

**GLAXOSMITHKLINE TERMS AND CONDITIONS OF PURCHASE
(SOFTWARE & SERVICES) UK**

1. DEFINITIONS

"Affiliate" means an organisation which is directly or indirectly controlled by, in Control of, or under common control with, either Supplier or GSK as appropriate.

"Agreement" means the agreement between GSK and Supplier consisting of the Purchase Order, these Terms and Conditions, the Specifications, and any other documents (or parts thereof) specified in the Purchase Order or otherwise expressly incorporating these Terms and Conditions.

"Control" means the ownership of more than 50% of the voting stock of any organisation or the legal power to direct or cause the direction of the general management of either Supplier or GSK as appropriate.

"Data Privacy Directive" means European Directive 95/46/EC on the protection of individuals with regard to the processing of individual data and the free movement of such data.

"Incoterms" means the Year 2000 edition of the official International Chamber of Commerce Rules for the interpretation of trade terms.

"Intellectual Property Rights" means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database right, moral right, design right and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, computer programs, confidential information, business names, goodwill and in applications for protection of the above rights.

"Licence Fee" means the licence fee set out in the Purchase Order.

"GSK" means GlaxoSmithKline Services Unlimited. GSK shall where rights, benefits and services are granted to GlaxoSmithKline Services Unlimited include its Affiliates.

"Purchase Order" means GSK's purchase order submitted to Supplier setting out GSK's requirements for Software or Services.

"Services" means the services to be provided by the Supplier pursuant to this Agreement.

"Software" means the computer Software and user documentation listed in the Purchase Order and any future upgrade, update or maintenance modification to those Software acquired by GSK during the subsistence of this Agreement.

"Specification" means the specification separately documented by GSK in writing which sets out the performance required of the Software and Services.

"Supplier" means the person, firm (or any individual partner thereof), or company to whom the Purchase Order is addressed.

"System" means computer central processing units and peripheral equipment, including without limitation, any cluster, combination or network of such central processing units and peripheral equipment which are under common control, and which are now, or may in the future be, owned or operated by GSK, its Affiliates or a third party who is providing services to GSK or its Affiliates.

"Terms and Conditions" means the terms and conditions set out in this document.

2. STATUS OF TERMS AND CONDITIONS

- 2.1 These Terms and Conditions and other matters appearing on the Purchase Order shall apply to all contracts for the purchase of Software or Services by GSK from Supplier to the exclusion of all other terms and conditions, including any terms or conditions which Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by Supplier irrespective of their date of communication to GSK. However the terms and conditions in any separately negotiated written contract entered into by the parties in respect of the Goods or Services identified in the Purchase Order shall overrule these Terms and Conditions.
- 2.2 Acceptance of the Purchase Order constitutes acceptance of these Terms and Conditions and any schedules attached. Where appropriate interpretation of the Purchase Order shall be governed by the provisions of Incoterms.
- 2.3 GSK will not be liable in respect of any Purchase Order(s) or instructions other than those issued or confirmed on its official, duly signed Purchase Order documents.

3. GRANT OF LICENCE

- 3.1 The Supplier grants to GSK and its Affiliates a world-wide, perpetual, non-exclusive, fully paid up licence to use the Software for the purposes listed in clause 3.2.
- 3.2 GSK may use the Software:
 - 3.2.1 for processing data of GSK and its Affiliates for their normal business purposes;
 - 3.2.2 for any act which is reasonably incidental to that use defined in clause 3.2.1 including to maintain back up copies of the Software which copies shall at all times be and remain the property of the Supplier;
 - 3.2.3 for any act which is permitted by sections 50A to 50C of the Copyright, Designs and Patents Act 1988.
- 3.3 GSK may grant sub-licences for all or part of the licence granted herein to third parties performing information processing services for GSK or its Affiliates; provided that such third parties agree to be bound by the use and confidentiality provisions set forth herein. GSK and its Affiliates may also hire third parties to modify (as permitted by law) and maintain the Software.
- 3.4 GSK may change the configuration of the systems on which the Software is installed and may install the Software on new or additional compatible systems without prior notice to the Supplier and without payment of an "upgrade fee" or other charge as a result of such actions provided the overall licence grant under this Agreement is not exceeded.

- 3.5 GSK may store the Software and Documentation at one or more locations owned or operated by GSK or its Affiliates. GSK may use the Software at one or more locations or on one or more computer systems, whether or not owned or operated by GSK or its Affiliates, during testing or operation of a disaster recovery plan for their computer facilities.
- 3.6 The Supplier will allow GSK to freely use the Software in accordance with this Agreement without any hardware or software device restricting, limiting or affecting such use. The Supplier warrants that the provision of such key or restriction device is used only to ensure that the Software can be used by the number of users, locations or systems specified in the Purchase Order and that the Software is not subject to any time bars or embedded code that may cause the Software to cease to operate for any reason whatsoever.

4. DELIVERY OF SOFTWARE AND PROVISION OF SERVICES

- 4.1 The Supplier shall deliver the Software and perform the Services at the time and place specified in the Purchase Order. If Software or Services are incorrectly delivered Supplier shall be responsible for additional expenses incurred in delivering them to the correct point specified in the Purchase Order or subsequently advised in writing by GSK. The quantity specified in the Purchase Order may not be changed without GSK's prior written consent. Quantities delivered in excess of those stated in the Agreement may not be accepted.
- 4.2 Time shall be of the essence in relation to the performance of any and all of Supplier's obligations pursuant to the Agreement.

5. CONTRACT PRICE AND TERMS OF PAYMENT

- 5.1 The price (which shall be a firm fixed price), shall be exclusive of VAT, and inclusive of all packaging and other related charges and inclusive of delivery and insurance. Any increase in the price for any reason shall be subject to the express prior written consent of GSK.
- 5.2 Upon acceptance of the Software and/or Services by GSK the Supplier shall submit invoices to GSK for payment of the Licence Fees and any other charges due hereunder, which shall be payable at the end of the month following the month in which the invoice is received. Value Added Tax, where applicable, will be shown separately on all invoices as a strictly net extra. GSK reserves the right to set off any sums in respect of which Supplier may be in default to GSK.
- 5.3 The correct Purchase Order number must be quoted on all invoices, and GSK will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers.
- 5.4 To ensure payment in accordance with the above procedure all invoices must be received at the invoice address shown on the Purchase Order.
- 5.5 Supplier acknowledges and agrees that where the GSK requires invoices to be received electronically, the supplier shall work with GSK or GSK's nominated representative to ensure that Supplier installs appropriate electronic invoicing methods. If Supplier already has an electronic invoicing system installed Supplier shall work with GSK or GSK's nominated representative to ensure such system is optimised.
- 5.6 In the event GSK reasonably considers that any invoice submitted by the Supplier is defective or relates to Goods supplied or Services performed otherwise than in accordance with the Supplier's obligations under this Agreement, GSK shall be entitled to withhold payment of the dispute amount without prejudice to any other rights or remedies it may have. GSK shall notify the Supplier of any dispute within fourteen days of receipt of the invoice. GSK and the Supplier shall attempt to settle such dispute in good faith within fourteen days of such notification failing which the parties shall refer such dispute for dispute resolution.
- 5.7 Any payment for an undisputed bona fide invoice not received by the due date shall be subject to an interest charge of 2% per annum above the LIBOR base rate.

6. REJECTION, REPAIR AND REPLACEMENT

- 6.1 If during the period of 180 days following acceptance of the Software by GSK, the Software fails to conform with the Specification GSK may, at its discretion, require Supplier as soon as reasonably practicable to either repair or replace the Software, or refund to GSK the purchase costs of all Software which do not correspond with the Specification. Repairs, replacements, and any refunds shall themselves be subject to the obligations in this Agreement;
- 6.2 In the event of a rejection in accordance with Section 6.1 above GSK shall notify Supplier in writing, and the payment obligation in relation to any such delivery shall be suspended forthwith.
- 6.3 The parties shall use their best endeavours to resolve any dispute arising pursuant to Section 6. If no agreement can be reached within 30 days, the parties shall agree on an independent expert (not an arbitrator) whose decision shall be final and binding as to the dispute. Each party shall bear its own respective fees in relation to the dispute, notwithstanding the decision reached.
- 6.4 If the expert finds that any delivery of the Software has not complied with the Agreement, GSK shall have the rights stated in Section 6.1.

7. STANDARD OF SERVICES

- 7.1 Supplier warrants and represents to GSK that any Services performed by Supplier or duly appointed sub-contractor:
 - 7.1.1 shall be performed in a good and workmanlike fashion and with all due speed, care, skill and diligence.
 - 7.1.2 shall be carried out in accordance with the Agreement with current industry standard codes of practice. Supplier shall ensure that all of its personnel and sub-contractors are suitably qualified to perform the Services and that all necessary licences, work permits or other authorisations have been obtained.

- 7.2 If any materials which are required by Supplier for the provision of the Services are not delivered fully in accordance with any stipulations in the Agreement, Supplier shall immediately effect correct delivery and shall be responsible for any additional costs and expenses incurred by both parties in so doing.
- 7.3 GSK shall have the right exercisable during the performance of the Services to suspend any payment obligation in respect of the Services if the performance does not conform in quality with any stipulations in the Agreement or if the performance is delayed.
- 7.4 If the Services do not conform with the Agreement, GSK shall have the right to purchase Services from elsewhere which nearly as practicable conform to the Agreement; and any extra expense incurred shall be paid by Supplier to GSK. Before exercising such right to purchase the Services from an alternative supplier GSK shall give Supplier an opportunity to replace the Services in respect of which payment was cancelled with Services which conform with the Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Supplier agrees to indemnify GSK and its employees, Affiliates, sub-contractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all direct damages, losses, costs and expenses (including without limitation legal and other professional advisers fees), made against or incurred or suffered by any of them and whether wholly or in part resulting directly or indirectly from any claim by a third party that the Goods or the provision of the Services by the Supplier or the use by or behalf of GSK of the Goods or of any assets used by the Supplier in connection with the performance of the Services infringes the Intellectual Property Rights of that third party.
- 8.2 Supplier shall, at its expense, defend any and all claims, actions and proceedings arising from infringements or alleged infringements of its Intellectual Property Rights in connection with the Software or Services and Supplier undertakes to indemnify GSK against any costs (including legal fees) which GSK incurs in connection with such actions and all damages awarded in any proceedings provided that GSK gives Supplier all reasonable assistance and the sole authority to defend or settle any legal proceedings at Supplier's expense.
- 8.3 GSK retains Intellectual Property Rights in, and ownership of all materials, plans, drawings, Specifications, patterns and/or designs provided by GSK to Supplier, and they shall all be returned at any time in good condition to GSK at GSK's request.
- 8.4 Where Software is made to GSK's Specification, model, or plans, the Intellectual Property Rights in the Software in so far as they relate to the Specification, model, or plans, and any improvements or developments thereof shall be the absolute property of GSK, and the Supplier will assign all such Intellectual Property Rights to GSK when such assignment is necessary.
- 8.5 Intellectual Property Rights arising during or out of the provision of Services shall be and remain the property of GSK.
- 8.6 If any part of the Software and/or Services does or is likely to become the subject of an action or claim Supplier shall have the option and at its expense to procure for GSK the right to continue using the Software and/or Services, or replace the Software and/or Services with non-infringing Software or Services, or modify the Software and/or Services so that they become non-infringing without reducing their performance and functionality in accordance with the Specifications.

9. CONFIDENTIALITY AND PUBLICITY

The Supplier, its employees and sub-contractors will, keep confidential all information of a commercial or technical nature disclosed to Supplier by GSK for the purpose of this Agreement, and will not disclose such information to any third party without GSK's prior written consent. The Supplier will not disclose the existence of this Agreement or any information related to this Agreement (including GSK's name, the Software or the Services) without GSK's prior written consent.

10. FORCE MAJEURE

- 10.1 Neither party shall be liable for, nor be deemed to be in default, on account of any delay in completion or the performance of any other act under the Agreement due to circumstances which are beyond the party's reasonable control ("Force Majeure"), provided that the party claiming hereunder shall notify the other with all possible speed specifying the cause and probable duration of the delay or non-performance and shall minimise the effects of such delay or non-performance.
- 10.2 If the performance by either party of any of its obligations under the Agreement is prevented or delayed by Force Majeure:
 - 10.2.1 for a consecutive period in excess of 5 working days, the parties shall enter into bona fide discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable in the circumstances.
 - 10.2.2 for a period in excess of 60 days cumulatively or consecutively, then the other party shall in its discretion have the right to immediately terminate the Agreement upon written notice.

11. COMPLIANCE WITH LAWS AND REGULATIONS

Supplier warrants that the Software and Services will comply with all relevant laws and regulations.

12. DATA PRIVACY DIRECTIVE

The parties warrant that they have legal authority in the country which they are established for the purpose of processing personal data (as defined in the Data Privacy Directive) and will not process the personal data of staff, employees and/or sub-contractors working for the other to which they have been granted access, or which have otherwise been made available for the purpose of the Agreement, except in accordance with the national law implementing the Data Privacy Directive applicable to the parties. Each party

agrees to indemnify the other in consequence of any breach of this Section or any claim by an employee or sub-contractor of the other party that his/her rights have been infringed.

13. HAZARDS

Supplier shall, and shall ensure that its staff and those of any sub-contractor shall, when working on any site in connection with the Agreement, comply with all relevant environmental, occupational health and safety legislation and any other appropriate standards, policies and procedures notified by GSK.

14. SUPPLIER'S EMPLOYEES

Nothing in this Agreement shall be construed or have effect as constituting any relationship of employer and employee between GSK and the employees and/or sub-contractors of Supplier. Supplier agrees that it is performing the Services as an independent contractor and will retain all responsibility for payment of any Income Tax, National Insurance Contributions, and any other taxation that may arise from the provision of the Services, and will indemnify GSK against any expense incurred by GSK as a result of GSK having to pay any tax, Income Tax or National Insurance Contributions and/or make any deductions at source in respect of the Services.

15. WARRANTIES AND SOFTWARE DEFECTS

15.1 Supplier warrants to GSK that:

15.1.1 it has and will have title and sole ownership of the Software and the right to convey the licenses granted herein, free of any liens, claims or encumbrances;

15.1.2 for a period of 90 days following delivery, the Software shall perform without material defect or error and in conformity with the Specification, functions and other performance requirements set forth herein and shall be free from all defects in material and workmanship;

15.1.3 it will use its best endeavours to ensure no portion of the Software contains any unauthorised code such as a virus, Trojan Horse, worm, or other software routine or hardware component designed to permit unauthorised access used to disable, erase, or otherwise harm software, hardware, or data automatically.;

15.2 Supplier warrants that the Software, and its own systems are capable of being used normally such that neither the performance nor the functionality of the Software will be adversely affected by date compliance issues.

15.3 In addition to any other rights and remedies available to GSK under this Agreement, the Supplier's obligation and GSK's remedy for any breach of this warranty shall be, at GSK's discretion, one or more of the following:

15.3.1 Supplier shall make any necessary repairs or replacements to the Software in order to correct the breach within thirty (30) days of receiving written notice from GSK to do the same; and/or

15.3.2 GSK may terminate this Agreement, without penalty or forfeiture, requiring the Supplier to promptly return all amounts previously paid by GSK in respect of the Software affected, directly or indirectly, by such non-compliance.

15.4 The Supplier warrants to GSK that the Services will be performed:

15.4.1 in accordance with the Specification or any modifications that may be agreed in writing;

15.4.2 in such a way as not to cause any material fault, deterioration of performance, or malfunction in the System

15.4.3 in such a way as not to cause any interruption to the business processes of GSK (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner).

15.5 If the Supplier has failed to perform the Support Services (or any part thereof) due to a breach of the Supplier's obligations in this Agreement, GSK shall be entitled (without prejudice to any other rights or remedies it may have), at its option; (a) to require the Supplier to remedy such breach by re-executing the relevant part of the Services; or (b) to require the Supplier to repay or credit to GSK that part of the charges paid by GSK to the Supplier relating to the provision of the relevant part of the Services (exclusive of any value added tax).

16. LIABILITY AND INSURANCE

16.1 Supplier shall indemnify GSK against any direct liabilities, damages, claims, costs, losses and expenses incurred or paid by GSK howsoever arising from any defect in the Software or Services or any breach by Supplier of its obligations hereunder or of any statutory duty or from any act or omission of Supplier's employees, agents or sub-contractors.

16.2 Supplier shall insure with a reputable insurance company its liabilities under the Agreement for a minimum of £5,000,000 per event and if so required at any time produce the policy of insurance and the receipt for the current premium to GSK for its inspection. Supplier agrees that any monies received by Supplier from the insurance company in full or part settlement of a claim arising out of the Agreement and paid by or due to GSK shall be paid immediately to GSK without offset or counter claim.

16.3 Any limitation, monetary or otherwise in such policy shall not be construed as a limitation on Supplier's liability and Supplier shall, notwithstanding such limitation, remain liable in full for the matters and to the extent not covered by the policy.

17. ASSIGNMENT AND DIVESTMENT

17.1 Supplier's rights and obligations under the Agreement may not be assigned in whole or in part without the prior written consent of GSK (acting in its sole discretion) and any such consent shall not be deemed to relieve Supplier of any of its obligations and liability to GSK pursuant to the Agreement.

- 17.2 GSK shall be entitled at any to assign the whole or any part of its rights and obligations under the Agreement to any Affiliate or to any successor in title to the whole or part of that part of GSK's business which relates to the Software or Services.
- 17.3 If another company is created or a third party acquires GSK's assets through a divestiture or reorganisation of GSK's business ("Divested Entity") such Divested Entity may use a portion of the Software and Documentation provided under this Agreement for up to twelve months, on notice to Supplier, provided that the Divested Entity agrees in writing to the terms and conditions of this Agreement. During this period, the Divested Entity may use GSK's Software and Documentation for either their business operations or GSK's business operations. If the Divested Entity wishes to continue to use any Software at the end of the time period specified above, the Divested Entity must execute a mutually agreeable Order Form with Supplier which will govern its use of the Programs.

18. THIRD PARTY RIGHTS

Except as expressly provided for in this Agreement, no person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any Term or Condition of this Agreement.

19. SUB-CONTRACTORS

Supplier shall not, without the prior written consent of GSK, appoint any sub-contractor or any person or persons to carry out its obligations under the Agreement. In the event that Supplier appoints a sub-contractor or other person to perform its obligations it shall remain liable to GSK for the performance of all its obligations and shall ensure that any such sub-contractor or other person reads and understands the implications of the Agreement.

20. ETHICAL STANDARDS AND HUMAN RIGHTS

- 20.1 Unless otherwise required or prohibited by law, the Supplier warrants, to the best of its knowledge, that in relation to the supply of goods or services under the terms of this Agreement:
- (a) it does not employ engage or otherwise use any child labour in circumstances such that the tasks performed by any such child labour could reasonably be foreseen to cause either physical or emotional impairment to the development of such child;
 - (b) it does not use forced labour in any form (prison, indentured, bonded or otherwise) and its employees are not required to lodge papers or deposits on starting work;
 - (c) it provides a safe and healthy workplace, presenting no immediate hazards to its employees. Any housing provided by the Supplier to its employees is safe for habitation. The Supplier provides access to clean water, food, and emergency healthcare to its employees in the event of accidents or incidents at the Supplier's workplace;
 - (d) it does not discriminate against any employees on any ground (including race, religion, disability or gender).
 - (e) it does not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
 - (f) it pays each employee at least the minimum wage, or a fair representation of the prevailing industry wage, (whichever is the higher) and provides each employee with all legally mandated benefits;
 - (g) it complies with the laws on working hours and employment rights in the countries in which it operates;
 - (h) it is respectful of its employees right to join and form independent trade unions and freedom of association.
- 20.2 The Supplier agrees that it is responsible for controlling its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent supplier of goods and services that are used by Supplier when performing its obligations under this Agreement.
- 20.3 The Supplier shall ensure that it has ethical and human rights policies and an appropriate complaints procedure to deal with any breaches of such policies.
- 20.4 GSK reserves the right upon reasonable notice (unless inspection is for cause, in which case no notice shall be necessary) to enter upon the Supplier's premises to monitor compliance by the Supplier of the warranties set out in Clause 24.1 above and the Supplier shall, subject to compliance with law, furnish GSK with any relevant documents requested by GSK in relation thereto.

21. TERMINATION

- 21.1 Subject to Section 20.4, if either party to the Agreement is in breach of the Agreement and does not remedy the breach within 30 days of notice from the other party so to do (if capable of remedy) the other party may terminate the Agreement immediately by notice to the party in breach.
- 21.2 If either party becomes bankrupt, dissolved, wound up, or makes any arrangement with its creditors or has a receiver, administrative receiver, liquidator or provisional liquidator appointed over all or any part of its assets or goes into liquidation (whether voluntary or otherwise) save as part of a bona fide reconstruction not involving insolvency or takes or suffers any similar action as a result of its liability to pay its debts or its insolvency it shall promptly so notify the other party in writing providing particulars of the circumstances whereupon the other party may terminate the Agreement immediately by notice.
- 21.3 If at any time during the term of the Agreement there shall be any change in the legal or beneficial ownership or Control of either party:
- 21.3.1 the changed party shall immediately so notify the other party in writing; and

21.3.2 the other party may, upon receiving notice or otherwise becoming aware of a change in the legal or beneficial ownership or Control of the changed party, terminate the Agreement immediately by notice in writing to that party if it considers in its sole discretion that such change of ownership or Control are prejudicial to its interests.

21.4 The Agreement may be cancelled at any time by GSK for any reason whatsoever, by giving Supplier notice in writing. Termination or expiry shall not relieve either party from any liability or action accrued prior to such termination or expiry. A fair and reasonable price will be paid for all Services in progress that have been delivered to GSK. GSK's liability is limited to Services in progress, and no further loss or liability will accrue on their account.

22. CONSEQUENCES OF TERMINATION

22.1 On termination of the Agreement Supplier shall, not later than seven days after GSK's notification but at Supplier's cost:

22.1.1 return to GSK all documents provided to Supplier by GSK; and

22.1.2 ensure that all documents containing Intellectual Property Rights and/or any information of a technical nature relating to the Software, the manufacture of the Software and the provision of Services, or of a confidential nature and supplied by GSK to Supplier, will be returned to GSK or destroyed by Supplier at GSK's option.

22.2 With effect from termination of the Agreement Supplier shall not make any use for any purpose whatsoever of any Intellectual Property Rights which is the property of GSK.

22.3 Termination of this Agreement shall be without prejudice to the continuation in force of sections 1, 2, 4, 8, 9, 17, 18, 19 and 26. Supplier agrees to provide GSK with all reasonable support with respect to any investigation required by GSK or any regulator with respect to the Software or Services carried out prior or after such termination or withdrawal. GSK will reimburse Supplier's reasonable costs in providing such assistance unless such termination or withdrawal has occurred for a reason contained in section 19.1.

23. WAIVER

No waiver or forbearance by GSK in enforcing any of its rights under the Agreement shall prejudice or affect the ability of GSK to enforce such rights or any of its other rights at any time in the future. No waiver shall be effective unless in writing and signed by GSK. For the avoidance of doubt, it is agreed that a waiver of a right on one occasion shall not constitute a waiver of the same right in the future.

24. SEVERABILITY

Any provision of these Terms and Conditions which is declared void or unenforceable by any competent authority or court shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect the other provisions of these Terms and Conditions, which shall continue unaffected.

25. AMENDMENT

This Agreement may only be amended in writing by authorised representatives of both parties.

26. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of England and Wales and subject to the non-exclusive jurisdiction of the English Courts.