

## FERO LABS

## SOFTWARE AS A SERVICE (SAAS) TERMS AND CONDITIONS

These Software as a Service (“SaaS”) terms are provided to you by Fero Inc., (“Fero”) and available online through a subscription, subject to the following terms of service (“Terms”), which may be updated by us from time to time without prior notice to you. **BY VISITING THE SITE AND USING ITS SERVICES, YOU AGREE TO THESE TERMS; IF YOU DO NOT AGREE, DO NOT USE THE SITE OR ANY OTHER FERO SERVICES.**

**Definitions.**

- (a) **“Terms”** shall mean these terms and conditions, the Order Form (if applicable), and any written amendments signed by both Parties;
- (b) **“Authorized Users”** shall mean Subscriber’s employees and independent contractors working for Subscriber in the ordinary course of Subscriber’s business who: (i) agree to be bound by the Terms; and (ii) are specifically authorized by Subscriber to access the Services;
- (c) **“Billing Start Date”** shall mean the date identified on the Order Form as the date from which billing shall be calculated;
- (d) **“Licensed Materials”** the materials provided through the Software (as defined below).
- (e) **“Results”** shall mean the data, test results, analytic reports, outcomes and predictions and other results generated from Subscriber’s use of the Licensed Materials.
- (f) **“Services”** shall mean Licensor’s Software, Licensed Materials and Results provided by Licensor to Subscriber hereunder;
- (g) **“Service Start Date”** shall mean the date from which Subscriber receives the applicable Service;
- (h) **“Site”** shall mean the Subscriber office location, as identified in the Order Form., which has been granted the right to use the Software during the Term.
- (i) **“Software”** shall mean the Licensor-developed software solution, technology and algorithms used by Subscriber for the Service hereunder;
- (j) **“Fees”** shall mean the fees payable pursuant to Section 3 hereof, as further described in the Order Form;
- (k) **“Order Form”** shall mean the attached Order Form that sets out the commercial terms and is executed by the Parties;
- (l) **“Term”** shall mean the period identified in the Order Form, or any renewal term, as applicable;

**2. Licenses.****(a) Grant.**

- (i) License to the Software: Licensor hereby grants the Subscriber a limited, royalty-free, non-exclusive, and non-transferable right and license, without right of sublicense, during the Term, to access the Licensed Materials through the Software, for the purposes and only at the specific Sites listed on the Order Form. For the avoidance of doubt, Subscriber may not run the Software or access the Licensed Materials at any location not identified as a Site in an Order Form.
- (ii) License to the Results: Licensor hereby grants the Subscriber a limited, worldwide, royalty-free, non-exclusive and non-transferable right and license, without right of sublicense, during the Term, to the Results produced by the Services, including, without limitation, all inventions, improvements and documentation, whether or not subject to patent or copyright protection for the purposes listed in the applicable Order Form.
- (iii) All rights in the Services not expressly granted hereunder are reserved to Licensor.

- (iv) Notwithstanding the licenses granted above, the use of the Services provided under these Terms is expressly prohibited for any use not described in the applicable Order Form, including, but not limited to, mission-critical applications such as: (1) life support systems; (2) air traffic control systems; (3) hazardous chemical management; (4) nuclear power plant operations; (5) defense and military applications; (6) financial trading and banking systems; (7) emergency response and disaster management; and (8) power grid and energy management systems. Subscriber is strictly prohibited from using the Services in any of the mission-critical applications. Any violation of this prohibition may result in immediate termination of the Terms without notice, and the Licensor shall not be held liable for any damages, losses, or liabilities resulting from such prohibited use. It is the responsibility of the Subscriber to ensure compliance with these restrictions and to seek alternative solutions for mission-critical applications.

**(b) Ownership.**

- (i) In the course of providing the Services, Licensor will utilize certain proprietary platforms, software, methods, technology and other materials, including but not limited to technical documentation, inventions, algorithms, architecture, logic, navigation, computer programs, source codes, or other backend and background elements incorporated into the Services and modifications thereto (the “**Licensor Framework**”). Subscriber acknowledges and agrees that Licensor retains sole ownership of all intellectual property rights in the Licensor Framework and the Services, and that the Licensor Framework and Services shall be deemed licensed to Subscriber under the terms of the license above. Subscriber further acknowledges and agrees that Subscriber will have no ownership interests in any of the preliminary Services (if any), including without limitation, working materials and beta tests, feedback and/or suggestions provided by Subscriber to Licensor.
- (ii) Subscriber shall retain all intellectual property rights in any documents, data, methodologies, software, equipment, systems, facilities or other materials or specifications provided to Licensor for use with the Services (“**Subscriber Materials**”) under these Terms. To the extent the Subscriber Materials include Licensor collecting, storing, processing, or disclosing personal information of third parties (including but not limited to names and email addresses of Authorized Users), Subscriber acknowledges and agrees that as between Licensor and Subscriber, Subscriber is a “data controller” and Licensor is a “data processor.” For purposes of the Agreement, a “data controller” has control over the purpose and manner of which personal data or personally identifiable information (as those terms are defined under applicable law) is collected, stored, and analyzed. A “data processor” collects, stores, or analyzes personally identifiable information at the direction of the data controller. As such, Subscriber shall be responsible for compliance with applicable law pertaining to data controllers and shall indemnify Licensor for all claims, costs, investigations, losses, demands, settlements, and judgments arising from collection, storage, processing or disclosure of personal information directed by Subscriber, except to the extent such claims arise from Licensor’s failure to comply with Subscriber’s lawful instructions. “Personal information” includes, but is not limited to, names, email addresses, physical addresses, phone numbers, social security numbers and any other information that could, on its own, be used to identify a person or entity.

**(c) Restrictions on Use.** Subscriber shall not edit, alter, abridge or otherwise change in any manner the content of the Services, including, without limitation, all copyright and proprietary rights notices. Subscriber may not, and may not permit others to:

- (i) reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Services;
- (ii) modify, translate, adapt, alter, or create derivative works from the Services;
- (iii) copy, distribute, publicly display, transmit, sell, rent, lease, or otherwise exploit the Services, or grant any such right to a third party; or
- (iv) use the Services in combination with an artificial intelligence tool.

**(d) Marketing Rights.** Licensor shall have the right to use Subscriber's name and trademarks in portfolios and websites, and other media or exhibits for the purposes of recognition of creative excellence or professional advancement. Licensor may describe its role in relation to the Services on its website, and in other promotional materials, and include a link to Subscriber's website. Licensor may disclose limited summaries of the Results with prior written permission from Subscriber, such permission not to be unreasonably delayed or denied and will be deemed permitted if Subscriber does not respond to requests for permission within five (5) days of written notice. Subscriber may credit Licensor as a partner.

**3. Fees and Payment.** In exchange for the license granted above, commencing on the Billing Start Date, Subscriber shall pay Licensor for the Term hereof the Fees, payable in advance, based on the Services as identified in the Order Form, and on any other commercial terms contained in this Agreement. Payments not received on their respective due date shall bear interest at the rate of 1.5% per month (unless such rate is not permitted by applicable law, in which case, the rate shall be that which is permitted by applicable law).

**4. Professional Services.** During the term of this Agreement, Subscriber may request Licensor to perform computer professional services in the nature of software development, customization add-in, documentation and/or integration services (hereinafter, "**Professional Services**"). Upon receipt of a request, Licensor may provide Subscriber with a written proposal, and when the Parties agree to all requirements of the proposed Professional Services, a Task Order for the Professional Services shall be mutually executed by the Parties. All Order Forms shall be subject to the Terms. Services performed by Licensor are not exclusive to Subscriber, and Licensor may perform services of any type or nature for any other person or entity at any time.

**5. Disclaimer.** SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE PROFESSIONAL SERVICES, SERVICES, LICENSED MATERIALS, AND RESULTS, AND THE CONTENTS THEREIN, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS AND LICENSOR DOES NOT MAKE ANY AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. FOR THE AVOIDANCE OF DOUBT, LICENSOR MAKES NO WARRANTY, GUARANTY, COMMITMENT OR OTHER OBLIGATION RELATED TO THE ACCURACY OR COMPLETENESS OF ANY RESULTS (INCLUDING, WITHOUT LIMITATION, ANY PREDICTIONS OR PREDICTIVE ANALYTICS INCLUDED IN SUCH RESULTS) AND SUBSCRIBER IS SOLELY RESPONSIBLE FOR ITS USE AND RELIANCE ON ANY SUCH RESULTS, THE LICENSED MATERIALS ARE NOT FAULT TOLERANT. SUBSCRIBER FURTHER ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED ARE NOT DESIGNED, INTENDED, OR AUTHORIZED FOR USE IN ENVIRONMENTS OR SYSTEMS WHERE FAILURE, DELAY, MALFUNCTION, OR INACCURACY COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("**MISSION-CRITICAL ENVIRONMENTS**"). THE SUBSCRIBER SHALL NOT USE THE SERVICES FOR ANY SUCH MISSION-CRITICAL ENVIRONMENTS, AND SUCH USE IS ENTIRELY AT SUBSCRIBER'S OWN RISK.

**6. Indemnification.**

**(a) Subscriber Indemnity.** Subscriber, at its expense, will defend, indemnify, and hold Licensor harmless from and against any and all claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorney's fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Licensor which directly relate to a claim, action, lawsuit, or proceeding made or brought against Licensor alleging the infringement or violation of a patent, trade secret, copyright, or trademark right (each a "**Licensor Claim**") by way of Licensor's use of any Subscriber Materials, or Subscriber's use of the Services not in compliance with these Terms.

**(b) Licensor Indemnity.** Licensor, at its expense, will defend, indemnify, and hold Subscriber harmless from and against any and all third-party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorney's fees, finally awarded by a court of competent jurisdiction, after all rights

of appeal are exhausted, against Subscriber which directly relate to a claim, action, lawsuit, or proceeding made or brought against Subscriber by a third party alleging the infringement or violation of such third party's registered patent, trade secret, copyright, or trademark (each a "**Subscriber Claim**") by way of Subscriber's use of the Services in accordance with these Terms.

**7. Limitation of Liability.** LICENSOR AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND LICENSORS ("**THE PARTIES**") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO SUBSCRIBER, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES (COLLECTIVELY, THE "**EXCLUDED DAMAGES**"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY. IN NO EVENT WILL THE LIABILITY OF THE LICENSOR ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW. SUBSCRIBER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR FOR ANY LOSS, DAMAGE OR COST IN CONNECTION WITH ANY CLAIM OR ACTION WHICH MAY BE BROUGHT BY ANY THIRD PARTY AGAINST LICENSOR RELATING TO ANY BREACH OF THIS AGREEMENT BY SUBSCRIBER.

**8. Term; Early Termination.**

- (a) This Agreement shall become effective when Subscriber signs the Order Form and shall terminate in one (1) year or when there is no active Order Form, whichever is later.
- (b) This Agreement may be terminated as follows: (a) if either Party commits a breach of any provision of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice thereof by the non-breaching Party, the Party giving such notice may then deliver a second written notice to the breaching Party terminating this Agreement, in which event this Agreement, and the licenses granted hereunder, will terminate on the date specified in such second notice; or (b) if a receiver is appointed over any assets of either Party or if either Party makes any arrangement with its creditors or becomes subject to an administration order or goes into liquidation or anything equivalent to the foregoing under any jurisdiction or ceases to carry on business, the other may terminate by giving written notice with immediate effect. If this Agreement is terminated before the end of its then current term for any reason other than by Subscriber under this Clause 8(a) or (b), then Subscriber will pay to Licensor as liquidated damages the amount due by Subscriber for the previous calendar month times the number of months remaining in such Term ("**Liquidated Damages**") within 30 days after such termination. The Parties agree that the Liquidated Damages under this clause are not intended to be and will not be punitive in effect and that the Liquidated Damages are a genuine pre-estimate of loss (which may be difficult to ascertain) resulting from early termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Subscriber receives any notice of late payment in any form, written or electronic, from Licensor including any business division (e.g., Licensor's Credit Department), such notice will be deemed to be a notice of breach.

**9. Confidentiality.**

- (a) **Definition of Confidential Information.** For the purposes of these Terms, "**Confidential Information**" means a Party's non-public information or material regarding its legal or business affairs, Licensed Materials, Subscriber Materials, financing, customers, properties, data, suppliers, trade secrets, technology, or research and development which is disclosed to the Receiving Party (as defined below), or to which the Receiving Party has access in connection with performing the Services; any information a party designates as 'confidential' or 'proprietary' at the time of disclosure; and any information that, due to its nature or the circumstances of its disclosure, the Receiving Party knows or has reason to know should be treated as confidential or proprietary. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential

Information is disclosed (the “**Receiving Party**”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the “**Disclosing Party**”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who does not owe a duty of confidentiality to the Disclosing Party. For the avoidance of doubt, notwithstanding anything to the contrary in these Terms, the Services shall constitute Licensor’s Confidential Information regardless of the applicability of any of the exclusions set forth in this Section.

- (b) **Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information of the Disclosing Party: (i) use such Confidential Information only in connection with the Receiving Party’s performance of its obligations and exercise of its rights under this Agreement; (ii) subject to Section 9(d) below, restrict disclosure of such Confidential Information within the Receiving Party’s organization to only those employees of the Receiving Party who have a need to know such Confidential Information in connection with the Receiving Party’s performance of, or exercise of its rights under, this Agreement; and (iii) except as expressly contemplated under the preceding clause (iv), not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
- (c) **Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- (d) **Required Disclosures.** In the event the Receiving Party becomes or may become legally compelled to disclose any Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or other process or otherwise), the Receiving Party shall provide to the Disclosing Party (to the extent legally permitted) prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party shall furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and shall use its best efforts to insure that confidential treatment shall be afforded such disclosed portion of the Confidential Information.
- (e) **Return or Destruction of Confidential Information.** Upon the Disclosing Party’s written request following the completion or termination of any Order Form, the Receiving Party promptly shall return to the Disclosing Party, or destroy, all Confidential Information of the Disclosing Party provided under or in connection with these Terms, including all copies, portions, and summaries thereof.
- (f) **Immunity from Liability for Confidential Disclosure of a Trade Secret to the Government or in a Court Filing:**
- (i) **Immunity**—A Disclosing Party shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that—(i) is made—(x) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney; and (y) solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (ii) **Use of Trade Secret Information in Anti-Retaliation Lawsuit**—A Disclosing Party who files a lawsuit for retaliation by the Receiving Party for reporting a suspected violation of law may disclose the trade secret to the attorney of the Receiving Party and use the trade secret information in the court proceeding, if the Receiving Party—(i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.
- (g) Licensor has established and implemented reasonable and appropriate information security practices regarding the protection of Subscriber data, including administrative, technical and physical security processes. Notwithstanding the foregoing, Subscriber is responsible for maintaining appropriate security, protection and backup of all Results. Licensor is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, or loss of, or damage to, or failure to store or encrypt, and Results or other data.

**10. Miscellaneous.**

- (a) Notice.** All notices to a Party hereunder shall be in writing, and delivered by certified mail, return receipt requested or overnight courier service, with confirmation by the above described mailing methods to the address(es) set forth on the Order Form, or to a different address which a Party may give written notice of pursuant to this section from time to time. Notice will be deemed delivered and received on the date it is actually received.
- (b) Amendment.** This Agreement may not be amended except in a writing executed by authorized representatives of Subscriber and Licensor.
- (c) Assignment.** This Agreement is not transferable, assignable, delegable, or sublicensable by Subscriber in whole or in part, without the prior written permission of Licensor. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, trustees, administrators, and assigns.
- (d) Survival.** The following obligations of the Parties will survive termination or expiration of this Agreement for any reason: Sections 2, 3, 5, 6, 7, and 9 of this Agreement and any payment obligations of Subscriber that accrue prior to such termination or expiration.
- (e) Independent Contractor.** Licensor is acting in performance of this Agreement as an independent contractor.
- (f) Binding Effect and Third-Party Beneficiary.** Except if specifically stated in this Agreement, neither Party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other Party. No third party is a beneficiary of this Agreement.
- (g) Waiver of Rights.** Except where specifically stated to the contrary, all remedies available to either Party for breach of this Agreement under this Agreement, at law, or in equity, are cumulative and nonexclusive. A waiver or failure of either Party at any time to require performance by the other Party of any provision hereof will not affect the full right to require such performance at any time thereafter.
- (h) Injunctive Relief.** If Subscriber breaches Section 2 or 9 of this Agreement, Licensor will be entitled, in addition to any other rights available under this Agreement or at law or in equity, to apply for immediate injunctive relief without any requirement to post a bond or other security and Subscriber acknowledges and agrees to not contest such application.
- (i) Severability.** If any provision or portion thereof of this Agreement or its application in a particular circumstance is held to be invalid or unenforceable to any extent in any jurisdiction, such provision or portion thereof will, as to such jurisdiction only, be ineffective to the extent of such unenforceability. All other provisions and portions of them hereunder will not be affected by the invalidity and will be valid and enforced to the fullest extent permitted by law.
- (j) Choice of Law and Venue.** This Agreement, as well as any and all tort claims arising from this Agreement or arising from any of the proposals, negotiations, communications or understandings regarding this Agreement, will be governed by and construed in accordance with the laws of the State of New York, United States, applicable to contracts made entirely within New York and wholly performed in New York, without regard to any conflict or choice of law principles. The sole jurisdiction and venue for any litigation arising out of this Agreement will be an appropriate federal or state court located in New York City.
- (k) Force Majeure.** Any failure or delay by Licensor in the performance of its obligations pursuant to this Agreement will not be deemed a default or breach of the Agreement or a ground for termination to the extent such failure or delay is due to computer or internet or telecommunications breakdowns, denial of service attacks, fire, flood, earthquake, elements of nature or acts of God, pandemics, epidemics, local disease outbreaks, public health emergencies, communicable diseases, and quarantines, acts of war, terrorism, riots, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Agreement are to be executed, strikes, supplier and third-party failure, lockouts, or labor difficulties, or any similar cause beyond the reasonable control of Licensor.

**(l) Entire Agreement.** This Agreement contains the final and entire agreement of the Parties and supersedes all previous and contemporaneous verbal or written negotiations, understandings, or agreements regarding the Agreement's subject matter.

**(m) Exhibits.** The following Exhibits are attached hereto and incorporated herein by this reference: Exhibit A: Order Form