

## GENERAL TERMS & CONDITIONS OF SERVICES

(Applicable as of 1 August 2013)

### 1 APPLICATION

- 1.1 These General Terms & Conditions of Services apply to services provided by Fidelta d.o.o., a Croatian limited liability company having its registered office at Prilaz baruna Filipovića 29, HR-10000 Zagreb, Croatia, VAT number: HR78855695247 („**Fidelta**“).
- 1.2 By accepting Fidelta's proposals or quotations for services, you agree to these terms and conditions.
- 1.3 Deviations from these terms and conditions shall be valid only if explicitly agreed by the parties in writing.

### 2 DEFINITIONS

- 2.1 “**Affiliate**” means, with respect to a party hereto, any entity that controls, is controlled by or is under common control with such party, whereby “**control**” shall mean the ownership of fifty per cent (50%) or more of the share capital.
- 2.2 “**Client**” means a legal entity or a natural person procuring Fidelta's services.
- 2.3 “**Client Indemnitees**” means Client and its Affiliates and their respective directors, officers and employees.
- 2.4 “**Client Loss**” means any and all losses, expenses (including reasonable legal counsel fees and expenses), costs, liabilities or damages to which any Client Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any third party or otherwise arising out of Fidelta's services performed hereunder.
- 2.5 “**Confidential Information**” means all material, data and information, tangible or intangible, whether in written, graphic, verbal or electronic form, developed by or disclosed or made available by the Disclosing Party to the Receiving Party, its employees or representatives under this Agreement. Confidential Information shall include, without limitation, the terms of this Agreement, trade secrets, know-how, inventions, technical data or specifications, chemical structures, testing methods, business or financial information, research and development activities, product and marketing plans, (pre-) (clinical) development plans and customer and supplier information, including, but not limited to, such information that becomes known to Receiving Party during visits to the facilities of Disclosing Party or its Affiliates. For clarification, all Client Materials and all information relating thereto, all data and results generated in the course of performance of the Services, and all Inventions shall be Confidential Information of Client. Notwithstanding the above, Confidential Information shall not include any information that the Receiving Party can show based on written evidence:

- (a) was already known to the Receiving Party without any obligations of confidentiality prior to receipt from Disclosing Party;
- (b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to Receiving Party;
- (c) became generally available to the public or otherwise part of the public domain after its disclosure, other than through any act or omission of the Receiving Party in breach of any obligation of confidentiality;
- (d) was disclosed to the Receiving Party, other than under an obligation of confidentiality, by a third party who had no obligation not to disclose such information to others; or
- (e) was independently discovered or developed by the Receiving Party without the use of Confidential Information.

Confidential Information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components, or combinations thereof are now, or become, known to the public.

2.6 **"Fidelta Indemnitees"** means Fidelta and its directors, officers and employees.

2.7 **"Fidelta Loss"** means any and all losses, expenses (including reasonable legal counsel fees and expenses), costs, liabilities or damages to which any Fidelta Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any third party arising out of Client's use of the data, results or inventions resulting from the services performed by Fidelta hereunder.

### **3 CONCLUSION OF THE CONTRACT, AMENDMENTS**

3.1 A binding contract for provision of services shall be deemed concluded when Client notifies Fidelta in writing that Client accepts Fidelta's contract proposal. The acceptance will be deemed validly communicated if made by mail, e-mail or telefax.

3.2 Acceptance that includes changed or additional terms and conditions, as compared to those offered, shall be deemed a new contract proposal, which requires acceptance by the other party.

3.3 Amendments to a concluded contract will only be valid if made in writing and signed by authorised representatives of both parties.

### **4 PROVISION OF SERVICES**

4.1 Fidelta will provide contracted services in a good and scientific manner and in compliance with applicable laws and regulations, pursuant to specific terms and conditions agreed upon with Client and the terms and conditions contained herein.

### **5 CHANGE ORDERS**

5.1 Should Client require changes to the services after conclusion of the contract, Client will provide Fidelta with a written change order detailing required changes, upon which the parties shall discuss in good faith on appropriate changes to the contract that would be commercially acceptable to both parties.

### **6 PRICES AND PAYMENT**

6.1 In consideration of services provided by Fidelta, Client shall pay to Fidelta the agreed price, increased by applicable value added tax, within thirty (30) days as of the day of receipt of the invoice.

- 6.2 Client will reimburse Fidelta for all reasonable and necessary costs and expenses incurred by Fidelta in performance of contracted services.
- 6.3 All payments shall be made by wire transfer to Fidelta's bank account stated on the invoice.
- 6.4 Client will pay an interest of one per cent (1%) per month (or the maximum amount allowed by law if less than 1% per month) for late payments.

## **7 INTELLECTUAL PROPERTY**

- 7.1 All results of the services, whether patentable or not, except Fidelta IP (as defined below), shall be intellectual property of Client („**Client IP**“).
- 7.2 Client acknowledges that Fidelta possesses certain research processes, methods or other research know-how, which are used for the performance of the services („**Fidelta IP**“). Client agrees that any improvements, alterations or enhancements that relate directly and specifically to Fidelta IP and are made in the course of the performance of the services shall be the sole property of Fidelta and shall not be included in the Client IP.
- 7.3 Intellectual property created before or outside of the scope of services contracted hereunder („**Background IP**“) will remain property of its owner and nothing herein shall be interpreted as granting to either party any right or license with respect to Background IP of the other party, except as necessary for performance of the services agreed hereunder, unless the parties have specifically agreed otherwise.

## **8 CONFIDENTIALITY**

- 8.1 During the term of this Agreement and for a period of five (5) years thereafter, Receiving Party: (i) shall keep strictly confidential all Confidential Information, (ii) shall not disclose to any third party any Confidential Information except as expressly permitted under this Agreement, and (iii) shall use the Confidential Information only for the purposes expressly permitted by this Agreement.
- 8.2 Any and all Confidential Information shall remain the property of its proprietor. Receiving Party shall, upon written request of Disclosing Party, return to Disclosing Party or, at Disclosing Party's option, destroy, any and all Confidential Information received from Disclosing Party within thirty (30) days of receipt of such written request. Receiving Party may, however, retain one (1) copy of each document or description thereof in its confidential files for the sole purpose of maintaining a record of what it received in confidence and to comply with confidentiality obligations contained herein and/or under applicable law.
- 8.3 Confidential Information may be disclosed by Receiving Party only to its employees, agents or consultants, but only to the extent required to accomplish the purposes of this Agreement and only if such employees, agents and consultants to whom disclosure is to be made are subject to an obligation of confidentiality and non-use at least as strict as those set forth in this Agreement. Receiving Party shall be responsible for any breaches of the confidentiality and/or non-use obligations set forth in this Agreement by any of its employees, agents and consultants.
- 8.4 Notwithstanding any provision herein to the contrary, Receiving Party shall be permitted to disclose Confidential Information solely to the extent that such disclosure is required by law or by order of any court or governmental authority; provided, however, that Receiving Party shall first have given advance notice to Disclosing Party so as to permit Disclosing Party to attempt to obtain a protective order requiring that the Confidential Information to be so disclosed be used only for the purposes for which

the order was issued or for such other legal requirement, and that Receiving Party cooperates with Disclosing Party in such efforts.

## **9 RECORDS AND MATERIALS**

- 9.1 Upon completion of the contracted services, Fidelta will promptly provide Client, at Client's expense, with materials, data and information owned by Client, in such form as possessed by Fidelta, provided that Fidelta will be entitled to retain, subject to confidentiality obligations set forth herein, such materials and copies of information and data as Fidelta determines required for the purpose of compliance with applicable regulatory and legal requirements.

## **10 SHIPMENT**

- 10.1 All materials agreed to be shipped by Fidelta to Client will be shipped FCA Fidelta's facilities (INCOTERMS 2010). Unless agreed otherwise with Client, Fidelta will select a carrier and ship materials prepaid, with the cost thereof charged to Client.

## **11 WARRANTIES**

- 11.1 Except as expressly set forth herein, and to the extent permitted by law, Fidelta gives no express or implied warranty for services provided hereunder, including but not limited to warranty of merchantability or fitness for a particular purpose or non-infringement.

## **12 LIMITATION OF LIABILITY**

- 12.1 Fidelta's aggregate liability under this agreement shall be limited to double the amount paid by Client to Fidelta for the services hereunder.
- 12.2 Neither party shall be liable to the other party for special, consequential, incidental, indirect or punitive damages, including loss of profits.
- 12.3 The foregoing exclusions and limitations of liability shall not apply to damages caused by gross negligence or wilful misconduct and damages caused by bodily injuries or death.

## **13 INDEMNIFICATION**

- 13.1 **Indemnification by Client.** Client shall indemnify, defend and hold harmless Fidelta Indemnitees from any Fidelta Loss, provided, however, that Client shall not indemnify any Fidelta Indemnitee for any Fidelta Loss to the extent this is caused by the negligence or wilful misconduct of Fidelta or the material failure of Fidelta to comply with the terms of this Agreement.
- 13.2 **Indemnification by Fidelta.** Fidelta shall indemnify, defend and hold harmless Client Indemnitees from and against any Client Loss to the extent the Client Loss is caused by, results from or arises out of the negligence or wilful misconduct of Fidelta or the material failure of Fidelta to comply with the terms of this Agreement.

## **14 EXAMINATION OF WORK**

- 14.1 During the term of this Agreement, Fidelta shall permit Client's personnel, agents or consultants who are bound by the confidentiality obligations set forth in this Agreement, to examine the work performed hereunder, the Fidelta's facilities where the work is conducted and the laboratory notebooks, upon reasonable advance notice during regular business hours to determine if the contracted services are being conducted in accordance the agreed terms and conditions. Such examination shall be at the cost and expenses of Client.

## **15 FORCE MAJEURE**

- 15.1 Neither party shall be liable for any delay or failure in performing any of its obligations hereunder if such delay or failure results from events or circumstances beyond such party's control (including without limitation any acts or restraints of governments or public authorities, war, revolution, riot or civil commotion, acts of God or fire, but excluding strikes and lockouts) ("Force Majeure"), provided that the party so affected shall send to the other party a written notice within three (3) days of becoming aware of such Force Majeure, giving full particulars thereof including the date of first occurrence, the circumstances giving rise to it and a best estimate of the duration of such circumstances. In case of any such delay or failure by a party hereto resulting from Force Majeure, the other party shall be entitled to terminate the contract by written notice, or to request appropriate reduction of its obligations.

## **16 APPLICABLE LAW AND JURISDICTION**

- 16.1 The validity, construction, performance and interpretation of this Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by the laws of Croatia, without regard to its conflict of law principles. Parties shall use reasonable efforts to resolve all disputes arising out of or in connection with this Agreement as rapidly as possible on a fair and equitable basis. In the event no amicable resolution can be reached, the dispute (including a dispute relating to non-contractual obligations arising out of or in connection with this Agreement) shall be submitted for resolution to the competent court in Zagreb, Croatia.