

HYBU CIG CYMRU – MEAT PROMOTION WALES

TERMS AND CONDITIONS OF PURCHASE (the “Conditions”)

The Order is HCC’s offer to purchase the Goods and/or the Services. Unless otherwise expressly agreed in writing by the Corporate Services Manager for and on behalf of HCC, these Conditions are the only conditions upon which HCC is prepared to purchase Goods and Services.

In these Conditions the following words shall have the following meanings:-

“Contract” – a contract for the supply of the Goods and/or Services to HCC formed in accordance with Condition 1(a) or 1(e) and incorporating the Order and these Conditions;

“Corporate Services Manager” – HCC’s Corporate Services Manager from time to time;

“Data controller”, “data processor”, “data subject” “personal data” and “processing” - bear the respective meanings given to them in Data Protection Law;

“Data Protection Law” – all data protection legislation, regulations, case law and codes of practice in force in England and Wales from time to time, including the Data Protection Act 1998 and, from 25 May 2018, the EU General Data Protection Regulation (EU Regulation 2016/679), together with any guidance issued from time to time by the Information Commissioner’s Office (and any replacement or successor body thereto);

“EIDCymru” - a company incorporated under the laws of England and Wales (company number 09366160) whose registered office is at Ty Rheidol, Parc Merlin, Aberystwyth, Ceredigion, SY23 3FF;

“Goods” – all goods, data, software and other items (or any of them) supplied to HCC under a Contract including (without limitation) any replacement goods and all necessary installation, handling, use, storage and/or disposal instructions in respect of such goods or other items;

“Group Members” – collectively EID Cymru and each group undertaking (as that term is defined in section 1161 of the Companies Act 2006) of HCC from time to time and an undertaking shall be treated, for the purposes only of the membership requirement contained in sections 1162(2)(b) and (d) of the Companies Act 2006, as a member of another undertaking even if its shares in that other undertaking are registered in the name of: (i) another person (or its nominee), whether by way of security or in connection with the taking of security; or (ii) its nominee; and each is a “Group Member”;

“HCC” Hybu Cig Cymru – Meat Promotion Wales, a company limited by guarantee incorporated under the laws of England and Wales (company number 04635113) whose registered office is at Ty Rheidol, Parc Merlin, Aberystwyth, Ceredigion, SY23 3FF;

“Order” – the purchase order placed by HCC for the supply of Goods and/or Services on and subject to these Conditions, including (without limitation) any Specification and/or other documents specified in or attached to such purchase order, issued pursuant thereto or incorporated therein by reference;

“Price” – the total price for the Goods and/or Services, as specified in the Order;

“Services” – the services to be supplied by the Supplier to HCC under a Contract, as specified in the Order;

“Specification” – together any and all technical specifications and/or requirements relating to the Goods and/or Services specified by HCC in or pursuant to the Order and/or any invitation to tender for the Goods and/or Services, including (without limitation) any descriptions, designs, drawings and/or details relating to the Goods and/or Services and any requirements relating to the manufacture and/or performance of the Goods, and any industry standard specifications relating to the Goods and/or Services;

“Supplier” – the person, firm, company or body to whom the Order is addressed;

The headings are for convenience only and shall not affect the construction or interpretation of these Conditions.

1. EFFECT OF THESE CONDITIONS

- (a) Subject to Condition 1(e) below, the Supplier's commencement of performance of the Order and/or any implied or express acceptance of the Order by the Supplier or the Supplier's use of the number of the Order in any order acknowledgement shall conclusively evidence the Supplier's agreement to the Order and its provisions on and subject to these Conditions and a Contract shall be formed accordingly.
- (b) All terms or conditions proffered by the Supplier are hereby excluded. No variation to these Conditions and/or any Specification shall be effective unless agreed in writing by the Corporate Services Manager on behalf of HCC. Acceptance of the Supplier's conditions of sale or any other terms inconsistent herewith shall not be implied from any act, omission or series of acts or omissions on the part of HCC.
- (c) All variations to these Conditions agreed at the time of placing the Order are specified in the Order. In the event of any inconsistency between these Conditions and the face of the Order, the latter shall prevail.
- (d) The Order and these Conditions constitute the entire agreement of the parties and supersede all other agreements and communications between HCC and the Supplier concerning the subject matter of the Order.
- (e) Where the Order has been issued by HCC following the completion of a competitive tendering process, the Supplier's tender response is deemed to be an offer by the Supplier to supply the Goods and/or Services to HCC on these Conditions and a Contract shall be formed upon HCC submitting the Order to the Supplier.

2. SUB-CONTRACTING AND ASSIGNMENT

- (a) Save as specified in the Order, the Supplier shall not sub-contract or assign the benefit of all or part of the Contract without the prior written consent of the Corporate Services Manager on behalf of HCC. The Supplier shall be directly responsible for all work done and all and any goods and/or services supplied by sub-contractors and any breach of these Conditions by any sub-contractor shall be deemed to be a breach by the Supplier.
- (b) HCC reserves the right to assign the benefit of the Contract to any person.

3. CONFORMITY WITH ORDER, QUALITY AND DESCRIPTION

- (a) The Goods shall in all respects:-

- (i) conform as to quality, quantity, design and description with the particulars of the Order;
 - (ii) be of satisfactory quality and free from defects;
 - (iii) be fit for all common purposes for which goods of the kind in question are commonly supplied and, if the purposes for which HCC requires the Goods have been made known to the Supplier (whether expressly or by implication), fit for those purposes;
 - (iv) be equal to all and any approved samples or patterns;
 - (v) comply with the Specification;
 - (vi) be adequately packed and wrapped at the Supplier's expense to protect against all risks of damage or deterioration;
 - (vii) comply with all requirements set out in the statutes and/or regulations and/or standards applicable to the Goods or goods of the type in question at the date of delivery; and
 - (viii) conform with all descriptions applied thereto by the Supplier or otherwise appearing in supporting literature supplied in respect of the Goods.
- (b) The Services shall be performed by the Supplier using that degree of skill, care, diligence and prudence reasonably and ordinarily expected from experienced and competent persons engaged in the provision of services similar to the Services under similar circumstances and conditions; in accordance with all methods, standards and practices customarily used in good and prudent industry practice; using or procuring the use of processes compliant with all applicable laws and legal obligations and with any relevant British, European or international standards, specifications and codes of practice and such other equivalent standards, specifications or codes of practice that may be in force from time to time during the performance of the Services and using appropriately experienced, qualified and trained personnel.
- (c) The Supplier shall issue appropriate instructions as to storage, handling, installation and use of the Goods. Such details and instructions shall form part of the description of the Goods.

4. DELIVERY

- (a) Subject to Condition 4(d), any time of delivery of Goods and/or performance of Services stated in the Order or otherwise agreed shall be of the essence of the Contract. The Supplier shall notify HCC forthwith of any likely delays, without prejudice to all and any rights HCC may have in relation to any such delays whether hereunder, at law or in equity.
- (b) Goods shall be delivered and Services shall be performed strictly in accordance with the Order.
- (c) The Supplier shall despatch with the Goods or under separate cover with its advice note all certificates of conformity, instructions and other documents required to be issued pursuant to the Contract, as stated in the Order or otherwise agreed. If the Supplier fails to provide the advice note or any of these documents or if any of these documents fail to conform with the requirements of the Order HCC shall be entitled to reject the Goods.
- (d) HCC shall be entitled in its absolute discretion to defer delivery of Goods and/or performance of Services without any liability for storage of Goods or other charges from the Supplier. In such case Goods and Services shall not be invoiced until delivery and performance (as the case may be) has taken place.

- (e) HCC shall be entitled to reject Goods found on delivery not to conform with the Specification, the Order and/or the requirements of these Conditions, including without limitation as to quantity or quality, or to be damaged or defective, however slight the non-conformity, damage or defect (and Sections 15A and 30(2A) of the Sale of Goods Act 1979 shall not apply). Such Goods may be returned to the Supplier within a reasonable time after delivery at the Supplier's risk and expense and shall be deemed not to have been delivered under the Order. The Supplier shall (at HCC's sole option) either supply replacements for rejected Goods or remedy defects or damage to HCC's reasonable satisfaction. The making of any payment shall not prejudice HCC's rights under this Condition 4(e).

- (f) HCC shall be entitled to reject Services which do not conform with the Specification, the Order or the requirements of these Conditions. The Supplier shall, within seven (7) days of HCC's request or on such other date as may be notified by HCC to the Supplier, re-perform the Services to HCC's reasonable satisfaction. The making of any payment shall not prejudice HCC's rights under this Condition 4(f).

- (g) Any acceptance by HCC of Goods and/or Services not in conformity with the Order shall be without prejudice to any rights HCC may have against Supplier whether hereunder, at law or in equity.

- (h) The Supplier's failure to adhere to any provision of the Contract, including, without limitation, any failure to deliver Goods and/or perform Services in accordance with the Order, Specification and/or these Conditions shall entitle HCC at its sole option at any time after the date for performance or delivery to treat the Contract as repudiated in whole or in part (without prejudice to any other rights it may have whether hereunder, at law or in equity), and HCC shall not be prejudiced by any delay in exercising such option or any indulgence granted to the Supplier.

- (i) HCC shall be entitled to recover from the Supplier all costs and expenses and loss whatsoever incurred (including, without limitation, loss of profit and the costs of any necessary repair, replacement or other correction) incurred as a result of or in connection with non-conformity of the Goods and/or Services with the Order, Specification and/or these Conditions either by equitable price reduction, set-off or credit against any amount owed to the Supplier (whether under the Contract or otherwise) as HCC may in its absolute discretion elect.

- (j) If the Contract provides for delivery by instalments HCC shall be entitled to treat default in delivery of one instalment as a material breach of the Contract entitling HCC (without prejudice to any of its other rights and remedies whether hereunder, at law or in equity) to terminate the Contract and to refuse delivery of any future instalments without incurring any liability in respect thereof to the Supplier. All instalment deliveries shall be invoiced separately unless otherwise specifically agreed in writing by the Corporate Services Manager on behalf of HCC.

5. RISK AND PASSING OF TITLE

- (a) Subject always to Condition (c) below and to HCC's right to reject or return Goods, unless otherwise agreed in writing by the Corporate Services Manager on behalf of HCC, title to and risk of loss or damage to the Goods shall pass to HCC immediately following off-loading of the Goods at the point of delivery specified in the Order.
- (b) The Supplier shall be responsible for all delivery, transport and unloading costs relating to the Contract and shall be liable to

insure Goods to their full replacement value against all risks of damage or loss prior to completion of delivery.

- (c) Where Goods are retained by the Supplier pending delivery instructions, title shall pass to HCC when Goods are ready for despatch but risk shall remain with the Supplier until delivery in accordance with HCC's instructions.

6. PRICE AND PAYMENT

- (a) The Price shall remain fixed and binding.
- (b) The Price is inclusive of all packaging, carriage, insurance and freight charges and exclusive of VAT. The Supplier shall not be entitled to increase the Price by reason of any variation to the costs of packaging, delivery, carriage, insurance and/or transportation.
- (c) The Supplier shall not issue any invoice prior to the scheduled or actual delivery/performance date (whichever is the later) of the Goods and/or Services and all documents required to be supplied in connection therewith under the terms of the Contract. All invoices shall specify the Order number to which it relates.
- (d) Subject to HCC's receipt of Goods and documents and Services conforming with the Order and to the provisions of Condition (c) above, unless otherwise agreed in writing by the Corporate Services Manager on behalf of HCC, payment will be in pounds sterling within thirty (30) days from the end of the month in which HCC receives a valid invoice.
- (e) Where the Price has been calculated by reference to any third party costs or expenses to be incurred by the Supplier or where the Price incorporates or includes any third party costs or expenses to be incurred by the Supplier, the Supplier shall ensure that its invoice(s) to HCC for the Price shall be accompanied by receipts, invoices and such other documentary evidence as HCC may reasonably require, proving that the relevant third party costs and expenses have been incurred by the Supplier.
- (f) Payment by HCC of any amount towards the Price shall not constitute HCC's admission as to the Supplier's performance of its obligations or a waiver of HCC's rights under the Contract.

7. INTELLECTUAL PROPERTY

- (a) If the Supplier makes any invention, discovery or design in the course of or otherwise resulting from an Order ("a Discovery"), the Supplier shall provide HCC with full details thereof. Unless otherwise expressly agreed in writing by HCC, absolute title in a Discovery (including all intellectual property rights therein) shall vest in HCC. The Supplier shall provide to HCC such waivers and assignments as may be required to vest the Discovery (and all intellectual property rights therein) in HCC and such copies of drawings, data, specifications and technical information as HCC may require in order fully to exploit the Discovery and to obtain protection by way of registration or otherwise of the rights of HCC in the Discovery.
- (b) The Supplier shall not without HCC's prior written consent supply Goods or perform any Services incorporating the Discovery to any third party.

8. WARRANTY

- (a) The Supplier warrants to HCC that for the warranty period (if any) set out in the Order, (the "Warranty Period") the Goods will comply with all the provisions of Condition 3(a). Without prejudice to any other remedy of HCC whether hereunder, at law or in equity, if during the Warranty Period HCC becomes aware

of any such non-compliance in the Goods (or any of them) it shall be entitled, at its sole option and discretion, to require the Supplier within seven (7) days of notification of the non-compliance to:

- (i) replace the Goods; or
 - (ii) rectify the non-compliance; or
 - (iii) where HCC has already paid for the Goods, refund to HCC the portion of the Price applicable to the non-compliant Goods or issue HCC with a credit note in respect of the same.
- (b) If the Supplier fails to comply with its obligations pursuant to Condition 8(a) above, without prejudice to any other right or remedy of HCC whether hereunder, at law or in equity, HCC will, at its sole option, be entitled to treat the Contract as repudiated by the Supplier and require the repayment of all and/or any part of the Price paid by HCC.
 - (c) The benefit of the warranty in Condition 8(a) above shall be freely assignable by HCC.

9. INDEMNITY

- (a) Subject always to Condition 9(b) below, the Supplier shall at all times indemnify and keep indemnified HCC and all of its Group Members from and against any and all liabilities, claims, actions, suits, costs, damages, losses and expenses (including without limitation legal fees and expenses on a solicitor own client basis), loss of profits and/or contracts, loss of property and/or death or injury to any person howsoever arising (whether directly or indirectly) incurred or suffered by HCC or by any of HCC's Group Members by reason of:
 - (i) any threat, claim or allegation of infringement of any patent, design right, registered design, trade mark or name or any other intellectual property or other right of any third party resulting from or arising in connection with the use or sale of Goods and/or the receipt of the Services; and/or
 - (ii) the Supplier's, its officers', agents' employees' or sub-contractors' failure to perform or delay in performing its obligations under the Contract (or any of them) including, without limitation, any failure to deliver the Goods and/or perform the Services on the date specified by HCC; and
 - (iii) any defect in or failure of the Goods and/or Services (or any of them) or any associated installation or construction work (or any part thereof) to conform with the Contract or any act or omission of the Supplier its officers, employees, agents or sub-contractors, including, without limitation, any negligent act or omission.
- (b) The indemnity set out in Condition 9(a) above shall not apply in respect of any losses, costs, damages or expenses to the extent incurred by HCC or by any HCC Group Member wholly and directly as a result of any use by the Supplier of any drawings, designs or specifications supplied to the Supplier by HCC.

10. PROPRIETARY INFORMATION

- (a) The Supplier shall keep in strict confidence all information relating to the activities of HCC and/or the activities of any of HCC's Group Members which may come into the Supplier's possession in the course of carrying out the Order ("Confidential Information") and the Supplier shall not without the prior written consent of the Corporate Services Manager on behalf of HCC use the same for any purpose other than the execution of the Order or

disclose the same to any person other than on a need-to-know basis and in confidence to those of its employees, officers and sub-contractors who require knowledge thereof for the purposes of the execution of the Order and who are, through their contracts with the Supplier, under obligations of confidentiality to the Supplier.

- (b) The Supplier shall and shall procure that any sub-contractor shall, immediately upon the request of HCC, return to HCC all Confidential Information in whatever form and whatever media held in the Supplier's and/or any sub-contractor's (as the case may be) possession and control together with all copies thereof and extracts therefrom.
- (c) The Supplier shall not without the prior written consent of the Corporate Services Manager on behalf of HCC use HCC's name or otherwise hold itself out as associated with HCC in any advertising or publicity material or in any other manner whatsoever.
- (d) All drawings and other items provided by HCC to the Supplier shall be used solely for the purposes of the Order and remain the property of HCC and the Supplier shall return the same without charge to HCC forthwith upon demand.
- (e) The Supplier shall forthwith upon request and in any event upon termination of the Contract return to HCC all Specifications, drawings, samples and other material whatsoever supplied by HCC to the Supplier or produced by the Supplier on HCC's instructions pursuant to the Order and shall not keep any copies of the same.
- (f) In the event that the Supplier is required pursuant to the Order to brand or mark the Goods or any packaging therefor with any trade mark belonging or licensed to HCC, the Supplier shall use such trade mark(s) strictly in accordance with HCC's instructions and for no other purpose. On termination of the Contract howsoever arising, the Supplier shall immediately cease to use such trade mark(s).
- (g) The Supplier shall include the substance of this Condition 10 in all sub-contracts issued pursuant to the Order.

11. INSURANCE

- (a) The Supplier shall effect and maintain:
 - (i) liability insurance with reputable insurers in such terms as are satisfactory to HCC and which indemnify the Supplier against all liability of the Supplier to HCC or any other person resulting from or arising out of any Contract; and
 - (ii) during the period of performance of the Contract, third party liability insurance and employer's liability insuranceand the Supplier shall promptly provide to HCC on request a copy of the insurance policies and evidence of the up-to-date payment of all premiums.
- (b) If the Supplier fails to maintain any insurance policies required to be effected and maintained by the Supplier pursuant to these Conditions (or any of them), or such insurance policies (or any of them) are cancelled, lapse, revoked, or are not renewed other than in accordance with these Conditions, then HCC shall be entitled to:
 - (i) cancel the Order and/or reject any Goods delivered and/or Services provided under the Order and/or to terminate the Contract and to return at the Supplier's cost any Goods

delivered under the Contract; and

- (ii) itself effect and maintain such insurance to a reasonable level of cover and deduct the premiums paid from any monies due or to become due to the Supplier.

12. LICENCES, PERMITS AND CONSENTS

The Supplier shall obtain and maintain, at its own cost and expense, in force all licences, permits and consents required in connection with the manufacture of the Goods and/or the supply and/or delivery of the Goods and/or performance of the Services to HCC.

13. CANCELLATION

- (a) Subject to Condition 13(b) below, HCC shall be entitled by notice at any time to cancel the Order in whole or in part.
- (b) Upon cancellation under Conditions 13(a) or 17(b) the Supplier shall immediately discontinue work on the Order and shall within two months thereafter submit its claim for expenses incurred pursuant to the Order to the extent to which the same would otherwise be an unavoidable loss to the Supplier due to HCC's cancellation or termination. The Supplier shall take all reasonable steps to mitigate its loss and HCC shall not be liable for claims submitted more than two months after cancellation or termination.
- (c) HCC shall have no further liability to the Supplier in connection with such cancellation or termination.

14. TERMINATION

HCC may at any time by notice in writing, without prejudice to HCC's other rights or remedies under the Contract, at law or in equity, whether accrued before or accruing after such notice, summarily terminate the Contract or suspend delivery without compensation to the Supplier upon the occurrence of any of the following events:-

- (a) if the Supplier commits a material breach of any of these Conditions and fails to remedy such breach (if capable of remedy) within fourteen (14) days after service of a notice specifying the breach and the remedy required;
- (b) the presentation of a petition, or the convening of a meeting for the purpose of considering a resolution, for the winding up or dissolution of, the passing of any resolution for the winding up or dissolution of, or the making of a winding up order against or order for the dissolution of, the Supplier;
- (c) the appointment of a receiver, administrative receiver, receiver and manager, administrator or similar officer over all or any of the assets or undertaking of the Supplier or the making of an administration application or the making of an administration order in relation to the Supplier;
- (d) the proposal of, application for or entry into of a compromise or arrangement or voluntary arrangement, or any other scheme, composition or arrangement in satisfaction or composition of any of its debts or other arrangement for the benefit of its creditors generally, by the Supplier with any of its creditors (or any class of them) or any of its members (or any class of them) or the taking by the Supplier of any action in relation to any of the same or the filing of any documentation for the purpose of obtaining a moratorium pursuant to section 1A and paragraph 7 of Schedule A1 of the Insolvency Act 1986 in relation to the Supplier;

- (e) the taking by any creditor (whether or not a secured creditor) of possession of, or the levying of distress, execution or enforcement or some other process upon, all or part of the property, assets or undertaking of the Supplier or the service of a notice of enforcement against the Supplier under paragraph 7 of Schedule 12 of the Tribunals, Courts and Enforcement Act 2007, or the taking control of any goods of the Supplier pursuant to that Schedule;
- (f) the suspension or threatened suspension of payment of its debts by the Supplier or the Supplier being unable to pay its debts as they fall due or admitting its inability to pay its debts;
- (g) the deemed inability of the Supplier (if a company) to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (with the words "proved to the satisfaction of the court" deemed to be omitted from that section for these purposes) or the Supplier (if an individual) appearing to be unable to pay a debt or to have no reasonable prospect of being able to pay a debt within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom the foregoing applies;
- (h) the presentation of a petition for bankruptcy, or the making of a bankruptcy order, in respect of the Supplier, the occurrence of circumstances in respect of the Supplier which would enable the presentation of a bankruptcy petition under Part IX of the Insolvency Act 1986 or the making of an application for an interim order or the making of an interim order under section 252 of the Insolvency Act 1986 in relation to the Supplier or, where the Supplier is a partnership, the occurrence of any of the foregoing events in relation to any individual partner in that partnership;
- (i) the ceasing by the Supplier to carry on the whole or a substantial part of its business; or
- (j) the occurrence of an event or circumstance in relation to the Supplier similar to any of those referred to in (b) to (i) above in any jurisdiction other than England and Wales.

15. WORK ON HCC's PREMISES

The Supplier shall, and shall procure that any sub-contractor and any other person employed by or carrying out installation or construction work on its behalf shall:

- (a) take all reasonable care in carrying out the Work, and in particular (without limitation) not to damage HCC's premises or any part thereof; and
- (b) comply with all reasonable instructions issued by HCC to the Supplier while at HCC's premises including (without limitation) as to security, hygiene and health & safety.

16. HEALTH AND SAFETY

The Supplier shall comply with all of its legal obligations and any and all requirements which HCC may notify to it from time to time (whether in the Specification or otherwise) in relation to health and safety in relation to the Goods and Services and shall as a continuing obligation surviving termination or performance of the Contract provide HCC with such information and assistance concerning the Goods and Services as HCC may reasonably require to enable HCC to comply with its legal obligations in relation to health and safety in respect of the Goods and Services (including, without limitation, in each case any obligations under the General Product Safety Regulations 2005).

17. ANTI-BRIBERY

The Supplier shall and shall procure that persons associated with it in connection with the Contract shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such an activity, practice or conduct had been carried out in the U.K;
- (c) not do, or omit to do, any act that would cause or lead HCC to be in breach of any of the Relevant Requirements;
- (d) if requested, provide HCC with such reasonable assistance at HCC's reasonable cost as HCC may require to enable HCC to perform any activity required by any relevant governmental or supervisory body in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements;
- (e) immediately notify HCC if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract); and
- (f) ensure that all persons associated with the Supplier in connection with the Contract comply with this Condition 17.

18. FREEDOM OF INFORMATION

- (a) The Supplier acknowledges that HCC is, and HCC's Group Members are, subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and agrees that it will assist and co-operate with HCC to enable HCC and each HCC Group Member to comply with its (and/or their) Information (as such term is defined in the FOIA) disclosure requirements under the FOIA and EIR.
- (b) The Supplier will and will procure that its sub-contractors will:
 - (i) transfer any Request for Information (as such term is defined in the FOIA) to HCC as soon as practicable after receipt and in any event within two (2) working days of receiving a Request for Information;
 - (ii) provide HCC with a copy of all Information in the Supplier's possession or power in the form that HCC may require within five (5) working days (or such shorter reasonable period as HCC may specify) of HCC requesting that Information; and
 - (iii) provide all necessary assistance as reasonably requested by HCC to enable HCC (or where applicable its Group Member) to respond to a Request for Information within the time for compliance set out in the FOIA or the EIR.
- (c) HCC will be responsible for determining at its absolute discretion whether any Information:
 - (i) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and
 - (ii) is to be disclosed in response to a Request for Information and in no event will the Supplier respond directly to a Request for Information unless expressly authorised to do so by HCC.

- (d) The Supplier acknowledges that HCC and/or any HCC Group Member may be obliged under the FOIA or the EIR to disclose Information:
 - (i) without consulting with the Supplier; or
 - (ii) following consultation with the Supplier and having taken the Supplier's views into account.

19 DATA PROTECTION

- 19.1 Both parties:
- (a) will comply with all applicable requirements of the Data Protection Legislation;
 - (b) acknowledge that for the purposes of the Data Protection Legislation, the Service Provider is the Processor and HCC is the Controller; and
 - (c) acknowledge that:
 - (i) the scope, nature and purpose of the processing to be carried out by the Service Provider in respect of the Protected Data;
 - (ii) the duration of the processing;
 - (iii) the types of Personal Data that will be processed; and
 - (iv) the categories of Data Subject whose Personal Data will be processed

shall be as set out in out in the attached Schedule, as updated from time to time by the written agreement of the parties.

- 19.2 The Service Provider shall (and shall ensure each person acting under its authority shall):
- (a) unless required to do so by Applicable Law, only process the Protected Data on and in accordance with the instructions set out in this clause 19 and Schedule 4, as updated from time to time by the written agreement of the parties ("Processing Instructions"); and
 - (b) if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, notify HCC of any such requirement before processing the Protected Data (unless Applicable Law prohibits such notification).
- 19.3 HCC will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Protected Data to the Service Provider for the duration and purposes of this Agreement.
- 19.4 The Service Provider shall ensure that all personnel who have access to and/or process the Protected Data are subject to binding confidentiality obligations to keep the Protected Data confidential.
- 19.5 The Protected Data shall not be transferred by the Service Provider to any country outside the European Economic Area or to any International Organisation.
- 19.6 The Service Provider shall:
- (a) implement and maintain at its cost and expense appropriate technical and organisational measures in relation to the processing of the Protected Data to:

- (i) ensure that the processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of Data Subjects;
- (ii) ensure a level of security in respect of Protected Data processed by it that is appropriate to the risks that are presented by the processing, in particular the risks of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise processed. Such measures shall include ensuring the integrity and resilience of the Service Provider's systems and services, that access to the Protected Data can be restored in a timely manner after an incident and, where appropriate, pseudonymising or encrypting the Protected Data; and
- (iii) without prejudice to clause 19.8, assist HCC in the fulfilment of its obligations under Data Protection Legislation to respond to requests by Data Subjects in exercise of their rights (in so far as the same relates to the Protected Data); and
- (b) regularly assess and evaluate the effectiveness of the technical and organisational measures adopted by it.

19.7 Without prejudice to clause 19.6(a)(ii), the Service Provider shall comply with the requirements regarding security of processing set out in the Data Protection Legislation (as applicable to Processors).

19.8 The Service Provider shall at no cost to HCC:

- (a) provide to it such information and/or assistance as HCC may require from time to time to comply with its obligations under Data Protection Legislation to respond to requests by Data Subjects in exercise of their rights under Data Protection Legislation and in relation to security, breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators in respect of data protection impact assessments;
- (b) notify HCC of any Personal Data Breach affecting the Protected Data immediately upon becoming aware of the same.

19.9 The Service Provider shall upon termination of this Agreement either delete or return to HCC (as directed by HCC) the Protected Data and all copies thereof, unless required by Applicable Law to store the Protected Data.

19.10 The Service Provider shall:

- (a) maintain complete and accurate records and information to demonstrate its compliance with this clause 19; and
- (b) permit HCC (and/or auditors mandated by HCC) to audit such records and information at such intervals as may reasonably be required by HCC from time to time.

19.11 The Service Provider shall not engage another Processor (or any replacement) to carry out processing activities in respect of the Protected Data without HCC's prior written consent. In the event that HCC gives its prior written consent to such engagement, the Service Provider:

- (a) shall enter into a written agreement with such Processor incorporating terms which are substantially similar to those set out in this clause 19; and
- (b) acknowledges that it shall remain full liable for all acts and omissions of such Processor.

20. GENERAL

- (a) No waiver of any of HCC's rights under the Contract shall be effective unless in writing signed by the Corporate Services Manager on behalf of HCC. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of HCC's rights in relation to different circumstances or the recurrence of similar circumstances;
- (b) If HCC shall be prevented from taking delivery of the Goods, receiving the Services, issuing instructions or otherwise progressing the Order by reason of any circumstances beyond its reasonable control including (without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock-out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute HCC shall be entitled, during the period of such contingency, to defer or cancel delivery of any undelivered balance of the Goods and/or performance of any element of the Services yet to be performed or to cancel the Contract, in which latter event, the provisions of Condition 13 shall apply;
- (c) Notice under these Conditions shall be properly given if in writing and sent by registered post to the address of the intended recipient as stated in the Order or to such address as HCC and the Supplier from time to time notify to each other as their respective addresses for service and any notice shall be served upon receipt by the intended recipient at such address;
- (d) The parties intend that each HCC Group Member shall be entitled to enforce the provisions of Conditions 9 and 10 subject to and in accordance with the terms of the Contract and the Contracts (Rights of Third Parties) Act 1999. The consent of HCC's Group Members shall not be required in order for all or any terms of the Contract to be varied, amended or modified or for the Contract to be suspended, cancelled, terminated or rescinded. Save as provided for in this Condition 20(d), none of the terms of the Contract are intended by HCC or the Supplier to be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any third party who is not a party to the Contract;
- (e) The laws of England and Wales shall govern construction and operation of the Contract and the Supplier agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.
- (f) Each of these Conditions contained herein shall be construed as a separate condition. If any provision hereof is held by any court or other competent authority to be invalid, void or unenforceable it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary be amended so far as may be required to give effect to the spirit of these Conditions.

SCHEDULE

PROCESSING BY THE PROVIDER OF PROTECTED DATA

1. Scope of processing

**[To be completed on issue of
purchase order]**

2. Nature and purpose of processing

**[To be completed on issue of
purchase order]**

3. Duration of the processing

**[To be completed on issue of
purchase order]**

**4. Types of personal data to be
processed**

**[To be completed on issue of
purchase order]**

5. Categories of data subject

**[To be completed on issue of
purchase order]**