Terms of Business for the provision of the Conservation Service

1 Definitions

In these Conditions (except where the context otherwise requires):

1.1. “Agreement” means:
   a) these Conditions and any document referred to in them;
   b) any correspondence from the Council to the Client accompanying these Conditions; and
   c) any special terms agreed in writing in accordance with clause 2.3 of these Conditions

1.2. “Assessment” has the meaning given at clause 3.4

1.3. “Client” means the party purchasing the Services identified in the correspondence from the Council accompanying these Conditions, and shall where the context requires include its authorised representatives and agents

1.4. “Conditions” means the terms of business set out in this document

1.5. “Conservation Centre” means the Council’s conservation laboratories at the Wiltshire and Swindon History Centre, Cocklebury Road, Chippenham SN15 3QN

1.6. “Council” means Wiltshire Council of County Hall, Bythesea Road, Trowbridge BA14 8JN

1.7. “Disclaimer Form” means the disclaimer form to be completed and signed by the Client if required in accordance with clause 10

1.8. “Estimate” means the Council’s provisional estimate of the amount payable by the Client for the provision of the Services, made in accordance with clause 3.3

1.9. “Equipment” means the items of equipment which the Council has agreed to hire to the Client in accordance with a Hire Form and this Agreement, all replacements of such equipment and all related accessories, manuals and instructions provided for it

1.10. “Fee” shall be the amount payable by the Client to the Council for the Services in accordance with this Agreement

1.11. “Hire Charge” shall be the amount payable by the Client to the Council for hiring the Equipment in accordance with this Agreement

1.12. “Hire Form” means the hire form to be provided by the Council to the Client to be completed and submitted by the Client and countersigned by the Council in accordance with clause 13

1.13. “Intellectual Property Rights” shall mean copyright, registered and unregistered design rights; patents; trade marks; know how; methods; processes; trade secrets; and all associated information

1.14. “Item” means the artefact or archival material in respect of which the Council is providing the Services to the Client

1.15. “Order” has the meaning given in clause 3.5

1.16. “Prohibited Act” means:
   a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to induce that person to perform improperly a relevant function or activity;
   b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
   c) committing any offence:
      i. under the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any government guidance or codes of practice; or
      ii. under legislation creating offences or at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
   d) defrauding, attempting to defraud or conspiring to defraud the Council

1.17. “Quotation” means the Council’s quotation for provision of the Services, made in accordance with clause 3.4

1.18. “Receipt Form” means the detailed receipt form to be completed and signed by the Council and the Client in accordance with clause 10

1.19. “Report” means any report, documentation, x-radiograph or other image produced by the Council in the course of providing the Services

1.20. “Services” means the conservation services and associated works to be provided by the Council under this Agreement as set out more particularly in the Quotation

1.21. use of the singular includes the plural (and vice versa) and use of any gender includes the other genders

1.22. a reference to a party is to a party to this Agreement and shall include that party’s personal representatives, successors or permitted assignees

1.23. a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations

2 Conditions Applicable

2.1. These Conditions shall apply to all agreements for the provision of the Services by the Council to the Client to the exclusion of all other terms and conditions (save as may be set out in any correspondence from the Council to the Client accompanying these Conditions) including any terms or conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document

2.2. Any order for Services shall be deemed to be an offer by the Client to purchase the Services pursuant to these Conditions

2.3. Any variation to the Agreement (including any special terms and conditions agreed between the Council and the Client) shall be inapplicable unless agreed in writing by the Council

3 The Order Process

3.1. Where transfer of the Items into the custody of the Council is required for physical assessment prior to Order, the requirements of clause 10.2 shall apply

3.2. The Client must inform the Council:
   a) of the insurance value of any individual Item where this is £1,000 or more, and the Client shall provide evidence of the insurance value if so requested by the Council; and/or
   b) where an Item is otherwise of particular significance.

If the Council does not receive this notification prior to receipt of the relevant Item at the Conservation Centre then it will be deemed that no significant value is attributed to it

3.3. At the Client’s request or where a physical assessment of the Item is not possible, the Council will give an Estimate on an “Estimate for Conservation” Form. The Estimate will be based on written details and photographs of the Item provided by the Client. The Estimate is provided as a guide only, is not binding and is subject to revision by the Council at any time, unless
otherwise agreed by the parties in writing

3.4. The Council will provide a Quotation on an “Acceptance for Conservation Work” Form following a physical assessment of the items carried out by a conservator at the Conservation Centre. (“Assessment”). The Council reserves the right to charge for the Assessment and any such charge shall be payable by the Client whether or not an Order is made. The Council reserves the right to revise the Quotation:

a) where the condition of the item in question deteriorates at any time between the date of the Assessment and the date on which the Client signs the Receipt Form to confirm final exit of the Item after completion of the Services in accordance with clause 10.4; or

b) where the Client requests a change to the amount or nature of the Services at any time after the Quotation is issued; or

c) where there is a change at any time after the Quotation is issued to the cost of providing the Services which is beyond the Council’s reasonable control or was unforeseen by the Council at the time of the Quotation; or

d) where the Client does not accept the Quotation within the timescale notified in the Quotation or, if no such timescale is notified, within 6 months of the date of the Quotation

e) to include reasonable costs, including materials and expenses, which were unquantifiable at the time of providing the Quotation and any charges made in accordance with this Agreement

3.5. Countersignature of the Quotation constitutes an offer by the Client to purchase the Services in accordance with these Conditions (an “Order”)

3.6. The Order shall only be deemed to be accepted when the Council receives the Client’s countersigned Quotation, save as otherwise agreed in writing by the parties

3.7. The time for delivery of the Services will be agreed by the Council and the Client when the Order has been accepted. The Council shall use all reasonable endeavours to meet any performance dates so agreed, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. The Council shall not be liable for any loss or damage resulting from any failure by the Council to perform any obligations by any date or within any period of time.

4 Payment of the Fee and Hire Charge

4.1. The Fee in relation to each Order shall be the total sum set out in the Quotation as amended from time to time in accordance with clause 3.4.

4.2. The Fee for an Assessment in relation to which no Order is made shall be the “Assessment Charge” set out in the Quotation

4.3. The Hire Charge shall be the total sum payable by the Client for hiring the Equipment in accordance with the rates set out in a Hire Form

4.4. The Client shall pay any sums payable to the Council under this Agreement within 28 days of the date of the Council’s invoice. All sums payable under this Agreement are exclusive of VAT which shall be due at the rate prevailing from time to time

4.5. The Client shall make any payments due to the Council under this Agreement without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Client has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Client

4.6. Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 4% above the base rate of Barclays Bank Plc from time to time in force and shall accrue at such a rate after as well as before any judgment

5 Intellectual Property

5.1. The Client agrees that the Council may at its discretion produce the Reports and agrees the Council will retain Intellectual Property Rights therein. Copies of the Reports and of the Council’s data are the Council’s property. The Council reserves the right to charge for the Assessment and any such charge shall be payable by the Client whether or not an Order is made. The Council reserves the right to revise the Quotation:

a) where the condition of the item in question deteriorates at any time between the date of the Assessment and the date on which the Client signs the Receipt Form to confirm final exit of the Item after completion of the Services in accordance with clause 10.4; or

b) where the Client requests a change to the amount or nature of the Services at any time after the Quotation is issued; or

c) where there is a change at any time after the Quotation is issued to the cost of providing the Services which is beyond the Council’s reasonable control or was unforeseen by the Council at the time of the Quotation; or

d) where the Client does not accept the Quotation within the timescale notified in the Quotation or, if no such timescale is notified, within 6 months of the date of the Quotation

e) to include reasonable costs, including materials and expenses, which were unquantifiable at the time of providing the Quotation and any charges made in accordance with this Agreement

5.2. The Client must not publish, or allow any third party to publish, the Reports (or any part of them) without the prior written permission of the Council. Where such permission is granted, the following acknowledgement must be included “With kind permission of the Wiltshire Council Conservation and Museums Advisory Service”

6 Liability

6.1. The Client acknowledges that the Council’s obligations and liabilities in respect of the Services and/or the Equipment are exhaustively defined in this Agreement. The Client agrees that the express obligations made by the Council in this Agreement are in lieu of and to the exclusion of any warranty condition term undertaking or representation of any kind express or implied statutory or otherwise relating to the Services and/or the Equipment provided under this Agreement

6.2. The Council shall have no liability whatsoever or howsoever arising to the Client its servants or agents for any breach losses damages or liabilities to the extent that the same are caused or contributed to by any negligent act or omission or breach or non performance of its obligations hereunder by the Client its servants or agents

6.3. The Council shall be under no liability whatever to the Client for any indirect or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Council of this Agreement

6.4. The Council’s total liability in respect of any and all breaches of contract or duty or negligence or otherwise whatsoever arising out of or in connection with:

a) the services provided under this Agreement shall be limited to the amount of the Fee payable for those Services; and

b) the Equipment hired under this Agreement shall be limited to the amount of the Hire Charge payable for that Equipment, to cover claims of any sort whatsoever (including interest and costs) arising out of or in connection with the Services or the Equipment as the case may be

6.5. Nothing in this clause 6 shall be construed as limiting the liability the Council for death or personal injury caused by its negligence or as limiting any other liability which the Council is prohibited by law from excluding or restricting

7 Termination

7.1. If the Client fails to pay the whole or any part of the Fee or Hire Charge in accordance with this Agreement or commits any other breach of this Agreement or if any distress or execution shall be levied upon any of the Client’s goods or if the Client is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Client (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if the receiver administrative receiver or manager shall be appointed over the whole or any part of the Client’s business or assets or if any petition for the appointment of an administrator is presented against the Client all sums outstanding to the Council in respect of the provision of the Services or the hire of the Equipment shall become payable forthwith. The Council may in its absolute discretion and without prejudice to any other rights which it may have suspend all future provision of the Services or hire of the Equipment to the
Client and/or terminate any contract for the provision of the Services or hire of the Equipment without liability upon its part

7.2. The Council reserves the right to retain possession of the Items until all relevant invoices have been paid in full, and a storage charge may apply in accordance with clause 11.

7.3. The Council accepts no liability for any damages, costs, claims and expenses which result from incomplete conservation treatment following cancellation of this Agreement, however arising.

8 Indemnity

8.1. The Client shall indemnify and keep the Council (including all officers servants and agents of the Council) indemnified against all claims losses liabilities expenses actions proceedings costs and demands (whether present or future direct or indirect actual or contingent) incurred by or arising against the Council in connection with the Council's custody of and/or provision of the whole or any part of the Services for the Items provided that this indemnity shall not apply if the Council incurs any such liability as a result of the negligence of the Council.

9 Delivery and Insurance of the Items

9.1. The Client shall at its own cost bring the Items to and collect the Items from the Conservation Centre, save as otherwise agreed in writing by the parties.

9.2. The Client shall at its own cost insure the Items while the Items are being brought to and collected from the Conservation Centre and for any period during which the Items are in the custody of the Council. The Client shall provide copies of the relevant certificates of insurance so requested by the Council. This clause applies to all forms of delivery, including courier, postage and any delivery arrangements made by the Council.

9.3. At any time where transfer of the Items into or from the custody of the Council is required, the requirements of clause 10 shall apply.

10 The Receipt Form

10.1. The Council shall provide the Receipt Form and the Disclaimer Form (if required) in the Council's standard format.

10.2. At the point of initial transfer of the Items into the custody of the Council prior to commencement of the Services, the Council will fill in a Receipt Form based on information provided and verified by the Client and the Client must sign where indicated. The Client must check the Receipt Form carefully before signature and the Council shall have no responsibility for the accuracy of the Receipt Form. The Council shall countersign and date the Receipt Form to acknowledge the Council's receipt of the Items and the Council shall provide a copy for the Client to take away. If at the point of initial transfer the Client fails for any reason:

a) to provide or verify the information required to complete the Receipt Form; or

b) to sign the completed Receipt Form to demonstrate agreement with its content, (including where the Items are transferred by courier or another third party), then the Client must sign a Disclaimer Form, and the Council shall at its sole discretion determine the identity, quantity and condition of the Items it has received

10.3. At each point of temporary exit of an Item from, and subsequent re-entry of an Item to, the custody of the Council at any time before completion of the Services, the Client shall sign the Receipt Form to acknowledge the exit or re-entry of the Item (as the case may be). If the Client fails for any reason to sign the Receipt Form at the point of exit from, or re-entry to, the Conservation Centre (including where the Items are to be transferred by courier or another third party, or where no Receipt Form was completed at the point of initial transfer), then the Client must sign a Disclaimer Form and:

a) in the case of temporary exit, the Council will only release the Items upon receipt of the signed Disclaimer Form and the Client will in any event be deemed to have received the Items specified by the Council 12 hours after dispatch by the Council; and

b) in the case of re-entry, the Council shall at its sole discretion determine the identity, quantity and condition of the Items it has received

10.4. Upon collection of the Items from the Conservation Centre by the Client following completion of the Services, the parties shall sign the final exit section of the Receipt Form to acknowledge return of the Items to the Client. If the Client fails for any reason to sign the Receipt Form at the point of final exit from the Conservation Centre (including where the Items are to be collected by courier or another third party, or where no Receipt Form was completed at the point of initial transfer), then the provisions of clause 10.3 relating to temporary exit shall apply equally to final exit.

10.5. The Client acknowledges that any damage or deterioration to the condition of the Items following their collection (as a result of either temporary exit or final exit) is not included in the Fee, and a new Quotation must be requested. For the avoidance of doubt, the Council accepts no responsibility for any loss or damage to the Items during transit.

11 Storage

11.1. The Client may charge a fee for storage and monitoring Items where:

a) the Client fails to arrange collection within two months of the date of the Council's notification of completion of the Services; or

b) the Client fails to arrange collection within three months of the date on which the Council first received the Items where the Client has not countersigned the relevant Quotation, or

c) payment is outstanding after the due date.

11.2. All storage charges shall be payable from the dates specified in clause 11.1 until the date of collection or payment (as the case may be). If the Item is not collected within six months of the dates specified in clauses 11.1(a) and (b), or payment is not made within six months of the due date, then title to the Item shall pass to the Council who shall be entitled to sell the Item and recover from the net proceeds of sale such sums as may be due to the Council.

12 Client/Third Party Premises

12.1. By prior agreement between the parties the Client shall provide the Council with access to such parts of the Client's premises or any third party's premises as the Council reasonably requires for the purposes only of properly providing the Services or hiring the Equipment, and the Client shall provide the Council with such facilities as may reasonably be required.

12.2. The Client shall take all reasonable steps to secure the health and safety of any Council staff working on the Client's premises or any third party's premises in accordance with clause 12.1. While on the premises of the Client or any third party, the Council shall at all times comply with any health and safety measures imposed by the owner of the premises in respect of staff.

13 Equipment Hire

13.1. The Client shall hire the Equipment to the Client in accordance with this clause 13.

13.2. The Client shall make a request for Equipment hire by completing, signing and submitting a Hire Form. The Client's order for Equipment hire shall only be deemed to be accepted by the Council upon the Council's countersignature of the Hire Form. The Council shall use all reasonable endeavours to fulfil any requested periods of hire, but any such dates shall be estimates only and shall not be of the essence.

13.3. The Client shall pay the Hire Charge to the Council in accordance with the Hire Form and clause 4 of this
13.4. The Council warrants that the Equipment shall be of satisfactory quality.

13.5. The Client agrees that:

a) The Equipment shall at all times remain the property of the Council, and the Client shall have no right, title or interest in or to the Equipment (save the right to use of the Equipment subject to the terms and conditions of this Agreement).

b) The Client shall ensure that the Equipment used only for the purposes for which it is designed, and operated in a proper manner by competent staff who have been trained by the Council in accordance with any operating instructions provided by the Council. The Client shall not use the Equipment for any unlawful purpose.

c) The Client shall take such steps (including compliance with all safety and usage instructions provided by the Council) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health during the period of hire. The Client shall make no alteration to the Equipment and shall not remove any existing components from the Equipment.

13.6. Where the Council agrees that the Equipment shall be hired to the Client on the Client's premises, in addition to clause 13.5 the following provisions shall apply:

a) The Client shall at its own cost collect the Equipment from and bring the Equipment to the Conservation Centre or other relevant Council premises, save as otherwise agreed in writing by the parties.

b) The risk of loss, theft, damage or destruction of the Equipment shall pass to the Client upon collection from the Council, and shall remain with the Client until the Equipment is received by the Council at the end of the period of hire.

c) The Client shall at its own cost insure the Equipment while it is being collected from and returned to the Council and for any period during which the Equipment is in the custody of the Client. The Client shall provide copies of the relevant certificates of insurance if so requested by the Council.

d) The Client shall give immediate written notice to the Council in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Client's possession or use of the Equipment.

e) The Client shall ensure that the Equipment is kept and operated in a suitable environment.

f) The Client shall keep the Council informed of all material matters relating to the Equipment, shall not part with control of the Equipment, sell or offer for sale or lend the Equipment and shall not allow the Equipment to be moved to any other premises without the Council's prior written permission.

g) The Client shall deliver up the Equipment at the end of the period of hire set out in the Hire Form or immediately upon the Council's written request.

13.7. The Client acknowledges that the Council shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Client or its officers, employees, agents and contractors and the Client undertakes to indemnify the Council on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Client to comply with the terms of this Agreement in relation to the Equipment.

14 Client's Warranty

14.1. By signing this Agreement the Client warrants that it is the legal owner of the items or has all necessary rights, licences and permission to authorise the Council to carry out the agreed work, and that the items are free of all liens, charges and encumbrances of any nature. The Client shall indemnify the Council against all costs, claims liabilities and expenses incurred by the Council in connection with any claim by any third party that the Client was not entitled to permit the agreed work to be carried out.

15 Announcements

15.1. Neither party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other party (such approval not to be unreasonably withheld or delayed). This obligation includes, but is not limited to, notification by the Client to the County Archaeologist of its intention to use the Council for conservation services.

16 Delegation

16.1. The Council may at any time assign, transfer or deal in any manner with all or any of its rights and obligations under this Agreement. In the event that it is necessary for the Council to use a third party to assist in the performance of this Agreement the Council shall be entitled to delegate its duties and obligations to the third party.

17 Arbitration

17.1. All disputes differences or questions arising out of this Agreement or as to the rights or obligations of the Council or the Client under this Agreement or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed by the Council and the Client or, failing any such agreement within 14 days to an arbitrator to be appointed at the request of either party by the President for the time being of the Law Society of England and Wales having due regard to any representation made to him as the appropriate qualification of such an arbitrator. The arbitration shall be conducted in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.

18 Governing Law

18.1. This Agreement is subject to the law of England and Wales. All disputes arising out of this Agreement shall be subject to the jurisdiction of the courts of England and Wales.

19 Notices and Contact Details

19.1. Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded delivery or registered post to the last known address of the relevant party or by email and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by email to the correct address.

19.2. It is the Client's responsibility to notify the Council of a change of contact details.

20 Prevention of Bribery

20.1. The Client:

a) shall not, and shall procure that all personnel of the Client shall not, in connection with this Agreement commit a Prohibited Act.

b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement.

21 Rights of Third Parties

21.1. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.