

## **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/or 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 ONE (DEFINITIONS AND INTERPRETATION) shall apply to the Agreement.

#### **2. TERM**

- 2.1 The Agreement shall commence on the Effective Date and, unless terminated earlier by operation of law or as otherwise provided for in the Agreement, shall continue with full force and effect during the Term.
- 2.2 Unless otherwise stated in the Special Terms, the Agreement shall automatically continue following the expiry of the Initial Term unless and until one Party gives the other at least ninety (90) days prior written notice to terminate the Agreement.

#### **3. SCOPE OF AGREEMENT AND PRECEDENCE**

- 3.1 In consideration of receipt of the Price, Fera agrees to provide the Deliverables to the Customer in accordance with the terms of the Agreement.
- 3.2 No order for the supply of Deliverables is binding on Fera unless an Order Form has been executed by both Parties.
- 3.3 Each Order Form signed by the Parties shall incorporate and be governed by these Terms and Conditions and the relevant Schedule(s); and shall, in each instance, form a separate and binding Agreement between the Parties
- 3.4 Nothing in the Agreement shall imply or be construed to mean that Fera will provide the Deliverables or any other goods and/or services to the Customer exclusively.
- 3.5 The Parties agree that any stated Delivery or performance dates are an estimate only and (subject to the other provisions of the Agreement) Fera will not be liable for any Claim in respect of Losses arising from delay in the Delivery or performance of Deliverables (or part thereof). Any such delay shall not entitle the 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.
- 3.6 In the event of any conflict arising between the documents comprising the Agreement, the descending order of precedence will be: (a) Particulars of Contract (inclusive of any Special Terms); (b) these Terms and Conditions and Schedule One (Definitions and Interpretations); then (c) Appendices (excluding the SoW); then (d) any applicable EULAs; and then (e) the SoW.

#### **4. FERA'S OBLIGATIONS**

- 4.1 Fera shall provide the Deliverables:
  - (a) using suitably qualified and experienced personnel;
  - (b) exercising reasonable skill and care;
  - (c) pursuant to all Applicable Laws;
  - (d) in material conformance with the SoW;
  - (e) free from any interests (except where stated to the contrary in the SoW); and
  - (f) materially free from defects in materials and workmanship at the time of Delivery.
- 4.2 Where Customer reasonably suspects that Deliverables are defective due to a breach of Clause 4.1, 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;

- (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 the Customer's facility; and Fera will conduct its own inspection of the Deliverables within a reasonable time. The Customer will perform all actions and assistance reasonably required by Fera, to enable Fera to validate the Customer's claim for breach.
- 4.3 Remedy. Where Fera determines that Deliverables are defective or otherwise not in conformance with Clause 4.1, Fera will provide to the Customer the remedies in accordance with the following:
- (a) Subject to Clause 4.3 (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 repair or for the Delivery of suitable alternative or substitute Goods free of cost and within a reasonable time period; and/or
    - (iii) refund the Price received by Fera in respect of the affected Deliverables.
  - (b) Fera will have no liability to Customer for breach of Clause 4.1 or any Losses:
    - (i) to the extent that it arises from: reasonable wear and tear; misuse, negligence, recklessness or deliberate action of the 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 the 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 4.2(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 4.3 will be Customer's sole and exclusive remedy for all and any claims in respect of breach of Clause 4.1.
- 4.4 Fera does not guarantee the suitability of materials and/or design of Deliverables made in accordance with the Customer's specification, including where the purpose for which such Goods are ordered is known to Fera.
- 4.5 Except as expressly provided in these Terms and Conditions, all warranties, conditions and other terms implied by statute or common law are excluded to the maximum extent permitted by law including with regards to condition, quality, performance or fitness for the purpose of any Deliverable. Fera does not warrant or represent that the Deliverables (or anything supplied to Fera by any third party on which all or part of the Deliverables depend) will be Delivered free of any faults, inaccuracies, interruptions, delays, omissions or errors ("**Faults**"). Fera shall not be liable for any Losses resulting from any such Faults. Further, the Customer accepts that it (or its Group member) shall assume sole responsibility and entire risk:
- (a) as to the suitability, selection and use of the Deliverables to meet its (or its Group member's) requirements or business needs; and
  - (b) in respect of the results obtained and/or conclusions drawn from the use and application of the Deliverables to its business.
- 4.6 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 the Agreement.
- 5. GOODS AND CUSTOMER MATERIALS**
- 5.1 Where Fera has agreed in the Particulars of Contract to arrange for the Delivery of Goods to the Customer's designated location, then Fera will notify the Customer of the estimated 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 the Customer's standard working hours.
- 5.2 Where Clause 5.1 does not apply, the Customer is responsible for collecting all Goods and the

Customer Materials from Fera's designated facility where it shall be Delivered on an *Ex Works* basis, and Fera will notify the Customer of the estimated date(s) for collection. Except as otherwise agreed in writing, such date(s) will be during a Working Day and the Customer will collect the Goods/Customer Materials during Fera's standard working hours.

- 5.3 Fera shall use its reasonable endeavours to comply with requests made by the Customer to postpone Delivery of Goods/Customer Materials, Deliver Goods/Customer Materials on a specified date(s), postpone the collection date(s) of Goods/Customer Materials, and/or make Goods/Customer Materials available for collection on a specified date(s); but shall be under no obligation to do so.
- 5.4 Without prejudice to Fera's rights under Clause 5.5, if:
- (a) the Customer refuses or fails or is unable to take Delivery of Goods/Customer Materials or to arrange for the collection of Goods/Customer Materials in accordance with Clause 5.1 or 5.2 (respectively); or
  - (b) Fera is unable to Deliver Goods/Customer Materials due to the fault, inaction or negligence of the Customer,
- then the Customer shall, in addition to the Price, pay all costs and expenses incurred by Fera including (a) storing the Goods/Customer Materials; (b) arranging for the return of Goods/Customer Materials; and/or (c) further Delivery of the Goods/Customer Materials.
- 5.5 If the Customer refuses or fails or is unable to take Delivery of the Goods/Customer Materials within ten (10) Working Days of Delivery, Fera may, without prejudice to its other remedies:
- (a) terminate the Agreement in accordance with Clause 17.3(d); and/or
  - (b) issue a notice to the Customer, stating that if the Customer fails to collect the Customer Materials within the next thirty (30) days, Fera may destroy the Customer Materials without further notice or liability to the Customer.
- 5.6 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 the Agreement as repudiated (in whole or in part).
- 5.7 Fera reserves the right to change the batch of the Goods at any time, and Goods may be Delivered which originate from multiple batches.
- 5.8 Packaging supplied by Fera, unless otherwise expressly agreed in writing in the SoW, is intended only to provide adequate protection in normal conditions of transit and storage of expected duration.
- 5.9 The Customer shall collect, transport, handle, store, process and use Goods in accordance with written instructions supplied by Fera.
- 5.10 Without prejudice to Clause 4 (Fera's Obligations), the 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, Customer Materials and Services will be deemed as accepted ten (10) Working Days following Delivery.
- 5.11 Risk in Goods shall pass to the Customer upon Delivery.
- 5.12 Title to Goods shall remain with Fera until receipt of the Price in accordance with the terms of the Agreement.

## **6. CUSTOMER OBLIGATIONS**

- 6.1 Customer shall:
- (a) provide Fera, in a timely manner, with such information and Customer Material as necessary for Fera to provide the Deliverables;
  - (b) comply with and use the Deliverables in accordance with (i) all operating specifications and instructions provided to it by Fera in respect of the Deliverables; and (ii) all Applicable Laws;
  - (c) co-operate with and respond to Fera (its subcontractors and/or consultants) in a timely and efficient manner in all matters relating to the Agreement;

- (d) to the extent reasonably required to provide the Deliverables, provide Fera (its subcontractors and/or consultants), without charge, access to Customer's premises, data, equipment, facilities, Customer Material and any health and safety and security requirements; and
  - (e) obtain and maintain all necessary and applicable licenses and consents; and comply with all relevant and Applicable Laws, to enable Fera to provide the Deliverables.
- 6.2 The Customer warrants and undertakes:
  - (a) that all information provided by it or on its behalf will be complete and accurate;
  - (b) that the Customer Material shall:
    - (i) be prepared with reasonable skill and care;
    - (ii) comply with (i) any operating specifications; and (ii) all Applicable Laws;
    - (iii) be in material conformance with the SoW;
    - (iv) be free from any third-party rights or interests (except as stated to the contrary in the SoW); and
    - (v) be free from defects in materials and workmanship;
  - (c) that it has obtained or will obtain all necessary licences, approvals, permits and authorisations required to perform its obligations under the Agreement including in relation to any Customer Materials.
  - (d) that all Customer Materials shall be delivered to Fera's nominated facility in accordance with Clause 6.6, no later than the date specified by Fera;
  - (e) that Customer Material will be delivered, assembled and maintained during the term of the Agreement at Customer's own cost and expense;
  - (f) that if requested by Fera, upon termination or expiry of the Agreement, the Customer will decommission, dismantle, make safe, remove and collect Customer Material then in Fera's possession at the Customer's cost and expense; and
  - (g) that the Customer will give Fera reasonable advance written notice of any known or suspected hazards that might arise from the transport, handling, storage, processing, or use of the Customer Material. Any additional costs incurred by Fera in the handling, storage, processing or destruction of such hazardous Customer Materials shall be for the account of the Customer unless otherwise specified in the SoW.
- 6.3 If the Customer Material is found by Fera to be defective, the Customer will supply satisfactory substitute material to Fera at the Customer's cost and expense and within a reasonable time.
- 6.4 Risk in the Customer Material shall remain with the 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.
- 6.5 The Customer acknowledges that, in performance of the Agreement, Customer Materials may be consumed (in whole or in part), damaged and/or destroyed, and the Customer shall hold Fera harmless from any Losses or Claims arising out of or relating to Fera's use, damage or destruction of Customer Materials.
- 6.6 Except as expressly agreed with Fera in the Special Terms, Customer shall arrange for delivery of Customer Material 'DDP' Fera's Sand Hutton facilities (Incoterms 2020, for which purposes Fera shall be construed as the 'buyer' and the Customer as the 'seller').
- 6.7 The Customer shall bear any Taxes incurred as a result of (i) providing Customer Material to Fera, and (ii) Fera Delivering Customer Materials to the Customer. Fera reserves the right to refuse deliveries which bear unpaid Taxes, in which case the 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 the Customer in addition to the Price.
- 6.8 Except as otherwise agreed in the Special Terms, 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 samples at its discretion and without any notice, obligation or liability to the Customer.

- 6.9 In Fera's absolute discretion, Representatives of the Customer may be permitted to attend Fera's premises. In such circumstances:
- (a) The Customer shall remain responsible for all salaries, expenses, and other associated costs;
  - (b) The Customer will procure that its Representatives comply with all policies, and procedures applicable to Fera's premises, including in respect of security, confidentiality, and health and safety; and
  - (c) Fera may at any time at its absolute discretion refuse to allow (or continue to allow) any particular individual on its premises.
- 6.10 Fera shall be under no obligation to allow any individual or group of individuals to witness the Services being carried out.

## **7. LIMITATION OF LIABILITY**

- 7.1 Subject to Clauses 7.2 and 7.3, the maximum aggregate liability of Fera (and its Group) to the Customer (and its Group) for all Losses under or in connection with the Agreement, whether arising under contract, tort 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).
- 7.2 Subject to Clause 7.5, neither Party shall be liable to the other Party for:
- (a) any consequential, indirect, or special Losses however arising in connection with the Agreement; and
  - (b) loss of profits (except with respect to the Price or other Fera charge specified in the SoW), loss of sales, anticipated savings or goodwill, loss of business opportunity or contracts, in each case whether direct or indirect,
- even if such Losses could have been foreseen.
- 7.3 Nothing in the 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;
  - (c) any matter for which it would be unlawful to exclude or limit liability;
  - (d) the Customer's liability to pay the Price and other sums due to Fera including expenses;
  - (e) any indemnity provided by the Customer pursuant to Clauses 7.4 or 7.5; and
  - (f) the indemnity provided by each Party pursuant to Clause 11.3.
- 7.4 The Customer shall indemnify Fera against all Losses suffered by Fera arising out of or in connection with:
- (a) The Customer's breach of, or its Representatives failure to comply with, Clauses 8 (Confidentiality), 10 (Compliance with Law), 11 (Intellectual Property Rights), 12 (Intellectual Property Infringement), Clause 6.9 and, if applicable, Appendix 2 (Protection of Personal Data) of the Order Form; and
  - (b) Fera's destruction of Customer Materials pursuant to Clauses 5.5(b) or 6.8.
- 7.5 The Customer shall be liable for, and shall indemnify Fera against, any Claim made against Fera and/or Losses suffered by Fera arising from the Customer's Representatives' act and omissions whilst on Fera premises.
- 7.6 The Parties shall each be subject to a general duty to mitigate their Losses.
- 7.7 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; and/or
  - (c) recommendations, interpretation, analysis, guidance, suggestions, proposals, endorsements in connection with Services,

are given without liability on the part of Fera.

## 8. **CONFIDENTIALITY**

- 8.1 The Receiving Party will hold the Disclosing Party's Confidential Information in confidence and will not disclose or permit the disclosure of any part of the Confidential Information to any third party except (a) to any Group members, consultants and advisors (including accountants and lawyers) bound by, or otherwise protected by legal privilege or confidentiality and non-disclosure commitments substantially similar to those contained in the Agreement ("**Authorised Recipients**"); and/or (b) to the extent required to comply with Applicable Law, provided that the Receiving Party (i) provides prompt notice (if legally permissible) to the Disclosing Party so that the Disclosing Party can seek a protective order or other appropriate remedy; and (ii) limits any such disclosure to the extent of the legal requirement and the disclosed information will remain Confidential Information despite such disclosure.
- 8.2 The Receiving Party shall be liable for the actions or omissions of its Authorised Recipients in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party.
- 8.3 These obligations of confidentiality do not apply to information which:
- (a) is or becomes generally available to the public (without breach by the Receiving Party) or a Receiving Party's Group;
  - (b) becomes known to the Receiving Party or Group members on a non-confidential basis via a third party;
  - (c) was lawfully in the prior possession of the Receiving Party or its Group;
  - (d) was independently developed by the Receiving Party or its Group without use or reference to Confidential Information; or
  - (e) the Disclosing Party agrees is not confidential.
- 8.4 Upon termination of the Agreement, the Receiving Party and its Authorised Recipients will cease all use of the Disclosing Party's Confidential Information and return, delete, or destroy it pursuant to Clause 18.3.
- 8.5 The Receiving Party's obligations of confidentiality shall apply to any Confidential Information of the Disclosing Party while any copy of it remains in the Receiving Party's possession or control, and thereafter for a period of two years.
- 8.6 Nothing in this Clause 8 (Confidentiality) shall prevent either Party from using, in the course of its normal business, any techniques, ideas or know-how gained during the performance of the Agreement provided that such use will not result in a disclosure of the other Party's Confidential Information or an infringement of its IPR.

## 9. **PRICE AND PAYMENT**

- 9.1 Except as expressly agreed by Fera in the Special Terms, payments under the Agreement shall be made in British pounds sterling. Any bank charges or levies incurred by Fera arising from receipt of payments shall be payable by Customer on an indemnity basis in addition to the Price.
- 9.2 Except where Fera agrees to receive payment by credit card (or other like method), invoices will be submitted by Fera in accordance with the Particulars of Contract or, where the Particulars of Contract do not detail invoice dates, upon 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 payment is received in full and cleared funds in Fera's nominated bank account.
- 9.3 Tax.
- (a) Prices payable in connection with the Agreement are expressed exclusive of applicable taxes, duties, levy or similar governmental charges (including withholding taxes, sales or Value Added Tax (VAT)) which shall be charged to Customer at the prevailing rate in addition to the Price.
  - (b) Where the Customer is obliged by Applicable Law to withhold or deduct any portion of the Price and/or expenses that Fera is entitled to receive; the Customer shall:
    - (i) pay any withholding tax directly to the appropriate government entity;
    - (ii) provide Fera with a tax certificate evidencing such payment or any tax exemption

on which Customer wishes to rely; and

- (iii) 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.

#### 9.4 Annual Price Increase

- (a) Unless otherwise specified in the Special Terms:
  - (i) Fera may increase the Prices on an annual basis on the anniversary of the Effective Date by a percentage equal to the average percentage increase in the RPI during the 12-month period preceding the date of notice of the adjustment, provided that the rate of increase shall always be 0% or greater; and
  - (ii) the first price increase shall take effect on first anniversary of the Effective Date. Fera will use reasonable endeavours to give notice to the Client of any increase prior to the date any Price adjustment takes effect.

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

- (a) the Customer shall notify Fera within ten (10) days of the date of such invoice, otherwise the invoice will be deemed to be accepted by Customer as undisputed and valid;
- (b) the Parties will resolve such dispute in accordance with Clause 20 (Dispute Resolution);
- (c) the Customer shall pay the undisputed amount(s) of such sum(s) in accordance with this Clause 9 (Price and Payment);
- (d) the Customer shall provide to Fera its written 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
- (e) Fera shall be entitled to withhold Delivery of further Deliverables until the dispute is resolved.

#### 9.6 Payment of any sum by the Customer shall be deemed as acceptance of the Deliverables to which such payment(s) apply.

#### 9.7 Without prejudice to Fera's other rights and remedies under the 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.

#### 9.8 Time shall be of the essence in relation to payments by the Customer to Fera under the Agreement.

### 10. COMPLIANCE WITH LAW

#### 10.1 General.

- (a) Each Party in performing its obligations under the 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 Applicable Law.
- (b) Each Party shall remain primarily responsible for the compliance by its Representatives and subcontractors with Applicable Laws.

#### 10.2 Modern Slavery. Notwithstanding the generality of Clause 10.1(a), each Party shall perform its obligations under the Agreement in compliance with (and shall ensure that its Representatives and sub-contractors comply with) the Modern Slavery Act 2015.

#### 10.3 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 the 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 the Agreement or its subject matter.

#### 10.4 Data Protection.

- (a) Each Party will comply with the requirements of the DPL in the performance of the Agreement.
- (b) If applicable, as stated in the Particulars of Contract, the Parties shall comply with the terms set out in Appendix 2 (Protection of Personal Data) of the Order Form.

10.5 Each Party will notify the other in writing promptly upon discovering any actual, potential or suspected breach of this Clause 10 (Compliance with Law). Breach of Clauses 10.2 and 10.3 shall be deemed a material breach under Clause 17.3(d).

### 11. **INTELLECTUAL PROPERTY RIGHTS**

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

#### 11.2 Background IPR

- (a) The Parties acknowledge and agree that all Background IPR is and shall remain the exclusive property of the Party owning it or that of its licensor. Fera acknowledges and agrees that Customer (or its licensor) owns the IPR in Customer Material.
- (b) Fera grants to the Customer a royalty-free, worldwide, non-exclusive (with a right to sub-license only with the prior written consent of Fera), temporary (for the duration of the 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, the Agreement; but specifically excluding any right to commercially exploit such Background IPR.
- (c) The Customer grants to Fera a royalty-free, fully paid-up, irrevocable, perpetual, worldwide, non-exclusive licence (with a right to sub-license) 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 the Agreements and delivering the Deliverables.
- (d) Where Background IPR identified in accordance with Clauses 11.2(b) or 11.2(c) 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 11.2(b) or 11.2(c) (as applicable) or (where the third party is itself a licensee of such IPR), it shall grant an authorised sub-licence in respect thereof.

11.3 Subject to Clauses 11.4 and 12, each Party shall indemnify and hold the other Party harmless against all Losses arising out of or in connection with any infringement (actual or alleged) of a third party's IPR which results from the other Party's use of that Party's IPR in connection with the Deliverables, in each case in accordance with the Agreement.

11.4 The IPR indemnity obligation on:

- (a) Fera under Clause 11.3 shall not apply to any Losses which result from the Customer's (or its Group member's or contractor's):
  - (i) combination of all or part of the Deliverables with other products or technology not supplied by, or instructed to do so by Fera;
  - (ii) failure to use the Deliverables (or aspects thereof) in accordance with the relevant specification, requirements and/or operating parameters;
  - (iii) the inclusion of any materials provided by the Customer which infringe the IPR of a

third party;

- (iv) the use by the Customer of IPR in a manner other than in accordance with the written instructions of Fera;
  - (v) the unauthorised modification of IPR after delivery by Fera to the Customer;
  - (vi) use of any obsolete, superseded or unsupported versions of the Deliverables following any notice by Fera to cease use or to use a replacement version
  - (vii) the use by Fera of IPR licenced by Customer to Fera for the performance of the Agreement; and/or
  - (viii) breach of any licence terms and conditions in relation to the use and/or enjoyment of the Deliverables as notified to Customer by Fera.
- (b) The Customer's indemnity under Clause 11.3 shall not apply to Losses to the extent that such Losses arise as a result of modifications made to Customer IPR by Fera or breach by Fera other than in accordance with Customer's instructions, requirements or specifications of any licence terms and conditions in relation to the use and/or enjoyment of the Customer IPR as notified to Fera by the Customer.

#### 11.5 Foreground IPR

- (a) Foreground IPR shall vest unconditionally and with full title guarantee in Fera. The 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, (but not adapt, modify, enhance or create any derivatives of) 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 11.5(a), the Customer may use the contents of Reports in accordance with its normal business requirements, except that the Customer will have no right to use or reproduce any Fera Marks without the prior written approval of Fera.
- (d) Where the Customer acquires any title, by operation of law, under the Agreement, the Customer unconditionally and irrevocably assigns to Fera all IPR that vest in:
  - (i) the Foreground IPR; and
  - (ii) any new adaptations, modifications and/or enhancements made to any Background IPR belonging to Fera,by way of present assignment of future IPR, with full title guarantee, without encumbrance or restriction and without charge to Fera. The Customer shall undertake all activities required by Fera to formalise and perfect such assignment; and
- (e) The Customer will not remove or conceal any proprietary rights notice in the Deliverables and will include such notices on any copy it is permitted to make by Fera.

### 12. **INTELLECTUAL PROPERTY INFRINGEMENT**

12.1 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.

12.2 If a claim is made, or in Fera's reasonable opinion is likely to be made, by a third party for IPR infringement against Customer or Fera in respect of the Deliverables, Fera may at its sole option and expense:

- (a) procure the right for Customer to continue to use the aspect of the Deliverables which is subject to such claim; or
- (b) replace or modify, or procure the replacement or modification of such infringing part of the Deliverables, provided that:
  - (i) the performance and functionality of the replaced or modified item is at least materially equivalent to that of the original;
  - (ii) the replaced or modified item does not have a material adverse effect on the provision of Deliverables;

- (iii) there is no additional cost to the Customer; and
- (iv) the terms of the Agreement apply to the replaced or modified Deliverables; or
- (c) if the options set out in Clauses 12.2(a) or 12.2(b) above cannot be accomplished on commercially reasonable terms, then Fera may terminate Customer's rights to use the affected part of the Deliverables. If Fera exercises the option set out in this Clause 12.2(c), then Fera will, as applicable, refund any unused prepaid Price for the affected part of the Deliverables.

12.3 Handling of Indemnified Claims. The indemnification obligation in Clauses 11.3 is conditional upon the indemnified party:

- (a) providing the indemnifying party with prompt notice of the details of any IPR claim;
- (b) not making any admission or taking steps to settle any claim without the indemnifying party's prior written approval;
- (c) if the indemnifying party so requests it, transferring control and defence of the claim to the indemnifying party; and
- (d) providing such reasonable assistance and co-operation (at the indemnifying party's cost) as required by the indemnifying party.

### 13. **DELAY EVENT**

13.1 If Fera's performance under the Agreement is hindered, prevented or delayed by any act or omission of the Customer, its Group member, subcontractors or consultants (including a failure or delay in delivering Customer Materials to Fera), or a Change in Law (each a "**Delay Event**") then, without prejudice to its other rights or remedies:

- (a) Fera shall be granted an extension of time to perform its obligations equal to the period of delay caused by such act or omission;
- (b) any failure by Fera to deliver its obligations in respect of the affected part of the Deliverables shall not constitute a breach of the Agreement; and
- (c) save to the extent the Delay Event relates to a Change in Law, Customer shall pay Fera any additional costs, arising from such act or omission, as Fera reasonably incurs.

13.2 Fera will not be in breach of the Agreement, or liable for any Losses 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 the Customer, its Representatives or sub-contractors.

### 14. **FORCE MAJEURE**

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

14.2 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 performance of the 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 performance of the Agreement as soon as reasonably possible;
- (c) use reasonable endeavours to continue to performance or resume performance of the Agreement for the duration of that Force Majeure Event.

14.3 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 the Agreement as soon as reasonably possible.

### 15. **SUSPENSION OF PERFORMANCE**

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

- (a) where the Customer has failed to make payment by the due date of undisputed sums invoiced by Fera in accordance with Clause 9 (Price and Payment);
- (b) until receipt of credit reference checks in respect of the Customer, which are reasonably satisfactory to Fera;
- (c) where the supply of Deliverables would exceed any credit limit which Fera may, in its discretion, have granted to Customer;
- (d) the Customer is in breach of any of the terms of the Agreement; and/or
- (e) a Change in Law has occurred which meets the requirements of Clauses 16.1(a) through to 16.1(c) (inclusive).

## 16. **CHANGE MANAGEMENT**

### 16.1 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 the Agreement or any transaction(s) contemplated thereby,

then Fera shall have the right to issue to Customer a Change Notice in accordance with Clause 16.3.

### 16.2 Customer change. If the Customer wishes to alter or vary the Deliverables during performance of the Agreement, it shall provide written notification to Fera detailing the requested change(s), together with such supporting information as reasonably requested by Fera. Fera will use reasonable endeavours to respond to the Customer within ten (10) Working Days of receipt of the notification, 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 16.3.

### 16.3 "Change Notice" A change notice issued by Fera will specify in reasonable detail: (a) 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).

### 16.4 Within a reasonable period (and in any event within ten (10) Working Days) from receipt of notice under Clause 16.3, the Customer will on written notice to Fera either:

- (a) accept the proposed change(s), whereupon the Parties will execute a variation to the Agreement, (whereupon the revised price will become the Price); or
- (b) reject the proposed changes, whereupon either Party may elect to terminate the Agreement (or part thereof) on written notice to the other Party in accordance with Clause 17 (Termination).

### 16.5 Where Fera (acting reasonably) believes that the Customer requires materially different performance than that agreed under the Agreement, it will notify the Customer of the same and the Customer will comply with its obligations under Clause 16.3.

### 16.6 For the avoidance of doubt: (a) no change or purported change to the Agreement shall be effective unless executed as a variation in accordance with Clause 19.2; and (b) the provisions of this Clause 16 (Change Management) are without prejudice to the provisions of Clause 14 (Force Majeure).

## 17. **TERMINATION**

### 17.1 The Agreement may be terminated by Fera for convenience on giving one (1) month's written notice.

### 17.2 Fera may terminate the Agreement immediately on written notice to the Customer if:

- (a) Fera (acting reasonably) determines that a conflict of interests exists or may develop between Fera and the Customer, or
- (b) any undisputed sum of Charges remains unpaid for more than thirty (30) days after the due date for payment in accordance with Clause 9 (Price and Payment) and following written demand from Fera.

- 17.3 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) and 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 ninety (90) 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 8 (Confidentiality), 10.2, 10.3, 11 (Intellectual Property Rights) and/or 12 (Intellectual Property Infringement) shall be considered a material breach for the purposes of the Agreement.
- 17.4 Where a material breach relates to one or more parts of the Deliverables which is capable of partial termination then the non-breaching party shall have the right to terminate that part of the Deliverables under the relevant SoW by written notice to the other party. No later than thirty (30) days following such notification, Fera shall provide Customer with the updated Prices relating to the Deliverables not terminated ("**New Prices**"). Where the Customer does not agree to the New Prices, the Customer shall have the right to terminate the Agreement, on written notice to Fera, no later than thirty (30) days from receipt of the New Prices. Where no such termination notice is issued by Customer, Customer shall be deemed to have accepted the New Price and the Agreement shall be amended accordingly.

## 18. **EFFECTS OF TERMINATION AND EXPIRY**

### 18.1 Following termination or expiry of the Agreement:

- (a) any rights, remedies or liabilities of either Party which accrued prior to the date of termination/expiry shall be unaffected;
- (b) any sums invoiced for payment before the effective date of termination or expiry will become immediately due and payable;
- (c) where Fera has not submitted an invoice, Fera may submit a valid invoice to the Customer and such invoice shall be payable immediately by Fera on receipt.

18.2 Fera may, during the term of the Agreement and upon termination, set off against any debt owed by the Customer to Fera, or the amount of Loss that Fera has assessed as resulting from termination, any sums otherwise due to Customer.

18.3 Each Party will, upon written request of the other Party, promptly 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 Applicable Law and/or to support the enforcement or defence of a Party's rights under the Agreement.

18.4 Without prejudice to Clause 8.4, neither Party will be considered in breach of this Clause 18.3 where Confidential Information remains on its computer archive and backup facilities following reasonable efforts to delete such Confidential Information.

18.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

## 19. **GENERAL**

### 19.1 Assignment and Sub-Contracting

- (a) The Customer shall not deal with, novate, assign, transfer, mortgage, charge, or delegate any of its rights and obligations under the Agreement without the prior written consent of Fera. Any attempted or purported assignment in contravention of this Clause 19.1 shall be void.
- (b) Fera may at any time, on reasonable notice in writing to the Customer, transfer, assign or novate all or any rights and/or obligations under the Agreement to a third party.
- (c) Fera shall be free to subcontract the whole or any part of its obligations under the Agreement.

### 19.2 Waiver and variation

- (a) No amendment or variation of the 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 the 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 the 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 the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

#### 19.3 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 the Customer an employee or servant of Fera or of making any Representative of Fera an employee or servant of the 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 the Customer consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.

19.4 Severability. If a provision of the 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 the Agreement shall not affect its continuance in force or any of its other provisions.

#### 19.5 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.

19.6 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.

#### 19.7 Non-Solicitation

- (a) For the term of the 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 19.7(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 the 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

#### 19.8 Entire Agreement.

- (a) The 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 the Agreement.

- (c) Nothing in this Clause 19.8 shall seek or purport to relieve either Party for liability in respect of fraud or fraudulent misrepresentation.

19.9 Publicity. Neither Party shall make any press announcement or publicise the 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.

19.10 Counterparts. The 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.

## 20. DISPUTE RESOLUTION

20.1 In respect of any dispute arising out of or in connection with the Agreement, either Party may initiate this Clause 20 (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.

20.2 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 20.3.

20.3 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 ten (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 ten (10) Working Days of the appointment of the Mediator meet with them 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; and
- (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.

20.4 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.

## 21. LAW AND JURISDICTION

21.1 The 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.

21.2 The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England.

21.3 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 Order Form (including, where applicable, an EULA);

**"Applicable 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 the Agreement;"

**"Background IPR"** means any and all IPR owned by or licensed to either Party and developed or obtained before or independently of the Agreement;

**"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(s)"** means any action, assertion of right, claim, demand or request;

**"Confidential Information"** means all information and personal data which is confidential or proprietary in nature; relates to the disclosing Party's business affairs (including any financial or technical data, trade secrets, know-how, IPR and/or derivative data or output) which the disclosing Party directly or indirectly discloses, or makes available to the receiving Party by whatever means before, on or after the date of the Agreement; and/or any other information clearly identified as being, or which ought reasonably be considered to be, confidential;

**"Customer"** means the person, persons or entity executing the SoW and to whom the Agreement is issued;

**"Customer Material"** means any goods, sample, material, chemical compound, biological material or other like substance to be provided by Customer to Fera under the Agreement;

**"Data Protection Legislation"** or **"DPL"** means all applicable data protection and privacy legislation in force in the United Kingdom including the Data Protection Act 2018, UK GDPR (as defined in sections 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

**"Deliver"** means, save as otherwise expressly specified in the Particulars of Contract, (a) in respect of Goods and Customer Materials to be delivered by Fera, delivery at Fera's nominated facility on an Ex Works basis (in accordance with Incoterms 2020), and (b) in respect of Services, completion of the relevant Deliverable, and the terms **"Delivered"** and **"Delivery"** shall be construed accordingly;

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

**"Disclosing Party"** means a party (or its Group member) who discloses Confidential Information to the Receiving Party;

**"Effective Date"** means the date when the Parties both sign the Order Form, or the date stated in the Particulars of Contract in the Order Form;

**"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 agreement notified to Customer by Fera for the access and use of Fera's web-based service(s);

**"Faults"** has the meaning given to it in Clause 4.5;

**"Fera"** means Fera Science Limited (a company incorporated in England and Wales under number 9413107);

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

**"Force Majeure Event"** means any circumstance or cause beyond a Party's reasonable control including acts of God, flood or other natural disaster, epidemic, pandemic, terrorist attack, civil commotion or riots, war or armed conflict, fire, explosion, contamination (including chemical or

biological), loss of access to electricity, power or telecommunications, shortages of materials or equipment, supply chain failures, any labour or trade dispute, strikes, industrial action or lockouts and any change in Law or due to action taken by a government or public authority (including quarantine measures) 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 the 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;

**"Initial Term"** means the period stated in the Particulars of Contract in the Order 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 patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks (registered or unregistered), domain names, goodwill, right to sue for passing off, design rights (registered or unregistered), rights in computer software, database rights, trade secrets, know-how, right to preserve confidentiality of information, any other industrial and intellectual property rights, including all applications for, renewals or extensions of, such rights and all similar or equivalent rights or protections which are recognised, subsist or will subsist, now or in the future, in any part of the world.

**"Loss(es)"** means any losses, demands, claims, costs, charges, damages, actions, proceedings, or expenses of any kind including interest, fines, legal and other professional expenses and disbursements;

**"Mediator"** has the meaning given to it in clause 20.3(a);

**"Order Form"** means Fera's template order form, duly completed by the Parties, and comprising of the Particulars of Contract and SoW;

**"Particulars of Contract"** means the particulars of contract at detailed in the Order Form;

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

**"Price"** means the sum(s) paid and payable by Customer to Fera as stated in the Order Form;

**"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;

**"Receiving Party"** means a party or Group member, who receives Confidential Information from the

Disclosing Party;

**"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;

**"RPI"** means Retail Price Index as calculated and published by the Office for National Statistics (or its replacement index)

**"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;

**"Special Terms"** means the special terms and condition contained in part 2 of the Particulars of Contract;

**"Statement of Work"** or **"SoW"** means the statement of work contained in Schedule 1 of the Order Form, including (amongst other things) the description of the Deliverables to be delivered, 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 under the Agreement including in respect of the Deliverables and Customer Materials;

**"Term"** means the Initial Term plus any extension pursuant to Clause 2.2;

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

**"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 the Agreement. All Schedules, Annexes, and Appendices, whether to these Terms and Conditions or the Order Form, shall all 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 19.5 (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 the 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 the 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.