

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions apply in these Terms:

Affiliate	means, in respect of either party, a company or other undertaking which is a Group Undertaking (as defined in section 1161(5) of the Companies Act 2006), in each case for the time being);
Agreement	these Terms, the Order, and all other documents attached to or otherwise incorporated into an Agreement, or any amended version agreed between the parties in accordance with clause 2.1 or, the Supplier's quotation for Goods and Fresenius Kabi's acceptance of it under clause 2.3;
Authority	means any local, national, multinational, governmental or non-governmental authority, statutory undertaking or public or regulatory, administrative, fiscal or judicial body or body corporate which has any jurisdiction, control or influence over a party or which has responsibility for providing any decision, consent or licence which is required in order for a party to fulfil its obligations in accordance with and pursuant to this Agreement (including, in the United Kingdom, the Medicines and Healthcare products Regulatory Agency, HM Revenue & Customs and the Competition and Markets Authority (and each of their successors) and including such equivalent bodies in relation to the Goods and/or Services provided outside of the United Kingdom);
Business Day	a day other than a Saturday, Sunday or public holiday in England when the banks in London are open for business;
Charges	the amount payable for the Goods supplied and/or Services performed in accordance with this Agreement;
Claim	means any one or more of the following: a claim, action, proceeding, demand, allegation, threat of any of the foregoing of whatever nature, in each case whether in contract, tort (including negligence) or otherwise;
Confidential Information	in relation to either party to this Agreement or its Affiliates, any and all Information that (i) is by its nature confidential; (ii) the other party knows or ought to know is confidential; (iii) is designated by the party as confidential;
Contract Year	means the period of 12 calendar months from the Start Date and each subsequent consecutive period of 12 calendar months during the Term;
Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
Delivery Location	has the meaning given in clause 6.1;
Force Majeure Event	an occurrence beyond the control and without the fault or negligence of the party affected and which that party is unable to prevent or provide against by the exercise of reasonable diligence, including acts of God, fire, flood, earthquake, unusually severe weather or elements of nature, war, embargo, riot, civil disorder, rebellion or revolution, epidemic, pandemic or any law or action taken by a governmental or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
Fresenius Kabi	Fresenius Kabi Limited (company number 2182135) registered in England and Wales with registered office at Cestrian Court, Eastgate Way, Manor Park, Runcorn WA7 1NT and Fresenius Kabi Group shall mean any Affiliates of Fresenius Kabi.
Fresenius Kabi Policies	those policies and procedures notified to the Supplier from time to time, and all amendments thereto, including the Fresenius Kabi Third Party Code of Conduct Third Party Code Of Conduct - Fresenius Kabi Global (fresenius-kabi.com) as amended or replaced from time to time;
Goods	the items (if any) set out in the Order to be purchased by Fresenius Kabi from the Supplier;
Information	all information of a technical, commercial, business, financial, operational, administrative, marketing or any other nature whatsoever including information relating to its current, prospective and previous customers, members, employees and suppliers, (including Personal Data), whether in oral, tangible or documentary form (including digital, electronic and magnetic media), whether marked or identified as being proprietary or not;
Intellectual Property Rights (IPR)	all patents, utility model rights, copyright, trade marks, service marks, trade, business and domain names, database rights, design rights, topography rights, moral rights, goodwill, rights in any Confidential Information (including know-how, business methods, data and trade secrets) and all other similar or analogous rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights in each case in any part of the world;
Losses	all losses, liabilities, costs (including legal costs), charges, fines, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction);
Order	the purchase order placed by Fresenius Kabi whether in writing, electronically or otherwise for the

supply of the Goods and/or the performance of the Services;

Personnel	in relation to the Supplier, any of its employees, agents, officers, contractors, sub-contractors or any other third party or any other third party engaged by the Supplier in connection with the provision of the Goods and/or Services;
Relevant Law	the common law and any statute, enactment, ordinance, order, regulation, guidance or other similar instrument in any jurisdiction, including any jurisdiction from which the Goods and/or Services are provided or in which any Goods and/or Services are received (or both), which relate to the performance of this Agreement;
Services	the Services (if any) set out in the Order to be performed by the Supplier;
Specification	means the relevant specification for the Goods and/or Services (if any) set out in the Order or as otherwise agreed between the parties;
Start Date	the date the Order is placed in accordance with clause 2.3;
Supplier	the person, firm or company who supplies Goods and/or Services to Fresenius Kabi as set out in the Order;
Term	the period from the Start Date until termination or expiry of this Agreement as specified in the Order (if any) or otherwise in accordance with these Terms;
Terms	these terms and conditions; and
VAT	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 In this context, unless otherwise stated or unless the context otherwise requires:

- 1.2.1 a reference to a particular law is, unless otherwise stated, a reference to it as amended, replaced or superseded and in force for the time being, and to any legislation which re-enacts or consolidates it, and includes all orders, regulations, instruments and other subordinate legislation for the time being in force made under it;
- 1.2.2 headings do not affect their interpretation or the interpretation of this Agreement;
- 1.2.3 references to this Agreement or any other document are to this Agreement or that document as in force for the time being and as amended, supplemented, varied, modified, renewed or replaced or extended from time to time in accordance with the requirements of this Agreement or that document (as the case may be);
- 1.2.4 references to any law, statute, enactment, order, regulation or other similar instrument shall, unless otherwise stated, be construed as a reference to each of the same as amended, replaced or superseded by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;
- 1.2.5 references to clauses and appendices are to clauses of and annexures to the Agreement; references in an annex to paragraphs are to paragraphs of that annex; and a reference to a clause is, unless otherwise specified, a reference to all its sub-clauses;
- 1.2.6 a reference to 'writing' or 'written' includes email;
- 1.2.7 the words 'other', 'including', 'includes', 'for example' and 'in particular' do not limit the generality of the words preceding those words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and
- 1.2.8 in the event of any conflict, inconsistency or ambiguity between the Terms and the Order, the Order shall prevail to the extent of such conflict.

2. ACKNOWLEDGEMENT AND ACCEPTANCE

- 2.1 These Terms apply to and are incorporated into the Agreement and prevail over any inconsistent terms or conditions contained or referred to in the Supplier's quotation, confirmation of order or specification, or other document supplied by the Supplier or implied by trade custom, practice or course of dealing.
- 2.2 These Terms may be varied only by written agreement signed by an authorised representative of each party.
- 2.3 The Supplier's quotation for Goods constitutes an offer to supply the Goods on these Terms. No offer placed by the Supplier shall be accepted other than by Fresenius Kabi issuing an Order, at which point the supply and purchase of the Goods on these Terms will be established.
- 2.4 The Supplier agrees that Fresenius Kabi shall not be bound by any minimum purchase commitments in respect to the purchase of Goods and/or Services.

3. COMMENCEMENT AND TERM

- 3.1 Unless otherwise agreed by the parties in writing, the Goods shall be provided by the Supplier to Fresenius Kabi, from the date of acceptance by Fresenius Kabi of the Supplier's offer in accordance with clause 2.3.
- 3.2 The Supplier shall from the date set out in the Order and, if relevant, for the Term, supply the Services to Fresenius Kabi in accordance with the terms of this Agreement.

4. PROVISION OF GOODS AND SERVICES

- 4.1 The Supplier represents, warrants and undertakes to Fresenius Kabi, as at the Start Date and throughout the Term, that it shall:
 - 4.1.1 provide the Goods and/or perform Services in accordance with this Agreement;
 - 4.1.2 co-operate with Fresenius Kabi in all matters relating to the Services, and comply with all instructions of Fresenius Kabi;

- 4.1.3 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 4.1.4 perform the Services in accordance with all Relevant Laws;
 - 4.1.5 use Personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it meets the Supplier's obligations set out in this Agreement;
 - 4.1.6 ensure that the Services conform with all descriptions, standards and specifications set out in the Order, and that the Deliverables shall be fit for any purpose that Fresenius Kabi expressly or impliedly makes known to the Supplier;
 - 4.1.7 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 4.1.8 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Fresenius Kabi, will be free from defects in workmanship, installation and design;
 - 4.1.9 not do or omit to do anything which may cause Fresenius Kabi to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Fresenius Kabi may rely or act on the Services;
 - 4.1.10 obtain and maintain in force at all times all licences, consents, permissions, authorisations and permits needed to provide the Goods and/or perform the Services; and
 - 4.1.11 shall devote such time, attention and abilities to the provision of the Goods and/or performance of the Services as may be necessary for the provision or performance thereof in accordance with this Agreement.
- 4.2 If the Supplier is unable to supply the Goods and/or perform the Services for any reason, it will immediately notify Fresenius Kabi in writing of this fact giving the reason and the likely duration of the inability, but this shall be without prejudice to any rights or remedies available to Fresenius Kabi.
- 4.3 The Supplier shall at all times comply with all reasonable requests and directions of Fresenius Kabi and any other third party working with (and authorised by) Fresenius Kabi and will take all reasonable care to ensure that the provision of Goods and/or performance of the Services shall not interfere with the operations of Fresenius Kabi, its employees or any other third party working with Fresenius Kabi.

5. GOODS

- 5.1 The Supplier shall ensure that the Goods (and all other deliverables provided by the Supplier pursuant to this Agreement):
- 5.1.1 shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979). appropriate design, quality, material and workmanship and free from defects and where required, shall comply with any quality agreement agreed between the parties;
 - 5.1.2 conform to the quantities, quality, standards, descriptions, stipulations, drawings, samples, patterns and specifications set out or referred to in the Order or as otherwise agreed between the parties;
 - 5.1.3 are fit for any purpose held out by the Supplier or made known to it either expressly or by implication by Fresenius Kabi; and
 - 5.1.4 comply with all Relevant Laws relating to the manufacture, packaging, labelling, supply and sale of the Goods at the time when the same are supplied.
- 5.2 If required by Fresenius Kabi, the Supplier shall supply samples of any Goods before delivery for Fresenius Kabi's approval.
- 5.3 The Supplier shall notify Fresenius Kabi where there is any change to the Goods including change to design, materials, formulation and/or manufacturing site. Such notifications shall be sent to quality.uk@fresenius-kabi.com.

6. DELIVERY, RISK & TITLE

- 6.1 The Supplier shall deliver the Goods at its own cost on the date and to the place specified in the Order (**Delivery Location**) or on such other date or to such other location as agreed by Fresenius Kabi. Unless otherwise agreed in writing, the delivery shall take place in accordance with DAP Incoterm.
- 6.2 If so requested by Fresenius Kabi, Goods and/or Services shall be delivered by instalments.
- 6.3 Time of delivery of the Goods and/or performance of the Services shall be of the essence of this Agreement. If the Supplier fails to meet any agreed delivery dates then Fresenius Kabi may (without prejudice to any other rights it may have):
- 6.3.1 terminate the Agreement in whole or in part without liability to the Supplier;
 - 6.3.2 refuse to accept any subsequent performance and/or supply of the Goods which the Supplier attempts to make;
 - 6.3.3 purchase substitute Goods from elsewhere;
 - 6.3.4 hold the Supplier accountable for any loss and additional costs incurred; and
 - 6.3.5 have all sums previously paid by Fresenius Kabi to the Supplier under the Agreement refunded by the Supplier.
- 6.4 Each delivery of Goods shall be accompanied by a delivery note stating the purchase order number, and details/quantity of the Goods included in the delivery.
- 6.5 Goods delivered in excess of the quantities set out in the Order shall remain at the risk of the Supplier and shall be returnable at the Supplier's expense. Fresenius Kabi shall not be bound to pay for any excess Goods unless it agrees in writing to accept such Goods.
- 6.6 Goods shall remain at the risk of the Supplier until actual delivery to Fresenius Kabi including unloading and stacking.

- 6.7 Title to the Goods shall pass to Fresenius Kabi on the earlier of actual delivery or payment for the Goods (in whole or in part). Title to the Goods shall pass to Fresenius Kabi with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party.
- 6.8 If Fresenius Kabi makes any advance, part or progress payment in respect of Goods prior to delivery, the Supplier shall (i) keep the Goods in its possession, stored separately from all other goods in its possession, (ii) label the same as being the property of Fresenius Kabi, and (iii) allow Fresenius Kabi access to the Supplier's premises in order to take possession of the Goods on request.
- 6.9 The Goods shall be properly packed and secured in such a manner as to reach their destination in a good condition having regard to the nature of the Goods. Where relevant, all Goods shall be delivered on heat-treated Euro pallets and stacked to a maximum of 1.7m with no overhang. Packaging material shall not be charged for and Fresenius Kabi shall have no obligation to return the same to the Supplier.
- 6.10 The Supplier shall ensure that the Goods meet any applicable acceptance criteria required by Fresenius Kabi. Fresenius Kabi shall have a reasonable amount of time and in any event no less than 14 days to inspect and/or test the Goods following delivery. Fresenius Kabi shall be entitled to reject the Goods (i) if they do not meet the acceptance criteria, or (ii) following acceptance, within a period of 14 days of discovery of any latent defect in the Goods. If there are no acceptance criteria, Fresenius Kabi shall not be deemed to have accepted the Goods until it has had 14 days to inspect and/or test them following delivery. In this case, Fresenius Kabi shall also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All IPR belonging to a party prior to the execution of this Agreement shall remain vested in that party.
- 7.2 The Supplier grants to Fresenius Kabi a worldwide, royalty-free, non-exclusive, perpetual, irrevocable licence (with the right to grant sub-licences) to use and copy (including for back-up purposes in accordance with best industry practice) (i) any and all IPR in the Goods, and (ii) any other IPR to the extent necessary to (a) receive or use the Services; (b) to enable the full benefit of ownership of the Goods, and/or (c) perform its obligations or exercise its right under this Agreement.
- 7.3 If any of the Goods and/or Services (or item used in the delivery thereof) is the subject of an infringement Claim, the Supplier shall at the request of Fresenius Kabi:
 - 7.3.1 procure for Fresenius Kabi the right to continue to use or receive the relevant Goods and/or Services in accordance with this Agreement; or
 - 7.3.2 modify or substitute the relevant Goods and/or Services so that they are non-infringing, provided that any such modification or substitution shall not degrade the performance or quality of the affected item.
- 7.4 The Supplier warrants and represents to Fresenius Kabi that the performance of its obligations under this Agreement and Fresenius Kabi's receipt and use of the Services, any IPR provided or made available, any Confidential Information disclosed to it by the Supplier, any of the Goods and the exercise of any rights granted under any licences granted by the Supplier to Fresenius Kabi will not infringe or cause any member(s) of the Fresenius Kabi Group to infringe any IPR or any other rights of any third party.

8. RECALL

- 8.1 If Fresenius Kabi is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall notify the Supplier in writing and attach a copy of the Recall Notice.
- 8.2 In the event that a recall of the Goods is necessitated by defect, Goods being unsafe, a failure to conform to the specifications, Relevant Law or any other reason within the Supplier's control, the Supplier shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties.
- 8.3 Fresenius Kabi shall, at the Supplier's cost:
 - 8.3.1 comply with any Recall Notice; and
 - 8.3.2 give such assistance as the Supplier reasonably requires to recall or withdraw the Goods from the market.

9. AUDIT AND INSPECTION

- 9.1 The Supplier shall allow Fresenius Kabi's employees, officers, agents, consultants, sub-contractors and regulators to access (whether remotely or otherwise) its premises and/or records and information during normal business hours and on reasonable notice, or, in the case of clause 9.4, at any time for the purposes of determining compliance with this Agreement and Fresenius Kabi Policies from time to time. The Supplier shall co-operate fully with Fresenius Kabi's employees, officers, agents, consultants, sub-contractors and regulators (and shall procure access for Fresenius Kabi to its Personnel as necessary) in relation to any reasonable request for information concerning such compliance which includes permitting copying of records and documents and taking such copies away.
- 9.2 Fresenius Kabi relies on the skill and judgement of the Supplier in the provision of the Goods and/or Services. However, Fresenius Kabi may (but shall not be obliged to), inspect and/or test any of the Goods and/or Services supplied or to be supplied to ensure conformity with this Agreement from time to time.
- 9.3 No testing or inspection carried out by Fresenius Kabi shall diminish the obligations of the Supplier under this Agreement nor shall such action constitute acceptance of the Goods and/or Services.
- 9.4 The Supplier agrees to co-operate fully with Fresenius Kabi in any way required and at any time to ensure the prevention of fraud or the commission of any criminal offence.

10. CHARGES AND PAYMENT

- 10.1 The Charges shall be as set out in the Order and, unless otherwise specified, shall be exclusive of VAT, but inclusive of all other charges including expenses, delivery, applicable discounts, packaging, freight, carriage insurance, loading and offloading.

- 10.2 Where additional charges and/or expenses are payable, they shall become payable only in such amounts as have been previously approved in writing by Fresenius Kabi.
- 10.3 The Supplier shall invoice Fresenius Kabi electronically via Fresenius Kabi's notified payment system which applies from time to time. All invoices shall in any event be raised by the Supplier in accordance with the instructions in the Order, or, if no instructions are specified therein, upon acceptance of the Goods and/or completion of the Services. Invoices must show the purchase order number. For the avoidance of doubt, an invoice may only apply to one purchase order. Where the Supplier is registered for VAT the invoice shall be a valid VAT invoice and VAT shall be shown as a separate item.
- 10.4 Fresenius Kabi shall pay for the Goods and Services in line with agreed payment terms following receipt of a valid VAT invoice. Time for payment shall not be of the essence of this Agreement.
- 10.5 Payment for Goods and/or Services is without prejudice to any claims or rights which Fresenius Kabi may have against the Supplier and shall not amount to acceptance of the Goods and/or Services.
- 10.6 Fresenius Kabi reserves the right to set off any amount owing to it from the Supplier howsoever arising against any sums payable by Fresenius Kabi to the Supplier, and to withhold any payments to the extent that Goods or Services have not been supplied to Fresenius Kabi 's reasonable satisfaction.
- 10.7 The parties agree that the provisions of Late Payment of Commercial Debts (Interest) Act 1998 shall not be applicable to this Agreement and the parties further expressly agree that interest calculated from day to day at the rate per annum of two (2) per cent above the base rate of The Bank of England in force from the date on which such payment was due until and including the date of actual payment (the "Agreed Interest") shall be a substantial remedy in respect of any late payment of sums due under this Agreement.
- 10.8 Each party shall be entitled to receive Agreed Interest on any payment not made when properly due and payable pursuant to the terms of this Agreement. Interest shall not accrue or be payable on any monies or payment set-off pursuant to clause 10.6.
- 10.9 If Fresenius Kabi disputes any sums set out in an invoice then it will notify the Supplier in writing as soon as possible and the Supplier shall submit an invoice to Fresenius Kabi for the undisputed balance of the invoice. Fresenius Kabi and the Supplier shall meet as soon as reasonably possible after receipt of a written notice from Fresenius Kabi under this clause to attempt to resolve the dispute.

11. VARIATION AND CANCELLATION

- 11.1 The specification and quantity of Goods or Services may be amended or cancelled without liability on the part of Fresenius Kabi (save as provided under clause 11.2) at any time prior to the dispatch of Goods and/or performance of the Services by giving written notice to the Supplier.
- 11.2 If Fresenius Kabi cancels or amends the specification or quantities in accordance with clause 11.1 above, Fresenius Kabi shall pay the cost of labour and materials expended on work in progress up until the date of the cancellation notice (to the extent that such work has been carried out in accordance with any previously-agreed time scales and to the extent that the Supplier can evidence this expenditure).
- 11.3 The results of any such work in progress (including any deliverables or other material, whether complete or not) shall be delivered to Fresenius Kabi by the Supplier within seven (7) days of such cancellation or amendment.

12. TERMINATION

- 12.1 Termination of this Agreement shall be without prejudice to any rights or remedies which may have accrued as at termination.
- 12.2 Termination or expiry of this Agreement for any reason shall not affect the coming into force or the continuation in force of any provisions which is expressed or implied to come into force on or after such expiry or termination, or which is required to give effect to such expiry or termination. Without prejudice to the foregoing, clauses 2, 5.1, 6, 7, 8, 9, 12, 14, 15, 16, 20 and 22 shall survive expiry or termination.
- 12.3 Without prejudice to its other rights, Fresenius Kabi may immediately terminate this Agreement by written notice to the Supplier if:
- 12.3.1 the Supplier commits a breach of a fundamental term or condition of this Agreement and such breach is not capable of remedy;
 - 12.3.2 the Supplier commits a material breach of a fundamental term or condition of this Agreement that may be remedied but does not remedy the breach within fourteen (14) days of a notice requiring it to do so;
 - 12.3.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into, any compromise or arrangement with any of its creditors;
 - 12.3.4 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
 - 12.3.5 (being a company and prior to the commencement of a formal insolvency process) is deemed unable to pay its debts within the meaning of section 123 of the IA 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA1986;
 - 12.3.6 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy;
 - 12.3.7 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.3.3 to clause 12.3.5 (inclusive);
 - 12.3.8 the terms of clause 17 apply; or
 - 12.3.9 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business or the business contemplated under this Agreement.

13. FRESINIUS KABI'S RIGHTS AND REMEDIES

- 13.1 In addition and without prejudice to any other rights or remedies available to Fresenius Kabi, if any Goods and/or Services are not supplied in accordance with this Agreement or if the Supplier fails to comply with any term of this Agreement, whether or not the Goods and/or Services have been accepted by Fresenius Kabi, Fresenius Kabi may:
- 13.1.1 reject the Goods and/or Services in whole or part, in which case a full refund for the Goods and/or Services so rejected shall be made to Fresenius Kabi by the Supplier and such rejected Goods and/or Services shall be removed from the delivery location within two (2) days of receipt of a written request to remove the same. Notwithstanding clause 6, rejected Goods remain at the Supplier's risk. In the event of such rejected Goods not being removed as required above, Fresenius Kabi may arrange for such removal at the cost of the Supplier; or
 - 13.1.2 require the Supplier, at the Supplier's expense, to remedy any defect in the Goods and/or Services or to supply replacement Goods and/or Services in accordance with this Agreement; or
 - 13.1.3 refuse to accept any further provision of Goods and/or Services; or
 - 13.1.4 obtain Goods and/or Services from a third party, the Supplier being responsible for any cost above that at which the Supplier would have supplied the Goods and/or Services; and/or
 - 13.1.5 claim damages.

14. INDEMNITY

- 14.1 The Supplier shall indemnify, defend, keep indemnified and hold harmless Fresenius Kabi from any and all Losses made against, incurred or suffered by any of them, and whether wholly or in part resulting directly or indirectly from, or connected in any way with any of the matters listed below whether or not such Losses were foreseeable at the date of entering this Agreement:
- 14.1.1 any alleged or actual infringement by an Indemnified Party of any IPR or any third party as a result of Fresenius Kabi 's (or the relevant Indemnified Party's) receipt of the Services or receipt or use of any Goods or IPR provided or otherwise made available to any Indemnified Party by the Supplier; and/or
 - 14.1.2 any breach by the Supplier of its obligations under this Agreement in relation to Confidential Information;
 - 14.1.3 the fundamental breach and/or wilful abandonment by the Supplier of any or all its obligations under this Agreement;
 - 14.1.4 the wilful misconduct, wilful default or negligence of the Supplier and/or any of its Personnel;
 - 14.1.5 any fraudulent or dishonest act or omission by the Supplier and/or its Personnel;
 - 14.1.6 any Claim relating to death, personal injury and/or damage to tangible property arising from the act or omission of the Supplier and/or any of its Personnel; and
 - 14.1.7 any fines levied on any member of the Fresenius Kabi Group by a third party including any Authority arising from the acts or omissions of the Supplier and/or its Personnel.
- 14.2 The Supplier shall provide all reasonable assistance to Fresenius Kabi and/or its insurers for the purposes of dealing with any action, claim or matter to which clause 14.1 applies.

15. LIABILITY AND INSURANCE

- 15.1 Nothing in this Agreement limits or excludes the liability of either party (i) in respect of any deceit, theft, fraud or fraudulent misrepresentation by it or its officers, employees, agents, contractors or subcontractors and in the case of Supplier, by its Personnel; (ii) for death or personal injury caused by the negligence of that party or its officers, employees, agents, contractors or subcontractors; (iii) under clauses (Indemnity); (iv) for breach of any obligation by the Supplier as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; (v) defective products under the Consumer Protection Act 1987 or (vii) to the extent such limitation or exclusion is not permitted by law.
- 15.2 Subject to clause 15.1, Fresenius Kabi shall not be liable to the Supplier for (i) any special, consequential or indirect loss or damage; (ii) loss of or damage to goodwill; (iii) loss of use or corruption of software, data or information; or (iv) any loss of profits, in each case whether arising from breach of contract, tort (including negligence), breach of statutory duty or otherwise.
- 15.3 Subject to clause 15.1 and 15.2, the total aggregate liability of Fresenius Kabi and each member of the Fresenius Kabi Group to the Supplier (in addition to payment of any amounts properly due) under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise howsoever, in respect of all acts, omissions (including negligence), breach of statutory duty, breach of contract or breach of warranty of Fresenius Kabi and/or any member of the Fresenius Kabi Group, its/their officers, employees, agents, contractors or sub-contractors occurring in any Contract Year, shall in no event exceed the sum equivalent to 100% of the total of the Charges which Fresenius Kabi is obliged to pay the Supplier hereunder and/or would have been payable if the Goods/Services had been provided/performed in full and there had been no claims or deductions under this Agreement, by Fresenius Kabi in the immediately preceding Contract Year.
- 15.4 Where the Supplier is providing Goods, then the Supplier shall, during the Term, maintain appropriate product liability insurance with a reputable insurer to cover its liabilities under the Agreement and all liability (however arising) for a claim that the Goods are faulty or defective. The Supplier shall provide a copy of the insurance policy and proof of payment of the current premium to Fresenius Kabi on request.
- 15.5 In addition to the product liability insurance (as referenced in clause 15.4) the Supplier shall, at all times, carry adequate insurance cover with a reputable insurer in respect of all risks for which it is prudent for the Supplier to insure against, having regard to the Supplier's possible liability to Fresenius Kabi. The Supplier shall, on written request, supply a copy of the policy and premium receipt to Fresenius Kabi.
- 15.6 The Supplier shall renew each insurance (pursuant to this clause 15) for the Term and within 14 days of each renewal shall produce to Fresenius Kabi the premium receipt for the renewal (or other evidence of the renewal satisfactory to Fresenius Kabi).
- 15.7 If the Supplier fails to effect a renewal, Fresenius Kabi is entitled to effect the insurance and the Supplier shall on demand reimburse to Fresenius Kabi an amount equal to the premium for that insurance.

16. CONFIDENTIALITY & NO ENDORSEMENT

- 16.1 Each party (the "**Receiving Party**") shall treat and keep all Confidential Information of the other party and its Affiliates (a) first disclosed to it by the other party, or (b) learnt, acquired or developed by the Receiving Party in connection with this Agreement, secret and confidential, and will not, without the other party's consent, disclose Confidential Information to any other person other than in accordance with this Agreement.
- 16.2 Unless otherwise agreed in writing, the Supplier shall (a) keep confidential the fact that it is supplying Fresenius Kabi and the terms of such supply, and (b) not use any of Fresenius Kabi's logo or business name in any promotional material.
- 16.3 The foregoing shall not apply to the extent that (a) the Receiving Party needs to have or disclose Confidential Information of the other party to any Affiliate, sub-contractor, agent or employee of the Receiving Party in order to fulfil its obligations, exercise its rights under this Agreement or to receive the benefit of the Services, provided always that the Receiving Party shall procure that such person to whom the Confidential Information is disclosed keeps the Confidential Information secret and confidential; or (b) any Confidential Information of the Supplier is embodied in or otherwise incorporated into any Goods or Services; or (c) any Confidential Information is in the public domain at the Start Date, or at a later date comes into the public domain, where such Confidential Information has not come into the public domain through a breach of this Agreement; or (d) any Confidential Information is required to be disclosed pursuant to any Relevant Law or Authority, or to the Receiving Party's solicitors, auditors, insurers, accountants or other professional advisors, for the purposes of reporting to or seeking advice from the relevant party, provided that the Receiving Party ensures that such party to whom disclosure is made under paragraph (d) uses such Confidential Information solely for such purposes and otherwise complies with this clause 16 to the same extent as if it were a party to this Agreement.
- 16.4 This clause shall survive termination of this Agreement.

17. FORCE MAJEURE

- 17.1 Subject to the remaining provisions of this clause 17, neither party to this Agreement shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such non-performance is due to a Force Majeure Event.
- 17.2 The Supplier shall use all reasonable endeavours to notify Fresenius Kabi if it becomes aware of any current or expected event that could give rise to a Force Majeure Event.
- 17.3 In the event that the Supplier is delayed or prevented from performing its obligations under this Agreement by a Force Majeure Event, the Supplier shall:
- 17.3.1 give notice in writing of such delay or prevention to Fresenius Kabi as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
- 17.3.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Agreement; and
- 17.3.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 17.4 The Supplier cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 17.5 As soon as practicable following the Supplier's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 17.6 Where the Force Majeure Event persists for a continuous period of 120 days then Fresenius Kabi may terminate this Agreement by serving 14 days written notice on the Supplier.

18. ASSIGNMENT

- 18.1 Fresenius Kabi may assign, charge, transfer, sub-contract or otherwise deal in any way with any of its rights or obligations under this Agreement in whole or in part at any time and on more than one occasion to (a) any member of the Fresenius Kabi Group by giving the Supplier written notice such consent not to be unreasonably withheld or delayed, save that no such consent shall be required on any sale, in whole or part, of the business to which this Agreement relates.
- 18.2 The Supplier shall not assign, charge, transfer, sub-contract or otherwise deal with any of its rights or obligations under this Agreement without prior written consent from Fresenius Kabi.

19. COMPLIANCE WITH RELEVANT REQUIREMENTS

- 19.1 Each party shall and shall ensure that its employees, directors, officers, agents and others acting on its behalf including Affiliates (**Representatives**) comply with all applicable laws, rules and regulations in relation to the Agreement, including but not limited to the laws on fair competition, public procurement and anti-bribery and corruption including the UK Bribery Act 2010. The Supplier shall comply with good business practices and all laws and regulations relevant to these Terms such that Fresenius Kabi's image and reputation is promoted and safeguarded and shall in particular comply with all laws and regulations of the United Kingdom relating to the marketing, distribution, supply, sale, labelling and installation of the Goods.
- 19.2 The Supplier undertakes to comply and shall ensure that its Representatives comply with Fresenius Kabi Policies.
- 19.3 Both parties shall and shall procure that its Representatives shall comply with all applicable laws, rules and regulations relating to modern anti-slavery, human rights and human trafficking including the Modern Slavery Act 2015 and the Human Rights Act 1998 (the **HRA 1998**).
- 19.4 Each party shall comply fully at all times with all laws, regulations, industry codes of practice and/or any other legal requirements including, but not limited to, those applicable to reporting of health, safety, medical device,

pharmaceutical, FSMP, environment, welfare and the production, storing, handling and supply of Goods and provision of Services.

19.5 Breach of this clause 19 shall be deemed a material breach incapable of remedy under clause 12.3.2.

20. ENVIRONMENT AND HUMAN RIGHTS

20.1 During the Term, the Supplier shall respect human rights and establish and maintain environmental standards, as defined below, within its own sphere of influence and not cause, be complicit or in any way contribute to the violation thereof. The supplier shall respect and ensure that its Representatives shall

20.1.1 Respect all human and environmental aspects listed under but not limited to "Environmental Responsibility (section 5) and "Employment Standards, Human Rights (section 17) in Fresenius Kabi's Third Party Code of Conduct and comply with applicable human rights and environmental laws and standards (hereinafter: "Human Rights and Environment"). The Supplier shall take appropriate measures to provide for a Human Rights and Environment management system, establish and maintain a Human Rights and Environment due diligence process appropriate to its size and business and/or risk profile, identify, prevent and mitigate Human Rights and Environment risks and to address adverse Human Rights and Environment impacts in its own business area and in the supply chain. The Supplier shall implement obligations corresponding to those contained in the present section on Human Rights and the Environment along its supply chain and encourage its subcontractors to comply with them. ;

20.1.2 identify, assess, treat and report on potential or actual adverse impact of its activities on Human Rights and Environment;

20.1.3 fully cooperate with and support Fresenius Kabi in its efforts to secure the respect for Human Rights and Environment along its supply chain and provide its employees with an opportunity to make a complaint concerning potential or actual adverse impacts on Human Rights and Environment and allow them to have access to Fresenius Kabi's Compliance Hotline without retaliation or threat thereof.

20.2 In the event of actual or potential violations of Human Rights and Environment, within its own business or in its supply chain, the Supplier shall inform Fresenius Kabi of adverse impacts on Human Rights and Environment and of the appropriate steps taken to address, end and mitigate the root causes of violations. If the Supplier has not prevented or eliminated the aforementioned risks and violations within a reasonable time, Fresenius Kabi may offer its support in the development and implementation of an action plan at the Supplier to eliminate the risks and violations of Human Rights and Environment. If, in Fresenius Kabi's sole determination, the Supplier's efforts to end, prevent and/or mitigate violations of Human Rights and Environment appear to be continually ineffective and inappropriate, Fresenius Kabi may, until the violations are redressed, temporarily suspend this Agreement. In case of severe adverse impacts on Human Rights and the Environment and the failure of the Supplier to address them adequately and to implement appropriate steps within a reasonable time, Fresenius Kabi may terminate the Agreement. In case of serious violations of Human Rights and Environment and/or severe actual adverse impacts, the Supplier's lack of preparedness to address them adequately and implement appropriate steps, Fresenius Kabi may terminate all business relationships between the Parties with immediate effect. A severe breach and/or severe adverse impact means an adverse environmental impact or an adverse human rights impact that is especially significant by its nature or affects a large number of persons or a large area of the environment, or which is irreversible, or is particularly difficult to remedy as a result of the measures necessary to restore the situation prevailing prior to the impact.

20.3 The Supplier shall upon request based on a reasonable suspicion provide Fresenius Kabi with information on individual cases relating to adverse impacts on Human Rights and Environment, including but not limited to, information on its business activities, social welfare issues and environmental issues. To verify the Supplier's compliance with this clause, Fresenius Kabi may request and obtain from the Supplier information on its actual or potential adverse impacts on Human Rights and Environment in order to establish a common understanding of the identified risks and to use such information as a basis for further aligned actions. To identify actual or potential adverse impacts or to assess the effectiveness of implemented measures, Fresenius Kabi may (at its own expense) audit the Supplier's compliance with Human Rights and Environment as defined in this clause. Fresenius Kabi shall give to Supplier reasonable advance notice of intended audits. In case of substantiated knowledge of potential or actual severe adverse impacts on Human Rights and Environment, Fresenius Kabi may carry out audits without prior notice. The Supplier shall fully cooperate with and provide conclusive documentation to Fresenius Kabi and any of its authorised affiliates or any auditor acting on Fresenius Kabi's behalf with regard to the subject of audit.

20.4 Should Fresenius Kabi be notified of a claim made by a third party or authority action in relation to an actual or potential violation of Human Rights and Environment in connection with the Supplier's business activities (**Third-Party Claims**), the Supplier shall, at its own costs, defend, indemnify and hold Fresenius and its Affiliates, and their respective officers, statutory representatives and employees harmless from and against all such Third-Party Claims.

21. THIRD PARTY RIGHTS

21.1 A person who is not a party to this Agreement is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999. If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms, the parties may rescind or vary this Agreement without the consent of that person.

22. GENERAL

22.1 **Notices:** Any notice given under this Agreement shall be in writing served by hand, prepaid first class recorded delivery, or first class registered post, marked for the attention of the person and sent to the address set out in the Order, and, in the case of Fresenius Kabi, copied to Legal Counsel at the registered office. Notices served by hand shall be deemed to have been received immediately if during business hours, and at the start of the next business hour if not. Notices sent by recorded delivery or post shall be deemed to have been received the second business day after posting. For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by email.

22.2 **Waiver:** A waiver of any right or remedy under this Agreement is only effective if it is in writing and it shall apply only to the party to whom the waiver is addressed and the circumstances for which it is given.

- 22.3 **Cumulative Rights:** The rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of and may be exercised without prejudice to any other rights or remedies provided in this Agreement, by law, equity or otherwise. Except as expressly stated in this Agreement (or in law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised wholly or partially from time to time.
- 22.4 **Further Assurance:** Each party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other party to implement and give full effect to the terms of this Agreement.
- 22.5 **No Partnership or Agency:** Each party is an independent contractor and neither is the agent of the other and nothing in this Agreement shall create or be deemed to create a partnership, joint venture or principal-agent relationship between the Supplier and Fresenius Kabi and neither party shall have authority to act in the name of or bind the other in any way.
- 22.6 **Severability:** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable then the remaining provisions shall remain in full force and effect. If it is held by a court or administrative body of competent jurisdiction that any provision in this Agreement is illegal, invalid or unenforceable, in whole or in part, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the commercial intention of the original provision.
- 22.7 **Entire Agreement:** This Agreement represents the entire agreement and understanding of the parties, and supersedes and extinguishes all proposals, previous agreements, understandings and negotiations between the parties in respect of the subject matter hereof and shall apply to the exclusion of all other standard conditions of supply or purchase, whether written, oral, express or implied which either party may purport to apply or which are endorsed upon any correspondence or documents issued by either party irrespective of their date of communication. In entering into this Agreement, the Supplier has not relied on any statement, representation, warranty, understanding, promise or assurance of any person, other than as expressly set out in this Agreement. The Supplier waives all rights and remedies which, but for this clause 22.7, it might otherwise have had in relation to any of the foregoing. Nothing in this clause shall limit or exclude any liability for fraud, fraudulent misrepresentation or fraudulent misstatement.
- 22.8 **Governing Law and Jurisdiction:** This Agreement and any non-contractual obligations arising out of or in connection with it and them or its subject matter shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales to settle any claim or dispute that arises from or in connection with this Agreement or its subject matter.