to take or do under the Contract may be requested by any officer or employee of the Company authorised either generally or specially by the Company provided that upon receipt of a written

request from the Company the Contractor shall inform the Company of the name of any such officer or employee.

1.4 Any Order raised in writing by the Company constitutes an offer on the part of the Company to acquire the Services subject to these Conditions which must be accepted in writing by the Contractor or by the actual execution of the Order. The Contractor is deemed to have understood the nature and extent of the Services and to have visited the site and shall make no claim founded on his failure to do so. The Company shall not be liable for any order unless it is issued or confirmed on its official order form and signed by the designated officer of the Company.

2. VARIATION OF CONDITIONS

The Services shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the Company.

Acceptance of an order will be deemed to bind the Contractor to these Conditions and no Services shall be supplied or performed by the Contractor, their employees, agents or representatives, except in accordance herewith. The Contractor's Conditions of Sale do not form part of the Contract.

3. CONTRACTOR'S STATUS

In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Company.

Accordingly:

3.1 the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Company, and

3.2 nothing in this Contract shall impose any liability on the Company in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Company to the Contractor that may arise by virtue of either a breach of this Contact or any negligence on the part of the Company, his staff or agents.

4. CONTRACTOR'S PERSONNEL

4.1 The Contractor shall take the steps reasonably required by the company to prevent unauthorised persons being admitted to the Premises. If the Company gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Company the Contractor shall replace any person removed under this Condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

4.2 If and when instructed by the Company, the Contractor shall give to the Company a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Company may reasonably require.

4.3 The decision of the Company as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

4.4 The Contractor shall bear the cost of any motive, instruction or decision of the Company under this condition.

5. MANNER OF CARRYING OUT THE SERVICES

5.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Company's prior consent.

5.2 Access to the Premises shall not be exclusive to the Contractor, but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Company may reasonably require.

5.3 The Company shall have the power at any time during the progress of the Services to order in writing:

5.3.1 the removal from the Premises of any materials which in the opinion of the Company are either hazardous, noxious or not in accordance with the Contract, and/or

5.3.2 the substitution of proper and suitable materials, and/or

5.3.3 the removal and proper re-execution notwithstanding any previous test thereof or interim payment for any work which, in respect of material or workmanship, is not in the opinion of the Company in accordance with the Contract.

5.4 On completion of the Services the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.

6. TIME OF PERFORMANCE

The Contractor shall begin performing the Services on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract. The Company may by written notice require the Contractor to execute the Services in such order as the Company may decide, in the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Company may from time to time require.

7. FORMS

An advice note shall accompany each complete performance of the Services. A bill shall be rendered on the Contractor's own invoice form to the Company. All advice notes, other relevant correspondence and invoices shall be clearly marked with the Company's order number, the consignee and the description of the Services concerned.

8. FREE-ISSUE MATERIALS

Where the Company for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Company. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Company of any surplus materials remaining after completion of the Services and shall dispose of them as the Company may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Company, the Contractor shall deliver up such materials whether processed or not to the Company on demand.

9. AUDIT

The Contractor shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Company of all expenditures which are reimbursable by the Company and of the hours worked and costs incurred in connection with any employees of the Contractor paid for by the Company on a time charge basis. The Contractor shall on request afford the Company or his representatives such access to those records as may be required by the Company in connection with the Contract.

10. PATENTS AND INFORMATION

10.1 It shall be a condition of this Contract that, except to the extent that the Services incorporate designs furnished by the Company, the Services will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Company against all actions, claims, demands, costs and expenses which the Company suffer or endure as a result of or in connection with any breach of this Condition.

10.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs or other materials:

10.2.1 furnished to or made available to the Contractor by the Company are hereby assigned to and shall vest in the Company absolutely.

10.2.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Company absolutely, and the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Company use or disclose any such specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contractor which the

Contractor may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Company or the Contract in any advertisement without the Company's prior written consent.

10.3 The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

11. DEFAULT BY CONTRACTOR

If the Contractor shall have failed to comply with any terms of the contract, either in relation to provision of Services or otherwise, the Company shall be entitled (whether or not any Services have been accepted by the Company) to avail itself of any of the following remedies at the Company's discretion:-

11.1 rescind the contract;

11.2 give the Contractor the opportunity to carry out remedial work in respect of Services at the Contractor's expense so that they comply with the terms of the contract;

11.3 refuse to accept any further performance of Services without any liability to the Contractor;

11.4 carry out at the Contractor's expense such work as may be necessary to make the Services comply with the contract;

11.5 claim such damages, costs and expenses as the Company may have sustained in consequence of any breach of the terms of the contract or failure by the Contractor any statutory or other legal obligations herein specified or implied by law.

These rights shall be in addition to and without prejudice to any other rights the Company may have.

12. FORCE MAJEURE

Neither party shall be liable to the other for any failure to perform its obligations under the Contract where such performance is rendered impossible by circumstances beyond its control, but nothing in this Condition shall limit the obligations of the Contractor to use its best endeavours to fulfil its obligations under the Contract.

13. PRICE AND PAYMENT

13.1 The Contract Price shall be 'net', that is, after deduction of all agreed discounts. It shall include the cost of packaging, packing materials, addressing, labelling, loading and delivery to the addresses named in the Contract or orders. The amount of any duty additional to the Contract Price and any early settlement discounts shall be shown separately in the Contract.

13.2 Payment for Services rendered within the terms of any order will normally be made <u>at the end of the month following the date of the Contractor's invoice</u> <u>following satisfactory conclusion of the contract</u>. The Company will seek to encourage

genuine early settlement discounts whenever possible. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge. Delays in payment of invoices are possible if the Contractor does not show the Company order number on its invoices. Payment terms will not be varied without the express authority of the Director of Finance.

13.3 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other contract with the Company.

13.4 No increase in price will be accepted (whether an account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) unless 60 days written notice shall have been given to the Company and such increase shall have been agreed in writing by the Company prior to execution of the Order.

14. WARRANTIES

14.1 The Contractor warrants to the Company that the Services will be performed by appropriately qualified and trained personnel with due care and diligence and to such high standard of quality as it is reasonable for the Company to expect in all the circumstances.

14.2 Without prejudice to any other remedy if any Services are not performed in accordance with the Contract then the Company shall be entitled:-

14.2.1 at the Company's option to require the Contractor to supply replacement Services in accordance with the Contract within the time stated in writing by the Company; or

14.2.2 at the Company's sole option and whether or not the Company has previously required the Contractor to supply any replacement Services to treat the Contract as discharged by the Contractor's breach and require the repayment of any part of the price which has been paid.

15. INDEMNITY

Without prejudice to its liability for breach of any of its obligations under the Contract the Contractor shall be liable for and shall indemnify the Company against all liability, loss, damages, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law as a result of or in connection with:

15.1 breach of any warranty given by the Contractor in relation to the Services;

15.2 any act or omission of any of the Contractor's personnel in connection with the performance of the Services.

15.3 any loss of or damage to property (whether real or personal),

15.4 any injury to any person, including injury resulting in death.

15.5 any financial or economic loss

except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Company, its servants or agents.

The Contractor warrants that he has complied with all his obligations as manufacturer or supplier under the Health and Safety at Work Act, 1974, or under any Regulations or Orders.

16. INSURANCE

16.1 The Contractor shall insure against its full liability under Condition 15. Such insurance by the Contractor shall be a condition precedent of the Contract.

16.2 The Contractor shall insure and keep insured for the period of the Contract and procure that any of its subcontractors shall likewise insure to the extent required under Condition 15 to £1,000,000 on any one claim and unlimited liability in respect of a period of insurance or public liability policy.

16.3 The Contractor upon request shall produce to the Company or cause any sub-contractor to produce documentary evidence that the insurance is properly maintained.

16.4 If the Contractor defaults in insuring, the Company may itself effect insurance and charge the cost together with an administrative charge of 5% to the Contractor.

17. TRANSFER AND SUB-CONTRACTING

Neither party shall assign the whole or any part of the Contract. The Contractor shall not sub-contract the production or supply of any Services without the previous consent in writing of the Company.

18. PATENTS, ETC

The Contract Price shall include all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performing the Contract.

19. CONFIDENTIALITY

The Contractor shall treat this order and all designs, drawings, specifications and information supplied therewith as confidential and shall not disclose the same to any third party without the Company's written consent or infringe any copyright, patent, trade mark, trade name or registered design vested in the Company. All materials, drawings, patterns, gauges, samples, specifications and other technical data prepared by the Company in connection with the Contract shall be the Company's property and the Company may reproduce and use the said items freely for any purpose whatsoever.

20. INDUCEMENT TO PURCHASE

20.1 The Contractor shall not offer to the Company or its representatives as a variation of the conditions of the Contract or as an agreement collateral to it any advantage other than a cash discount against the Contract Price.

20.2 If the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other contract with the Company or for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other contract with the Company or if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) or if in relation to the Contract or any other contract with the Company, the Contractor or any person employed by it or acting on its behalf shall have done any act which had the recipient been in the employment of a public body would have been an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Company which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration, the Company shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination.

21. INSOLVENCY

The Company may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor in any of the following events:

21.1 if the Contractor, being an individual, or, where the Contractor is a firm, any partner in that firm shall at any time become bankrupt, or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance of assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or not our bankrupt, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

21.2 if the Contractor being a company shall pass a resolution, or the Court shall make an order, that the company shall be wound up (except for the purpose of amalgamation or reconstruction) or if an administrative receiver on behalf of a creditor shall be appointed, or if the Court shall make an administration order, or if circumstances shall arise which entitle the Court or a creditor to appoint an administrative receiver or which entitle the Court to make a winding-up order or administration order:

provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Company.

22. CANCELLATION

Any Order raised by the Company may be cancelled at any time by the Company giving the Contractor notice in writing. A fair and reasonable price shall be paid for all work in progress/services performed at time of the cancellation which is subsequently received by

the Company. The Company shall not be liable for any loss to the Contractor including consequential loss.

23. PUBLICITY

The Contractor shall not advertise or publicly announce that it is undertaking work for the Company, or use the Company's name or logo without the prior consent of the Company.

24. NOTICE

Any notice required to be given in writing under the Contract shall be given where possible by facsimile and otherwise by first class post addressed to the registered office of the party for which it is intended or to such other address as may be notified in writing in accordance herewith for the purposes and shall be deemed to have been received in the case of a telex or facsimile upon transmission and in the case of a letter forty-eight hours after posting. In proving service by letter it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

25. WAIVER

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Contractor of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

26. VALIDITY

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

27. DISPUTE

Any dispute arising under or in connection with the Contract or the supply of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated upon the application of either party by the President for the time being of the Law Society in accordance with the Arbitration Acts 1950 - 1979. The arbitrator's decision shall be final and binding on both parties. Costs shall be in the award of the arbitrator.

28 RACIAL DISCRIMINATION

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 and the Race Equality (Amendment) Act 2000 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

29. DISABILITY

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Disability Act 2005 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

30 EQUALITY

The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2006 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

31. BRIBERY ACT 2010

The Contractor shall, at all times, act within the meaning and scope of the provisions of the Bribery Act 2010 or any statutory modification of re-enactment thereof. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

32. LAW

The Contract shall be considered as a contract made in England and subject to English Law.