

**ASTELLAS PHARMA (PTY) LTD**  
**TERMS AND CONDITIONS OF PURCHASE**

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## 1. INTERPRETATION

1.1 The following definitions and rules of interpretation in this Condition 1 apply in these CONDITIONS:

**AFFILIATES:** with respect to each PARTY, any individual or organisation which directly or indirectly controlled by, in Control of, or under common Control with such PARTY.

**ARISING IP:** IP created or developed by SUPPLIER in relation to the provision of GOODS or SERVICES, including the MATERIALS.

**ASTELLAS:** [Astellas Pharma (Pty) Ltd, whose registered number is 2002 024956 07 and registered address is 5 Osborne Lane, Bedfordview, 2007, South Africa

**BACKGROUND IP:** IP owned or controlled by either PARTY on the date of signing of this CONTRACT.

**CHARGES:** the charges payable for the GOODS and/or SERVICES as set out in a PURCHASE ORDER and as further described in Condition 8.1.

**CODES:** means (i) all relevant codes of promotional standards and ethics applicable to the provision of the GOODS or SERVICES, and (ii) any guidance and ruling by a self-regulated body in relation to (i) above.

**COMMENCEMENT DATE:** the earlier of: (i) the date of acceptance of the relevant PURCHASE ORDER by SUPPLIER; and (ii) such other date as ASTELLAS may agree in writing with SUPPLIER.;

**CONDITIONS:** these terms and conditions (including any policies referred to in them).

**CONTRACT:** a PURCHASE ORDER, together with a PROJECT AGREEMENT (if required by ASTELLAS), and these CONDITIONS, as further described in Condition 2.1.

**CONTROL:** as to any Person, (a) direct or indirect ownership of at least fifty percent (50%) on a fully diluted basis of the voting and/or economic interests in the Person in question; or (b) possession, directly or indirectly, of the power to direct or cause the direction of management or

policies of the Person in question (whether or not exercised and whether through ownership of securities or other ownership interests, by contract or otherwise).

**DATA PROTECTION LEGISLATION:** any legislation in force from time to time that regulate the processing of personal data and is applicable to the provision of GOODS or SERVICES pursuant to the CONTRACT .

**GOODS:** any goods (including any part or parts of them) to be supplied to ASTELLAS from SUPPLIER as set out in the PURCHASE ORDER (if any).

**INTELLECTUAL PROPERTY (IP):** all patents, patent applications, designs, database rights, copyright, trademarks, KNOW HOW, domain names, moral rights, rights in confidential information and all other forms of intellectual or industrial property rights whether or not registered or capable of registration and wherever in the world enforceable.

**KNOW HOW:** all knowledge, information, data, inventions, improvements and results.

**LAWS:** all laws, regulations, regulatory requirements, directives, orders and codes of practice of any jurisdiction applicable to the provision of the GOODS or SERVICES, and the regulation of pharmaceutical products in the RSA and any judicial decision by a court of competent jurisdiction or guidance or ruling by a governmental authority or regulatory body in relation to the above.

**MATERIAL:** all documents, products, materials and/or work product to be prepared and/or delivered by SUPPLIER for/to ASTELLAS pursuant to a PURCHASE ORDER.

**PARTY:** ASTELLAS or SUPPLIER (as relevant) and **PARTIES** means both of them.

**PERSON:** means an individual, corporation, partnership, limited liability company, trust, business trust, association, joint stock company, joint venture, syndicate, sole proprietorship, unincorporated association or any other form of business entity not specifically listed herein or a combination thereof as well as governmental bodies and authorities.

**POLICY:** an Astellas guideline, code or policy as referred to in Condition 21 and as amended from time to time, and **POLICIES** shall mean all of them.

**PROJECT AGREEMENT:** means an agreement, incorporating and governed by these CONDITIONS, signed by SUPPLIER and COMPANY in relation to the provision of GOODS or SERVICES which the COMPANY may require in addition to a PURCHASE ORDER.

**PURCHASE ORDER:** ASTELLAS' written instructions incorporating and governed by these CONDITIONS to buy the GOODS and/or SERVICES.

**REPRESENTATIVES:** means the directors, officers, employees, agents, auditors, professional advisers and sub-contractors of the relevant PARTY.

**RESPONDENTS:** means any individual that SUPPLIER interviews for purposes of conducting market research such as, without limitation, advisors, carers and patients and their families.

**RSA:** means the Republic of South Africa.

**SERVICES:** any services to be provided by SUPPLIER to ASTELLAS as set out in the PURCHASE ORDER (if any).

**SUPPLIER:** the individual, organisation, firm or company who enters into the CONTRACT by accepting a PURCHASE ORDER.

**TERM:** the period set out in the PURCHASE ORDER or, where none is stated, until the date that SUPPLIER completed the supply of GOODS and/or SERVICES in conformance with the requirements of the CONTRACT.

**TRADE MARKS:** the trademarks, logos or trade names owned or used by ASTELLAS including without limitation those used on or in relation to ASTELLAS' pharmaceutical products and the ASTELLAS name.

1.2 A reference to South Africa law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Condition headings do not affect the interpretation of these CONDITIONS.

1.4 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. CONTRACT

2.1 Each PURCHASE ORDER for GOODS and/or SERVICES from ASTELLAS to SUPPLIER shall be deemed to be an offer by ASTELLAS to buy GOODS and/or SERVICES subject to these CONDITIONS.

2.2 No PURCHASE ORDER shall be accepted until SUPPLIER either expressly by giving notice of acceptance or signing the PURCHASE ORDER, or impliedly by fulfilling the PURCHASE ORDER, accepts the offer constituting SUPPLIER'S unconditional acceptance of these CONDITIONS and the PURCHASE ORDER to the exclusion of any other terms SUPPLIER seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, amounting to the "CONTRACT".

2.3 Every acceptance of a PURCHASE ORDER by SUPPLIER shall be deemed to create a separate binding contract relating to the GOODS and/or SERVICES provided under the relevant PURCHASE ORDER only.

2.4 The CONTRACT replaces all previous agreements between SUPPLIER and ASTELLAS relating to its subject. It is the entire agreement between SUPPLIER and ASTELLAS relating to the GOODS and SERVICES.

2.5 The CONTRACT prevails over, supersedes and excludes any terms or conditions contained in or referred to in any correspondence or document SUPPLIER generate (including, without limitation, SUPPLIER'S invoices).

2.6 If there is any conflict or inconsistency between the PURCHASE ORDER, the PROJECT AGREEMENT or any of the documents that make up the CONTRACT, these CONDITIONS take precedence. No terms or conditions endorsed upon, delivered

with or contained in SUPPLIER'S quotation, acknowledgement or acceptance of PURCHASE ORDER, specification or similar document shall form part of the CONTRACT and SUPPLIER waives any right which it otherwise might have to rely on such terms and conditions.

2.7 Any forecasts provided by ASTELLAS to SUPPLIER are only estimates and are not binding.

2.8 ASTELLAS' rights under these CONDITIONS are in addition to the statutory conditions, warranties and terms implied in favour of ASTELLAS by any relevant statutes and any statutory re-enactments or modifications.

### 3. GOODS

3.1 SUPPLIER warrants and represents to ASTELLAS that the GOODS shall:

3.1.1 conform in all respects to the quantity, quality, design, description, patterns, physical samples, specifications (and any modifications thereto) as set out in the PURCHASE ORDER, and/or as supplied or advised by ASTELLAS to SUPPLIER;

3.1.2 be free from faults and defects and of good design, material and workmanship, and capable of any standard of performance specified in the PURCHASE ORDER; and

3.1.3 comply with all statutory requirements and regulations relating to the manufacture, labelling, packaging, storage, handling, delivery and sale of the GOODS at the time when they are supplied including, but not limited to, the requirement that the GOODS are of satisfactory quality and fit for the purpose for which they are intended.

3.2 The GOODS must be supplied with adequate instructions as to use and use-by date and, unless otherwise agreed by the PARTIES, SUPPLIER shall at its own cost, provide training to ASTELLAS if it is necessary for the safe and proper use of the GOODS.

3.3 If required in the PURCHASE ORDER, SUPPLIER will install and/or commission the GOODS at the locations specified by ASTELLAS. SUPPLIER will ensure SUPPLIER'S Representatives involved in installing and/or commissioning the GOODS are suitable and qualified.

3.4 Notwithstanding any such inspection or testing, SUPPLIER shall remain fully responsible for the GOODS and any such inspection or testing shall not diminish or otherwise affect SUPPLIER'S obligations under the CONTRACT.

### 4. SERVICES

4.1 SUPPLIER warrants and represents to ASTELLAS that any SERVICES performed by SUPPLIER or its duly appointed sub-contractor shall:

4.1.1 conform with all descriptions and specifications provided to ASTELLAS by SUPPLIER;

4.1.2 be performed in a good and workmanlike fashion and with all due speed, care, skill and diligence; and

4.1.3 be carried out in accordance with the CONTRACT, generally recognised commercial practices, current industry standard codes of practice, and the highest standards prevailing in SUPPLIER'S industry.

4.2 SUPPLIER shall, at no additional cost to ASTELLAS:

4.2.1 apply such time, attention, resources, trained personnel and skill as is necessary for due and proper performance of the SERVICES in line with good industry practices;

4.2.2 provide all tools and other equipment required to carry out the SERVICES;

4.2.3 co-operate with other suppliers who provide ASTELLAS with goods or services;

4.2.4 comply with ASTELLAS' policies and all reasonable operational directions

that are consistent with the CONTRACT as we set from time to time; and

4.2.5 attend and participate in on-going reviews of SUPPLIER'S performance of the SERVICES at such premises and such reasonable intervals as we require;

4.2.6 provide the SERVICES in line with any service levels and key performance indicators set out in the PURCHASE ORDER and provide a relevant monthly report if required by ASTELLAS; and

4.2.7 promptly inform ASTELLAS when SUPPLIER become aware of any matter which may affect SUPPLIER'S ability to provide the SERVICES in line with the CONTRACT.

4.3 SUPPLIER shall ensure that all SUPPLIER'S employees and sub-contractors, if applicable, who are assigned by SUPPLIER to perform SERVICES for, or on behalf of ASTELLAS shall successfully complete any required compliance training as directed by ASTELLAS and SUPPLIER shall permit ASTELLAS to audit SUPPLIER'S records regarding the successful completion of such mandatory compliance training.

## 5. DELIVERY

5.1 The GOODS shall be delivered, carriage and duty paid, to ASTELLAS' place of business or to such other place of delivery as is agreed by ASTELLAS in writing prior to delivery of the GOODS. SUPPLIER shall off-load and stack the GOODS at its own risk as directed by ASTELLAS.

5.2 The date for delivery shall be specified in the PURCHASE ORDER, or if no such date is specified then delivery shall take place within 28 days of the date of the PURCHASE ORDER or at such earlier date as may reasonably be requested by ASTELLAS. Time for delivery shall be of the essence.

5.3 Unless otherwise stipulated by ASTELLAS in the PURCHASE ORDER, deliveries shall only be accepted by ASTELLAS in normal business hours.

5.4 SUPPLIER will insure the GOODS against all risks, including, without limitation, theft and non-delivery for any reason from the point of production to the point of delivery, for an amount equal to the CHARGES for the GOODS or such higher amount specified in the PURCHASE ORDER.

5.5 SUPPLIER shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the PURCHASE ORDER number, date of PURCHASE ORDER, number of packages and contents and, in the case of delivery by instalments set out in Condition 5.6 below, the outstanding balance remaining to be delivered.

5.6 Where ASTELLAS agrees in writing to accept delivery by instalments the CONTRACT shall be construed as a single CONTRACT in respect of each instalment. Nevertheless failure by SUPPLIER to deliver any one instalment shall entitle ASTELLAS at its option to treat the whole CONTRACT as repudiated.

5.7 If the GOODS are not delivered in accordance with this Condition 5 then, without prejudice to any other rights which it may have, ASTELLAS reserves the right to:

5.7.1 cancel the CONTRACT in whole or in part;

5.7.2 refuse to accept any subsequent delivery of the GOODS which SUPPLIER attempts to make;

5.7.3 recover from SUPPLIER any expenditure reasonably incurred by ASTELLAS in obtaining the GOODS in substitution from another supplier; and

5.7.4 claim damages for any additional costs, loss or expenses incurred by ASTELLAS which are in any way attributable to SUPPLIER'S failure to deliver the GOODS on the due date.

5.8 If the GOODS are delivered to ASTELLAS in excess of the quantities ordered ASTELLAS shall not be bound to pay for the excess and any excess shall be and shall remain at SUPPLIER'S risk and shall be returnable at SUPPLIER'S expense.



5.9 ASTELLAS shall not be deemed to have accepted the GOODS until it has had 7 days to inspect them following delivery. The issue by ASTELLAS of a receipt note for GOODS will not constitute any acknowledgement of the condition or nature of those GOODS. ASTELLAS shall also have the right to reject the GOODS as though they had not been accepted for 28 days after any latent defect in the GOODS has become apparent.

5.10 If it is found within a reasonable time after delivery of GOODS or work products resulting from SUPPLIER'S provision of the SERVICES that the GOODS/work products or part of them are not in accordance with the PURCHASE ORDER or CONTRACT, ASTELLAS shall have the right to reject those GOODS/work products or any of them and require SUPPLIER to remove them or any of them and (without prejudice to any of ASTELLAS' other remedies) to refund to ASTELLAS the CHARGES paid by ASTELLAS in relation to them, together with all expenses directly or indirectly incurred by ASTELLAS in consequence of such rejection or removal.

## 6. RISK AND TITLE

The GOODS shall remain at the risk of SUPPLIER until delivery to ASTELLAS is complete. Title in the GOODS shall pass to ASTELLAS on the earlier of payment or delivery, notwithstanding any purported retention of title by SUPPLIER.

## 7. ASTELLAS' PROPERTY

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of IP rights in all drawings, specifications and data supplied by ASTELLAS to SUPPLIER or not so supplied but used by SUPPLIER specifically in the supply of the GOODS and SERVICES shall at all times be and remain the exclusive property of ASTELLAS but shall be held by SUPPLIER in safe custody at its own risk and maintained and kept in good condition by SUPPLIER until returned to ASTELLAS and shall not be disposed of other than in accordance with ASTELLAS' written instructions, nor shall such items be used otherwise than as authorised by ASTELLAS in writing.

## 8. CHARGES AND EXPENSES

8.1 The charges for the GOODS or SERVICES shall be set out in the PURCHASE ORDER and shall be exclusive of value added tax, but inclusive of all other charges, duties, customs or levies unless otherwise agreed in writing by the PARTIES ("**CHARGES**").

8.2 Any variation in the price or extra CHARGES shall be subject to the express prior written consent of ASTELLAS.

8.3 SUPPLIER shall send an invoice to ASTELLAS:

8.3.1 for GOODS, upon, but separately from despatch of the GOODS to ASTELLAS, and in any event within three months after delivery of the GOODS to ASTELLAS; and

8.3.2 for SERVICES, at the intervals or times set out in the PURCHASE ORDER or (where not set out), each month in arrears.

8.4 The PURCHASE ORDER number shall be quoted on all invoices and SUPPLIER agrees that ASTELLAS will accept no liability and payment obligations for invoices which do not bear such PURCHASE ORDER number, unless otherwise agreed in writing by ASTELLAS.

8.5 If ASTELLAS pre-agrees in writing to pay SUPPLIER'S expenses and/or disbursements, ASTELLAS shall only do so to the extent that:

8.5.1 the expenses and/or disbursements are reasonable and SUPPLIER has undertaken commercially reasonable efforts to mitigate any exposure to the expenses and/or disbursements;

8.5.2 SUPPLIER has incurred them directly, wholly and exclusively in the provision of the GOODS or performance of the SERVICES or the provision of the MATERIAL;

8.5.3 SUPPLIER has incurred them in compliance with the Astellas Supplier Expenses Guidelines POLICY; and

8.5.4 the expenses and/or disbursements do not relate to costs yet to be incurred.

8.6 ASTELLAS shall have the option of making all travel arrangements on behalf of the SUPPLIER. ASTELLAS shall not pay any insurance related expenses arising from the travel expenses of SUPPLIER.

8.7 All disbursements should be set out in any invoice and applied bank charges, exchange bureau charges and rate fluctuation losses should be specified as separate amounts. SUPPLIER shall keep valid tax receipts showing the location, date and amount for all disbursements and make these available to ASTELLAS on request at any time. All disbursements are reimbursed on a strict pass-through basis and SUPPLIER shall not charge any mark-up and/or VAT on any disbursements.

## **9. PAYMENT**

9.1 Subject to SUPPLIER providing the GOODS and SERVICES in accordance with the CONTRACT, ASTELLAS shall pay the CHARGES for the GOODS and/or SERVICES as set out in the PURCHASE ORDER within 60 days of receipt of invoice. Time for payment shall not be of the essence in the CONTRACT.

9.2 If any sum under the CONTRACT is not paid when due then, without prejudice to both PARTIES' other rights under the CONTRACT, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2,5% per annum over the prime rate from time to time. SUPPLIER is not entitled to suspend deliveries of the GOODS or SERVICES as a result of any sums being outstanding.

9.3 SUPPLIER shall not provide GOODS or SERVICES prior to receipt of a PURCHASE ORDER from ASTELLAS and ASTELLAS shall not be obliged to pay SUPPLIER for the provision of GOODS and SERVICES prior to SUPPLIER'S receipt of a PURCHASE ORDER, which shall not be unreasonably withheld or delayed by ASTELLAS.

9.4 Without prejudice to any other right or remedy, ASTELLAS reserves the right to set off any amount owing at any time from SUPPLIER to ASTELLAS or its AFFILIATES against any amount payable by ASTELLAS or its AFFILIATES to SUPPLIER under any CONTRACT.

## **10. AUDIT RIGHTS**

10.1 SUPPLIER shall maintain all complete, accurate and up to date records and supporting documents required under applicable LAWS or in connection with the CONTRACT for the longer of seven (7) years after final payment is made or for the time period specified under applicable LAWS.

10.2 Within five (5) business days after receipt of notice by SUPPLIER, ASTELLAS (or its designated representative) shall be allowed access in which to examine, audit and copy, any records or manufacturing processes to determine compliance with: applicable LAWS and POLICIES; the CONTRACT; any suspected breach of Condition 21 and Condition 22, and/or to respond to any government inquiry.

10.3 SUPPLIER and its AFFILIATES shall fully cooperate in connection with any such audit.

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1 All BACKGROUND IP and rights therein shall remain the property of the owning PARTY.

11.2 SUPPLIER hereby grants to ASTELLAS a non-exclusive, perpetual, royalty free, worldwide licence, with the full right to grant sublicenses, to use its BACKGROUND IP to allow ASTELLAS and its AFFILIATES to obtain the full benefit of the Contract (including use and sale of the GOODS, SERVICES and MATERIALS).

11.3 All ARISING IP and MATERIAL and rights therein shall automatically vest in ASTELLAS and SUPPLIER hereby assigns to ASTELLAS (and will ensure that its REPRESENTATIVES assign) with full title guarantee all ARISING IP and MATERIAL and rights therein.

11.4 SUPPLIER shall, promptly, at ASTELLAS's request and expense, do (or procure to be done) all such further acts and things and the execution of all such other documents as ASTELLAS may from time to time require for the purpose of securing for ASTELLAS the full benefit of the CONTRACT, including all right, title and interest in and to the ARISING IP and MATERIAL.

11.5 SUPPLIER warrants and represents that the GOODS, providing the SERVICES, assignment of the ARISING IP and MATERIAL to ASTELLAS (where relevant) and license of SUPPLIER'S BACKGROUND IP by SUPPLIER to ASTELLAS will not infringe the IP rights of any third party.

## 12. ASTELLAS' TRADE MARKS AND NAME

12.1 Where the PARTIES agree that ASTELLAS' TRADE MARKS shall be used in the MATERIAL, ASTELLAS (on its own behalf and as a licensee of any of its AFFILIATES) grants a non-exclusive, royalty free licence to SUPPLIER to apply the TRADE MARKS to the MATERIAL to the extent strictly necessary to carry out SUPPLIER'S obligations under the CONTRACT.

12.2 SUPPLIER shall use the TRADE MARKS and any corporate name of ASTELLAS only on or in relation to the MATERIAL in the form and manner specified by ASTELLAS from time to time, and not otherwise.

## 13. CONFIDENTIALITY

SUPPLIER shall, during the TERM of the CONTRACT and for a period of ten years thereafter, keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to SUPPLIER by ASTELLAS or its REPRESENTATIVES and any other confidential information concerning the business of ASTELLAS or its AFFILIATES or its products which SUPPLIER may obtain and SUPPLIER shall not disclose such information to any third party nor use such confidential information save as necessary pursuant to the CONTRACT without ASTELLAS' prior written consent. SUPPLIER shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging SUPPLIER'S

obligations to ASTELLAS and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind SUPPLIER.

## 14. DATA PROTECTION

The PARTIES shall comply, and shall ensure that their REPRESENTATIVES comply, with such of the provisions of the DATA PROTECTION LEGISLATION as shall apply to any and all personal data which may be disclosed to or acquired by it as a result of the provision of the GOODS or SERVICES and SUPPLIER shall comply with all instructions of ASTELLAS in relation to such personal data and the processing of the same. SUPPLIER shall take all appropriate technical and organisational measures to prevent unauthorised or unlawful disclosure, processing or accidental loss or destruction of, or damage to, such data.

## 15. INSURANCE

At all times during the TERM of the CONTRACT, SUPPLIER shall maintain in force with a reputable insurance company insurance sufficient to meet its obligations under the CONTRACT and if so required at any time produce the policy of insurance and the receipt for the current premium to ASTELLAS for its inspection.

## 16. INDEMNITY

16.1 SUPPLIER shall keep ASTELLAS and its AFFILIATES indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including reasonable management, legal and other professional fees and expenses) penalties, interest, liabilities, damages, awards, settlements or other losses awarded against or incurred or paid by ASTELLAS or its AFFILIATES as a result of or in connection with:

16.1.1 any breach by SUPPLIER or SUPPLIER'S REPRESENTATIVES of any of the representations and warranties given under Conditions 3.1, 4.1, 11.5 and 22.3;



- 16.1.2 the SUPPLIER'S or the SUPPLIER'S REPRESENTATIVE'S malpractice, fraud or wilful default;
- 16.1.3 damage to real or personal property caused by the SUPPLIER or the SUPPLIER'S REPRESENTATIVES; or
- 16.1.4 injury to persons, including injury resulting in death caused by the SUPPLIER or the SUPPLIER'S REPRESENTATIVES;
- 16.1.5 an infringement or alleged infringement of any INTELLECTUAL PROPERTY rights caused by the use, manufacture or supply of the GOODS or the use or supply of the products or SERVICES (including the MATERIALS); and
- 16.1.6 any claim made against ASTELLAS in respect of any liability, loss, damage, injury, cost or expense sustained by ASTELLAS' employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the GOODS, or provision of the SERVICES or MATERIALS, as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the CONTRACT by SUPPLIER.

#### **17. ASTELLAS' LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES WILL ASTELLAS OR ITS AFFILIATES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF SUPPLIER OR ANY OTHER PARTY ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. NOTWITHSTANDING THE FORM (e.g., CONTRACT, TORT OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL

ASTELLAS OR ITS AFFILIATES BE LIABLE FOR DAMAGES OR LOSSES THAT EXCEED THE AMOUNT OF FEES PAYED BY ASTELLAS FOR THE GOODS OR SERVICES THAT GAVE RISE TO SUCH DAMAGES OR LOSSES FOR EACH RESPECTIVE BREACH OR SERIES OF RELATED BREACHES. THIS CONDITION WILL NOT APPLY TO LOSSES IN CASE OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF ASTELLAS, ASTELLAS' GROSS NEGLIGENCE OR WILFUL MISCONDUCT, ASTELLAS' FRAUD OR FRAUDULENT MISREPRESENTATION OR TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY DESPITE THE FOREGOING DISCLAIMER, EXCLUSION AND LIMITATION.

#### **18. TERM**

- 18.1 The TERM commences on the COMMENCEMENT DATE and, unless terminated sooner in accordance with these CONDITIONS, shall continue for the TERM.
- 18.2 SUPPLIER is appointed to provide GOODS and/or SERVICES to ASTELLAS, in accordance with the PURCHASE ORDER and these CONDITIONS, on a non-exclusive basis for the TERM.

#### **19. TERMINATION**

- 19.1 ASTELLAS shall have the right at any time and for any reason to terminate the CONTRACT in whole or in part by giving SUPPLIER 30 days' written notice whereupon all work on the CONTRACT shall be discontinued and ASTELLAS shall pay to SUPPLIER fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 19.2 Either PARTY shall have the right at any time by giving notice in writing to other PARTY to terminate the CONTRACT forthwith if:
  - 19.2.1 either PARTY commits a material breach of the CONTRACT;
  - 19.2.2 any distress, execution or other process is levied upon any of the assets of either PARTY;

- 19.2.3 either PARTY becomes insolvent, is unable to pay its debts as they fall due, has a receiver, administrative receiver, administrator, business rescue practitioner or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, or becomes the subject of an order or resolution for dissolution or liquidation (other than for the purpose of solvent amalgamation of reconstruction) in relation to any jurisdiction;
- 19.2.4 either PARTY ceases or threatens to cease to carry on trade (in whole or in part); or
- 19.2.5 the financial position of either PARTY deteriorates to such an extent that, in the opinion of the other PARTY, the capability of SUPPLIER to adequately fulfil its obligations under the CONTRACT has been placed in jeopardy.
- 19.3 ASTELLAS shall have the right at any time by giving notice in writing to SUPPLIER to terminate the CONTRACT forthwith if:
- 19.3.1 SUPPLIER commits any breach of Conditions 11 (Intellectual Property Rights), 12 (Astellas' TRADE MARKS and Name), 13 (Confidentiality), 14 (Data Protection), 15 (Insurance), 22 (Anti-Corruption Policy) and 23 (Safety and Environmental Requirements);
- 19.3.2 SUPPLIER undergoes a change of CONTROL; or
- 19.3.3 SUPPLIER does or omit to do anything which in ASTELLAS' reasonable opinion may materially damage or impair ASTELLAS' reputation.
- 19.4 The termination of the CONTRACT, however arising, shall be without prejudice to the rights and duties of ASTELLAS accrued prior to termination. The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 19.5 The terms of Conditions 11 (Intellectual Property Rights), 12 (Astellas' TRADE MARKS and Name), 13 (Confidentiality), 14 (Data Protection), 15 (Insurance), 16 (Indemnity), 17 (Astellas' Limitation of Liability), 18 (Term), 19 (Termination), 26 (General) and the PARTIES' obligations there under, shall survive termination or expiration of the TERM and completion of the provision of GOODS and/or SERVICES by the SUPPLIER.
- 20. REMEDIES**
- 20.1 Without prejudice to any other right or remedy which ASTELLAS may have, if any GOODS, SERVICES and MATERIALS which are not supplied in accordance with, or SUPPLIER fails to comply with, any of the Conditions of the CONTRACT including but not limited to Conditions 2 and 3, ASTELLAS shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the GOODS or SERVICES have been accepted by ASTELLAS:
- 20.1.1 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 CONTRACT or if the performance is delayed.
- 20.1.2 to rescind the CONTRACT;
- 20.1.3 to reject the GOODS or SERVICES (in whole or in part) and return them to SUPPLIER at the risk and cost of SUPPLIER on the basis that a full refund for the GOODS or SERVICES so returned shall be paid forthwith by SUPPLIER;
- 20.1.4 at ASTELLAS' option and within the timeframe specified by ASTELLAS to give SUPPLIER the opportunity at SUPPLIER'S expense either to remedy any defect in the GOODS or SERVICES or to supply replacement GOODS or SERVICES and carry out any other necessary work to ensure that the terms of the CONTRACT are fulfilled;

20.1.5 to refuse to accept any further deliveries of the GOODS or SERVICES but without any liability to SUPPLIER;

20.1.6 to carry out at SUPPLIER'S expense any work necessary to make the GOODS or SERVICES comply with the CONTRACT; and

20.1.7 to claim such damages as may have been sustained in consequence of SUPPLIER'S breach or breaches of the CONTRACT.

**21. COMPLIANCE WITH ALL APPLICABLE LAW AND ASTELLAS' POLICIES**

21.1 SUPPLIER agrees to provide the GOODS and/or perform the SERVICES in due compliance with all applicable LAWS and CODES, good business ethics, current industry standard codes of practice and the highest standards prevailing in SUPPLIER'S industry.

21.2 SUPPLIER will not, in carrying out its obligations, put itself or the other PARTY in breach of applicable LAWS.

21.3 SUPPLIER will use its best endeavours to ensure its REPRESENTATIVES are not engaged in and will not engage at any time in any unfair labour practice or implement or maintain employment conditions in violation of applicable LAWS.

21.4 SUPPLIER acknowledges that is has read and agrees to comply and shall procure that its REPRESENTATIVES comply with the following Astellas POLICIES set out below and available on Astellas' website at the respective links set out below:

21.4.1 Adverse Event Reporting POLICY

21.4.2 Anti-Corruption POLICY

21.4.3 EMEA Region Code of Ethics POLICY

21.4.4 Conflict of Interest POLICY

21.4.5 Corporate Social Responsibility POLICY

21.4.6 Supplier Expenses Guidelines POLICY

21.5 SUPPLIER further agrees to notify ASTELLAS if SUPPLIER'S business practices are inconsistent with any of the provisions of the codes or POLICIES set out above in this Condition 21.

21.6 If SUPPLIER is conducting market research in the course of providing the SERVICES, it must also comply with Astellas' Market Research Code POLICY and ensure that it has obtained all relevant consents (or note consent from individuals that have been telephoned) from RESPONDENTS contacted - available on Astellas eu website..

21.7 Notwithstanding condition 21.6, SUPPLIER must always enter into a direct written agreement with healthcare professionals or patient organisations in advance of the commencement of any consultancy service(s) that healthcare professionals or patient organisations provide

**22. ANTI-CORRUPTION POLICY**

22.1 Without limiting the generality of Condition 21, SUPPLIER agrees to provide the GOODS and/or perform the SERVICES in due compliance with the relevant CODES, LAWS and the Astellas Anti-Corruption POLICY.

22.2 SUPPLIER must not pay, offer or promise to pay, or authorise the payment directly or indirectly of any monies or anything of value to any government official or employee, or any political party or candidate for political office, for the purpose of influencing any act or decision of the government in connection with the activities of SUPPLIER under the CONTRACT.

22.3 SUPPLIER warrants and represents that:

22.3.1 no REPRESENTATIVE of SUPPLIER or its AFFILIATES is an official or employee of a governmental agency or instrumentality or a government owned company in a position to

influence action or a decision regarding the provision of GOODS and/or SERVICES by SUPPLIER contemplated in the CONTRACT;

22.3.2 as of the date of acceptance of the PURCHASE ORDER it is not under investigation by any regulatory authority or professional body and has not been disciplined or disqualified by any regulatory authority or professional body.

22.4 SUPPLIER confirms that the fees to be paid under the CONTRACT are reasonable and are commensurate with the GOODS and/or SERVICES to be provided.

### **23. SAFETY AND ENVIRONMENTAL REQUIREMENTS**

SUPPLIER shall obtain all permits and abide by all applicable environmental and safety regulations from all applicable regulatory authorities. In order for ASTELLAS to properly discharge, use, store, handle, transport and dispose of the GOODS and to comply with applicable LAWS, SUPPLIER shall provide to ASTELLAS, upon request, any information about the characteristics, components or contents of the GOODS.

### **24. ASSIGNMENT AND SUBCONTRACTING**

SUPPLIER shall not be entitled to assign or subcontract the CONTRACT or any part of it without the prior written consent of ASTELLAS. ASTELLAS may assign the CONTRACT or any part of it to any individual, organisation, firm or company.

### **25. FORCE MAJEURE**

Either PARTY reserves the right to defer the date of delivery or payment or to cancel the CONTRACT or reduce the volume of the GOODS ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of either PARTY including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either PARTY'S workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

### **26. GENERAL**

26.1 Each right or remedy of ASTELLAS under the CONTRACT is without prejudice to any other right or remedy of ASTELLAS whether under the CONTRACT or not.

26.2 If any provision of the CONTRACT is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the CONTRACT and the remainder of such provision shall continue in full force and effect.

26.3 Failure or delay by ASTELLAS in enforcing or partially enforcing any provision of the CONTRACT shall not be construed as a waiver of any of its rights under the CONTRACT.

26.4 Any waiver by ASTELLAS of any breach of, or any default under, any provision of the CONTRACT by SUPPLIER shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the CONTRACT.

26.5 The PARTIES to the CONTRACT do not intend that any TERM of the CONTRACT shall be enforceable by any person that is not a party to it.

26.6 The relationship of SUPPLIER to ASTELLAS shall be that of an independent contractor. At no time shall SUPPLIER and its REPRESENTATIVES hold themselves out as being a REPRESENTATIVE of ASTELLAS.

26.7 This CONTRACT and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with South African law, and the PARTIES submit to the exclusive jurisdiction of the South African courts.