**GLAXOSMITHKLINE TERMS AND CONDITIONS OF PURCHASE (GOODS & SERVICES) (“Terms and Conditions”)**

1. **DEFINITIONS**

“Affiliate” means a corporation which is directly or indirectly Controlled by, in Control of, or under common Control with, either Supplier or Purchaser as appropriate.

“Agreement” means the agreement between Purchaser and Supplier consisting of the Purchase Order, these Terms and Conditions, the Specification(s), 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 share capital of any corporation or the legal power to direct or cause the direction of the general management of either Supplier or Purchaser as appropriate.

“Supplier Personnel” means any individual employed by Supplier or appointed by Supplier in connection with the supply of the Goods or Services.

“Data Protection Law” means data protection legislation or any statutory equivalent in force in any part of the world that is relevant to Personal Data and the supply of Goods and/or Services.

“Data Subject”means an individual who is the subject of the personal data.

“Foreign Supplier” means a Supplier who is incorporated or registered for business in a country other than Malaysia.

"Goods" means all (or any) of the goods covered by the Agreement including without limitation raw materials, processed materials or fabricated products.

“GST” means Goods and Services Tax charged in accordance with the Goods and Services Tax Act 2014 (Act 762) on the supply of goods or services.

 “GST Law” means the Goods and Services Tax Act 2014 of Malaysia and any rules, registrations or rulings made thereunder, as amended, modified ior revised from time to time.

“Incoterms” means the Year 2010 edition of the official International Chamber of Commerce Rules for the interpretation of trade terms.

“Intellectual Property Rights” means any registered and unregistered trade marks, trade names, brand names, logos, trade dress, designs, patents (including applications for registration thereof) and any know how, copyright and database rights wherever subsisting.

“Invoice”, where it relates to a supply on which GST is chargeable, means a Tax Invoice issued in accordance with s.33 of the Goods and Services Tax Act 2014 (Act 762). “Local Supplier” means a Supplier who is incorporated or registered for business in Malaysia.

“Loss” means all loss, damages, liability, claims, costs and expenses (including legal costs and expenses) but excluding any incidental or consequential damages.

“Packaging” means bags, cases, carboys, cylinders, drums, pallets and other containers.

“Personal Data” has the meaning set forth in the relevant applicable Data Protection Law as amended from time to time. If not defined under the Data Protection Law, “Personal Data” means any information that alone or in conjunction with other information identifies an individual, including an individual’s name, social security number, date of birth, driver’s license number, government-issued identification number, bank account number, and credit or debit card number.

“Price / Fees” means the consideration payable for the Goods and / or Services pursuant to this Agreement.

 “Purchase Order” means an order placed by Purchaser which is either attached herein and / or issued pursuant to this Agreement.

"Purchaser" means the GSK legal entity specified in the Purchase Order.

“Purchaser’s Confidential Information” means Purchaser’s data that (a) is marked or otherwise identified as “confidential” or with a similar designation, or (b) even if it is not marked or identified as “confidential,” a reasonable person would recognize as information that ought to be treated as confidential information, including information relating to the trade secrets such as know-how, formulae and processes, scientific research, clinical development, or business affairs of Purchaser; Purchaser’s Personal Information; all project and computer-related technical matters, including design/performance specifications, operating procedures, systems documentation, utility reference manuals, language reference manuals, third party software and documentation, financial information, inventions, contractual information (including pending deals), customer information such as patient and supplier lists, prices and costs, data related to regulatory submissions, and any other relevant information furnished to Supplier and Supplier Personnel by or on behalf of GSK under the Agreement. Purchaser’s Confidential Information shall not include: (i) information which at the time of disclosure or discovery is in the public domain; (ii) information which, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of the Agreement; (iii) information which Supplier can establish by reasonable proof was in its possession at the time of disclosure by Purchaser and was not acquired, directly or indirectly, from Purchaser; or (iv) information which Supplier receives from a third party, provided, however, that such information was not obtained by said third party, directly or indirectly, from Purchaser and that said party has a right to disclose it.

“GSK Personal Information” means any Personal Information that is: (i) provided by GSK to the Supplier; (ii) collected by the Supplier on behalf of GSK; (iii) otherwise processed by the Supplier for the purpose of providing the Services; and (iv) any copies of, materials derived from or incorporating, the Personal Information that is provided, collected or Processed pursuant to (i) – (iii) above, in each case in any medium.

"Services" means the services covered by the Agreement.

"Specification(s)” means the specification(s) detailed in a schedule to be attached to these Terms and Conditions, or as separately documented by Purchaser in writing which sets out the performance required of the Goods and Services.

"Supplier" means the person, firm (or any individual partner thereof) or company to whom the Purchase Order is addressed, and who will be supplying Goods or providing Services to Purchaser under the Agreement.

“Tax Authority” means any tax or customs authority and any other body duly authorised to apply, operate, administer or enforce any law, legislation, rule, regulation or practice in Malaysia on any direct or indirect taxation.

“Taxable Supply” means a supply of goods or services which is a standard-rated supply or an exempt supply but does not include a zero-rated supply as determined under the GST Law and any applicable rules, regulations or guidelines issued by any Tax Authority.

1. **STATUS OF TERMS AND CONDITIONS**
	1. These Terms and Conditions shall apply to all purchases of Goods or Services by Purchaser from Supplier. Any other terms or conditions which Supplier may purport to apply or which are endorsed upon any correspondence or documents issued by Supplier to Purchaser irrespective of their date of communication, appearing on the Purchase Order or in any separately negotiated written contract entered into by the parties in respect of the Goods or Services shall be applied only to the extent that is not inconsistent with these Terms and Conditions.
	2. In the event of inconsistency between these Terms and Conditions and the provisions appearing on the face of the Purchase Order, the former shall prevail, unless expressly provided otherwise on the Purchase Order.
	3. Acceptance of the Purchase Order constitutes acceptance of these Terms and Conditions and schedules (if any) attached. Interpretation of the Purchase Order for the Goods and/or Services from Local Supplier will be according to the applicable Malaysian law. In case of Foreign Supplier, where appropriate interpretation of the Purchase Order shall be governed by the provisions of Incoterms.
	4. Purchaser will not be liable in respect of any Purchase Order(s) or instructions other than those issued or confirmed on its official letterhead or other official stationary of the Purchaser, and duly signed by its authorized person.
2. **TIME OF PERFORMANCE**
	1. Unless otherwise instructed in writing by Purchaser’s nominated representative, all Goods must be delivered and all Services must be performed at the time and place specified in the Agreement.
	2. Supplier shall provide Purchaser with :-

(i) details of the anticipated lead times between placing an order and delivery of any Goods; and

(ii) working programmes for the Services as Purchaser may reasonably require within thirty (30) days of receipt of the Purchase Order. Supplier’s working programmes shall give details of its proposals for carrying out the Services within the time stipulated indicating the sequence and timing of all operations forming part of the Services.

 Supplier shall keep Purchaser informed of progress but notification of any delay in progress shall not relieve Supplier from complying with timelines originally specified.

* 1. Time shall be of the essence in relation to the performance of any and all of Supplier’s obligations pursuant to the Agreement.
	2. Purchaser may, by notice in writing to Supplier, cancel any delivery of Goods or Services which in Purchaser’s opinion cannot be made within a reasonable time after the due date, without being liable to Supplier for such cancellation.
1. **PASSING OF PROPERTY AND RISK**
	1. Unless Incoterms are agreed in case of Foreign Supplier, title in Goods and Services shall pass upon creation of the Goods and performance of the Services which comply with the Agreement but the risk in Goods and Services shall remain with Supplier until they are delivered at the place specified in the Agreement and a nominated employee of Purchaser signs a delivery note.
	2. Neither payment by, nor passage of property or risk in the Goods or the Services to, Purchaser shall be deemed to constitute acceptance of the Goods or the Services by the Purchaser.

1. **CONTRACT PRICE AND TERMS OF PAYMENT**
	1. The Price / Fees stipulated in the Purchase Order as payable for the Goods and Services (“Purchase Price”) (which shall be a firm fixed price), shall be exclusive of GST and inclusive of all other taxes, packaging and other related charges and (unless Incoterms are agreed in case of Foreign Supplier) inclusive of delivery and insurance. If the Price / Fees payable relates to a supply on which GST is chargeable, Purchaser shall pay to the Supplier an amount equal to any GST so chargeable for which the Supplier is liable to account for subject to the production of a valid Invoice. The Supplier shall, upon the Purchaser’s written request, produce to the Purchaser’s satisfaction valid documentation that the Supplier is a registered person (if applicable) under the Goods and Services Tax Act 2014 (Act 762). Any increase in the Price / Fees for any reason shall be subject to the express prior written consent of Purchaser.
	2. The Supplier shall issue invoices only after the delivery of Goods or after the completion of Services, unless otherwise agreed in this Agreement. Subject to the terms of this Agreement, payment of the Purchase Price shall be made by Purchaser to Supplier within ninety (90) days from receipt of original invoice at the following address:

(i) for invoices mailed using non-courier services - ‘**Recall Corporation Sdn. Bhd.**, P.O. Box 7218, Pejabat Pos GPO Shah Alam, 40706 Selangor Darul Ehsan, Malaysia’;

(ii) for invoices mailed using courier services requiring acknowledgement of receipt - ‘**Recall Digital Services (RDS)**, Recall Malaysia, Lot 767, Persiaran Selangor, Seksyen 16, 40200 Shah Alam, Selangor, Malaysia’;

(iii) or any other address subsequently communicated by Purchaser to Supplierin writing **(“Invoicing Address”)**.

A duplicate copy of the invoice shall be sent to the Purchaser’s designated contact person.

* 1. The correct Purchaser business entity name, Purchase Order number and Purchaser contact person’s name must be quoted on all invoices and Purchaser will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear the correct Purchase Order number and the Purchaser contact person’s name. Further, the Purchaser shall not be under any obligation to pay in the event that Goods or Services are not supplied according to the Purchaser’s instruction.
	2. All invoices shall be accompanied by a copy of the bill of lading if on collect freight shipments or if otherwise required by law, and by a prepaid freight bill if all or any part of the freight is included on the face of the Purchase Order. In addition to any other information specified elsewhere herein, invoices and packing slips shall contain the following information: description of Goods and Services, sizes, quantities, weight, unit prices and extended totals.
	3. If any payment provided for hereunder is to be made on some basis other than a lump sum price, Purchaser shall have the right to inspect and audit Supplier’s books, records and all associated documents relating to such costs (excluding, however, the basis for agreed upon fixed rates). In the event that any such audit or audits reveal any error or discrepancy of any nature whatsoever, such error or discrepancy will be promptly corrected, and all monies owing and due either to Purchaser or to Supplier will be promptly paid by the other party.
	4. Purchaser reserves the right to set off any sums owed by Supplier to Purchaser against the amount invoiced. Payment of an invoice shall not constitute acceptance by Purchaser of Goods or Services and does not relieve Supplier of its obligations under the Agreement.
	5. If the Purchaser disputes the amount claimed under a invoice, the Purchaser shall within 21 days of the receipt of such invoice at the Invoicing Address, respond in writing to the Supplier, which response shall (a) state the amount that the Purchaser proposes to pay (the “Response Amount”), and (b) include all supporting reasons if payments are withheld or if the Response Amount is less than the amount claimed under the invoice. The Supplier shall issue a revised invoice for the Response Amount or such other amount as agreed between the Supplier and Purchaser. The Purchaser shall pay the Supplier the amount claimed under such revised invoice within 90 days of the date of receipt of the invoice at the Invoicing Address.
	6. The Supplier shall do all things, including providing valid Invoices, valid GST registration details or other documentation in such form and detail as may be necessary to enable or assist the Purchaser to claim any credit for input tax in relation to any GST paid or payable under this Agreement or in respect of any supply under this Agreement. For avoidance of doubt, in the event the Supplier makes any Taxable Supply to the Purchaser, the Supplier’s right to payment under this Agreement shall be subject to a valid Invoice being delivered to the Purchaser in respect of any Taxable Supply and no amount shall be payable by the Purchaser under this Agreement until a valid Invoice for the Price is received.
	7. If there is any abolition or reduction or any change in the rate of GST, the Price / Fees and/or GST payable by the Purchaser for any Taxable Supply shall be adjusted accordingly and shall increase or decrease, as the case may be.
	8. Purchaser and Supplier agree that they shall at all times comply with the Goods and Services Tax Act 2014 (Act 762) and related legislation including the Price Control and Anti Profiteering Act 2011 (as amended).
1. **REJECTION, REPAIR AND REPLACEMENT**
	1. If Goods or Services do not conform to the requirements of the Agreement (including without limit non-conformance with quantity specified, time for performance, quality or any Specifications in respect thereof), without prejudice to Purchaser’s other legal rights, Supplier shall, at Purchaser’s sole option:

(i) immediately (and in any event within fourteen (14) days) after receipt of notice from Purchaser, either :-

(a) repair the defective Goods and Services at the site of delivery or Supplier's worksite;

(b) replace the defective Goods and Services with goods and services which conform to the requirements of the Agreement; or

(c) refund to Purchaser the Purchase Price of Goods and Services and pay to Purchaser all costs incurred by Purchaser including but not limited to freight, clearance, duty and storage charges relating to such Goods and Services.

Repairs, replacements and refunds shall themselves be subject to the obligations in this Agreement and Supplier shall be responsible for all costs and expenses incurred in such repairs, replacements and refunds to the correct point specified in the Agreement or to such other location as may be subsequently advised in writing by Purchaser; and/or

(ii) purchase goods and services from third party(s) which in Purchaser’s opinion is an appropriate substitute for the Goods and Services, and supply the same to the Purchaser; and/or

(iii) forthwith suspend all payment obligations in relation to such Goods and Services.

Supplier shall indemnify Purchaser for all Loss suffered or incurred by Purchaser as a result of Goods or Services not conforming to the requirements of the Agreement (including the difference between the Purchase Price and the price payable to third party(s) under sub-clause (ii)). If Supplier is required to repair or replace the Goods or Services, Purchase shall pay the Purchase Price within ninety (90) days from the acceptance of the replaced or repaired Goods of Services, or within ninety (90) days from the receipt of invoice at the Invoicing Address, whichever is later;

* 1. Without limiting the foregoing, Purchaser shall be entitled to reject any and all Goods and Services delivered or performed if the quantity delivered is less than or in excess of those specified in the Agreement and Purchaser shall be entitled to at its sole discretion, reject the Goods and Services in its entirety even if only part of the Goods and Services is defective or do not comply with the Agreement.
	2. If Purchaser elects to accept non-conforming Goods or Services, Purchaser, in addition to its other remedies, shall be entitled to an appropriate reduction in the Purchase Price.
	3. Without prejudice to Purchaser’s other legal rights, Supplier shall, at Purchaser’s sole option, with all possible speed and at Supplier’s risk and expense, replace repair or otherwise make good any Goods or Services which are or become defective during the Guarantee Period. Unless otherwise stated in Purchase Order, the Guarantee Period shall be twelve (12) months after the date of actual commissioning of the Goods or Services or of the facility into which Goods and Services are incorporated, or eighteen (18) months from the actual date on which Goods and Services are delivered to Purchaser at the place and in accordance with the conditions stated in the Purchase Order, whichever is later.
	4. If it is necessary to return the Goods or part thereof to Supplier for repair of a defect or replacement, Supplier shall be liable for all costs and risks associated with the return and re-supply, including but not limited to, the cost of removal and/or dismantling of such defective Goods and the reinstallation of the replaced or repaired Goods.
	5. If Supplier replaces or renews or modifies any part of the Goods or Services, a new Guarantee Period of twelve (12) months after the date of actual commissioning of the replaced or renewed or modified Goods or Services or of the facility into which such Goods and Services are incorporated, or eighteen (18) months from the actual date on which replaced, renewed or modified Goods and Services has been delivered to Purchaser at the place and in accordance with conditions stated in the Purchase Order, whichever is later.

1. **INTELLECTUAL PROPERTY RIGHTS**
	1. Supplier shall, at its own cost and expense, defend any and all actions for infringements or alleged infringements of Intellectual Property Rights in connection with the Goods or Services and Supplier undertakes to indemnify Purchaser for all Loss which Purchaser suffers or incurs in connection with such actions, provided that Purchaser gives Supplier all appropriate information and assistance and the sole authority to defend or settle any legal proceedings at Supplier’s sole expense.
	2. Purchaser retains Intellectual Property Rights in, and ownership of, all materials, plans, drawings, Specification(s), patterns and/or designs provided by Purchaser to Supplier, and they shall all be forthwith returned in good condition to Purchaser at Purchaser’s request.
	3. Where Goods are made to Purchaser’s Specification(s), model or plans, the Intellectual Property Rights in the Goods in so far as they relate to the Specification(s), model or plans (including all improvements or developments thereof) shall be the absolute property of the Purchaser upon creation and shall thereafter remain the property of Purchaser, and the Supplier hereby irrevocably assigns all such Intellectual Property Rights to the Purchaser at no fee to the Purchaser.
	4. Intellectual Property Rights arising during or out of the provision of Services shall be the property of Purchaser upon creation and shall thereafter remain the property of Purchaser and Supplier hereby agrees to execute all documents and render all assistance to perfect the ownership of such Intellectual Property Rights in the Purchaser as necessary.
	5. To the extent that Supplier or third parties retain ownership rights in materials delivered with the Goods, or upon which the Goods or Services are based, Supplier hereby grants to Purchaser an irrevocable, worldwide, non-exclusive, royalty-free right and license to make, have made, modify, use, distribute, publicly perform or display, sell, offer to sell, and import such materials. Supplier hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the licences and intellectual property rights set forth in this Clause 10.
	6. In the event that the Intellectual Property Rights relating to the Goods and Services are held by the courts to infringe a third party’s rights, and their use is enjoined by that third party, Purchaser shall be entitled to, at its sole discretion but at Supplier’s sole cost and expense :

(i) require Supplier to immediately (and in any event within fourteen (14) days) after receipt of notice from Purchaser, either :-

(a) procure for Purchaser the right to continue using the Goods and Services; or

(b) replace the Goods and Services with non-infringing Goods and Services; or

(c) modify the Goods and Services so that they become non-infringing without detracting from their overall performance and functionality; or

(ii) purchase goods and services from third party(s) which in Purchaser’s opinion is an appropriate substitute for the Goods and Services to be provided under the Agreement.

Supplier shall indemnify Purchaser for all Loss suffered or incurred by Purchaser as a result of such infringement (including the difference between the Purchase Price and the price payable to third party(s) under sub-clause (ii)) and/or due to the interference or discontinue of the use of Goods and/or Services.

1. **CONFIDENTIALITY AND PUBLICITY**
	1. Supplier shall, and shall procure that its employees and sub-contractors shall, keep secret any Intellectual Property Rights, Specification(s) or other information of a commercial or technical nature disclosed directly or indirectly to Supplier by Purchaser for the purpose of the Agreement, and shall not use or disclose the same (including any part thereof) to any third party without Purchaser's prior written consent.
	2. Without limiting the foregoing, Supplier shall not without Purchaser's prior written consent disclose, copy, publicize or publish, the existence of the Agreement or any information related to the Agreement including the name of Purchaser, the Goods or Services, and the place of delivery or performance.
	3. Upon Purchaser’s request at any time, Supplier shall: (i) cease any and all use of the Information; (ii) promptly return to Purchaser any and all tangible information, including all copies, reproductions, summaries, memos, correspondence and compilations of the information, so Supplier will no longer have any information in its possession or under its control in either electronic or paper or other format; and (iii) cease any and all work hereunder and refrain from, directly or indirectly, using the information.
2. **FORCE MAJEURE**
	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 act under the Agreement due to circumstances which could not have been contemplated by the parties and which are beyond the party’s reasonable control and not due to any default or negligence of a party (“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. For clarity, this shall include a right by Purchaser to suspend any shipment of Goods or performance of Services without penalty or liability.
	2. If the performance by either party of any of its obligations under the Agreement is prevented or delayed by Force Majeure:

(i) for a consecutive period in excess of seven (7) 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.

(ii) for a period in excess of thirty (30) days (not necessarily consecutive), then either Party shall in its discretion have the right to immediately terminate the Agreement upon written notice to the other Party.

1. **COMPLIANCE WITH STATUTES AND REGULATIONS**
	1. Supplier undertakes that the Goods supplied and Services performed will be produced or performed in full compliance with, the relevant statutes, regulations and other legal requirements including those relevant to anti-corruption, pharmaceutical, nutritional and cosmetic products, health, safety, environment, welfare, production, storing, handling and delivery of the Goods and performance of the Services.
	2. Supplier shall provide evidence of compliance with such legal requirements (including, permits, inspection reports, certificates of analysis etc.) promptly on request and in any event within a reasonable time. Supplier shall ensure that its sub-contractors comply with the requirements of this Clause 13.
	3. Supplier shall use its best endeavours to comply with all reasonable requests of Purchaser to minimise Purchaser’s compliance costs in respect of applicable data protection, health, safety, environmental and producer responsibility obligations.
2. **INSPECTION**
	1. Purchaser, and all third party it appoints, shall have the right upon prior notice to inspect and carry out any tests, or batch sampling, it wishes on all Goods and Services at Supplier's premises and the premises of any sub-contractors. Where pre-shipped inspection is specified, Supplier must, at its sole expense facilitate the same and provide any or all relevant certificates of analysis to Purchaser upon request.
	2. Supplier shall, and shall ensure that its sub-contractors shall, grant a right of access to Purchaser and all third party it appoints in order to inspect and test the Goods for compliance with relevant environmental, occupational health and safety legislation and other requirements such as Purchaser’s standards.
	3. Any inspections, tests, approvals or acceptance given by or on behalf of Purchaser in relation to the Goods or Services shall not relieve Supplier from its obligations or liabilities under the Agreement.
	4. Notwithstanding any prior inspections or payments hereunder, all Goods and Services shall be subject to final inspection, which may include measurement, testing or examination, and acceptance at Purchaser’s facility within a reasonable time (but not less than ninety (90) days) after receipt at destination. Inspection or acceptance by Purchaser does not relieve Supplier of any obligations or liabilities under the Agreement.
3. **DATA PRIVACY**
	1. If the Supplier is required to process Personal Data or if Personal Data is disclosed to Purchaser by Supplier in the course of performing this Agreement, Supplier shall ensure compliance with any Data Protection Law, including but not limited to providing notice to, and (if applicable) obtaining consent from the Data Subjects for their Personal Data to be disclosed and processed by Purchaser, its affiliates and other third parties for purposes related to the performance of this Agreement and/or compliance with legal and regulatory requirements.
	2. Supplier shall make known to Data Subjects that if Data Subjects wish to request access to and/or correct Personal Data, request to limit the usage, storage and/or processing of Personal Data, withdraw consent for usage, storage or processing of Personal Data or prevent the use of Personal Data for direct marketing purposes or raise any complaints in respect of Purchaser dealings with Personal Data, they can contact the party so named under Clause 8 of the Form of Agreement.
	3. Supplier acknowledges that in the event certain Personal Data is not provided to Purchaser or its use, storage or processing of that Personal Data is restricted or withdrawn, the performance of this Agreement may be affected in a manner which shall be advised by Purchaser. Under no circumstance shall the retraction, withdrawal of consent or limitation of the right to use, store or process Personal Data be construed as a Force Majeure event.
4. **HAZARDS**
	1. 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 Purchaser.
	2. Supplier will provide applicable hazard information such as material safety data sheets and will inform Purchaser of all regulations and guidance (statutory or otherwise) which Supplier knows or believes to be associated with the Goods and any combination of the Goods with another product.
	3. Supplier shall indemnify Purchaser against all Loss related to any third party claim which arises from Supplier’s or Supplier’s sub-contractors’ actions resulting in alleged release of any waste, hazardous substance or other pollutant.
	4. Supplier undertakes to exceed statutory minimum environmental, occupational health and safety requirements in accordance with generally accepted best working practices and any specific standards or other requirements of Purchaser.
5. **RESPONSIBILITY FOR INFORMATION**

Supplier shall be responsible for all errors or omissions in any drawings, calculations, packaging details or other particulars supplied by Supplier, whether such information has been approved by Purchaser or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by Purchaser.

1. **SUPPLIER’S EMPLOYEES**
	1. For the duration of the period that any Goods or Services are being provided, the employment of any employee of Supplier shall remain with Supplier and shall not pass or otherwise transfer to Purchaser and nothing in the Agreement shall be construed or have any effect as constituting any relationship of employer and employee between Purchaser and the employees of Supplier 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 employee-related taxes and contributions, Employee Provident Fund and/or taxation that may arise from the provision of the Services, indemnify and hold Purchaser harmless from and against any and all such costs (including without limitation to legal costs on an indemnity basis), expenses, losses, liabilities, claims or demands which Purchaser suffers or incurs as a result of Supplier’s failure to comply with these requirements
	2. Supplier shall deal with all issues relating to the employment or engagement of the Supplier’s employee including without limitation: disciplinary and performance issues; grievances; issues relating to the employee’s ill health; and issues relating to Supplier’s terms and conditions of employment or engagement. Supplier shall inform its employee that he/she is not an employee of Purchaser or entitled to any of the employment rights or benefits which would be applicable to Purchaser’s own employees, including participation in any Purchaser’s employee benefit plan, incentive, compensation or other employee policy or programme.
	3. Supplier shall comply with Purchaser’s Pre-Engagement Screening (“PES”) requirements in respect of the relevant employee and shall also comply with any changes to such PES requirements as notified by Purchaser to Supplier from time to time. The Purchaser’s Standard PES process is based on the minimum requirements attached hereto as Schedule 1 which may be amended from time to time. At the sole discretion of Purchaser, Purchaser may require Supplier to carry out additional checks and investigations on specified employee in addition to the minimum PES requirements.
	4. Prior to the engagement of any employee and/or prior to the employee carrying out the Service, Supplier shall conduct the Purchaser’s Standard PES process on its employees. Purchaser shall be entitled upon request to enter into Supplier’s premises and inspect, audit and examine all documentation relating to the PES requirements and/or evidencing implementation of the relevant PES requirements by the Supplier. Purchaser reserves the right to screen any of Supplier’s employees or proposed additional or replacement employee at any time.
	5. Supplier will ensure that all employees will wear such identification as Purchaser deems necessary when on the Site and shall procure the employees’ compliance with any security guidelines as set out by Purchaser.
	6. Supplier will ensure that all its employees comply with certain Purchaser’s global policies (including human resource policies) as a minimum standard. These policies are those which relate to matters of honesty, integrity, respect for others and the protection of personal data.
	7. Supplier will provide each employee with copies of the current relevant Purchaser policies, as provided by Purchaser to Supplier from time to time.
	8. Without prejudice to any of the foregoing, Supplier shall not employ or engage any foreign employee without valid work permits or employment passes and/or in any manner in contravention of the Immigration Act and/or Employment Act or any other statutory enactment in force at the time; and shall indemnify and keep indemnified Purchaser and its officers and employees from any and all liability that may arise by reason of breach of this obligation.
	9. Supplier represents that, with respect to the performance of this Agreement, Supplier will:
2. not use child labour in circumstances that could cause physical or emotional impairment to the child;
3. not use forced labour (prison, indentured, bonded or otherwise);
4. provide a safe and healthy workplace; safe housing (if housing is provided by Supplier to its employees); and access to clean water, food, and emergency healthcare in the event of accidents in the workplace;
5. not discriminate against employees on any grounds (including race, religion, disability or gender);
6. not use corporal punishment or cruel or abusive disciplinary practices;
7. pay at least the minimum wage (if any) and provide any legally mandated benefits;
8. comply with laws on working hours and employment rights;
9. respect employees’ right to join and form independent trade unions;
10. encourage its suppliers or subcontractors (if any subcontractor has been appointed with Supplier’s prior written consent) in relation to this Agreement to comply with these standards; and
11. maintain a complaints process to address any breach of these standards. In the case of any such complaints, the Supplier shall report the alleged complaint and proposed remedy to Supplier.
12. **SOFTWARE DEFECTS**
	1. Where applicable, Supplier warrants that Goods, computer hardware and software supplied by Supplier to Purchaser (the “Products”):
13. are free from defects and/or disabling codes, and have been duly tested to ensure that there are no hidden defects or disabling codes and are subject to recognised and appropriate release procedures including the latest version of a proprietary virus detection software package approved by Purchaser, and Supplier shall procure that corresponding obligations are imposed with its sub-contractors or agents;
14. have been obtained from a reputable and reliable software developer and not through any interest group or multi-organisational software sharing scheme;
15. will comply with and function substantially in accordance with their related user documentation; and
16. shall not breach any third party’s Intellectual Property Right.
	1. Supplier shall indemnify and hold Purchaser harmless against any and all Losses suffered or incurred by Purchaser as a result of Supplier’s breach of the above warranties.

1. **LIABILITY AND INSURANCE**
	1. Supplier shall indemnify Purchaser and its Affiliates against all Loss incurred or suffered by Purchaser and its Affiliates howsoever arising from any defect in the Goods or Services or any breach by Supplier of its obligations hereunder or of any statutory duty or from any negligence, act or omission of Supplier’s employees, agents or sub-contractors.
	2. Supplier shall insure with a reputable insurance company its liabilities under the Agreement based on the value of the Goods and Services to be provided per event in a minimum amount of the value of the Agreement (local currency) and if so required at any time produce the policy of insurance and the receipt for the current premium to Purchaser 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 Purchaser shall be paid immediately to Purchaser without offset or counter claim.
	3. Supplier shall add Purchaser as an additional insured on each of Supplier’s insurance policies above. Supplier also agrees to waive and will require its insurers to waive all rights of subrogation against Purchaser, its Affiliates and their respective directors, officers, and employees as it relates to this Agreement on all insurance coverage. If Supplier at any time neglects or refuses to provide or cause to be provided the insurance required herein, or if such insurance is cancelled, without prejudice to any other rights or remedies available to Purchaser, Purchaser shall have the right to (but shall not be obliged to) procure such policy and coverage as Purchaser deems appropriate and to deduct a sum equivalent to the amount paid by Purchaser in respect of premiums for such insurance policies from any monies due or to become due to Supplier or to recover the same or any balance thereof remaining unpaid as a debt due from Supplier to Purchaser. Supplier shall not commence work until all of the insurance required herein shall have been obtained and approved by Purchaser
	4. 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.
	5. Purchaser’s remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity.
	6. In no event shall Purchaser be liable for any consequential, (including, without limitation, lost profits and business interruption whether or not such damages are foreseeable) incidental, indirect, special, economic or punitive damages arising out of or related to the breach or repudiation of contract, breach of warranty, negligence or otherwise, even if Supplier has been advised of the possibility of such damages.
2. **ASSIGNMENT**
	1. Supplier’s rights and obligations under the Agreement may not be assigned in whole or in part without the prior written consent of Purchaser (acting in its sole discretion) and any such consent shall not be deemed to relieve Supplier of any of its obligations and liability to Purchaser pursuant to the Agreement.
	2. Purchaser shall be entitled at any time by notice in writing to Supplier 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 Purchaser’s business which relates to the Goods or Services.
3. **THIRD PARTY RIGHTS**

No person who is not a party to the Agreement, other than an assignee of any right or obligation assigned pursuant to this clause shall have any rights to enforce any term or condition of the Agreement except for Purchaser’s Affiliates who shall be entitled to enforce rights granted to it under the Agreement.

1. **SUB-CONTRACTORS**

Supplier shall not, without the prior written consent of Purchaser, appoint any sub-contractor or any person or persons to carry out all or any of its obligations under the Agreement. In the event that Supplier appoints a sub-contractor or other person to perform its obligations Supplier shall remain liable to Purchaser for the performance of all Supplier’s obligations and shall ensure that any such sub-contractor or other person reads and understands the implications of the Agreement. Supplier shall, by entering into a separate agreement or otherwise, further ensure that such sub-contractor or other person shall be subject to and shall adhere to the same obligations imposed on Supplier under the Agreement.

1. **TERM AND TERMINATION**
	1. Subject to Clause 25.3, if either party to the Agreement is in breach of the Agreement and does not remedy the breach within thirty (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.
	2. If Supplier shall become bankrupt, dissolved, wound up, or shall compound or make any arrangement with its creditors or have a receiver, administrative receiver, liquidator or provisional liquidator appointed over all or any part of its assets or go into liquidation (whether voluntary or otherwise) save as part of a bona fide reconstruction not involving insolvency or shall take or suffer to be taken any similar action as a result of its liability to pay its debts or its insolvency it shall promptly so notify Purchaser in writing giving particulars of the circumstances whereupon Purchaser may terminate the Agreement immediately by notice. For the avoidance of doubt, Purchaser may terminate the Agreement upon the occurrence of any of the circumstances described in this Clause notwithstanding that Supplier may not have given notice to Purchaser as required.
	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 Supplier:
2. Supplier shall immediately so notify Purchaser in writing; and
3. Purchaser may, upon receiving notice or otherwise becoming aware of a change in Control of Supplier, terminate the Agreement immediately by notice in writing to Supplier if it considers in its sole discretion that such change in Control are prejudicial to its interests. For the avoidance of doubt, Purchaser may terminate the Agreement if it considers in its sole discretion that such change in Control are prejudicial to its interests notwithstanding that Supplier may not have given notice to Purchaser as required.
	1. Purchaser may terminate the Agreement without cause, by giving Supplier thirty (30) days’ written notice of such termination, and without any liability to Supplier for such termination.
4. **CONSEQUENCES OF TERMINATION**
	1. On termination of the Agreement, Supplier shall:
5. not later than seven days after Purchaser’s request, deliver to Purchaser (or as Purchaser shall direct) all quantities of the Goods in its possession which comply with the Agreement save that in the event of termination of the Agreement due to Supplier’s breach, Purchaser shall be entitled to reject all quantities of Goods in Supplier’s possession even if they comply with the Agreement;
6. comply with Clause 11.3; and
7. ensure that all documents containing Intellectual Property Rights and/or any information of a technical nature relating to the Goods, the manufacture of the Goods and the provision of Services, or of a confidential nature and supplied directly or indirectly by Purchaser to Supplier, are, at Purchaser’s option, either forthwith returned to Purchaser or destroyed by Supplier.
	1. A fair and reasonable price will be paid for the Goods and Services which comply with the Agreement and which have been delivered to Purchaser and/or for all Services in progress that have been performed by Supplier. Purchaser’s liability is limited to the said Goods and Services in progress, and no further loss or liability will accrue on their account.
	2. Termination or expiry shall not relieve either party from any liability or action accrued prior to such termination or expiry.
	3. With effect from termination or expiry of the Agreement Supplier shall not make any use for any purpose whatsoever of any Intellectual Property Rights which is the property of the Purchaser.
	4. Termination or expiration of the Agreement or withdrawal of any Goods or Services from the Agreement shall be without prejudice to the continuation in force of any condition which by their nature or effect need to or are intended to survive termination or expiration of the Agreement including without limitation clauses 1, 2, 10, 11, 21, 22 and 29. Supplier agrees to provide Purchaser with all reasonable support with respect to any investigation required by Purchaser or any regulator carried out prior or after such termination or withdrawal with respect to the Goods delivered / manufactured or Services carried out prior or after such termination or withdrawal. Purchaser will reimburse Supplier’s reasonable costs in providing such assistance unless such termination or withdrawal has occurred for a reason contained in Clause 24.1, 24.2 or 24.3.
8. **POLICIES AND PROCEDURES**
	1. Purchaser shall notify Supplier of relevant policies / procedures which may be applicable from time to time and which Supplier should follow in the supply of Goods and/or Services in this Agreement. Purchaser shall provide copies of such policies / procedures where appropriate. Supplier warrants that it will do nothing in the performance of its obligations under the Agreement which will be in conflict with the Purchaser’s policies.
	2. Supplier agrees to comply with all Purchaser’s rules, regulations and requirements with respect to conduct and the health, safety and protection of persons and property, while on Purchaser’s or its Affiliate’s premises.
	3. Supplier agrees to comply fully with the Purchaser’s code of conduct.

1. **WAIVER**

No waiver or forbearance by Purchaser in enforcing any of its rights under the Agreement shall prejudice or affect the ability of Purchaser to enforce any of its other rights. No waiver shall be effective unless in writing and signed by Purchaser. 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.

1. **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.

1. **AMENDMENT**

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

1. **DISPUTE RESOLUTION**
	1. The Parties will attempt in good faith to negotiate a settlement to any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination.
	2. Save as provided for in Clause 30.3 below, if parties fail to reach agreement within sixty (60) days after a party first gives written notice to the other party of any such dispute, then either party may initiate a legal action in the Malaysian Court.
	3. For any dispute arising pursuant to Clauses 6, 7 and/or 8 (“Technical Dispute”), if parties are unable to reach a mutual agreement regarding the Technical Dispute within thirty (30) days after a party first gives written notice to the other party of any such Technical Dispute, the parties may agree on an independent expert (not an arbitrator) within thirty (30) days of failure by parties to reach a mutual agreement on such Technical Dispute.
	4. If the parties agree on the independent expert to be appointed, the decision of such independent expert shall be final and binding as to the Technical Dispute and as to which party should pay his fees, the default result being that the fees shall be borne by the party against whom the expert’s decision is given. If the expert finds that any delivery of the Goods or Services has not complied with the Agreement, Purchaser shall have the rights stated in Clauses 6, 7 and 8 relating to defective Goods or Services (as the case may be). If the expert finds that the Goods and Services comply with the Agreement, Purchaser shall pay for such Goods and Services in accordance with the payment provisions contained in the Agreement.
	5. If parties fail to reach a mutual agreement on who to appoint as independent expert within the abovementioned thirty (30) days, either party may initiate a legal action in the Malaysian Court.
2. **GOVERNING LAW AND JURISDICTION**

The construction, validity and performance of the Agreement shall be governed by the Laws of Malaysia, and both parties hereby submit to the exclusive jurisdiction of the Malaysian Courts.

1. **STAMP DUTY**

Supplier shall be responsible for stamping this Agreement in duplicate and return the stamped original agreement to the Purchaser. Supplier agrees to pay for and bear the cost of stamping.

**SCHEDULE 1 to ATTACHMENT 3**

**PURCHASER’S PRE-ENGAGEMENT SCREENING (“PES”) REQUIREMENTS**

# Purpose

The PES requirements are required for all categories of Complementary Workers who are not on the payroll of Purchaser (“CW”) with unaccompanied access on Purchaser’s Sites and/or access (including remote access) to Purchaser’s confidential information.

1. **Responsibility**

2.1 Supplier have the responsibility to ensure that the minimum PES process detailed below are undertaken prior to the engagement and/or commencement of the work at Purchaser site, of any of their employees and/or personnel and/or any other 3rd party engaged by Supplier, who have unaccompanied access on Purchaser’s sites or access to Purchaser’s confidential information whether access is remote or not. It’s the responsibility of Supplier to conduct the same standard of PES process for the engagement of their employees, subcontractors and/or Contractors of any tier who will work on Purchaser’s sites and/or only have access to the Purchaser’s confidential information.

2.2 For CW with a gap of 6 months or more since the previous assignment at GSK, then the PES requirements outlined below must be repeated.

## 3. PES Requirements

3.1 The standard PES process is based on the following minimum requirements:

* An identity check
* Confirmation of the individual’s Right to Work in Malaysia, in compliance with the prevailing Immigration Act, and/or any other statutory enactments from time to time in force (where required)
* Verification of education qualifications or other skills claimed (particularly where the qualification or skill is an entry requirement for the job)
* Reference Check from previous employers (minimum of 2), 1 (one) of which will be current/most recent employer
* Verification of dates of employment claimed for the preceding 5 years
* Criminal record check
* Financial/credit check (only when considered necessary for the position by Purchaser)
* Disclosure of any directorships held by the candidate (only when considered necessary for the position by Purchaser)
* A check of motor vehicle licenses where driving is a contractual requirement
* Any other pertinent licences, certifications and operating documents that may be required by law (if needed)
* Verification of home address for previous 5 years.
	1. Original documents, where reasonable, should be used to check the identity and qualifications such as driving licenses.
	2. At the sole discretion of Purchaser and/or in compliance with local health and risk assessment legislation, Purchaser may require Supplier to carry out additional checks and investigations on Supplier’s employees and/or Personnel in addition to the minimum PES requirements set out above.
	3. Periodic audit will be conducted by Purchaser for ensuring compliance with this policy by Supplier. Failure to complete the PES to Purchaser’s standard will result in the site access to the facility and/or Purchaser’s confidential information access being refused or withdrawn as the case maybe.
	4. Access to a Purchaser’s site and/or issuance of a site pass will only be permitted to a CW on presentation of a suitable form of identity on their initial visit to a site.
	5. Where there is a specific business requirement, any CW who has not completed the PES process may be issued with a temporary pass for a maximum of 5 days. During this period, the CW will not be allowed to access the Purchaser’s confidential information until all the necessary PES screening checks have been completed satisfactorily. They must also be escorted to and from their work station.

 3.7 PES Failures – Debarment Criteria

Supplier will not cause any person who is deemed to have failed PES to work on Purchaser’s sites and/or only have access to the Purchaser’s confidential information if :

* There is evidence that the job application is fraudulent i.e. documentation and information provided is false
* The stated qualifications and employment positions within the application are false
* The individual has no right to work in Malaysia, and/or not in compliance with the prevailing Immigration Act and/or any other statutory enactments from time to time in force
* The documentation supporting the individual’s right to work in Malaysia has expired
* The individual had previously been an employee of the Purchaser or any company within the GlaxoSmithKline group of companies and had been dismissed for gross misconduct.
	1. Supplier shall obtain CW’sexpress consent in writing in relation to the screening and possible audit by Purchaser before the screening is conducted.