

**FERA SCIENCE LIMITED****STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

These Terms and Conditions shall apply to all contracts for the supply of Goods and Services by Fera to the exclusion of all other terms and conditions, including any terms and conditions which Customer may purport to apply under any purchase order or similar document.

**1. DEFINITION AND INTERPRETATION**

The definitions and rules of interpretation contained in Schedule 1 (Definitions and Interpretation) shall apply to this Agreement.

**2. PERFORMANCE**

2.1 In consideration of receipt of the Price, Fera agrees to provide the Deliverables to Customer in accordance with the terms of this Agreement.

2.2 No order for the supply of Deliverables is binding on Fera unless it has been accepted in writing.

2.3 Nothing in the Agreement implies that Fera will provide the Deliverables or other goods and/or services to Customer exclusively.

2.4 Unless stated to the contrary in the SoW:

(a) Fera will deliver Deliverables 'ex works' at its Sand Hutton facility (Incoterms 2010, for which purposes Fera shall be construed as the 'seller' and Customer as the 'buyer'); and

(b) stated delivery times are an estimate only and (subject to the other provisions of this Agreement) Fera will not be liable for any Claim in respect of Loss arising from delay in the delivery of the Deliverables (or part thereof). Any such delay shall not entitle Customer to terminate or rescind the Agreement in whole or in part, and time shall not be of the essence in relation to the provision of Deliverables.

2.5 Where Representatives of Customer attend Fera's premises:

(a) Customer shall remain responsible for their salaries, expenses, and other associated costs;

(b) Customer will procure that they comply with all policies and procedures applicable to Fera's premises, including in respect of security, confidentiality, and health and safety;

(c) Fera may at any time at its absolute discretion refuse to allow (or continue to allow) any particular individual on its premises; and

(d) Fera shall be under no obligation to allow any individual or group of individuals to witness the Services being carried out.

2.6 Web-based Services. In addition to these Terms and Conditions, access to and use of Fera's Web-based Services is subject to the terms of EULAs accompanying such product(s), the terms of which shall be incorporated into and form part of this Agreement. In the event of any conflict between these Terms and Conditions and the terms and conditions of any EULA, these Terms and Conditions shall prevail to the extent of such conflict.

**3. GOODS**

3.1 Where Fera has agreed to arrange for the delivery of Goods to Customer's designated location, then Fera will notify Customer of the date (or dates) for delivery. Except as otherwise agreed in writing, such date(s) will be during a Working Day and Fera will arrange delivery during Customer's standard working hours.

3.2 Where Customer is responsible for collecting Goods from Fera's designated facility, then Fera will notify Customer of the date (or dates) for collection. Except as otherwise agreed in writing, such date(s) will be during a Working Day and Customer will collect Goods during Fera's standard working hours.

3.3 Fera shall use its reasonable endeavours to comply with requests made by Customer to postpone delivery of Goods, deliver Goods on a specified date (or dates), postpone the collection date (or dates) of Goods, and/or make Goods available for collection on a specified date (or dates); but shall be under no obligation to do so.

- 3.4 If:
- (a) Customer refuses or fails or is unable to take delivery of Goods or to arrange for the collection of Goods in accordance with clause 3.1 or 3.2 (respectively); or
  - (b) Fera is unable to deliver Goods due to the fault, inaction or negligence of Customer; or
- then Customer shall, in addition to the Price, pay all costs and expenses incurred by Fera in (a) storing the Goods; (b) arranging for the redelivery of Goods; and/or (c) further making available the Goods for collection.
- 3.5 If Customer fails to take delivery or collect the Goods (as the case may be) within ten (10) Working Days following the notified date of delivery, Fera may terminate the Agreement in accordance with clause 15.3(d).
- 3.6 If Goods are delivered in instalments, each individual delivery shall constitute a separate Agreement. Any failure by Fera to deliver or any Claim by Customer in respect of any one or more instalments shall not entitle Customer to treat this Agreement as repudiated (in whole or in part).
- 3.7 Fera reserves the right to change the batch of the Goods at any time, and Goods may be delivered which originate from multiple batches.
- 3.8 Packaging supplied by Fera, unless otherwise expressly agreed in writing, is intended only to provide adequate protection in normal conditions of transit and storage of expected duration.
- 3.9 Customer shall collect, transport, handle, store, process and use Goods in accordance with written instructions supplied by Fera.
- 3.10 Without prejudice to clause 4 (Warranties), Customer shall perform acceptance tests on Goods in accordance with the SoW and standard industry practice. Unless Fera receives written notification to the contrary, Goods will be deemed as accepted ten (10) Working Days following delivery to Customer or collection by Customer (as appropriate).
- 3.11 Risk in Goods shall pass to Customer upon delivery.
- 3.12 Title to Goods shall remain with Fera until receipt of the Price in accordance with the terms of this Agreement.
- 4. WARRANTIES**
- 4.1 Fera grants to Customer the following Warranties in respect of Services:
- (a) Services will be performed by suitably qualified and experienced personnel;
  - (b) Services will be performed exercising reasonable skill and care;
  - (c) Services will be performed in material conformance with the SoW; and
  - (d) Information provided in respect of Services will be complete and accurate.
- 4.2 Fera grants to Customer the following Warranties in respect of Goods:
- (a) Goods will be delivered free from any third-party rights or interests (except as stated to the contrary in the SoW);
  - (b) Goods will be provided in material compliance with the SoW;
  - (c) Goods will be provided free from defects in materials and workmanship; and
  - (d) Information provided in respect of Goods will be complete and accurate.
- 4.3 Where Customer reasonably suspects that Deliverables are defective due to a breach of the Warranties, Customer will:
- (a) provide written notice of its claim to Fera within ten (10) Working Days from the date that the circumstances giving rise to its claim arose (or ought reasonably to have been apparent to Customer) specifying in sufficient detail the reason(s) giving rise to the suspected breach of Warranty;
  - (b) immediately cease use of the Deliverable(s) to which its claim relates; and

- (c) in the case of Goods, at Fera's election, either (i) arrange for the return of such Goods to Fera's designated facility (at Customer's cost and expense); or (ii) segregate and make available the Goods for Fera's inspection at Customer's facility; and Fera will conduct its own inspection of the Deliverables within a reasonable time. Customer will perform all actions reasonably necessary to enable Fera to validate its claim for breach of Warranty.
- 4.4 **Remedy.** Where Fera determines that Deliverables are defective, Fera will provide to Customer the remedies in accordance with the following:
- (a) Subject to clause 4.4(b), Fera will, at its sole discretion:
    - (i) in the case of Services, re-perform the Services within thirty (30) days;
    - (ii) in the case of Goods, arrange for their prompt repair or for the delivery of suitable alternative or substitute Goods free of cost and within a reasonable time; and/or
    - (iii) repay the Price received in respect of the affected Deliverables.
  - (b) Fera will have no liability to Customer for breach of the Warranties or any Loss:
    - (i) to the extent that it arises from: reasonable wear and tear; misuse, negligence, recklessness or deliberate action of Customer or any third party; alterations, repairs or modifications made without Fera's written instruction; failure or refusal to comply with Fera's written instructions or recommendations (including with regards to the transport, storage, handling, processing, or use of Goods); manufacture of Goods which have complied with Customer's specification or requirements; use of the Deliverables for a purpose which has not been specified by Fera or expressly included in the SoW;
    - (ii) unless Fera was notified in accordance with clause 4.3 (a); or
    - (iii) where Fera is prevented from validating the claim due to Customer's failure or refusal to comply with Fera's reasonable requests.
  - (c) The remedy provided by Fera under this clause 4.4 will be Customer's sole and exclusive remedy for claims in respect of the Warranties.
- 4.5 Fera does not guarantee suitability of materials or design of Goods made in accordance with Customer's specification, including where purpose for which such Goods are ordered is known to Fera.
- 4.6 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO WARRANTY, CONDITION, UNDERTAKING OR TERM, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE AS TO THE CONDITION, QUALITY, PERFORMANCE OR FITNESS FOR PURPOSE OF THE DELIVERABLES IS ASSUMED BY FERA AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT ALL SUCH WARRANTIES, CONDITIONS, UNDERTAKINGS AND TERMS ARE EXCLUDED TO THE EXTENT PERMITTED BY LAW
- 5. CUSTOMER OBLIGATIONS**
- 5.1 Customer shall provide Fera, in a timely manner, with such Information and Customer Material as necessary for Fera to provide the Deliverables.
- 5.2 Customer provides to Fera the following warranties:
- (a) that all Information provided by it or on its behalf will be complete and accurate;
  - (b) the warranties contained in clause 4.2 *mutatis mutandis* in respect of Customer Material;
  - (c) that it has obtained or will obtain all necessary licences, approvals, permits or authorisations required in relation to this Agreement;
  - (d) that Customer Material will be delivered, assembled and maintained during the term of this Agreement at Customer's own cost and expense;
  - (e) that upon termination or expiry of the Agreement (or following Fera's written request) Customer will decommission, dismantle, make safe, remove and collect Customer Material then in Fera's possession at Customer's cost and expense; and
  - (f) that Customer will give Fera written notice of any known or suspected hazards that might arise from transport, handling, storage, processing or use of Customer Material.

- 5.3 If Customer Material is found by Fera to be defective, Customer will supply satisfactory substitute material to Fera at Customer's cost and expense and within a reasonable time.
- 5.4 Risk in Customer Material shall remain with Customer at all times. Except for Customer Material, all other equipment, apparatus, material and accessories obtained by Fera and/or used for the purposes of providing the Deliverables shall remain the property of Fera.
- 5.5 Except as expressly agreed with Fera in writing, Customer shall arrange for delivery of Customer Material 'DDP' Fera's Sand Hutton facilities (Incoterms 2010, for which purposes Fera shall be construed as the 'buyer' and Customer as the 'seller').
- 5.6 Customer shall bear any Taxes incurred as a result of providing Customer Material to Fera. Fera reserves the right to refuse deliveries which bear unpaid Taxes, in which case Customer shall pay costs incurred with the return of such Customer Material. Where Fera does accept delivery then any incurred Taxes settled by Fera will be charged to and paid by Customer in addition to the Price.
- 5.7 Except as otherwise agreed in writing, title and risk in samples remaining in Fera's possession following delivery of the Deliverables will pass to Fera. Fera may dispose of, store or destroy any such residual Customer Material at its discretion and without any further obligation or liability to Customer.

## 6. **LIMITATION OF LIABILITY**

- 6.1 Subject to the other provisions of this clause 6 (Limitation of Liability) the maximum aggregate liability of Fera (and its Group) to Customer (and its Group) under or in connection with this Agreement, whether arising under contract or by way of indemnity, negligence (including negligent breach of contract) or other legal theory shall not exceed the lesser of 100% (one hundred per cent)] of the Price paid or payable; and (b) £25,000 (twenty-five thousand pounds).
- 6.2 Subject to clause 6.5, neither Party shall be liable to the other Party for any consequential, indirect or special Loss however arising in connection with this Agreement.
- 6.3 Nothing in this Agreement shall exclude or limit the liability of either Party for:
  - (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) any matter for which it would be illegal to exclude or limit liability.
- 6.4 Customer shall indemnify Fera against all Losses suffered by Fera arising out of or in connection with Customer's breach of clauses 7 (Confidentiality), 9 (Compliance with Law), 10 (Intellectual Property Rights), or 11 (Intellectual Property Infringement).
- 6.5 Customer shall be liable to Fera for any Claim made against Fera and/or Losses suffered by Fera arising from torts committed by Customer's Representatives whilst on Fera premises.
- 6.6 Advice given by Fera or its Representatives as to:
  - (a) the methods of transporting, storage, handling, processing or use of Goods;
  - (b) the suitability of using such Goods in manufacturing processes or in conjunction with any other materials; or
  - (c) recommendations, interpretation, analysis, guidance, suggestions, proposals, endorsements in connection with Services;

are given without liability on the part of Fera.

## 7. **CONFIDENTIALITY**

- 7.1 Each Party shall in respect of any Confidential Information received by it under this Agreement:
  - (a) only use such Confidential Information for the purposes of this Agreement;
  - (b) treat such Confidential Information as confidential and not at any time for any reason disclose or permit it to be disclosed to any person other than in accordance with the terms of this Agreement;

- (c) disclose such Confidential Information only to those of its Representatives who need to know such Confidential Information and who are under a duty of confidentiality to the receiving Party at least as stringent as the obligations contained in this clause 7 (Confidentiality); and procure that such Representatives are informed of the confidential nature of the Confidential information; and
- (d) protect such Confidential Information with at least the degree of care that it applies to its own Confidential Information (and in any event with no less than a reasonable standard of care).

7.2 The provisions of clause 7.1 shall not apply to Information which, in respect of the receiving Party:

- (a) is at the time of receipt (or which subsequently becomes) available to the public other than through a breach of this Agreement;
- (b) is lawfully disclosed to that Party by a third party without restriction on its use or disclosure;
- (c) is independently developed by that Party;
- (d) is in the possession of or known by that Party prior to its receipt from the disclosing Party;  
or
- (e) is disclosed to the extent necessary to comply with the Law, provided that the Party making such disclosure shall give the other Party written notice not less than 2 (two) Working Days in advance of such disclosure (unless such notice would itself be contrary to Law).

7.3 Each Party agrees that damages would not be an adequate remedy for any breach of this clause 7 (Confidentiality). Without prejudice to any other remedies the remedies of injunction, specific performance and other equitable relief shall be available in connection with any actual or threatened breach of this clause 7 (Confidentiality) and no proof of special damages shall be necessary.

## 8. PRICE AND PAYMENT

8.1 Except as expressly agreed by Fera in writing, payments under this Agreement shall be made in British pounds sterling. Bank charges or levies incurred by Fera arising from receipt of payments from overseas shall be payable by Customer on an indemnity basis in addition to the Price.

8.2 Except where Fera agrees to receive payment by credit card (or other like method), invoices will be submitted by Fera in accordance with the SoW or (where the SoW does not detail invoice dates) on completion of delivery. Payment of each invoice will be due no later than thirty (30) days from the date of invoice. Payment will be deemed to have been made only when cleared and good value funds appear in Fera's nominated bank account.

### 8.3 Tax.

- (a) Prices payable in connection with this Agreement are expressed exclusive of VAT which shall be charged to Customer at the prevailing rate and Customer agrees to pay such VAT in addition to the Price.
- (b) In respect of any deduction or withholding required by Law, Customer shall pay to Fera such additional sums as required such that Fera receives a net amount in its bank account equal to the Price (after deducting therefrom all withholdings or similar taxes). The Parties shall use their commercially reasonable efforts to minimise such withholding or similar tax obligation. In the event there is no applicable double taxation agreement, or if an applicable double taxation agreement only serves to reduce such withholding or similar tax, then Customer shall pay such withholding or similar tax to the appropriate government authority.

8.4 If the payment of any sum due in accordance with this Agreement is subject to a dispute, then:

- (a) the Parties will resolve such dispute in accordance with clause 18 (Dispute Resolution);
- (b) Customer shall pay the undisputed amount(s) of such sum(s) in accordance with this clause 8 (Payment);
- (c) Customer shall provide to Fera its reason(s) for disputing the payment of such sum(s) together with supporting Information as reasonably requested by Fera without undue delay, and in any event at least five (5) Working Days prior to the due date for payment; and

- (d) Fera shall be entitled to withhold the delivery of further Deliverables until the dispute is resolved.
- 8.5 Payment of any sum by Customer shall be deemed as acceptance of the Deliverables to which such payment(s) apply.
- 8.6 Without prejudice to Fera's other rights and remedies under this Agreement, any undisputed sums outstanding for payment after the due date shall bear compounded interest at the rate of five hundred (500) basis points over the prevailing base rate of the Bank of England, calculated from the original due date for payment until the date that such sum(s) are received in full by Fera. The Parties agree that such interest is a 'substantial remedy' for the purposes of section 9 of the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 Time shall be of the essence in relation to payments by Customer to Fera under this Agreement.

## 9. **COMPLIANCE WITH LAW**

### 9.1 General.

- (a) Each Party in performing its obligations under this Agreement will comply with applicable Laws and neither Party shall expect or demand that the other Party performs any act or omission that would (in that Party's reasonable opinion) cause it to infringe any Law.
  - (b) Each Party shall remain primarily responsible for the compliance by its Representatives and subcontractors with applicable Laws.
- 9.2 Modern Slavery. Notwithstanding the generality of clause 9.1(a), each Party shall perform its obligations under this Agreement in compliance with (and shall ensure that its Representatives and sub-contractors comply with) the Modern Slavery Act 2015.

### 9.3 Bribery and corruption.

- (a) Each Party warrants to the other that it shall not, and that its Representatives shall not, induce, do or agree to do any other act, failure to act or thing in connection with this Agreement that contravenes any Law relating to anti-bribery and corruption or anti-money laundering, including: (i) the Ethical Legislation; and (ii) in the case of a Public Official, any Law applicable to the Public Official in their capacity as such.
- (b) Each Party shall maintain policies applicable to its Representatives that are designed to prevent them from contravening the Ethical Legislation, including the maintenance of a gifts and hospitality policy requiring such persons to not accept, agree, authorise, give, offer, promise, request or undertake any Inducement (or to agree to do any of the same).
- (c) Each Party agrees to notify the other as soon as reasonably practicable upon becoming aware of any extortive solicitation, demand or other request for anything of value, by or on behalf of any person relating to this Agreement or its subject matter.

### 9.4 Data Protection.

- (a) Each Party will comply with the requirements of the DPL in performance of this Agreement.
  - (b) In the event of a requirement for Fera to process the personal data of Customer or Customer's Representatives in performance of its obligations under this Agreement, the Parties shall execute a variation to this Agreement incorporating the requirements of the DPL.
- 9.5 Each Party will notify the other in writing promptly upon discovering any actual, potential or suspected breach of this clause 9 (Compliance with Law).

## 10. **INTELLECTUAL PROPERTY RIGHTS**

10.1 Except as expressly stated to the contrary, nothing in this Agreement shall purport or effect to transfer ownership of IPR between the Parties.

### 10.2 Background IPR

- (a) Fera grants to Customer a royalty-free, worldwide, non-exclusive (with a right to sub-licence only with the prior written consent of Fera), temporary (for the duration of this Agreement) licence to use such of its Background IPR strictly as required by Customer in

order to exercise its rights under and receive the benefit of, this Agreement; but specifically excluding any right to commercially exploit such Background IPR.

- (b) Customer grants to Fera a royalty-free, fully paid-up, irrevocable, perpetual, worldwide, non-exclusive licence (with a right to sub-licence) licence to copy, use, modify, develop and maintain such of its Background IPR as Fera reasonably requires for the purpose of exercising its rights under this Agreement and delivering the Deliverables.
  - (c) Where Background IPR identified in accordance with clauses 10.2(a) or (b) contains the IPR of a third party, then the Party controlling such Background IPR shall procure that the third party grants a licence as required by clause 10.2(a) or (b) (as applicable) or (where the third party is itself a licensor of such IPR), it shall grant an authorised sub-licence in respect thereof.
- 10.3 Customer shall not infringe the IPR of any third party in performance of this Agreement and shall, during and after the Term, indemnify and keep indemnified and hold Fera harmless from and against all Claims in respect of Loss arising from Customer's breach of this clause 10 (Intellectual Property Rights), except to the extent that such Claim results from the breach of any sub-licence of IPR by Fera.
- 10.4 Fera shall not infringe the IPR of any third party in performance of this Agreement and shall, during and after the term, indemnify and keep indemnified and hold Customer harmless from and against all Claims in respect of Loss arising from Fera's breach of this clause 10 (Intellectual Property Rights) except to the extent that such Claim results from:
- (a) the inclusion of any materials provided by Customer which infringe the IPR of a third party;
  - (b) the use by Customer of IPR in a manner other than in accordance with the written instructions of Fera;
  - (c) the unauthorised modification of IPR after delivery by Fera to Customer;
  - (d) the use by Fera of IPR licenced by Customer to Fera for performance of this Agreement; and/or
  - (e) the breach of any sub-licence of IPR by Customer.
- 10.5 Foreground IPR
- (a) Foreground IPR shall vest unconditionally and with full title guarantee in Fera. Customer shall procure that its Representatives do not assert any moral rights in such Foreground IPR (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988).
  - (b) Fera shall grant to Customer a personal, non-exclusive, global, royalty-free, fully paid-up licence to use, copy, develop or modify the Foreground IPR to the extent necessary in the direct field of application for which the Deliverables were carried out.
  - (c) Without prejudice to clause 10.5(a), Customer may use the contents of Reports in accordance with its normal business requirements, except that Customer will have no right to use or reproduce any Fera Marks without the prior written approval of Fera.

## 11. INTELLECTUAL PROPERTY INFRINGEMENT

11.1 General. Each Party shall notify the other in writing of any Claim brought against it for infringement or alleged infringement of any IPR in any materials supplied and or/ licenced by it to the other Party,

### 11.2 Claims against Customer.

- (a) Customer shall at its own expense conduct all negotiations and any litigation arising in connection with any Third-Party IP Claim made against Customer in connection with this Agreement. Customer shall provide regular notices to Fera of all material issues that arise during the conduct of such litigation and notification.
- (b) Fera shall at the request of Customer afford to Customer all reasonable assistance for the purpose of contesting any Third-Party IP Claim.
- (c) Fera shall not make any admission which may be prejudicial to the defence of settlement of any Third-Party IP Claim.

### 11.3 Claims against Fera.

- (a) Fera shall at its own expense conduct all negotiations and any litigation arising in connection with any Third-Party IP Claim made against Fera in connection with this Agreement. Fera shall provide regular notices to Customer of all material issues that arise during the conduct of such litigation and notification.
- (b) Customer shall at the request of Fera afford to Fera all reasonable assistance for the purpose of contesting any Third-Party IP Claim.
- (c) Customer shall not make any admission which may be prejudicial to the defence of settlement of any Third-Party IP Claim.

### 11.4 Continued performance. If any Third-Party IP Claim is made or in the reasonable opinion of Fera is likely to be made against Fera that will prevent or delay delivery of the Services, Fera shall notify Customer and shall (at its sole discretion):

- (a) modify the Deliverables to provide so as to avoid infringement or alleged infringement;
- (b) substitute alternative Deliverables of substantially equivalent performance and functionality, so as to avoid the infringement or alleged infringement;
- (c) procure a licence to use the IPR and supply Deliverables which are the subject of the alleged infringement; and/or
- (d) terminate the Agreement.

## 12. **EXCUSABLE DELAY**

12.1 Neither Party shall be in breach of this Agreement or liable to the other for any delay, non-performance or Loss arising from a Force Majeure Event.

12.2 Where a Force Majeure Event occurs, the Party seeking to rely on that event to excuse its delay or non-performance shall:

- (a) promptly give written notice to the other Party of the details of any Force Majeure Event, including an estimate of its duration, the extent to which its delivery of this Agreement is likely to be affected and any mitigating action(s) being taken;
- (b) take reasonable steps to minimise the effects of the Force Majeure Event and resume full delivery of this Agreement as soon as reasonably possible;
- (c) facilitate efforts that the other Party makes to obtain alternative goods or services; and
- (d) use reasonable endeavours to continue to deliver or resume delivery of this Agreement for the duration of that Force Majeure Event.

12.3 Following cessation of the Force Majeure Event, the Party relying on the Force Majeure Event shall provide written notice to the other Party confirming the cessation of the Force Majeure Event; and resume performance of its obligations under this Agreement as soon as reasonably possible.

12.4 Fera will not be in breach of this Agreement, or liable for any Loss sustained or incurred by Customer due to delay or non-performance of its obligations to the extent that such delay or non-performance was caused directly or indirectly by any act or omission of Customer, its Representatives or sub-contractors.

## 13. **CHANGE MANAGEMENT**

13.1 External change. Where a Change in Law has the effect of: (a) materially increasing the cost to Fera of providing the Deliverables; (b) introducing a material delay in delivery of Deliverables; or (c) requiring Fera to render substantially different performance of this Agreement or any transaction(s) contemplated thereby; then Fera will issue to Customer a change notice in accordance with clause 13.3.

13.2 Customer change. If Customer wishes to alter or vary the Deliverables during performance of the Agreement, it shall provide written notification to Fera detailing the required change(s), together with such supporting Information as reasonably requested by Fera. Within ten (10) Working Days of receipt of notification, Fera will respond to Customer either (i) stating that Fera is unable to



make the required change(s); or (ii) providing Customer with a change notice in accordance with clause 13.3.

13.3 **Change notice.** A change notice issued by Fera will specify in reasonable detail: the nature of the change; (b) a description of what amendments (if any) are required to the SoW or other terms and conditions of the Agreement to enable Fera to deliver the Deliverables; and (c) any increase in the Price due to such change(s).

13.4 Within a reasonable period (and in any event within ten (10) Working Days) from receipt of notice under clause 13.3, Customer will on written notice to Fera either:

- (a) accept the proposed change(s), whereupon the Parties will execute a variation to this Agreement, (whereupon the revised price will become the Price); or
- (b) reject the proposed changes, whereupon either Party may elect to terminate this Agreement (or part thereof) on written notice to the other Party in accordance with clause 15 (Termination).

13.5 Where Fera (acting reasonably) believes that Customer requires materially different performance than that agreed under this Agreement, it will notify Customer of the same and Customer will comply with its obligations under clause 13.2

13.6 For the avoidance of doubt: (a) no change or purported change to this Agreement shall be effective unless executed as a variation in accordance with clause 17.2; and (b) the provisions of this clause 13 (Change Management) are without prejudice to the provisions of clause 12 (Excusable Delay).

#### 14. **CUSTOMER DELAY**

14.1 Without prejudice to its other rights and remedies, Fera may at its sole option, suspend or withhold performance under this Agreement:

- (a) where Customer has failed to make payment by the due date of undisputed sums invoiced by Fera in accordance with clause 8 (Price and Payment);
- (b) until receipt of satisfactory credit reference in respect of Customer;
- (c) where the supply of Deliverables would exceed any credit limit which Fera may, in its discretion, have granted to Customer; and/or
- (d) Customer is otherwise in breach of any of the terms of this Agreement.

14.2 Customer agrees to not do or omit to do anything (whether directly or indirectly) that has the purpose, effect or likely effect of a Delay Event. Where Customer is in breach of this clause 14.2 then (in addition to its other rights and remedies under this Agreement) Fera shall not be liable for any connected delays or issues with the Deliverables, and Customer shall be liable for any Losses incurred by Fera in connection with the Delay Event.

#### 15. **TERMINATION**

15.1 The Agreement may be terminated by Fera for convenience on giving one (1) months written notice.

15.2 Fera may terminate this Agreement immediately on written notice to Customer if:

- (a) Fera (acting reasonably) determines that a conflict of interests exists or may develop between Fera and Customer;
- (b) any undisputed sum of Charges exceeding £5,000 (five thousand pounds) remains unpaid for more than thirty (30) days after the due date for payment in accordance with clause 10 (Price and Payment) and following written demand from Fera;

15.3 Either Party may terminate the Agreement immediately by written notice to the other where:

- (a) the other Party experiences an Insolvency Event;
- (b) the other Party commits a breach of the Agreement which (if capable of remedy) has not been remedied by the Party in default within thirty (30) days from delivery of written notice in respect of such breach;

- (c) the other Party is impacted by a Force Majeure Event that has prevailed for more than 60 (sixty) Working Days; or
- (d) that other Party commits a material breach of the Agreement. Without prejudice to the generality of the foregoing, a breach of clauses 7 (Confidentiality), 9 (Compliance with Law), 10 (Intellectual Property Rights) and/or 11 (Intellectual Property Infringement) shall be considered a material breach for the purposes of this Agreement.

## 16. EFFECTS OF TERMINATION

- 16.1 Termination of the Agreement shall not affect any obligation or liability of either Party which has accrued prior to the date of termination.
- 16.2 Any sums invoiced for payment before the effective date of termination or expiry will become immediately due and payable.
- 16.3 Except for clauses, 3 (Goods), 4 (Warranties), 5 (Customer Obligations) 6 (Limitation of Liability), 7 (Confidentiality), 8 (Price and Payment), 9 (Compliance with Law), 10 (Intellectual Property Rights), 11 (Intellectual Property Infringement) 16 (Effect of Termination), 17 (General), 18 (Dispute Resolution) and 19 (Law and Jurisdiction) and except in respect of any other accrued rights, neither Party shall be under any further obligation to the other.
- 16.4 Fera may, during the term of the Agreement and upon termination, set off against any debt owed by Customer to Fera, or the amount of Loss that Fera has assessed as resulting from termination, any sums otherwise due to Customer.
- 16.5 Each Party will upon request return or destroy (and certify such destruction) the Confidential Information of the other Party in its possession, save to the extent that it is required to retain a copy of such Confidential Information in accordance with its audit requirements or by Law. Neither Party will be considered in breach of this clause 16.5 where Confidential Information remains its computer archive and backup facilities following reasonable efforts to delete such Confidential Information.

## 17. GENERAL

### 17.1 Assignment and Sub-Contracting

- (a) Customer shall not assign or sub-contract this Agreement or any part of it without the prior written consent of Fera. Any attempted or purported assignment in contravention of this clause 17.1 shall be void.
- (b) Fera may at any time, on reasonable notice in writing to Customer, transfer or assign all or any rights and/or obligations under this Agreement to a third party within its Group.
- (c) Fera shall be free to subcontract the whole or any part of the Deliverables.

### 17.2 Waiver and variation

- (a) No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised Representative of each Party.
- (b) A waiver of any right or remedy under this Agreement or by operation of Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (c) A failure or delay to exercise any right or remedy provided under this Agreement or by operation of Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- (d) No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

### 17.3 Legal Relationship

- (a) Nothing in the Agreement shall create a partnership or joint venture between the Parties or have the effect of making any Representative of Customer an employee or servant of Fera or of making any Representative of Fera an employee or servant of Customer.
- (b) Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

- (c) Where Customer consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.
- 17.4 Severability. If a provision of this Agreement is found to be unenforceable by a court that provision shall be deemed to be amended to the minimum extent necessary to make it enforceable. The unenforceability of a provision of this Agreement shall not affect its continuance in force or any of its other provisions.
- 17.5 Notices
- (a) Any notice which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party at its registered address. Provided the relevant notice is not returned as undelivered, the notice shall be deemed to have been given two (2) Working Days after the day on which the letter was posted (or four (4) hours after sending in the case of electronic mail) provided this was sent on a Working Day, or sooner where the other Party acknowledges receipt of such letters (or electronic mail).
  - (b) Either Party may change its address for service on written notification to the other Party.
- 17.6 Third Party Rights. A person who is not a party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 17.7 Non-Solicitation
- (a) For the term of this Agreement and 12 (twelve) months after neither Party shall (except with the prior written consent of the other) directly or indirectly approach any Representative of the other with a view to engaging that person as an agent, contractor or employee either in its own right or on behalf of a third party.
  - (b) If either party commits a breach of clause 17.7(a), the breaching Party shall, on demand, pay to the claiming party a sum equal to one years' basic salary or annual fee that was payable by the claiming Party to that Representative plus the recruitment costs incurred by the claiming Party in replacing the Representative.
  - (c) Nothing in this Agreement shall limit the right of either Party to engage any person who has approached it in response to any public advertisement which is open to all-comers and which is not specifically targeted at the Representative and the Representative applies for engagement as a result of the advertisement
- 17.8 Entire Agreement.
- (a) This Agreement represents the entire understanding and constitute the whole agreement between the Parties in relation to its subject matter.
  - (b) The Parties agree that there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between them except as specifically set forth herein and neither Party has relied on any other Information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.
  - (c) Nothing in this clause 17.8 shall seek or purport to relieve either Party for liability in respect of fraud or fraudulent misrepresentation.
- 17.9 Publicity. Neither Party shall make any press announcement or publicise this Agreement without the prior written consent of the other Party, save that Fera shall be entitled to refer to Customer as its customer in its general marketing, publicity and case study materials.
- 17.10 Counterparts. This Agreement may be executed in counterparts each of which when executed and delivered is an original, but such counterparts shall be deemed to constitute one and the same instrument. The Parties agree that signatures exchanged by electronic means are effective for the purposes hereunder to the same extent as original signatures.

## 18. **DISPUTE RESOLUTION**

- 18.1 In respect of any dispute arising out of or in connection with this Agreement, either Party may initiate this clause 18 (Dispute Resolution) by issuing a 'notice of dispute' to the other Party, setting out the dispute together with its suggested action(s) to resolve it.

- 18.2 Following receipt of a notice of dispute, the senior executives of each Party will negotiate in good faith to resolve the dispute. Where no resolution is possible within ten (10) Working Days, the Parties will refer the dispute to their respective managing director. If the Parties' managing directors cannot resolve the dispute within a further ten (10) Working Days, the dispute may, by agreement between the Parties be referred to mediation in accordance with clause 18.3
- 18.3 The procedure for any such mediation shall be as follows:
- (a) A neutral person (the "**Mediator**") shall be chosen by agreement between the Parties, or (where the Parties cannot agree on the Mediator), either Party may within 10 Working Days from the notice of mediation, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a mediator (who shall then be the Mediator).
  - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him to agree a timetable for the exchange of Information and the procedure to be adopted for the mediation. Either Party may at any stage seek from CEDR guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations and proceedings in the mediation shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings.
  - (d) If the Parties reach agreement on the resolution of the dispute, that agreement shall be set out in writing and shall be binding upon them.
  - (e) Failing agreement, either Party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a 'without prejudice' basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of both Parties.
- 18.4 For a period of sixty (60) calendar days from the date of the appointment of the Mediator (or such other period as the Parties agree) neither Party may commence proceedings in relation to the matters referred to the Mediator.

## 19. **LAW AND JURISDICTION**

- 19.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection to it shall be construed in accordance with the law of England and Wales.
- 19.2 The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England.
- 19.3 Each Party expressly waives any claim that it may have on the grounds of inconvenient forum.

**SCHEDULE ONE (DEFINITIONS AND INTERPRETATION)****1. DEFINITIONS**

In these Terms and Conditions, the following words shall have the following meanings:

**“Agreement”** means these Terms and Conditions together with the SoW and any separate written agreement between the Parties expressly setting out the terms and conditions governing the delivery of Deliverables (including, where applicable, an EULA);

**“Background IPR”** means in respect of a Party, any IPR, excluding Foreground IPR, owned or controlled by that Party arising or developed (a) before commencement of the Agreement, or (b) during the Agreement but independently of the provision of the Deliverables;

**“Change in Law”** means, subsequent to the Effective Date, either: (a) a change in any Law, or (b) the imposition of any mandatory restriction, condition or measure (regardless of originating authority or intended effect) including the requirement to obtain any consents, licences, permits, or other approvals;

**“Claim”** means any action, assertion of right, claim, demand or request;

**“Client Data”** means any personal data which is transmitted by or on behalf of Customer to, or is otherwise processed by, Fera under this Agreement or which is generated under this Agreement;

**“Confidential Information”** means in respect of a Party (a) all Information in respect of that Party’s business including customer data, financial information, trade secrets, the existence of and contents of this Agreement and other Information of commercial value; (b) all Information of any nature whatsoever which includes, Information which relates to the business, affairs, properties, assets, trading practices, goods/services, developments, IPR, know-how, personnel, customers and suppliers of that Party; and (c) any Information which has either been designated as confidential by that Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);

**“Customer”** means the person or persons to whom the Agreement is issued;

**“Customer Material”** means any good, sample, material, chemical compound, biological material or other like substance to be provided by Customer to Fera under this Agreement;

**“Data Protection Legislation”** or **“DPL”** means the Data Protection Act 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in England and Wales from time to time and any other applicable Laws relating to the processing of personal data.

**“Delay Event”** means an action or event instigated by Customer (other than a Force Majeure Event), that has the effect of suspending or delaying Fera’s ability to deliver Deliverables, or extending the period previously agreed for the provision of Deliverables by Fera;

**“Deliverables”** means either (a) the Goods and/or Services collectively, or (b) individually the Goods or Services (as the context requires);

**“Ethical Legislation”** means the Criminal Finances Act 2017, Bribery Act 2010, Companies Act 2006, Fraud Act 2006, Proceeds of Crime Act 2002 the Theft Act 1968; and the *‘OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions’* and the commentaries issued thereto from time to time;

**“EULA”** means the ‘end user licence undertaking’ notified to Customer by Fera for the access and use of Fera’s web-based service(s);

**“Fera”** means Fera Science Limited of Sand Hutton, York, YO41 1LZ (a company incorporated in England and Wales under number 9413107) whose registered office is situated at 65 Gresham Street, London, EC2V 7NQ;

**“Fera Marks”** means the proprietary identifying marks of Fera including branding, logos, trademarks and service marks;

**“Force Majeure Event”** means an event which is beyond the reasonable control of a Party and which that Party could not anticipate and mitigate by contingency planning, insurance or other prudent business means, but excludes (a): industrial action affecting that Party only and not its industry generally; (b) failure of any subcontractor (save where that subcontractor itself is affected an event which is beyond its reasonable control and which it could not anticipate and mitigate by contingency

planning, insurance or any other prudent business means); or (c) (in respect of Fera) the breakdown of machinery or delay in delivery by Fera's suppliers;

**"Foreground IPR"** means any IPR obtained, found, produced, devised, developed, or made during or generated in the course of the carrying out the Services and/or providing the Goods.

**"Goods"** means the goods to be supplied by Fera under this Agreement as detailed in the SoW, together with supporting documentation, and manuals.

**"Group"** means in relation to a company, that company, any holding company or subsidiary from time to time of that company and any subsidiary from time to time of a holding company of that company (where "holding company" and "subsidiary" have the meanings given to them by section 1159 of the Companies Act 2006);

**"Inducement"** means: (a) any advantage, benefit, consideration, gift or payment of any kind, which is (or is agreed to be) or could act as an inducement or reward, for any form of improper conduct by any person in connection with their business, employment, official, public or business role, duties or functions; (b) anything that would amount to an offence of bribery or corruption under law; or (c) any facilitation payment;

**"Information"** means information recorded in any form;

**"Insolvency Event"** means a Party experiencing or suffering one or more of the following events: (a) that Party entering into liquidation or receivership; (b) that Party enters into compulsory or voluntary liquidation with or for the benefit of its creditors; (c) that Party (being a company) enters into compulsory or voluntary liquidation of amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency); (d) that Party has a receiver or manager appointed of the whole or substantially the whole of its undertakings; (e) if any distress or execution is threatened or levied upon any property of the that Party; (f) that Party undergoes a change of control (within the meaning of s. 1124 of the Corporation Tax Act 2010); (g) that Party is unable or is deemed unable to pay its debts as they fall due; and/or any substantially equivalent or analogous event to the foregoing that apply to that Party in its jurisdiction of incorporation or (in the case of a partnership) occurs to any individual partner;

**"Intellectual Property Right"** or **"IPR"** means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country;

**"Law"** means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directive applicable to the performance of this Agreement;

**"Loss"** means any loss, cost, charge, damages or expense of any kind including interest, expenses fines, legal and other professional expenses and disbursements;

**"Party"** means (as the context requires) either Fera or Customer; and **"Parties"** means both Fera and Customer;

**"Price"** means the sum(s) payable by Customer to Fera as stated in the Agreement;

**"Public Official"** means any person holding an administrative, judicial or legislative position of any kind, whether appointed or elected, including any person employed by or acting on behalf of a public agency, body or state-owned enterprise, a public international organisation (where 'public international organisation' has the meaning given to it by section 6 of the Bribery Act 2010) or a political organisation or party, or a candidate for any such office;

**"Report"** means the final version of Fera's written account of the results of the Services, including findings, conclusions, observations, summary analysis, raw data, etc, provided to Customer;

**"Representative"** means, in respect of a Party, an agent, contractor, director, employees officer, professional advisor, representative, servant or member of staff;

**"Services"** means the services to be supplied by Fera to Customer as specified in the Agreement, and shall also be deemed to include any incidental supply of Goods made in relation to or as part of the Services;

“**Statement of Work**” or “**SoW**” means a written agreement between the Parties including (amongst other things) the description of the Deliverables to be delivered, the Price, delivery times, logistics arrangements, and any other salient considerations;

“**Tax**” includes any fee, charge, customs duty, excise duty, fine, penalty, levy, stamp duty, tariff, withholding tax or other like tax incurred as a result of providing the Deliverables under this Agreement;

“**Terms and Conditions**” means these Fera Standard Terms and Conditions for the Supply of Goods and Services;

“**Third-Party IP Claim**” means any Claim arising from a third party for infringement or alleged infringement of that third party’s IPR arising from the performance of a Party’s obligations under this Agreement;

“**Warranties**” means the warranties provided by Fera to Customer in accordance with clause 4 (Warranties);

“**Web-based Services**” means services offered by Fera to Customer or Customer’s Representatives via the internet;

“**Working Day**” means any day other than Saturday, Sunday and bank holidays in England; and

“**VAT**” means UK value added tax.

## 2 INTERPRETATION

- 2.1. References to clauses, schedules, annexes or appendices are to clauses, schedules, annexes or appendices of this Agreement. All schedules, annexes, and appendices shall form part of a single Agreement.
- 2.2. References to Customer shall, where appropriate, be references to each individual person constituting the Customer.
- 2.3. References to Customer or Fera shall, where appropriate, be references to any lawful successor, assignee or transferee.
- 2.4. References to a person or third party shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency (whether or not having a separate legal personality).
- 2.5. Unless the context requires otherwise, references to the singular shall include references to the plural and *vice versa*.
- 2.6. References to ‘written notice’ shall mean a notice prepared and served in accordance with clause 17.5 (Notices).
- 2.7. The word ‘including’, ‘include’, or similar expression shall be construed as illustrative and interpreted as meaning ‘including without limitation’.
- 2.8. Headings in this Agreement are for ease of reference only and shall not affect the interpretation of any provision.
- 2.9. References to any Law shall be construed as references to all subordinate legislation made under that Law (where ‘subordinate legislation’ has the meaning given to it by section 21 of the Interpretation Act 1978) and to all such laws as amended, consolidated, re-enacted or replaced, or as their application is modified by other laws, whether before or after the date of this Agreement.
- 2.10. The terms ‘controller’, ‘data subject’, ‘personal data’, ‘personal data breach’, ‘process’ (with ‘processed’ to be construed accordingly) and ‘processor’ shall have the same meanings as in the DPL.