



AstraZeneca UK Limited

**General Conditions of Contract
AZ 1-06b**

CONSULTANT APPOINTMENT

This Document Comprises 25 Pages

Issued on behalf of AstraZeneca UK Limited by:

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1. Definitions and Interpretation

1(1) For the purposes of the Contract (as defined in this sub-clause 1(1) the following words and expressions shall, unless the context otherwise requires, have the following meanings:

- (a) “Adjudicator” means any person or persons from time to time appointed to act as an adjudicator in accordance with the procedures for appointing an adjudicator set out in paragraphs 3.1 to 3.5 of the Institution of Civil Engineers’ Adjudication Procedure (1997), or any amendment or modification thereof being current at the time of the appointment, in connection with a dispute arising under the Contract.
- (b) “CDM Regulations” means the Construction (Design and Management) Regulations 1994.
- (c) “Construction Industry Scheme” means the scheme for the taxation of sub-contractors in the construction industry in the United Kingdom pursuant to sections 559 to 567 of the Income and Corporation Taxes Act 1988 and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 S.I. No. 743, as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 S.I. No. 2622 or any statutory re-enactment or amendment to the same that is made from time to time.
- (d) “Contract” means the legally binding agreement entered into by the Employer and the Consultant comprising the Contract Agreement and the documents listed therein, or, where a Contract Agreement has not been executed by the parties, the Purchase Order and the documents listed therein. In the event of a discrepancy between the documents listed in the Contract Agreement or, where applicable, the Purchase Order, the said documents shall take precedence in the order in which they are listed.
- (e) “Contract Agreement” means, where applicable, the document of that name executed by both the Employer and the Consultant and forming part of the Contract.
- (f) “Consultant” means the person, firm or company so named in the Contract.
- (g) “Employer” means the company so named in the Contract, its successors in title and, subject to sub-clause 5(1), its assigns.
- (h) “Engineer” means the person named in the Contract Agreement, or, where no Contract Agreement has been executed by the parties, named

elsewhere in the Contract, or such other person so appointed from time to time by the Employer and notified in writing to the Consultant to act as the Engineer for the purposes of the Contract.

- (i) “Engineer’s Representative” means a person named in the Contract Agreement, or, where no Contract Agreement has been executed by the parties, named elsewhere in the Contract, or notified as such from time to time as being authorised to perform any or all of the duties permitted by sub-clause 2(2).
- (j) “Force Majeure” means acts of God such as earthquake, storm, tempest, lightning and/or flood; acts of government or state; war, civil war, riot, civil commotion and/or insurrection; fire, explosion, protestor action and/or any other prevention from or material hindrance in obtaining essential raw materials, energy or other supplies; labour dispute (other than one solely confined to the Consultant’s own employees, servants, agents and/or sub-contractors); and/or any other reason or cause entirely beyond the control or influence of either party and which does not arise out of particular circumstances which are or should have been in the contemplation of the party relying upon the event of Force Majeure at the time of entering into the Contract. Shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.
- (k) “Group Company” means in relation to the Employer, another body corporate which is a Subsidiary of or a Holding Company of the Employer.
- (l) “Holding Company” and “Subsidiary” shall have the meanings ascribed to those expressions by Section 736 of the Companies Act 1985 (as amended) save that the condition in Section 736(1)(a) shall be deemed to be satisfied if that other company holds more than one quarter of the voting rights in it.
- (m) “Period for Completion” means the period of time agreed by the Employer and the Consultant for the carrying out of the Services, subject to revision in accordance with sub-clause 3(5) or Clause 9.
- (n) “Programme” means the programme to be devised and produced by the Consultant under Clause 9 of these conditions and any subsequent refinements, revisions, modifications and/or additions thereto as may from time to time be proposed or approved in writing by the Employer or the Engineer.

- (o) "Project Data" means any and all documents, designs, calculations, programmes, models, data and/or information, in whatever form or format, relating to or in any way touching upon the Works and/or Services.
- (p) "Purchase Order" means the document of that name issued by the Employer to the Consultant and forming part of the Contract.
- (q) "Scope of Services" means the document or documents describing the nature, scope and extent of the Works, the Services and the Employer's requirements in relation thereto and any refinements, revisions, modifications and/or additions thereto as may from time to time be proposed or approved in writing by the Employer or the Engineer.
- (r) "Services" means the services, duties and obligations which are to be performed and/or provided by the Consultant in relation to or in connection with the Works as set out in the Scope of Services and elsewhere in the Contract together with all other necessary ancillary services, duties and/or obligations reasonably to be inferred from the requirements of the Scope of Services and the Contract and such other additional services as may be agreed between the Employer or the Engineer and the Consultant from time to time.
- (s) "Site" means the area of land, buildings and other places provided by the Employer for the purposes of the Contract on, under, in or through which the Works and Services are to be executed or relate and any other land, buildings or places provided by the Employer for the purpose of the Works and/or the Services.
- (t) "Staged Completion" means the completion of specified elements of the Services by agreed dates during the Period for Completion, subject to revision in accordance with sub-clause 3(5) or Clause 9.
- (u) "Works" means the works described in the Scope of Services in relation to which the Consultant is to provide the Services including (inter alia) all temporary and permanent building and engineering works, plant, controls and interfaces, testing and commissioning procedures and consumables of every kind required in or about the construction, installation, completion, testing and commissioning of the Works, and any refinements, revisions, modifications and/or additions thereto as may from time to time be proposed or approved in writing by the Employer or Engineer.

- 1(2) Words importing the singular also include the plural and vice versa where the context requires.
- 1(3) "Person" includes firms, companies and any other entities having legal capacity in English Law .
- 1(4) Any term importing gender shall include any other gender.
- 1(5) Any reference to a Clause, sub-clause, part, schedule or appendix is, unless stated to the contrary, a reference to a clause, sub-clause, part, schedule or appendix of or to this Contract.
- 1(6) The headings in these conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof or of the Contract.

2. Engineer and Engineer's Representative

- 2(1) The Engineer is authorised to issue instructions, approve proposals, make decisions and issue certificates on behalf of the Employer in respect of the performance and/or provision of the Consultant's services, duties and obligations under the Contract.
- 2(2) The Engineer may, by notice in writing to the Consultant, delegate to any Engineer's Representative any of the duties and authorities vested in the Engineer except for any decision to be taken or certificate to be issued in respect of Clauses 11 and 13. Any instruction or approval in writing given by an Engineer's Representative to the Consultant within the terms of any such delegation (but not otherwise) shall bind the Consultant and the Employer as though it had been given by the Engineer provided that the Engineer's Representative shall have no authority:
 - (a) to relieve the Consultant of any of his duties or obligations under the Contract;
nor, except as expressly provided hereunder;
 - (b) to order any work involving a later than previously agreed completion date or any extra payment by the Employer; or
 - (c) to make any variation of, or in or addition to, the Servicesand the Consultant shall not be bound in such circumstances. If the Consultant acts on any instruction or approval given by the Engineer's Representative without evidence of the Engineer's Representative having delegated powers in respect of the subject matter of the instruction or approval, the Consultant so relies at its own risk and the Employer shall not be liable for any additional cost or delay suffered by the Consultant or caused to the Services in the event that the

Engineer's Representative does not have power to issue instructions or approvals in respect of that subject matter.

- 2(3) No approvals, comments, instructions, decisions, consents or advice from the Employer, Engineer or Engineer's Representative nor any enquiry or inspection which the Employer, Engineer or Engineer's Representative may make or have carried out for its benefit or on its behalf shall in any way reduce or extinguish the Consultant's obligations and liabilities under the Contract.

3. Responsibilities of the Consultant

- 3(1) The Consultant will perform and/or provide the Services in accordance with the requirements of the Contract and the instructions of the Engineer. In so doing, the Consultant warrants to the Employer that it has exercised and will continue to exercise in the performance/provision of the Services under the Contract all the skill, care and diligence to be expected of a properly qualified and competent consultant experienced in carrying out such services in relation to projects of similar scope, nature and complexity to the Works and that the Services can and will be completed in accordance with the Programme.
- 3(2) So far as the Consultant has already performed or partly performed any of the Services it warrants that:
- (a) it has performed such Services in accordance with the standards of skill, care and diligence stipulated in sub-clause 3(1) above and in compliance with all other warranties, undertakings and all other terms and conditions set out in the Contract; and
 - (b) it will complete the performance of any part performed Services in due time in accordance with the Contract. Any payments made hitherto by the Employer to the Consultant in connection with the Services shall be treated as payments on account of the sums due to the Consultant under Clause 11.
- 3(3) The Consultant shall satisfy itself that the information provided by the Employer and/or Engineer whether contained within the Contract, Project Data or otherwise provided by the Employer or Engineer, is accurate and sufficient and will not prejudice the performance of any of the Consultant's obligations under the Contract. The Consultant shall inform the Engineer immediately of any inaccuracy, discrepancy or insufficiency in such information and the Engineer shall reconcile such inaccuracy or discrepancy and/or provide further information/data to the reasonable satisfaction of the Consultant within a

- reasonable time of being requested so to do. The Consultant shall not be entitled to any extension of time or additional payment in respect of such clarification.
- 3(4) The Consultant shall as soon as reasonably possible comply with and adhere strictly to any and all instructions given by the Engineer on any matter relating to or connected with the performance/provision of the Services whether or not expressly referred to or pre-envisaged in the Contract. Instructions may be given verbally or in writing but verbal instructions must be confirmed within 14 days. In the event that a verbal instruction is not so confirmed the Consultant shall write to the Engineer within 7 days of the expiry of the 14 day period requesting confirmation in writing of the verbal instruction. The Engineer shall confirm the instruction in writing within 7 days of receipt of the Consultant's notice and in the event that the Engineer does not so confirm the instruction, it shall be of no effect.
- 3(5) If in the reasonable opinion of the Consultant, any instruction of the Engineer or any Engineer's Representative may prevent or prejudice the Consultant from or in fulfilling any of the Consultant's obligations under the Contract, it shall so notify the Engineer in writing as soon as reasonably possible (stating fully the nature and grounds for the Consultant's concerns) and the Consultant and the Engineer shall meet within 14 days in order to try and resolve such matter. Any agreement reached is to be confirmed in writing by the Engineer within 5 working days of such agreement. Failing agreement, the Engineer shall be entitled to confirm or amend his instruction as he sees fit and the Consultant shall, in so far as he is able, comply with such confirmed and/or amended instruction, provided always that the Consultant shall not be held responsible for any defect, deficiency or default resulting from such compliance to the extent that the Consultant's objections to the instruction are subsequently upheld as having been justified and reasonable and the Consultant did everything within its power to mitigate against the adverse effects warned of by the Consultant.
- 3(6) The Consultant shall not without the Engineer's prior written consent approve quality standards or finishes or any material change in the Works or initiate, approve or do anything which would or might reasonably be expected to materially increase the costs of the Works or which would or might reasonably be expected to affect the scheduled completion date for the Works or any part or parts of the Works or the size, quality, function, performance, life cycle, design life and/or maintenance of the Works or any part or parts thereof.
- 3(7) The Consultant shall be fully responsible for all design work undertaken by specialist consultants, contractors or suppliers ("Sub-Contractors") engaged by

the Consultant to carry out any part or parts of the Services. The Consultant shall not sub-contract any part or parts of the Services without the prior written consent of the Engineer.

- 3(8) The Consultant shall ascertain and conform in all respects with the provisions of any general or local Act of Parliament and the Regulations and Bye-laws of any local or other statutory authority which may be applicable to the Services or the Works and with such rules and regulations of public bodies and companies as aforesaid. Provided always that if the Contract or instructions of the Engineer shall at any time be found not to be in conformity with any such Act, Regulation or Bye-law the Engineer shall issue such instructions as may be necessary to ensure conformity with such Act, Regulation or Bye-law.
- 3(9) Unless otherwise stated in the Contract, the Consultant shall not be responsible for obtaining any planning permission which may be necessary in respect of the Works.
- 3(10) The Consultant warrants that it has discharged, and will continue to discharge, the obligations of a designer in compliance with Regulation 13 of the CDM Regulations. If expressly required in the Contract, (but not otherwise), the Consultant is appointed as the Planning Supervisor for the purposes of the CDM Regulations. If so appointed, the Consultant further warrants that it is competent to fulfil this role and will devote adequate resources to discharging its obligations as Planning Supervisor.
- 3(11) The Consultant shall co-operate with the Employer's other consultants (where appointed) and ensure that its work is properly co-ordinated with theirs. Further, the Consultant shall provide/perform the Services so as not to put the Employer in breach of any other agreement which relates to the Works.

4. Project Data

- 4(1) The property and copyright in Project Data provided by or on behalf of the Employer to the Consultant shall remain with the Employer and the Consultant is only permitted to make at its own expense such copies as it may require for the purposes of performing /providing the Services under the Contract.
- 4(2) The Consultant as beneficial owner hereby grants to the Employer an irrevocable, royalty-free, non-exclusive licence to copy and use the Project Data whether in hard copy versions or held or stored on electronic media, which are produced by, or on behalf of, the Consultant in the course of performing its obligations under the Contract, for any purpose whatsoever connected with the Works or any part of the Works. The copyright licence shall include the right to reproduce the

designs contained in the Project Data and the purposes for which the Project Data may be used shall include, but not be limited to, the design, construction, installation, completion, testing, commissioning, use, operation, maintenance, dismantling, reconstruction, replacement, repair, alteration, adjustment, modification, extension, demolition, disposal, advertisement and/or sale of the Works or any part of the Works. The Employer shall have the right to grant sub-licences in the same terms as this licence and to transfer the licence to third parties without requiring the consent of the Consultant. The Consultant hereby undertakes to procure the necessary rights from any Sub-Contractor to give effect to this sub-clause 4(2). The Consultant will not be liable for any use of the Project Data prepared or provided by the Consultant for any purpose other than that for which it was originally prepared and such other uses as are reasonably foreseeable unless the Consultant authorises such use and confirms that the Project Data is suitable for such use.

- 4(3) The Consultant shall prepare or provide all Project Data in the form and format specified by the Engineer and shall provide copies to the Engineer on demand of any and all Project Data requested by the Engineer and in any event on completion or earlier termination of the Contract.
- 4(4) Where required by the Scope of Services or by the Engineer the Consultant shall submit Project Data to the Engineer for approval in accordance with the Programme or where the Programme does not specify a date or dates for submission as soon as reasonably practicable.
- 4(5) If in the opinion of the Engineer any Project Data prepared or provided by the Consultant does not comply with the requirements of the Scope of Services or with any other provision of the Contract he shall so inform the Consultant in writing giving his reasons and may withhold his approval thereof until the Consultant has re-submitted the Project Data in the required form with appropriate modifications.
- 4(6) The Consultant shall immediately notify the Engineer if it later wishes to modify any design which the Engineer has previously approved and shall submit the modified design or drawing to the Engineer for consideration and approval.
- 4(7) Should the Engineer fail within a reasonable period following the submission or re-submission of any Project Data under this Clause 4 to notify the Consultant either that he approves the data or that he is withholding his approval, the Engineer shall take such delay into account when determining any revision of the Programme under Clause 9.

- 4(8) The Consultant shall be responsible for the sufficiency of and any discrepancies (including errors and inaccuracies) in the Project Data supplied by it whether or not such Project Data has been approved by the Engineer under this Clause 4 and the Consultant shall make good any deficiencies and/or rectify such discrepancies as soon as possible at its own expense.
- 4(9) The Consultant shall provide for the safe storage of the Project Data in its possession and protect the same against loss or damage. The Consultant shall indemnify the Employer against all demands, damages, costs, charges and expenses arising in connection with any claims against the Employer for any such loss or damage.

5. Assignment

- 5(1) The Employer shall be entitled to assign the benefit of the Contract to another Group Company without the consent of the Consultant.
- 5(2) The Consultant shall not assign or charge or purport to assign or charge the Contract or any part or parts thereof or any benefit or interest therein or thereunder without the prior written consent of the Employer.
- 5(3) This Contract is for the sole benefit of the parties to the Contract. Terms which make reference to third parties are not to be construed as terms purporting to confer a benefit upon such third parties. It is not the intention of the parties to this Contract that any term hereof should be enforceable by anyone other than the parties to the Contract.

6. Intellectual Property Rights

- 6(1) The Consultant shall indemnify the Employer against any claims for or in respect of infringement of any patent, registered design, trademark, copyright or any other intellectual property rights arising out of or in connection with the Services or the use by the Employer, pursuant to the copyright licence granted by sub-clause 4(2), of Project Data prepared and/or provided by the Consultant and against all costs, losses, damages and expenses which the Employer may incur in any action or threatened action for such infringement or settlement thereof or for which the Employer may become liable in any such action provided that this indemnity will not apply where the infringement arises as a result of and in relation to any Project Data provided by the Employer in circumstances where the Consultant has properly discharged its duty to warn under sub-clause 3(3).
- 6(2) Any inventions made or created by the Consultant or by its employees in the performance of the Services shall belong to the Employer absolutely. The

Consultant shall give or procure the giving of such assistance including the execution of all necessary documents to procure the vesting of any patent (or right to apply for the same) for such inventions in the Employer as absolute owner.

7. Personnel

- 7(1) The Consultant shall, within 14 days of being awarded the Contract, confirm to the Engineer in writing the names and roles of the personnel it proposes assigning to the Contract in connection with the performance/provision of the Services. The Engineer will advise the Consultant of any objections which the Employer has to the Consultant's proposals and shall meet as necessary with the Consultant to resolve any differences. The Consultant shall not assign to the Contract or employ in the performance/provision of the Services any person not previously notified to and approved by the Employer. Once the names and roles of the personnel are agreed the Consultant shall not change or re-assign the personnel or their roles and shall not assign to the Contract or employ in or about the performance/provision of the Services any other persons without the prior written approval of the Engineer. In any event, the Consultant will provide all staff necessary to properly fulfil its duties under the Contract. If the Engineer considers that the Consultant is at any time providing insufficient staff, the Engineer may notify it of the fact and the Consultant will comply with the Engineer's reasonable instructions regarding the matter.
- 7(2) The Consultant shall ensure that its personnel shall comply with all applicable rules and regulations when visiting the Site and any and all other parts of the Employer's premises.
- 7(3) The Consultant will only employ agency personnel in connection with the Services with the prior written consent of the Engineer.
- 7(4) The Engineer shall have the right at any time to require the removal of any person employed by the Consultant in connection with the Services and for an immediate replacement to be provided.

8. Confidentiality

- 8(1) The Project Data together with all other information in whatsoever form relating to the Services or the Works or to the Employer's business which comes into the Consultant's possession (the "Information") shall be regarded as secret and confidential and shall not be disclosed by the Consultant except to the extent that it becomes necessary to furnish Information to others solely for the purpose of

carrying out of the Services. The Consultant shall impose the same obligations of secrecy and confidentiality upon any third party to whom the Information is passed. These obligations will continue in full force and effect notwithstanding the termination of the Contract or the Consultant's employment under it, but shall not in any event apply to any part of the Information which the Consultant can show:

- (a) was already in the Consultant's possession prior to its disclosure by the Employer; or
 - (b) was lawfully acquired by the Consultant at any time from a third party who holds such information free of any obligation of confidentiality; or
 - (c) is or comes into the public domain otherwise than through the fault of the Consultant.
- 8(2) The Consultant and its agents, servants and workmen shall keep secret and shall not disclose to any third party (except Sub-Contractors accepting like obligations as to secrecy and then only to the extent necessary for the performance of the sub-contract in question) any matters relating to the existence or to the performance, variation, cancellation or termination of the Contract (either actual or projected) except with the prior written consent of the Employer.
- 8(3) The Consultant shall not take photographs nor make films or video recordings of the Works or any section or part thereof or of any property of the Employer without the prior written consent of the Engineer.
- 8(4) The Consultant shall not display any advertisement on the Site or elsewhere in connection with the Services or the Works without the prior written approval of the Engineer.
- 8(5) The Consultant shall do everything necessary to comply with its obligations under this Clause 8 and if required by the Employer the Consultant and its individual personnel shall sign a confidentiality agreement approved by the Employer.

9. Programme

- 9(1) Within 21 days after the award of the Contract the Consultant shall submit to the Engineer for his consideration and approval a Programme showing the order in which it proposes to carry out the various elements of the Services and the time required for each in order to achieve completion of the Services, including any Staged Completion of the Services, within the Period for Completion. Should the Engineer reject any Programme under sub-clause 9(2) below the Consultant shall within 21 days of such rejection submit a revised Programme taking due cognisance of the Engineer's grounds for rejection.

- 9(2) The Engineer shall within 21 days after receipt of the Consultant's Programme:
- (a) consider and approve the Programme in writing; or
 - (b) reject the Programme in writing with reasons; or
 - (c) request the Consultant to supply further information to clarify or substantiate the Programme or to satisfy the Engineer as to its reasonableness having regard to the Consultant's obligations under the Contract.

Provided that if none of the above actions are taken within the said period of 21 days the Engineer shall be deemed to have approved the Programme as submitted.

- 9(3) The Consultant shall within 21 days after receiving from the Engineer any request under sub-clause 9(2)(c), or within such further period as the Engineer may allow, provide the further information requested failing which the relevant Programme shall be deemed to be rejected. Upon receipt of such further information the Engineer shall within a further 21 days approve or reject the Programme in accordance with sub-clauses 9(2)(a) and 9(2)(b).

- 9(4) The Consultant shall on a monthly basis (commencing one month from the date of the Contract) provide the Engineer with all necessary information to enable the Engineer to assess the actual progress of the Services against the approved Programme. Should it appear to the Engineer at any time that the actual progress of the Services does not conform with the Programme approved pursuant to this Clause 9, the Engineer shall be entitled to require the Consultant to produce a revised Programme showing such modifications to the original Programme as may be necessary to ensure completion of the Services or any Staged Completion of the Services within the Period for Completion or any agreed revised Period for Completion. In such event the Consultant shall submit its revised Programme within 21 days or within such further period as the Engineer shall allow. Thereafter the provisions of sub-clauses 9(2) and 9(3) shall apply to the revised Programme in the same way as to the original Programme.

10. Indemnity and Insurance

- 10(1) The Consultant shall indemnify and keep indemnified the Employer against any and all losses and claims in respect of :
- (a) death or other injury to any person or;
 - (b) loss of or damage to any property (other than the Works) which may arise out of or in consequence of the carrying out of the Services and against all claims, demands, proceedings, damages, costs, charges and

expenses whatsoever in respect thereof or in relation thereto provided that the Consultant's liability under this sub-clause 10(1) shall not exceed £2,000,000 (two million pounds) for any one occurrence or series of occurrences arising from the same event.

- 10(2) The Consultant shall have in force and shall require any Sub-Contractor employed by it to have in force, the following insurances at all times:
- (a) Insurance against the liabilities set out in sub-clause 10(1).
 - (b) Employer's liability insurance required pursuant to the Employer's Liability/Compulsory Insurance Act 1969 or any statutory amendment or re-enactment thereof in force from time to time.
- 10(3) The Consultant shall use its best endeavours to maintain, with reputable insurers carrying on business in the United Kingdom, from the date hereof and for a period expiring no earlier than twelve years after the date of the Contract, design indemnity insurance in the amount of £2,000,000 (two million pounds) for each and every claim arising out of any one event in respect of any negligence omission or default on the part of the Consultant provided that such insurance is generally available to consultants carrying out work of a similar nature to the Services. The Consultant shall notify the Employer in writing from time to time of any change in its professional indemnity insurance arrangements.
- 10(4) Upon request, the Consultant shall provide satisfactory evidence to the Employer that the insurances required under the Contract have been effected and shall, of so required, produce the insurance policies for inspection.

11. Payment

- 11(1) The Consultant's remuneration shall be calculated either on the basis of:
- (a) the fixed prices for specific work stages; or
 - (b) the hourly rates
- set out elsewhere in the Contract, or a combination of the two or other bases of remuneration, if so agreed. Where no such basis is set out elsewhere in the Contract, the Consultant shall be remunerated on the basis of a fair and reasonable hourly rate having regard to any previous course of dealings between the parties and/or rates quoted by the Consultant and other consultants periodically employed by the Employer.
- 11(2) The Consultant shall each month (on or before such date as the Engineer may direct) submit a statement (in such form as the Engineer may direct) confirming (depending upon the basis of remuneration agreed with the Consultant and

whether the agreed fixed prices (if any) are conditional upon completion of the work stages to which they relate):

- (a) the work stage or stages completed; or
- (b) the proportion of work stage or stages completed; or
- (c) time spent in the performance/provision of the Services;

since the previous statement (or in the case of the first such monthly statement, the date of commencement of the Services) and the amount claimed in respect thereof, together with such supporting documentation as the Engineer may reasonably require in order to assess the Consultant's entitlement to payment.

- 11(3) Within 14 days of the date of delivery of the Consultant's monthly statement to the Engineer in accordance with sub-clause 11(2) the Engineer shall certify as the amount due to the Consultant (after deducting any previous payments on account) the amount which in the opinion of the Engineer on the basis of the monthly statement and the payment method set out in the Contract is due to the Consultant.
- 11(4) The Consultant shall submit a VAT invoice dated no earlier than the end of the month in which the monthly statement was submitted and which agrees in all respects with the Engineer's certificate. Payments to the Consultant become due on certification. It is agreed by the parties that the final date for payment shall be whichever is the latest of the following:
- (a) the first working day after the end of the month following the month in which the Consultant's invoice is dated; or
 - (b) 14 days after the requirements of the Construction Industry Scheme (where applicable) have been complied with by the Consultant to the satisfaction of the Employer.
- 11(5) The Engineer shall certify when the Services have been completed. The Engineer and the Consultant shall within three months of completion of the Contract as certified by the Engineer prepare a final valuation for the provision of the Services. Within one month following the preparation of that valuation the Engineer shall issue a certificate stating the amount which in his opinion is due under the Contract as a final payment to the Consultant (after giving credit to the Employer for all amounts previously paid by the Employer and for all sums which the Employer is entitled under the Contract) and the balance (if any) due from the Employer to the Consultant or from the Consultant to the Employer as the case may be.
- 11(6) All payments to be made under sub-clause 11(5) shall become due on certification. In the event of any balance owing from the Consultant to the

Employer the final date for payment by the Consultant shall be the first working day after the end of the month following the month in which the Engineer's certificate is dated. In the event of any balance owing from the Employer to the Consultant, then the Consultant shall submit a VAT invoice which agrees in all respects with the Engineer's certificate and it is agreed by the parties that the final date for payment by the Employer shall be whichever is the latest of the following:

- (a) the first working day after the end of the month following the month in which the Consultant's invoice is dated; or
 - (b) 14 days after the requirements of the Construction Industry Scheme (where applicable) have been complied with by the Consultant to the satisfaction of the Employer.
- 11(7) The Consultant shall provide free access for the Engineer's auditors to validate any payments made in accordance with this Clause 11.
- 11(8) Every certificate issued by the Engineer pursuant to this Clause 11 shall be sent to the Employer and on the Employer's behalf to the Consultant. By this certificate the Employer shall give notice to the Consultant specifying the amount (if any) of the payment proposed to be made and the basis on which it was calculated.
- 11(9) Where a payment under this Clause 11 is to differ from that certified or the Employer is to withhold payment after the final date for payment of the sum due under the Contract, the Employer shall notify the Consultant in writing not less than one day before the final date for payment specifying the amount proposed to be withheld and the ground for withholding the payment or if there is more than one ground each ground and the amount attributable to it.
- 11(10) If, in complying with its obligations in respect of instructions under sub-clause 3(4) or any other matter arising under the Contract, the Consultant reasonably considers that it will incur additional costs due to such instructions or matters it shall immediately notify the Engineer in writing. If the Engineer agrees with the Consultant's opinion, he shall request the Consultant to provide a statement of the additional costs together with such supporting documentation as the Engineer shall reasonably require. The Consultant's statement shall be valued and paid in accordance with sub-clauses 11(1) to 11(4) inclusive provided that the Consultant will have no right to payment under this sub-clause 11(10) if the instruction or other matter was necessary due to the act, default or omission of the Consultant, any Sub-Contractor, its servants or agents.

12. Force Majeure

- 12(1) Neither party shall be liable for any failure to perform its duties, obligations and/or responsibilities hereunder or any failure to provide the other party with the opportunity to comply with its duties, obligations and/or responsibilities hereunder if and to the extent that such failure arises as a direct and unavoidable consequence of Force Majeure. For the avoidance of any doubt, any matter covered by Clause 14 is not an event of Force Majeure.
- 12(2) In the event that either party seeks to rely upon the relief granted by sub-clause 12(1), it shall submit to the other party written notice of the happening of the event of Force Majeure together with reasonable proof of the nature of the event and of its effect upon the performance of the party's obligations under the Contract.
- 12(3) The parties shall use all reasonable endeavours to prevent and mitigate the effects of any delay occasioned by, or other consequence of, any event of Force Majeure.
- 12(4) Should one event of Force Majeure last continuously for more than 3 months then the parties shall endeavour to agree any modifications to the Contract which may be equitable having regard to the nature of the event.
- 12(5) If the parties have failed to reach agreement as described in sub-clause 12(4) within 6 months of the commencement of the event in question, either party may at any time thereafter, and provided the event still subsists, by notice to the other terminate the Contract. The provisions of Clause 13 shall apply to such termination.

13. Suspension and Termination

- 13(1) The Employer may, in addition to any other rights and remedies which it may have, by notice in writing at any time forthwith terminate the Consultant's employment under the Contract.
- 13(2) If the Employer is in material and persistent breach of its obligations under the Contract and shall fail to remedy the same after receiving a 30 day notice from the Consultant specifying the breach and requiring its remedy then the Consultant shall be entitled forthwith by written notice to terminate its employment under the Contract.
- 13(3) If the Consultant becomes insolvent or makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction), the Employer may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to

the Consultant or any person in whom the Contract may have become vested. For the purposes of the Contract, any termination under this sub-clause 13(3) shall be deemed to be a breach by the Consultant of its obligations under the Contract.

- 13(4) The Employer may by notice in writing suspend all or any of the Consultant's duties or obligations under the Contract. If the Employer has not, within 6 (six) months of the notice, requested the Consultant to resume performance of the duties or obligations suspended the Consultant may serve 30 days' notice on the Employer requiring it to end the suspension. If the Employer does not notify the Consultant within the 30 day period that the suspension is ended the Consultant may forthwith by written notice to the Employer terminate its employment under the Contract.
- 13(5) Upon any termination under sub-clause 12(5) or this Clause 13 and subject to any set-off or deduction which the Employer may be entitled to make under sub-clause 13(6), the Employer shall, in accordance with Clause 11, pay any sums to the Consultant which have accrued due prior to the date of such termination, together with a fair and reasonable proportion of the next following instalment of payment for the Services which the Consultant has properly performed up to the date of such termination, less any amounts previously paid by the Employer to the Consultant. The Consultant shall not be entitled to any further sums in respect of loss of anticipated profit or otherwise.
- 13(6) Where the Consultant's employment under the Contract has been terminated under this Clause 13 due to a breach by the Consultant of its obligations under the Contract the Employer may itself complete the Services or arrange for their completion by a third party and no further payments shall become due to the Consultant until the Services have been completed in accordance with the requirements of the Contract. The Employer shall be entitled to set off or deduct from monies due to the Consultant any additional costs with respect to completion of the Services incurred by the Employer, provided the Employer gives notice in accordance with sub-clause 11(9) and the Engineer shall issue a certificate as to the amount of those costs. Payment shall become due on certification. The final date for payment of the sums due (if any) to the Consultant under this sub-clause 13(6) shall be 28 days following receipt from the Consultant of a VAT invoice which corresponds in all respects with the amount of the Engineer's certificate provided that if the total cost to the Employer exceeds the amount due to the Consultant, the balance shall be recoverable from the Consultant by the Employer as a debt.

- 13(7) Termination of the Consultant's employment under the Contract shall be without prejudice to the rights and remedies of either party in relation to any negligence, omission or default of the other prior to such termination and the continuing operation of sub-clauses 4(1), 4(2), 4(3), 4(9), 5(2), 6(1), 6(2), 8(1), 8(2), 8(3), 8(4), 8(5), 10(1), 10(2), 10(3), 13(6), 13(7), 13(8) and Clauses 14, 15, 16, 17 and 18.
- 13(8) Following any termination of the Consultant's employment under the Contract the Consultant shall:
- (a) immediately take all necessary steps to end the provision by it of the Services in a safe and orderly manner such steps to be taken with all reasonable speed and economy; and
 - (b) deliver to the Employer copies in such form as the Employer may reasonably require of all Project Data (whether in the course of preparation or completed) which the Consultant holds in connection with the Services and/or the Works together with the originals and any copies which the Consultant may hold of all Project Data prepared and/or provided to it by the Employer or by others in connection with the Services and/or the Works; and
 - (c) if requested by the Employer, immediately assign any contract with any Sub-Contractor to the Employer and take such steps as are necessary to enable a legal assignment to take place and effect.

14. Code of Conduct

- 14(1) Supplier recognises AstraZeneca's commitment to working only with suppliers who embrace standards of ethical behaviour that are consistent with AstraZeneca's *Code of Conduct* (<http://www.astrazeneca.com/responsibility>), as described in AstraZeneca's document *Responsible Procurement Supplier Expectation (v0.3May09)* (a part of the AstraZeneca Global Standard – Responsible Procurement).
- 14(2) Supplier represents and warrants and undertakes that it:
- (a) shall perform this Agreement and operate its business in compliance with all applicable laws and regulations;
 - (b) has received and read AstraZeneca's *Code of Conduct* and AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*; and

- (c) shall perform this Agreement and operate its business to ethical standards consistent with those set out in AstraZeneca's *Code of Conduct* and as described in AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*, and
 - (d) cause its suppliers and sub-contractors to operate their business in compliance with all applicable laws and regulations and in a manner consistent with AstraZeneca's *Responsible Procurement Supplier Expectation (v0.3May09)*.
- 14(3) In the event that Supplier fails to meet or maintain such ethical standards, the Parties shall agree upon what measures should be taken by Supplier to improve Supplier's performance (the "Improvement Plan"). If the Parties are unable to agree upon an Improvement Plan or Supplier does not implement the Improvement Plan within an agreed reasonable timescale (which shall in any event not be in excess of twelve (12) calendar months) AstraZeneca shall be entitled to terminate this Agreement with immediate effect, to be relieved of any obligations and to seek compensation from Supplier.
- 14(4) Supplier agrees that any material breach or violation by Supplier of the above representations, warranties and undertakings shall give AstraZeneca the right to terminate this Agreement according to Article [] *Term and Termination*.

15. Limitation of Liability

The Consultant shall not be liable to the Employer by reason of any breach of the Contract for:

- (1) any loss of production or of any contract that may be suffered by the Employer, or
- (2) any wastage, loss or contamination during its use in any plant of any process consumable which shall be deemed to include feed stocks, chemicals, bio-chemicals, catalysts and utilities; or
- (3) any loss or damage arising from any design or information which the Employer has specifically instructed the Consultant to use;

except to the extent that recoveries in respect thereof are obtainable under the insurances effected pursuant to sub-clauses 10(2) and 10(3).

16. Law

The construction validity and performance of the Contract shall be governed by the Law of England.

17. Notices

- 17(1) All notices and communications to be given or made under this Contract shall be given or made in writing and delivered either by hand, by post in a pre-paid letter, or by facsimile transmission confirmed by post in a pre-paid letter, addressed to the other party.
- 17(2) Notices to be given to the Employer by the Consultant shall be addressed to the AstraZeneca UK Engineering Purchasing Manager, Alderley House, Alderley Park, Macclesfield, Cheshire SK10 4TF. Other communications shall be addressed as for notices or to such other address as is from time to time specified by the Employer for the purpose of communications to the Employer and/or the Engineer.
- 17(3) Notices and communications to be given or made to the Consultant by the Employer or the Engineer shall be addressed as specified from time to time by the Consultant for the purpose.
- 17(4) The notices or other communications shall be deemed to be duly made or given on the day of delivery if delivered by hand, after two days for a letter or after four hours for a facsimile transmission, save that if a letter is returned as being undelivered within seven days of its despatch, or a facsimile is reported as being received in incomplete or illegible form within two hours of transmission during normal office hours, that notice or communication shall not be deemed to have been made.

18. Dispute Resolution

- 18(1) If, at any time:
- (a) The Consultant is dissatisfied with any act or instruction of the Engineer's Representative or any other person responsible to the Engineer; or
 - (b) The Employer or the Consultant is dissatisfied with any decision, opinion, instruction, direction, certificate or valuation of the Engineer or with any other matter arising under or in connection with the Contract or the carrying out of the Services,
- the matter of dissatisfaction shall, subject to the parties' rights under sub-clause 18(3), be referred to the Engineer who shall notify his written decision to the Employer and the Consultant within one month of the reference to him.
- 18(2) (a) Notwithstanding the existence of a dispute and unless the Contract has already been determined or abandoned, the Employer and the Consultant shall continue to perform their obligations.

- (b) The Employer and the Consultant shall give effect forthwith to every decision of:
 - (i) the Engineer on a matter of dissatisfaction given under sub-clause 18(1); and
 - (ii) the Adjudicator on a dispute given under sub-clause 18(3) unless and until that decision is revised by agreement of the Employer and Consultant or pursuant to this Clause 18.
- 18(3) (a) The Employer and the Consultant each has the right to refer a dispute as to a matter under the Contract for adjudication and either party may give notice in writing (hereinafter called the Notice of Adjudication) to the other at any time of its intention so to do. The adjudication shall be conducted in accordance with the Institution of Civil Engineers' Adjudication Procedure (1997) or any amendment or modification thereof being in force at the time of the said Notice.
 - (b) Unless the Adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
 - (c) The Adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
 - (d) The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
 - (e) The Adjudicator shall act impartially.
 - (f) The Adjudicator may take the initiative in ascertaining the facts and the law.
- 18(4) The decision of the Adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (to the extent that the Contract provides for arbitration or the parties otherwise agree to arbitration) or by agreement.
- 18(5) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the Adjudicator is similarly not liable.
- 18(6) (a) All disputes arising under or in connection with the Contract or the carrying out of the Services other than failure to give effect to a decision of an Adjudicator shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the "Notice to Refer") to refer the dispute to arbitration.

- (b) Where an Adjudicator has given a decision under sub-clause 18(3) in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision otherwise the Adjudicator's decision shall be final as well as binding.
- 18(7)
- (a) The arbitrator shall be a person appointed by agreement of the parties.
 - (b) If the parties fail to appoint an arbitrator within one month of either party serving on the other party a notice in writing (hereinafter called the "Notice to Concur") to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.
 - (c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.
 - (d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this Clause 18 the said functions shall be exercised on his behalf by a vice-president for the time being of the said Institution.
- 18(8)
- (a) Any reference to arbitration under this Clause 18 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the Institution of Civil Engineers' Arbitration Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. Such arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate or valuation of the Engineer or an adjudicator.
 - (b) Neither party shall be limited in the arbitration to the evidence or arguments put to the Engineer or to any Adjudicator pursuant to sub-clauses 18(1) or 18(3) respectively.
 - (c) The award of the arbitrator shall be binding on all parties.
 - (d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the Services and/or Works are not then complete or alleged to be complete.

- 18(9) No decision, opinion, instruction, direction, certificate or valuation given by the Engineer shall disqualify him from being called as a witness and giving evidence before an Adjudicator or arbitrator on any matter whatsoever relevant to the dispute.