1. **INTRODUCTION**

1.1 At a meeting of the University Council on 14 June 2013, UCT management was instructed to initiate a review of outsourcing at UCT and to report back to Council with recommendations.

1.2 The context for this instruction includes events which dated back to 2012, a year in which the worker turbulence at Supercare revealed company practices that were in violation of not only the Code of Conduct but the law of the land as well. Whilst many of the issues involving Supercare had been resolved by the end of 2012, many remained unresolved and a review of the other outsourced service providers had unearthed further violations.

1.3 Acting on this instruction, management appointed a panel of reviewers in the persons of Emeritus Professor of Sociology, Johann Maree, and Professor Rochelle le Roux of the Faculty of Law. They commenced their work in October 2013.

1.4 The Terms of Reference approved by Council for the work of the review panel are reproduced in the main body of this response. Prior to the review itself there was considerable discussion on the terms of reference between the Advisory Committee and the reviewers in order to convey what Council expected from the review.

1.5 In discussing this the committee was clear that the 2013-2014 review should be fundamentally different from the review done by de Nicola and Shisana in 2010. The current review needed to be holistic, to cover issues that would give Council a broad view of outsourcing at UCT in the context of the labour relations landscape and mood in South Africa as a whole.

1.6 In particular, it was emphasised that the current review should avoid the mistakes of the last one, which had dwelt too much on the costs of outsourcing and the financial implications of insourcing. The present investigation should produce data that would enable Council to form a view about not only the financial implications of any decision that it took, but also the moral, political, social, cultural and human rights consequences.

2. **THE REPORT AND THE TERMS OF REFERENCE**

Below we set out management’s view of the way in which the Report addresses the various Terms of Reference. These were presented as follows:
Generally:

The Investigator will be required to evaluate outsourcing at UCT by addressing the requirements set out below. The Investigator is required to draw UCT’s attention to any new or pending legislation or trends in the industry, to set out in detail the resource implications, and to make recommendations to the executive on various models that may be proposed.

And specifically:

2.1 **REASSESS the original objectives of outsourcing, revisit and test the principles in which the original recommendation was made to UCT Council, as well as the reasons for and outcomes of outsourcing at other universities.**

The Review Panel did not address this requirement directly or in isolation. Instead, they approached the total task in a holistic way in the process of which they were able to comment on some of these criteria, such as the issue of core versus non-core activities. In the words of the Report:

“In deciding on the appropriate review criteria, we were troubled by the designation of certain services as core and non-core and the significance of this dichotomy for the purpose of our review. We concluded that while other criteria may now be equally important, the nature of the service (core/non-core) remains an important consideration when outsourcing is considered or reviewed. Below we endeavour to sharpen the meaning of the core/non-core dichotomy.”

On the issue of outsourcing at other universities, please see below at paragraph 2.6.

2.2 **ASSESS the labour relations context in South Africa in the wake of the Marikana experience, the latest Union demands for the banning of “labour brokers” and the Unions’ view of the perceived exploitative nature of outsourcing.**

The report deals with this requirement in a variety of ways, with part of the discussion appearing under the section dedicated to stakeholder interviews at UCT, and part subsumed in Chapter 3 under the discussion of the legal landscape. It does not however deal in any depth with the broad nationwide debate or the tone and temperature of labour relations in the country since Marikana.

2.3 **ASSESS the efficacy of UCT’s Code of Conduct and the Implementation Protocol as appropriate tools in ensuring the proper treatment of workers by their employers, and the possibility of changes to these tools should the recommendation favour their retention.**

The reviewers spent a great deal of time and energy on the Code of Conduct and the Implementation Protocol which are discussed in various parts of the report but especially under the legal landscape. The Code features prominently in the report’s recommendations. This underlines the reviewers’ conviction that while the Code is an initiative of which UCT can justly be proud, its implementation also provides an opportunity for a great deal of confusion and even mischief.
2.4 PROVIDE detailed costing for the various options (i.e. continuing outsourcing – with a Code of Conduct or without – or re-insourcing, or reverting to a market model, or adopting a hybrid model). Such costing should take into account:

(a) the cost of the instruments required for monitoring and compliance;
(b) the cost of management time and specialist expertise in doing so; and
(c) any hidden costs

In Chapter 4 the report addresses the costs of insourcing the services that are currently outsourced. As agreed with the reviewers at the beginning of the process, the calculations were made by the Finance Department based on questions and guidelines supplied by the panel. The report concludes that the costs of insourcing would be “substantially more than the costs of outsourcing the same services”. It goes on to point out that these costs would result in a “6% increase in student tuition fees at UCT”. In summary, the reviewers put the cost of insourcing all the currently outsourced services at R223 million at 2014 rates compared with the planned spending on outsourcing which is R165 million. To this difference of R71 million should be added upfront asset purchase costs of R68 million.

2.5 ASSESS UCT’S current management of outsourced contracts with particular reference to existing arrangements (contractual and operational), paying attention to risk to UCT and whether, and how, these arrangements can be improved.

In the section on the legal landscape the report addresses this term of reference, making the point that even though UCT is not the employer of the outsourced workers, it has inserted itself into the commercial contracts with the service providers via the Code of Conduct. The report then goes on to identify points of confusion, and sometimes friction, which result from the parallel operation of the Code and general labour legislation in the relationship between UCT as the client and the service provider. In identifying these pressure points, the reviewers conclude that if outsourcing continues, the Code of Conduct and its Implementation protocol will need radical overhauling.

2.6 REPORT on trends in the industry, in the higher education sector, and where UCT is positioned in comparison, including an assessment of other universities where outsourcing has been tried.

This term of reference was de-emphasised in the study, with the approval of the Advisory Committee, once it became clear that a mid-April deadline for submission of the report could not accommodate such a detour. The reviewers did however have access to at least one recent report on outsourcing from a sister institution, and their view was that while that report had limitations in that it did not address all the cost implications of insourcing, it did help them to pose more direct questions in their brief to the Finance Department.

In the reviewers’ opinion, the trend towards outsourcing was worldwide and showed no sign of abating. This was certainly true of the tertiary education sector in South Africa, where UCT had taken the lead to improve the wages of outsourced workers with the introduction of the Code of Conduct. The reviewers could not find any other South African university that had any comparable measures in place.
Research conducted by our own HR Department painted a picture of outsourcing in the South African higher education landscape as reflected in the following table:

<table>
<thead>
<tr>
<th>University</th>
<th>Insource/Outsource</th>
<th>Comment</th>
<th>Minimum Salary</th>
<th>Maximum Guaranteed</th>
</tr>
</thead>
<tbody>
<tr>
<td>NMMU</td>
<td>Partially outsourced</td>
<td>Gardeners and some cleaners insourced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wits</td>
<td>Outsourced except for security</td>
<td>Offers training and development for outsourced staff</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UJ</td>
<td>Mostly outsourced</td>
<td>Cleaners Trust fund established R1 million per annum for high performers</td>
<td>R2,000.00</td>
<td>R6,000.00</td>
</tr>
<tr>
<td>Rhodes</td>
<td>Fully insourced</td>
<td>Major staffing challenges at these levels*</td>
<td>R4,700.00</td>
<td>R6,400.00</td>
</tr>
<tr>
<td>UKZN</td>
<td>Mostly outsourced</td>
<td>Some cleaning and security remain insourced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UJ</td>
<td>Mostly outsourced</td>
<td>Insource some labourers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UP</td>
<td>Partially outsourced</td>
<td>Gardeners and kitchen helpers retained</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UFS</td>
<td>Mostly outsourced</td>
<td>Small number of cleaners insourced</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NWU</td>
<td>Outsourced</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Rhodes is currently insourced and reported wage ranges from R4,700 – R6,400 per month (inclusive of benefits). They have also reported major staffing issues and a spike in disciplinary hearings at this level, including difficulty in managing back staff paid at higher levels in the range due to the ‘notch’ system, and because of there being no personal performance system in place to manage this.

2.7 **Consult with key stakeholders, managers and interested and affected parties at UCT or at the UCT work site.**

The reviewers spent a considerable amount of time consulting stakeholders, who are listed in Appendix A.

2.8 **RECOMMEND to the executive a model that would most closely satisfy UCT’s twin objectives of efficiency and effectiveness in operations, on the one hand, and equity in worker treatment, on the other, in the provision of services.**

The recommendations follow below.
3. RECOMMENDATIONS IN THE REPORT

3.1 We recommend that outsourcing be continued at UCT, but subject to some adjustments.

This recommendation is accepted. While we note, as indicated in paragraph 2.4 above, the panel’s view that “the cost of insourcing is too high” we accept even more strongly their opinion that “efficiency is an even stronger indicator against insourcing”. We share the conclusion reached in the report that the university is not “equipped to manage and provide these services with the same focus, enthusiasm and acumen as specialist service providers” and is unlikely to develop this expertise within a reasonable time “without compromising its mandate of tertiary level education and research”.

3.2 A radical revision of the Code of Conduct needs to be undertaken. In particular the revised Code should:

- provide clarity on its purpose and the above industry standards required by UCT. It should make a clear distinction between standards, procedures for monitoring (randomly and structured) and reporting on the one hand and procedures for breaching of the Code on the other hand. It should also provide clear guidelines on penalties for breaches.

This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

- make it very clear that the service providers are primarily responsible for the management of their employees regarding all aspects of their employment including grievance handling and dispute procedures. It needs to specify very clearly under what conditions at what stage and by means of what procedure the University may become involved in any employer-employee related issue of a service provider. It must guard against the premature or irregular involvement of UCT with disciplinary and other employment related matters between the service providers and their employees.

This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

- a structure and procedure involving both the University and the service provider needs to be put in place for a grievance or dispute that entails both a staff member of UCT and employee of a service provider.

This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

- require service providers to align individual contracts of employment with the Code of Conduct and to provide copies of the contract of employment to each outsourced worker. The commercial contract with each service provider must also be aligned with the Code of Conduct. Where provident fund or similar deductions are made, regular statements must be provided to the employees by the service providers of the contributions paid over.
This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

- clearly spell out the role of the Code of Conduct manager.

This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

3.3 Before finalising the Code of Conduct it must be checked by an experienced labour lawyer and human resource manager to ensure that it complies with all the legal requirements and best practice.

This recommendation is accepted. The drafting team included a labour lawyer and the drafts benefited from scrutiny by HR experts.

3.4 Repeated renewals of commercial agreements should be avoided. Contracts should be awarded for an initial term of five years and only be renewable for one more term of five years. Subsequent to that, the commercial agreement must be subjected to a tendering process which may include a bid from the current contractor and re-appointment. Potential to observe the newly developed Code of Conduct should be an important consideration when awarding the tender.

This recommendation is accepted.

3.5 The management and oversight of the Code of Conduct should be simplified. The Executive Directors currently managing the commercial agreements should be relieved of the management and the oversight of the Code of Conduct and this responsibility should be transferred to the Code of Conduct manager.

This recommendation is accepted. It brings much-needed clarity to an area that has long bedevilled attempts to manage the triangular relationship. The formal title for the Code of Conduct manager will be “Code Compliance Officer”.

3.6 The office of the Code of Conduct manager should be expanded and strengthened, in particular with employment law expertise.

This recommendation is accepted. Management agrees with this recommendation as it will ensure the strengthening of the implementation of a revised Code of Conduct. Management wishes to point out that giving effect to this recommendation will come at a cost to the University. Relevant costs associated with this include consideration of whether the support provided by the Office of the Code of Conduct will need to be redesigned.

In terms of the labour law expertise required to strengthen the office, management proposes that a separate budget be secured for this purpose. The budgeted expenditure for 2013 is approximately R1 182 000 (based on the current post and labour law advice at 2013 rates), but pending analysis and further consideration of the future requirements of the office, this is likely to increase.
3.7 In the spirit of equity and other values propagated by UCT, the remuneration of the outsourced workers should be increased and within five years it should be aligned with the remuneration of comparable employees within the UCT system. In this regard we also recommend that the pay gap between the basic remuneration of the lowest paid worker at UCT (whether outsourced or insourced) should, within a five year period, be no worse than 1 to 25 when compared to the guaranteed remuneration package of the VC.

This recommendation, strictly, cannot be supported as it stands. It has however generated discussion around the SLL at its current levels. One of the outcomes of this discussion is a sense by management that there is merit in investigating alternatives to the SLL in the search for a defensible minimum wage in a socio-economic context in which many factors play a role.

What follows is a concrete proposal for the consideration of Council, should Council be minded to authorise a move away from the current SLL:

[Recommended amount to be inserted here]

3.8 The risks of wearing of a badge of association with UCT by the outsourced workers should be fully investigated.

This recommendation is accepted. The view of management is that this is an operational matter that does not merit inclusion in the Code.

3.9 In the case of the security service, guard houses/shelters should be erected at strategic locations on campus and UCT should provide the service provider with the specifications of protective clothing, suitable for local weather conditions.

This recommendation is accepted. We would, however, note the following considerations:

- G4S in collaboration with the Employees Representative Committee (ERC) have agreed to issue all their officers working at UCT with a winter uniform suitable for local weather conditions.

- There is some tension between the demand for guardhouses and the deployment of security guards on patrol duty. It is a tension that emerged as recently as April 2014 when during a briefing with P&S the SRC claimed students were feeling “unsafe and insecure” because they were not seeing enough visible patrolling.

3.10 Means should be investigated for the study benefit to be also accessible to the outsourced workers in the event of the outsourced worker or his or her dependants being admitted to either to the University of the Western Cape of the University of Stellenbosch; the establishment of a study fund should be considered.

This recommendation cannot be supported as it stands because it raises more questions than management has answers for at the moment.
• implementing the recommendation would raise issues of principle and cost

• the issue of principle relates to the fact that the UCT Staff Tuition Fee Rate is not accessible to all categories of UCT staff; for instance, it excludes T1 and T2 employees. Extending the benefit to outsourced workers in these circumstances might prove problematic.

• the staff tuition fee rate extended to outsourced workers by Council in 2010 was made tenable only at UCT. Considering a further extension to other institutions requires careful thought.

• the benefit is costly and, each year, the Human Resources department is asked to look at ways to contain growing costs in this regard, especially in the context of UCT’s austerity measures.

Regarding the second part of the recommendation, what management proposes to do is to investigate the establishment of a study fund, which might provide an answer to the suggestion in the Report that outsourced workers be assisted to access a tertiary education for their dependants. The results of such an investigation would then be submitted to Council for a mandate in the normal way.

3.11 Each of the outsourced companies must have an employee representative committee (ERC) representing UCT employees of the company working at UCT. The exact form it takes is to be decided jointly by management and employees. It could take the form of a shop stewards committee where there is a trade union or a workers’ forum where there is not. It could even be a joint committee consisting of shop stewards and workers’ forum members. The ERC must be independent of management and have the right to represent employees on any issue relating to their work and employment conditions.

This recommendation is accepted. It has been incorporated in the draft Code and its Annexures.

10 September 2014