



National Collection of Plant Pathogenic Bacteria

MATERIAL TRANSFER AGREEMENT

FERA IS NOT WILLING TO TRANSFER MATERIAL ON ANY TERMS OR CONDITIONS OTHER THAN THE FOLLOWING. RECEIPT OF CULTURES VIA PLACEMENT OF AN ORDER WITH FERA (OR VIA ANY OTHER ROUTE SUCH AS REPLACEMENT UNDER WARRANTY, AS A GIFT OR SIMILAR) CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

This Material Transfer Agreement ("Agreement") is between:

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 17 Rochester Row, London, SW1P 1QT ("Fera"), which houses the National Collection of Plant Pathogenic Bacteria (NCPB) under licence from of the Secretary of State for Environment, Food and Rural Affairs ("Defra") and the Recipient (as detailed on New Recipient Application Form, Order Forms and Packing Notes) acquiring Material (as defined hereinafter) under this Agreement. Fera will only transfer Material to Registered Recipients in good standing. Fera is willing to transfer the Material and the Recipient is willing to receive the Material under the terms and conditions specified herein.

Scope of Agreement

This Agreement applies to the use, handling, sale, distribution and any disposition of the Material, Replicates, and Derivatives.

Interpretation

"Material" means any material or portion thereof shipped to the Recipient, as detailed on individual Order Forms. In the case of replacement of cultures under warranty or sending of cultures as a gift or similar, this will be as detailed in the Packing Note.

"Replicates" means any biological or chemical material that represents a substantially unmodified copy of the Material. Replicates include but are not limited to material produced by growth of cells or microorganisms or amplification of Material.

"Derivative" means material created from the Material that is substantially modified to have new properties. Derivative includes, but is not limited to, recombinant DNA clones made using a vector purchased from Fera.

This Agreement is subject to the Fera Terms and Conditions as appended as Annex 1 to this Agreement.

1. Recipient Rights, Qualifications and Responsibility

(a) Recipient shall not sell, lend, distribute, or otherwise transfer the Material or Replicates to any others.

(b) Subject to the terms and conditions of this Agreement and any statutory, regulatory or other restriction imposed by law or any third party interest, Recipient may use the Material, Replicates, or Derivatives in any lawful manner for scientific research purposes only. Notwithstanding the foregoing, Recipient may not distribute or sell the Material or Replicates.



- (c) Recipient represents that within their laboratory
- (i) access to the Material, Replicates or Derivatives will be restricted to personnel capable and qualified to safely handle the Material, Replicates, or Derivatives and
 - (ii) Recipient shall exercise the utmost care, taking into account the unique characteristics of the Material, to maintain and use the Material, Replicates, or Derivatives with appropriate precautions to minimise any risk of harm to persons and property and to safeguard them from theft or misuse.

Recipient agrees that Material or Replicates designated Class II constitute known pathogens and that other Material, not so designated, or Derivatives, may be pathogenic under certain conditions. In addition, the Material or Derivatives may pose additional hazards. Recipient, not Fera, assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, use and any misuse or other wrongdoing with respect to Material transferred hereunder, the Replicates, and any Derivatives. Recipient agrees that any handling or other activity undertaken in their laboratory with the Material, Replicates, or Derivatives will be conducted in compliance with all applicable laws and regulations. Recipient will supply to Fera upon request a copy of any necessary licence, permit or other authorisation.

(d) Recipient acknowledges, agrees and represents that the Material is not intended for use in humans, and agrees not to conduct research in humans without the advance written consent of all applicable regulatory authorities.

(e) Recipient represents, warrants and covenants that all information provided to Fera in connection with the request for culture(s) is true, correct and complete, including, without limitation, any information provided for use in obtaining any licence, permit or other authorisation with respect to requested cultures hereunder or otherwise complying with applicable law and regulations.

Recipient agrees to comply with all restrictions on export from the United Kingdom and re-export from other countries set forth in the export licenses and any other permit or authorisation required by law for the Material, Replicates, and Derivatives and/or any information provided therewith or derived therefrom, and are responsible for obtaining any re-export authorisation before transferring the Material, Replicates, or Derivatives provided hereunder or derived therefrom to another country or national thereof.

With respect to transfers of Material, Replicates, or Derivatives to destinations outside the United Kingdom,

- (i) Recipient assumes all risk and responsibility in connection with complying with applicable foreign law and regulations concerning the import, handling, transportation, storage, use, and misuse or other wrongdoing with respect to Material, Replicates or Derivatives and
- (ii) Recipient has advised Fera when placing its request for culture(s) of any foreign legal or regulatory requirements pertaining to the requested shipment to be implemented within the United Kingdom in connection with such shipment.

(f) Certain contributors of Material to Fera have requested and Fera has agreed that they will be notified of the identity of transferees of Materials hereunder. Recipient acknowledges that nothing prohibits Fera from identifying Recipient as a transferee of Materials hereunder.

2. Intellectual Property/Exploitation



(a) Nothing in this Agreement grants Recipient any rights under any patents, propriety, intellectual property, or other rights with respect to the Material, Replicates or Derivatives.

(b) The Agreement grants the Recipient the non-exclusive, revocable, non-assignable right to use the Material, Replicates or Derivatives for scientific research purposes only. Use for commercial purposes is specifically excluded without prior consent from Defra.

(c) Recipient agrees to acknowledge NCPPB/Fera and any contributor indicated by Fera as the source of the Material in any and all publications and patent applications that reference the Material. Except as required by the preceding sentence, Recipient may not otherwise use or permit others to use Fera's name or trademarks without the advance written consent of Fera.

Indemnification of Fera and contributor

Recipient shall indemnify, to the extent permitted by law, Fera and contributor against any claims made against Fera by third parties that sale or use of the Material, Replicates, or Derivatives by Recipient and/or production of Replicates or Derivatives by Recipient infringes any patent or other proprietary rights of such third parties or of contributor and against any claims or liabilities arising as a result of breach of this agreement, including, without limitation, any claims relating to, the receipt, handling, storage, transfer, disposal, use and any misuse or other wrongdoing with respect to Material, the Replicates, Derivatives, transferred hereunder.

Assignment

This Agreement is not assignable, whether by operation of law or otherwise

Convention on Biological Diversity

NCPPB seeks to conform with the spirit of the Convention on Biological Diversity (CBD). Nothing in this agreement shall be construed as changing the rights and obligations of Parties under the CBD. The agreement fully complies with Article 15 of the CBD, which recognises the sovereign rights of States over their natural resources. The CBD requires users of genetic resources to share benefits accruing from their use with the country of origin. In the case of subsequent exploitation, suitable and adequate sharing of income must be negotiated with the country concerned.

3. Limited Warranty of Material

Fera hereby represents and warrants that the Material shall be viable upon shipment from Fera, and for a period, from Fera's shipment, of thirty (30) days (the "Warranty Period").

The sole remedy for breach of this warranty is one (1) replacement by Fera of the Material free of charge if Recipient reports the lack of viability upon receipt or within the applicable Warranty Period. Any expiration date specified on the Material shipment documentation states the expected remaining useful life, but does not constitute a warranty.

Disclaimer of warranties

Except as expressly provided in this agreement, there are no representations or warranties by Fera or its contributors with respect to the items, express or implied, including without limitation, any implied warranty of authenticity, typicality, title, safety, merchantability, or fitness for a particular purpose. Neither Fera nor its contributors makes any representation or warranty that use of the items will not infringe any patent, copyright, trademark or other proprietary right of third parties nor as to the accuracy or correctness of the data.



Fera may at its discretion provide technical assistance and information with respect to the Material as well as other products and procedures associated with use of the Material. Fera makes no warranties of any kind, express or implied, with respect to the technical assistance or information provided. It is the Recipient's responsibility to assess the technical assistance and information in consideration of the use, selection, application or suitability of the items.

4. Limitation of liabilities; remedies

(a) Recipient recognises the potential hazard of utilising the Material and Replicates, the experimental nature of the Material and Replicates, and understands that the taking of appropriate precautions to minimise any health risk becomes fully Recipient's responsibility upon receipt of the Material. Neither Fera nor any contributor is liable for any damages or injuries resulting from receipt and/or improper, inappropriate, negligent or other wrongful handling or use of the Material, Replicates, or Derivatives, and/or, except as expressly provided in this agreement or any certificate of analysis provided herewith, from any misidentification, misrepresentation, lack of title, safety, purity, typicality, or viability of the items. Neither Fera nor contributor will be liable to Recipient or Recipient's institution or any of its employees, representatives, or agents for any loss, claim or demand made by Recipient or Recipient's institution or such persons made against Recipient or Recipient's institution by any other party, due to or arising from the use of the items by Recipient, except to the extent permitted by law when caused by the gross negligence or wilful misconduct of Fera.

(b) neither Fera nor any contributor shall have any liability to Recipient or Recipient's institution for any consequential (including lost profits), incidental, indirect, special, economic or punitive damages arising out of, or based upon the transactions contemplated by this Agreement or the subject hereof, even if Fera has been advised of the possibility of such damages.

(c) the exclusive remedy against Fera (including any contributor) for any losses or damage of any kind whatsoever, whether in contract, tort or otherwise, shall be, at Fera's option, refund of the fee paid to Fera for such Material or other item or replacement of the Material.

5. Shipping

Fera will package the Material for shipping in accordance with IATA international safety regulations. If special processing or packaging is necessary, a special processing fee will be charged. If the Material is lost or damaged during shipment, Fera will replace such Material, including storage media, at no additional charge, provided that Recipient has reported thawed, damaged or lost shipments immediately to the applicable airline or freight forwarder and notified Fera promptly upon discovery thereof.

6. Miscellaneous

This Agreement shall be construed and enforced in accordance with and governed by the laws of England.



ANNEX 1

Fera Terms and Conditions for the Supply of Materials

These Terms and Conditions may only be varied with the written agreement of Fera. These Terms and Conditions shall apply to all contracts for the supply of Materials by Fera to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order confirmation of order or similar document.

1. Definition and Interpretation

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

"Agreement" means the agreement between Fera and the Customer incorporating the Agreement for the Material Transfer Agreement and these Terms and Conditions (including any relevant Purchase Order);

"Confidential Information" means any information given to or obtained by Fera from the Customer, or by the Customer from Fera, under the Agreement, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, material, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

"Fera" shall mean 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 17 Rochester Row, London, SW1P 1QT.

"Customer" means the person or persons to whom the Agreement is issued. Where the Customer consists of more than one person, the obligations of those persons in respect of the Agreement shall be joint and several.

"Material" means the Material to be supplied by Fera as detailed in the Purchase Order or by Fera in any other form, including but not limited to email, telephone, letter and fax.

"Intellectual Property" means any copyright, design right, trademark, trade name, know-how, patentable invention for the purposes of the Patents Act 1977, database right for the purposes of the Copyright and Rights in Databases Regulations 1997, and all intellectual property, including Technical Information, the rights to which are protectable by law; and "Intellectual Property Rights" and "IPR" shall mean any rights in Intellectual Property.

"Parties" means Fera and the Customer.

"Price" means the charges, taxes and disbursements specified by Fera in quote or Material Transfer Agreement.

"Purchase Order" means the purchase order containing details relating to the supply of Material under the Agreement.

"Technical Information" means and includes inventions, discoveries (and applications thereof), biological substances, organisms and materials (whether patentable or not), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.

"Terms and Conditions" means the Fera Standard Terms and Conditions for the Supply of Material.

"VAT" means UK value added tax.

1.2 Clause headings shall not affect the interpretation of these Terms and Conditions.

1.3 Unless the context otherwise requires, references in these Terms and Conditions:

1.3.1 to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;

1.3.2 to one gender include all genders, and reference to singular include the plural and vice versa;

1.3.3 to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.



2. **The Material**

- 2.1 Fera agrees to provide the Materials to the Customer in accordance with the Agreement.
- 2.2 Fera undertakes to the Customer that it shall use its reasonable endeavours to provide the Material in accordance with good scientific practice and within the time period agreed between the Parties and at all times exercising reasonable skill and care.
- 2.3 Nothing in the Agreement implies that Fera will provide the Materials for the Customer exclusively.
- 2.4 No order for the supply of Materials is binding on Fera unless and until it has been accepted by Fera in writing.
- 2.5 Time shall not be of the essence in relation to the provision of the Materials by Fera to the Customer.

3. **Delivery and Packaging**

- 3.1 Delivery of the Materials shall be at the time and date and in the manner specified by Fera or as otherwise agreed with the Customer.
- 3.2 Time of delivery shall not be of the essence. Stated delivery times are an estimate only and, subject to the other provisions of the Agreement, Fera will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Material nor will any delay entitle the Customer to terminate or rescind the Agreement.
- 3.3 If the Customer; refuses or fails to take delivery of the Material within the Customer's normal working hours on the date of delivery, or if Fera is unable to deliver the Material on time because the Customer has not provided appropriate instructions, documents, licences or authorisations, Fera may store the Material and the Customer shall in addition to the price payable pay all related costs and expenses (including without limitation, the costs for storage and insurance) and additional delivery costs incurred by Fera and if the Customer fails to take delivery of or to collect the Material (as appropriate) after fourteen (14) days following the date of delivery, Fera may rescind the Agreement and sell the Material to a third party if possible or recover damages.
- 3.4 Fera shall use its reasonable endeavours to comply with the reasonable requests made by the Customer to postpone delivery of the Material but shall be under no obligation to do so.
- 3.5 If Material are delivered in instalments, each delivery shall constitute a separate Agreement. Any failure by Fera to deliver or any claim by the Customer in respect of any one or more of the instalments in accordance with this Agreement shall not entitle the Customer to treat the Agreement as a whole as repudiated.
- 3.6 Fera reserve the right to change the batch of the Material at any time and Material may be delivered which originate from one or more different batches.
- 3.7 Fera reserves the right, at its sole option, to cancel or withhold the delivery of any Material, (whether in whole or in part):
 - 3.7.1 until receipt of satisfactory credit reference in respect of any Customer; and/or
 - 3.7.2 where the supply of such Material would exceed any credit limit which Fera may, in its absolute discretion, have granted to the Customer; or
 - 3.7.3 the Customer is in breach of any of the terms of the Agreement.
- 3.8 Packaging supplied by Fera, unless otherwise expressly agreed in writing, is intended to provide adequate protection in normal conditions of transit of expected duration.
- 3.9 Due to the nature of the Material to be supplied, the Customer shall be responsible for ensuring the Material are kept in adequate storage conditions once delivered in accordance with this clause, including but not limited to protecting the Material against the effects of humidity and temperature.

4. **Risk and Title**

- 4.1 Unless stated otherwise, risk in the Material shall pass to the Customer (the Customer is then responsible for all loss or deterioration of the Material or for any damage occurring) upon delivery in accordance with clause 3.



4.2 Title to the Material shall remain with Fera until any and all sums due or payable by the Customer to Fera, under this Agreement or under any other contract between the Customer and Fera is made in full and cleared funds.

5. **Defects Apparent on Inspection**

5.1 The Customer shall only be entitled to claim in relation to defects in the Material as supplied which are apparent on visual inspection if the Customer inspects the Material and a written complaint specifying the defect is made to Fera within seven (7) days of delivery, and Fera is given an opportunity to inspect the Material and investigate any complaint before any use of or alteration to or interference with the Material.

5.2 If a complaint is not made to Fera in accordance with this clause 5, the Material shall be deemed to be in all respects in accordance with the Agreement (subject only to clause 6) and the Customer shall be bound to pay the Price for such Material.

6. **Defects not Apparent on Inspection**

6.1 The Customer shall only be entitled to claim in respect of defects in the Material supplied which are not apparent on visual inspection at the time of delivery if:

6.1.1 a written complaint is sent to Fera as soon as reasonably practicable after the defect is discovered and subsequently no use is made of the Material or alteration or interference made to or with the Material before Fera is given the opportunity to inspect the Material in accordance with clause 6.4 below; and

6.1.2 the complaint is sent within 30 days of the date of delivery of the Material.

6.2 The Customer shall not be entitled to claim in respect of any defect arising by reason of fair wear and tear or damage due to accident, neglect or misuse, nor in respect of any Material to which alterations have been made without Fera's consent.

6.3 Fera shall not be liable for (and the Customer shall indemnify and keep indemnified Fera against) any and all claims whatsoever arising from loss or damage suffered by reason of use of the Material after the Customer becomes aware of any defect or after circumstances have occurred which should reasonably have indicated to the Customer the existence of a defect.

6.4 Fera may within fifteen (15) days of receiving a written complaint in accordance with clauses 5.1 or 6.1 (or twenty-eight (28) days where the Material are situated outside the UK) inspect the Material and the Customer if so required by Fera shall take all reasonable steps necessary to enable it to do so (including delivery of such Material to Fera at Fera's request at the Customer's cost). For the avoidance of doubt, no Material should be returned to Fera without Fera's prior consent.

7. **Defects**

7.1 If the Material delivered under this Agreement are found by Fera to be defective Fera will following delivery (at Fera's request) of such defective Material to Fera by the Customer, following return of the defective Material to Fera, at its sole option, either:

7.1.1 supply satisfactory substitute Material free of cost and within a reasonable time; or

7.1.2 repay the Price of the Material in respect of which the complaint has been made.

8. **Specifications**

8.1 The Customer shall indemnify and keep indemnified Fera from and against any and all actions, claims, costs, liabilities and proceedings which arise due to the manufacture of the Material by Fera being in accordance with specifications provided by the Customer if such specifications are inaccurate or contain defects or if they infringe or are alleged to infringe any patent, copyright, design right, registered design or any other third party intellectual property rights.

8.2 Fera does not guarantee suitability of materials or design of Material made especially to the Customer's requirements even if the purpose for which the Material are acquired is known to Fera.

8.3 All Material must be used strictly in accordance with the instructions, recommendations and specifications (if any) of Fera.



- 8.4 Fera accepts no liability for any losses arising due to:
- 8.4.1 any use of the Material which is not in accordance with any such instructions referred to in clause 8.3 above; or
 - 8.4.2 any use of the Material for a purpose which has not been specified by Fera.

8.5 Without prejudice to the generality of the foregoing, all recommendations and advice given by or on behalf of Fera as to the methods of storage or use of the Material and the suitability of using such Material in manufacturing processes or in conjunction with any other materials are given without liability on the part of Fera.

9. Invoicing and Payment Terms

- 9.1 Payments of the Price shall be made within 30 days of receipt of a valid VAT invoice. Payment shall be made in £ sterling. All cheques, drafts or other payment instructions should be drawn on a bank trading in the UK.
- 9.2 All bank charges associated with payments made by the Customer for the Material (such as, by way of example only, charges levied on payments from overseas) shall be payable by the Customer.
- 9.3 All sums due from the Customer to Fera which are not paid on the due date (without prejudice to the rights of Fera under the Agreement) shall bear compounded interest at the rate of 4% over the daily base rate of the Bank of England.
- 9.4 Time shall be of the essence in relation to payments by the Customer to Fera under the Agreement.

10. Corrupt gifts and payments

The Customer shall not offer or give, or agree to give, to any employee or representative of Fera any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or from having done or refrained from having done, any act in relation to the obtaining or execution of this or any other agreement with Fera or for showing or refraining from showing favour or disfavour to any person in relation to this or any such agreement. The attention of the Customer is drawn to the criminal offences created by the Bribery Act 2010.

11. Force Majeure

Fera shall be under no liability for any failure to perform any of its obligations under the Agreement if and to the extent that the failure is caused by act of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, fires, breakdowns, interruptions of transport, governmental action or restriction, shortages of labour or materials or breakdown of machinery, delay in delivery by Fera's suppliers or any other cause whatsoever (whether or not similar to the foregoing) outside the control of Fera.

12. Termination

- 12.1 The Customer may cancel the Order within fourteen (14) days of placing the Order for the Materials provided that the Materials have not been used and are returned unopened and in a satisfactory condition within 14 days after receipt. Cancellations should be sent by email to ncppb@fera.co.uk
- 12.2 Materials shall be returned at the cost of the Customer. Fera shall refund the price of the Order and delivery charges where applicable within 14 days of receipt of the cancellation of the Order; or where the Materials have already been despatched within 14 days of receipt of the returned Materials.
- 12.3 Orders for Materials cannot be cancelled where the Materials were a special order to your specification.
- 12.4 The Agreement may be terminated by Fera on giving one (1) months written notice.
- 12.5 Either party may terminate the Agreement immediately by written notice given to the other where:
- 12.5.1 that other party commits a breach of the Agreement which the party serving the notice reasonably considers is not capable of remedy; or
 - 12.5.2 that other party has continued in any breach of the Agreement for more than 30 days after being warned in writing of such breach.



- 12.6 Fera may terminate the Agreement immediately by written notice to the Customer if:-
- 12.6.1 the Customer is a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or if the Customer makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or
 - 12.6.2 the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or
 - 12.6.3 the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.
- 12.7 If the Customer does not make payments in accordance with clause 9 above Fera reserves the right to cease the supply of Material and, if it thinks fit, to terminate the Agreement immediately by written notice given to the Customer.
13. **Effect of termination**
- 13.1 Termination of the Agreement shall not affect any obligation or liability of any Party which has accrued at the date of termination.
14. **Legal Relationship**
- 14.1 Nothing in the Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Customer a servant of Fera or of making any official of Fera an employee or servant of the Customer.
- 14.2 Neither of the Parties 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.
15. **Severability**
- If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.
16. **Notices**
- Any notices to be given under the Agreement shall be in writing and sent to the relevant address or addresses set out in the Agreement by hand, electronic mail transmission, facsimile or prepaid post. Such notices shall be deemed to be received at once if sent by facsimile or electronic mail transmission and if sent by prepaid first class post within the United Kingdom shall be deemed to be served on the second business day after posting. If a notice is sent to or from abroad by prepaid mail it shall be deemed to be served on the fifth business day after posting.
17. **Dispute resolution**
- 17.1 Fera and the Customer shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.
- 17.2 If any such dispute cannot be resolved in accordance with condition 17.1, the dispute may, by agreement between Fera and the Customer, be referred to mediation in accordance with condition 17.3
- 17.3 The procedure for any such mediation shall be as follows:
- 17.3.1 A neutral person ("the Mediator") shall be chosen by agreement between Fera and the Customer, alternatively, either party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to either party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator.
 - 17.3.2 Fera and the Customer shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be



adopted for the mediation. If appropriate, Fera and the Customer may at any stage seek from CEDR guidance on a suitable procedure.

- 17.3.3 Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the Parties in any future proceedings.
 - 17.3.4 If Fera and the Customer reach agreement on the resolution of the dispute, that agreement shall be set out in writing and shall be binding upon Fera and the Customer.
 - 17.3.5 Failing agreement, either Fera or the Customer 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 Fera and the Customer.
- 17.4 For a period of sixty days from the date of the appointment of the Mediator, or such other period as Fera and the Customer may agree, neither of the Parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

18. **Third Party Rights**

A person who is not a party to the Agreement (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any of these conditions. Any right or remedy of a third party which exists or is available apart from the Act is not affected.

19. **Jurisdiction and governing law**

The Agreement is subject to English law and to the exclusive jurisdiction of the courts of England and Wales.