



## Cefas Standard Terms and Conditions of Sale

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These Terms and Conditions of Sale apply to any contract between Cefas and the Customer for the supply of services and/or goods by Cefas to the Customer based upon the Quotation to which they are attached.

These Terms and Conditions of Sale prevail over any other terms and conditions which the Customer has or may issue to Cefas.

### 1. Interpretation

#### 1.1 Definitions

In the Agreement, the following definitions apply:

<b>Agreement</b>	means the agreement between Cefas and the Customer incorporating these Terms and Conditions of Sale, the Quotation and any other document referred to therein.
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday in England, unless otherwise stated in the Quotation.
<b>Cefas</b>	means the Secretary of State for Environment, Food and Rural Affairs acting through the Centre for Environment, Fisheries and Aquaculture Science, whose address is Lowestoft Laboratory, Pakefield Road, Lowestoft, Suffolk, NR33 0HT.
<b>Controller</b>	has the meaning given in the GDPR
<b>Customer</b>	means the party to whom the Quotation is addressed and who has ordered the Works.
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by Cefas under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>DPA 2018</b>	means the Data Protection Act 2018
<b>Data Protection Impact Assessment</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>Data Protection Legislation</b>	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>Data Protection Officer</b>	has the meaning given in the GDPR
<b>Data Subject</b>	has the meaning given in the GDPR

<b>Data Subject Access Request</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>Force Majeure</b>	means any circumstance outside a Party's reasonable control, including, but not limited to, acts of God, flood, drought, earthquake or other natural disaster or extreme weather, epidemic or pandemic, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, answering or responding to a UK national emergency, or failing to grant a necessary licence or consent, collapse of buildings, fire, explosion, or accident, any labour or trade dispute, strikes, industrial action or lockouts, non-performance by suppliers or sub-contractors or interruption or failure of utility service, restrictions in delivery due to weather.
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679)
<b>Goods</b>	means any goods to be provided to the Customer by Cefas, as set out in the Quotation, if applicable.
<b>Intellectual Property</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>LED</b>	means the Law Enforcement Directive (Directive (EU) 2016/680)
<b>Party</b>	means either Cefas or the Customer and "Parties" shall be construed accordingly.
<b>Personal Data</b>	has the meaning given in the GDPR
<b>Personal Data Breach</b>	has the meaning given in the GDPR
<b>Price</b>	the price(s) charged for the Work, as set out in the Quotation.
<b>Processor</b>	has the meaning given in the GDPR
<b>Protective Measures</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

<b>Quotation</b>	means the proposal provided in writing by Cefas to the Customer for the Work to which the Agreement is related.
<b>Sub-processor</b>	means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
<b>Terms and Conditions of Sale</b>	means these terms and conditions including the Schedules.
<b>Work</b>	means the services and/or goods to be supplied under the Agreement as defined in the Quotation.

- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a Party includes its personal representatives, successors or permitted assigns.
- 1.4 A reference to a statute or statutory provision includes all subordinate legislation made from time to time under that statute or statutory provision and includes any subordinate legislation made under that statute or statutory provision, as amended extended or re-enacted.
- 1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.6 A reference to writing or written includes e-mails provided that notices that are issued by e-mail, in accordance with Clause 14, are marked as a notice and refer clearly to the clause in these Terms and Conditions of Sale to which such notice relates.
- 1.7 The Agreement supersedes all prior negotiations, representations and undertakings concerning the Work.
- 1.8 Any variation to the Agreement requires the written acceptance of both Parties.
- 1.9 The Customer will not be deemed to have accepted Cefas' offer until the Customer has confirmed unqualified acceptance in writing on the terms of the Agreement. If the Customer does not accept the Quotation in writing within 30 days (or, if different, within the period stated in the Quotation), the Quotation will lapse.
- 1.10 References to Clauses and Schedules are references to clauses and schedules of the Agreement.

## **2. Commencement, Duration and Scope**

- 2.1 Cefas shall provide the Work to the Customer in accordance with the terms and conditions of the Agreement.
- 2.2 Cefas shall provide the Work from a date agreed in writing by the Parties but which shall not be prior to the date the Customer accepts the Quotation in writing.
- 2.3 The Agreement shall continue until the Work is completed in accordance with the Agreement and Cefas' final invoice has been paid in full by the Customer or the Agreement has been terminated in accordance with the Agreement.
- 2.4 If the Work includes sample testing services, the additional terms and conditions set out in Schedule A shall also apply to the Agreement.

2.5 If the Work includes the provision of Goods, the additional terms and conditions set out in Schedule B shall also apply to the Agreement.

### **3. Cefas' Obligations**

3.1 Cefas shall exercise reasonable skill and care in providing the Work and shall only be liable to the extent that it has been negligent in such provision.

3.2 Cefas shall use reasonable endeavours to perform the Work in accordance with any programme agreed with the Customer from time to time but time shall not be of the essence of the Agreement.

3.3 Cefas may substitute any named personnel in the Quotation with personnel of equivalent knowledge and experience.

3.4 Unless stated otherwise in the Quotation, the language of the Agreement is English and written Work deliverables shall be in English.

3.5 Cefas will appoint a project manager to receive the Customer's instructions and to direct the provision of the Work on a day to day basis.

### **4. Customer's Obligations**

4.1 The Customer shall:

a) promptly provide Cefas with:

i) the name, title and contact details of those persons authorised to issue instructions to Cefas and to bind the Customer contractually on matters relating to the Work;

ii) any instruction, consent, decision, and/or approval; and

iii) any relevant data and/or information under the control of the Customer

which Cefas may require in order to carry out the Work;

b) obtain and maintain all necessary licences, consents and authorisations and comply with all relevant legislation in connection with the Work. The Customer shall indemnify and hold harmless Cefas from and against all consequences of any failure in this respect;

c) arrange such rights of access to its property and / or the worksite and use of its facilities as reasonably required by Cefas to provide the Work at no charge to Cefas;

d) cooperate with Cefas in all matters relating to the Work;

e) provide, in a timely manner, such material and information as Cefas reasonably requires and ensure that it is accurate in all material respects; and

f) be responsible, at its own cost, for preparing and maintaining its property, facilities and equipment which Cefas may require access to or use of in accordance with all applicable laws, before and during the provision of the Work, and informing Cefas of all of its obligations and actions under this Clause 4.1 f).

4.2 Cefas shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Cefas' failure or delay to perform any of its obligations due to any act, omission or failure by the Customer to perform any relevant obligation as set out in this Clause 4.

## **5. Operations at the Customer's Sites**

- 5.1 If Cefas visits the Customer's property, Cefas shall not be deemed to have assumed control or responsibility for the property or any non-Cefas or non-Cefas related personnel on it. The Customer shall notify others on the site:
- a) of the presence of Cefas personnel on the property;
  - b) of the extent to which Cefas is authorised to direct and/or supervise their work; and
  - c) that the presence (or otherwise) of Cefas does not relieve them of their responsibilities, including safety, and their obligations under their respective contracts and agreements.
- 5.2 Cefas shall take reasonable precautions and use reasonable endeavours to minimise damage to the Customer's/ third party's property. If, notwithstanding such precautions and endeavours, any such property is damaged, the cost of rectification and all other losses shall be borne by the Customer.

## **6. Confidentiality**

- 6.1 Each Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, initiatives, documents and any other information received from the other Party which is of a confidential nature including information concerning its business, its products or its services.
- 6.2 The recipient shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know for the purpose of discharging the recipient's obligations under the Agreement and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the recipient.
- 6.3 This Clause 6 shall not apply to Cefas where information is already in the public domain or where disclosure is required to meet a legal obligation (including obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

## **7. Copyright and Ownership**

- 7.1 Subject to Clauses 7.3 to 7.6 Cefas reserves all rights in pre-existing Intellectual Property and in any Intellectual Property arising from the Work.
- 7.2 Cefas will grant such permissions or licences as are necessary for the Customer to benefit from the Work if and while the Customer pays all invoices due under the Agreement.
- 7.3 The Customer understands and acknowledges that:
- a) where a third party owns any pre-existing Intellectual Property, the Customer's use of rights in such pre-existing Intellectual Property is conditional on Cefas obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Cefas to license such rights to the Customer; and
  - b) any Work undertaken by Cefas in which copyright arises is and will remain, under the Copyright, Design and Patents Act 1988 (or any subsequent legislation dealing with same) Crown copyright.
- 7.4 If the Customer is not a Crown body, under delegation from the Controller of Her Majesty's Stationery Office, Cefas will assign absolutely to the Customer all Crown copyright subsisting in

the Work and the Customer is free to use it for its own purposes. Under all circumstances the material will remain Crown Copyright.

- 7.5 If the Customer uses Crown copyright in dealings with third parties, the Customer will mark the document as 'includes Crown copyright, Cefas [20XX], however this does not imply Crown endorsement of the subsequent use of these results' and the Customer shall ensure that same requirement subsists in any future assignment of the Crown copyright.
- 7.6 Notwithstanding the above, the Customer, or any subsequent assignor of the Crown copyright, must draw to the respective assignee's attention the Crown copyright status of the material and explain what this means, in particular as to duration.
- 7.7 Notwithstanding the provisions of Clause 6, Cefas will notify the Customer of its intention to publish alone or in conjunction with any other person articles, photographs or other illustrations relating to the Work undertaken by Cefas. Cefas shall endeavour to circulate proposed publications at least 30 days in advance of publication. If the Customer can reasonably demonstrate that the publication or presentation contains any of its confidential information, as set out in Clause 6.1, it shall so notify Cefas not later than fourteen (14) days after receipt of the proposed publication or presentation and Cefas shall not publish such confidential information. Should Cefas not receive any such notification Cefas may issue such publication without restriction.
- 7.8 The Customer shall advise any third party to whom it passes any information provided to it by Cefas under the Agreement that they may not rely upon such information.
- 7.9 All software supplied by Cefas, in whatever form, is supplied under licence and not by way of sale and is subject to Cefas' licence terms and in the case of software licensed to Cefas, to terms and conditions equivalent to those between Cefas and Cefas' licensor.

## **8. Payment**

- 8.1 In consideration of the provision of the Work by Cefas, the Customer shall pay Cefas the Price.
- 8.2 Cefas may increase the Price by giving notice to the Customer at any time if:
- a) the Customer changes the specification or scope of the Work (including but not limited to: delivery dates, locations or quantities);
  - b) there is any delay caused by any instructions of the Customer in respect of the Work or failure of the Customer to provide adequate or accurate information or instructions in respect of the Work; or
  - c) Cefas undertakes work that is additional to the Work at the Customer's request.
- 8.3 The Customer shall pay each invoice submitted to it by Cefas, in full and cleared funds, including UK Value Added Tax if applicable. Payment shall be in Pounds Sterling and due within 30 days of the invoice date, unless stated otherwise in the Quotation.
- 8.4 Without prejudice to any other right or remedy it may have, if the Customer does not pay Cefas on the due date:
- a) Cefas may, at its sole discretion, suspend all Work until payment has been made in full; and
  - b) the Customer shall pay interest on the overdue amount at a rate calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the late Payment of Commercial Debts Regulations 2002 and 2013 and at the relevant reference rate plus the statutory rate of interest.

c) where the provisions of Clause 8.4 b) do not apply the Customer shall pay interest on the overdue amount based on the current annual Bank of England 'Base Rate' plus three percent (3%) per annum which shall be calculated pro rata on a daily basis from the date the sum in question becomes due until the date the actual payment is received by Cefas.

8.5 The Customer shall pay all amounts due under the Agreement in full without any deduction, set off, counterclaim or withholding except as required by law.

8.6 All sums payable to Cefas under the Agreement shall become due immediately on its termination, despite any other provision. This Clause 8.6 is without prejudice to any right to claim for interest under the law or any such right under the Agreement.

## **9. Change Control**

9.1 The Customer and Cefas shall meet at regular intervals, to be agreed between the Parties, to discuss matters relating to the Work. If either Party wishes to change the scope or execution of the Work (hereinafter referred to as a "Change") it shall submit details of the proposed Change to the other Party using the Variation Form attached in Schedule C.

9.2 If either Party proposes a Change Cefas shall, within a reasonable time, provide a written estimate to the Customer of:

- a) the likely time required to implement the Change;
- b) any necessary variations to the Price arising from the Change;
- c) the likely effect of the Change on the timing of the Work; and
- d) any other effects of the Change on the Agreement.

9.3 If the Customer wishes Cefas to proceed with the Change, Cefas has no obligation to do so unless the Customer has agreed the necessary variation to the Price, the Work, and any other relevant terms of the Agreement to take account of the Change and the Agreement has been varied in accordance with Clause 20.

9.4 Notwithstanding Clauses 9.1 to 9.3, Cefas may, from time to time and without notice, change the Work in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature or scope of the Work or the Price.

## **10. Force Majeure**

10.1 Provided it has complied with Clause 10.3, neither Party shall be liable for any delay in performing or failure to perform its obligations under the Agreement, other than to make payments, due to any event of Force Majeure. Such delay or failure will not constitute a breach of the Agreement and the time for performance will be extended by such period as is reasonable.

10.2 If the Force Majeure event prevents a Party from performing its obligations for more than 12 weeks, the other Party may, without limiting its other rights or remedies, terminate the Agreement by giving one month's written notice to the other Party.

10.3 The Party affected by an event of Force Majeure shall:

- a) as soon as reasonably practical after the start of the Force Majeure event but no later than 5 Business Days from the start, notify the other Party in writing of the Force Majeure event, the date on which it started, its likely or potential duration and the effect of the Force Majeure event on its ability to perform its obligations under the Agreement; and

- b) use reasonable endeavours to mitigate the effect of the Force Majeure event on the performance of its obligations.
- 10.4 Where the Work involves the use of water borne vessels Cefas will use reasonable endeavours to re-plan and/or absorb lost time due to restrictions imposed by the weather but the costs of weather risk shall be borne by the Customer unless expressly stated to the contrary in the Quotation.
- 10.5 If the U.K. Foreign & Commonwealth Office advises that travel is not recommended to locations where Work is to be undertaken, Cefas shall be released from its obligations to provide the Work to the Customer. In such circumstances Cefas will try to find a resolution with the Customer to mitigate the effect on the Work.

## **11. Suspension and Termination**

- 11.1 Without limiting its other rights or remedies, Cefas may suspend the Work if:
- a) the Customer fails to pay any invoice on the due date; or
  - b) the Customer becomes subject to any of the events listed in Clause 11.3 or Cefas reasonably believes that the Customer is likely to become subject to any of them.
- 11.2 Provided always that the Customer has made all payments properly due in accordance with Clause 8, the Parties may agree to suspend the Work in whole or in part. Unless agreed otherwise by the Parties in writing, if the Customer has not instructed Cefas to resume the Work within 6 months of the date of the agreed suspension, Cefas may terminate the Agreement.
- 11.3 Without limiting its other rights or remedies, either Party may terminate the Agreement with immediate effect by giving written notice to the other Party if:
- a) the other Party commits a breach of its obligations under the Agreement and fails to remedy, or commence and continuously proceed to remedy, that breach within 30 days after being notified in writing to do so;
  - b) the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (the "Act") or (being an individual) is deemed either unable to pay its debts or has no reasonable prospect of doing so, in either case, within the meaning of section 268 of the Act or (being a partnership) has any partner to whom any of the foregoing apply;
  - c) the other Party commences negotiations with any creditors with a view to rescheduling its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or bankruptcy of the other Party, including the appointment of (or notice of intention to appoint) an administrator;
  - e) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 11.3 b) to 11.3 d) (inclusive);
  - f) the other Party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or



- g) the other Party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.4 Without limiting its other rights or remedies, Cefas may terminate the Agreement with immediate effect if the Customer fails to pay any amount due under the Agreement on the due date.

## **12. Consequences of Termination**

12.1 On termination or expiry of the Agreement for any reason:

- a) the Customer shall immediately pay to Cefas all of Cefas' outstanding unpaid invoices and interest and, in respect of Work supplied but for which no invoice has yet been submitted, Cefas shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall promptly return all Cefas materials and any deliverables which have not been fully paid for. If the Customer fails to do so, then Cefas may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement;
- c) the accrued rights and remedies of the Parties at termination or expiry shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- d) Clauses 6, 12, 13, 21 and 24 shall survive termination or expiry of the Agreement.

## **13. Liability, Warranties and Insurance**

13.1 Nothing in the Agreement shall limit or exclude either Party's liability for:

- a) death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) any other exclusion or limitation which is not permitted by law.

13.2 Subject to Clause 13.1:

- a) Cefas shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for:
  - i) loss of: revenue, profits or anticipated profit, sales, business, agreements or contracts, anticipated savings in each case whether direct or indirect and whether or not foreseeable at the date of receipt of the order by Cefas;
  - ii) loss of or damage to goodwill;
  - iii) loss of use or corruption of software, data or information; or
  - iv) any indirect or consequential loss arising under or in connection with the Agreement; and
- b) Cefas' total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total value payable to Cefas by the

Customer under the Agreement (excluding any applicable taxes, duties or levies) or £300,000, whichever is less.

- 13.3 The Customer shall not pursue any claims in contract, tort or for breach of statutory duty (including negligence) against any individuals working or who worked for Cefas at any time. The Customer acknowledges that such individuals are entitled to enforce this Clause pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.4 Except as set out in the Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 13.5 The Customer understands and acknowledges that research and development experiments and investigations have an inherent risk of being compromised by a wide array of unpredictable influences. Where experiments or tests or similar research activity fails and Cefas demonstrates that standard operating procedures and quality criteria have been adhered to, unless specifically stated to the contrary in the Quotation, Cefas shall not be obliged to repeat the affected part of the Work.
- 13.6 Where Goods are provided as part of the Work, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 13.7 Cefas shall have no liability whatsoever for any negligence, default or omission by person or persons engaged by Cefas on the Customer's instruction.

#### **14. Notices**

- 14.1 Any notices served by either Cefas or the Customer shall be in writing and copied to the Commercial Advice Team at Cefas ([commercialadvice@cefas.co.uk](mailto:commercialadvice@cefas.co.uk)) and:
- a) delivered by registered post to the registered or main operating office of the Party concerned and shall be deemed to have been received 48 hours after the time of posting, if posted in the country of the recipient Party, or 7 days after the time of posting if posted from outside the country of the recipient Party, or
  - b) delivered in person to the registered or main operating office of the Party concerned and shall be deemed to have been received 24 hours after delivery, but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (Addressee's time) it is deemed to be received at 9.00 am on the following Business Day, or
  - c) served by e-mail which will be deemed to have been delivered 24 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (Addressee's time) it is deemed to be received at 9.00 am on the following Business Day.

#### **15. Assignment**

- 15.1 Neither Party shall assign sub-let or otherwise transfer any obligation or benefit under the Agreement without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

#### **16. Rights of Third Parties**

16.1 Subject to Clause 13.3 for the purposes of the Contracts (Rights of Third Parties) Act 1999, the Agreement is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

## **17. Waiver**

17.1 A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a Party exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, or preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.2 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

## **18. Severance**

18.1 If any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required to make it valid, legal and enforceable, be deemed modified. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any such modification or deletion shall not affect the validity and enforceability of the rest of the Agreement.

## **19. No Partnership**

19.1 Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the Parties, or make either Party the agent of the other Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

## **20. Variation**

20.1 Except as set out in the Agreement, any variation, including the introduction of any additional terms and conditions to the Agreement or a Change shall be binding only when agreed in writing and signed by and authorised representative of both Parties using the Project Variation Form in Schedule C. For the avoidance of doubt the project manager appointed by Cefas in accordance with Clause 3.5 is not deemed to be a Cefas authorised signatory for the purposes of this Clause 20.1.

## **21. Dispute Resolution**

21.1 The Parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement (a "Dispute").

21.2 If a Dispute cannot be resolved in accordance with Clause 21.1, the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed by the Parties, the mediator will be appointed by CEDR. To initiate the mediation a Party must give notice in writing (an "ADR notice") to the other Party requesting mediation. A copy of the ADR notice must be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

21.3 Neither Party may start court or arbitration proceedings pursuant to Clause 21.2 in relation to the whole or part of a Dispute until 45 days after service of the ADR notice provided that the right to issue proceedings is not prejudiced by the delay.

21.4 If the Dispute is not resolved within 60 days of service of the ADR notice or either Party fails to participate or to continue to participate in the mediation or the mediation terminates without

resolution the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 24.

## **22. Entire Agreement**

- 22.1 The Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 Neither Party shall have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Neither Party shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 22.3 Nothing in this Clause 22 shall limit or exclude any liability for fraud.

## **23. Data Protection**

- 23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Cefas is the Processor. The only processing that Cefas is authorised, by the Customer, to do is detailed in the Quotation and may not be determined by Cefas.
- 23.2 Cefas shall notify the Customer as soon as reasonably possible if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 23.3 Cefas shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
  - 23.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 23.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services
  - 23.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 23.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 23.4 Cefas shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - 23.4.1 process that Personal Data only in accordance with the Quotation, unless Cefas is required to do otherwise by Law. If it is so required Cefas shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
  - 23.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
    - 23.4.2.1 nature of the data to be protected;
    - 23.4.2.2 harm that might result from a Data Loss Event;
    - 23.4.2.3 state of technological development; and
    - 23.4.2.4 cost of implementing any measures;
  - 23.4.3 ensure that:

- 23.4.3.1 Cefas staff and key personnel do not process Personal Data except in accordance with this Agreement (and in particular the Quotation);
- 23.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Cefas personnel who have access to the Personal Data and ensure that they:
  - 23.4.3.2.1 are aware of and comply with Cefas' duties under this Clause;
  - 23.4.3.2.2 are subject to appropriate confidentiality undertakings with Cefas or any Sub-processor;
  - 23.4.3.2.3 are informed of the confidential nature of the Personal Data and
  - 23.4.3.2.4 do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
  - 23.4.3.2.5 have undergone adequate training in the use, care, protection and handling of Personal Data; and
- 23.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 23.4.4.1 the Customer or Cefas has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
  - 23.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
  - 23.4.4.3 Cefas complies with its obligations under the Data Protection legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its reasonable endeavours to assist the Customer in meeting its obligations); and
  - 23.4.4.4 Cefas complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 23.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Cefas is required by Law to retain the Personal Data.
- 23.5 Subject to Clause 23.6, Cefas shall notify the Customer as soon as reasonably possible if it:
  - 23.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 23.5.2 receives a request to rectify, block or erase any Personal Data; receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 23.5.3 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - 23.5.4 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 23.5.5 becomes aware of a Data Loss Event.
- 23.6 Cefas' obligation to notify under Clause 23.5 shall include the provision of further information to the Customer in phases, as details become available.
- 23.7 Taking into account the nature of the processing, Cefas shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- 23.7.1 the Customer with full details and copies of the complaint, communication or request;
  - 23.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 23.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 23.7.4 assistance as requested by the Customer following any Data Loss Event;
  - 23.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 23.8 Cefas shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where Cefas employs fewer than 250 staff, unless:
- 23.8.1 the Customer determines that the processing is not occasional;
  - 23.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - 23.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.9 Cefas shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 23.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, Cefas must:
- 23.10.1 notify the Customer in writing of the intended Sub-processor and processing;
  - 23.10.2 obtain the written consent of the Customer;
  - 23.10.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23 such that they apply to the Sub-processor; and
  - 23.10.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 23.11 Cefas shall remain fully liable for all acts or omissions of any Sub-processor.
- 23.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

## **24. Governing Law**

- 24.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Schedule A**  
**Additional Terms and Conditions**  
**for Sample Testing**

**1. Sample Submission Instructions**

- 1.1 The sample submissions instructions set out in the Quotation must be followed. Whilst the sample submission instructions reflect the summary of Cefas' knowledge and expertise in this field and Cefas has made all reasonable efforts to ensure that they are correct and appropriate, Cefas does not accept any responsibility for samples not meeting the required standard for analysis and any samples falling short of this standard are the sole responsibility of the Customer.
- 1.2 Cefas may reject any sample which is, in its opinion, in such a condition as to render it impossible / not suitable for analysis. If Cefas rejects a sample, the Customer may, at his own expense, either submit a further sample for testing or request a refund of any payment it has made for the testing of that particular sample minus a 10% administrative charge.

**2. Delivery of Samples**

- 2.1 Unless otherwise specified in the Quotation, the Customer is solely responsible for the delivery of samples to Cefas and Cefas accepts no responsibility for samples failing to arrive in a timely manner or in satisfactory condition.
- 2.2 Cefas shall have no liability or responsibility for the samples until it has accepted delivery in writing or (where applicable) its nominated laboratory analytical representative has accepted delivery in writing. For the avoidance of doubt, acceptance of delivery does not constitute suitability of the sample, which may still be deemed unsuitable for analysis in accordance with Clause 1.2 of this Schedule A.
- 2.3 If required in the Quotation, the Customer must include with any sample a Sample Submission Form.
- 2.4 Within 48 hours of a request by Cefas the Customer shall provide in writing information on the composition of the sample and its condition. If the Customer does not provide this information Cefas may either terminate the Agreement or charge the Customer for any reasonable costs incurred as a result of the delay. If Cefas terminates the Agreement, the Customer shall pay Cefas' reasonable expenses.
- 2.5 Cefas will exercise reasonable care in its handling and storage of samples but does not accept any liability for the loss or destruction of samples in its possession.

**3. Ownership of Samples**

- 3.1 Unless otherwise specified in the Quotation title in the samples shall pass from the Customer to Cefas on acceptance of delivery.
- 3.2 Unless specified otherwise in the Quotation:

- a) no samples or sub samples shall be returned to the Customer; and
- b) Cefas will not be obliged to retain samples or sub-samples, on behalf of the Customer, on completion of the Work.

3.3 Notwithstanding the provisions of Clause 3.2 b) above, Cefas and/or the testing laboratory used by Cefas may use any samples for their own research purposes. In such circumstances, the Customer shall have no further liability for the samples.

#### **4. Testing and Results**

- 4.1 The test results apply solely to the portion of sample tested at the time of testing.
- 4.2 All samples will be tested in accordance with applicable Cefas standard operating procedures and, where applicable and with the requirements of UKAS or other equivalent accreditation for testing laboratories. Any deviations or departures from these standards will be notified to the Customer.
- 4.3 Ownership of the test results shall pass to the Customer on completion of the testing but Cefas shall retain the right to store and utilise any test results, provided that this is done so on an anonymous basis.

#### **5. Confidentiality**

- 5.1 Subject to Clauses 6 and 7.7 of the Terms and Conditions of Sale, Cefas will take reasonable steps to keep the test results confidential and will make use of the samples only in the manner described in this Schedule A.

#### **6. Limitation of Liability**

- 6.1 Cefas shall exercise all reasonable skill and care in the performance of the testing but does not represent, guarantee or warrant the reliability and accuracy of any particular test result.
- 6.2 It is the Customer's responsibility to assess the plausibility of any test result and any reliance on the test results is solely at the risk of the Customer.

#### **7. Shellfish Sampling Terms**

For Shellfish Sampling, the following terms shall also apply:

- 7.1 All samples will be anonymised by the Customer, before submission to Cefas, by allocating a unique identifier to each sample to prevent laboratory staff from being able to identify the geographical origin of the sample.
- 7.2 On receipt at the Cefas laboratory, all samples will be assessed for their suitability for testing and given a unique sample reference number which the Customer will be informed of.



- 7.3 Cefas may also reject the samples, in accordance with Clause 1.2 of this Schedule A, in the event that the shellfish matrix and testing requirements for the samples do not comply with any sample submission conditions specified in the Quotation.
- 7.4 All samples will be tested in accordance with the test methods which comply with the UKAS accreditation for testing laboratories (Schedule No 2293). Any deviations or departures from this standard will be notified to the Customer.
- 7.5 Cefas does not accept any liability for any future illnesses associated with bivalve shellfish from a production area where the determinants tested by Cefas have been reported as not detected in a sample in the past.
- 7.6 Results from tests which have been validated, but not yet accredited, may only be used for risk assessment purposes.
- 7.7 As a government agency, Cefas has an obligation to support the Government's consumer protection law and policy. Consequently, in the unlikely event that Cefas becomes aware of a non-compliant product being placed on the market, Cefas has an obligation to inform the relevant competent authority.

**Schedule B**  
**Additional Terms and Conditions**  
**for Goods**

**1. Specification of Goods**

- 1.1 Subject to Clause 1.2 of this Schedule B, the Goods will be provided to the Customer in accordance with the specification set out in the Quotation (the "Specification").
- 1.2 If the Specification is supplied by the Customer, the Customer shall indemnify Cefas against all liabilities, costs, expenses, damages and losses suffered or incurred by Cefas in connection with any claim made against Cefas for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with Cefas' use of such Specification.

**2. Delivery**

- 2.1 Cefas shall deliver the Goods to the location set out in the Quotation (the "Location") and on the delivery date or dates set out in the Quotation ("Delivery Date").
- 2.2 If the Location is a Cefas facility and the Customer is collecting the Goods from the Location, collection shall take place between the hours of 9.30 am and 5.00 pm, Monday to Friday within 3 days of being informed by Cefas that the Goods are ready for collection.
- 2.3 Delivery of the Goods shall be completed on the Goods' arrival at the Location ("Delivery").
- 2.4 The Delivery Date is approximate only. Cefas is not liable for any delay in Delivery that is caused by a Force Majeure event or the Customer's failure to provide Cefas with adequate delivery instructions or any other instructions that are relevant to the delivery of the Goods.
- 2.5 Delays in Delivery shall not entitle the Customer to:
- a) refuse to take delivery of the Goods;
  - b) claim damages; or
  - c) terminate the Agreement.
- 2.6 If the Customer does not take delivery of the Goods within 3 business days of Cefas notifying it that the Goods are ready for delivery, unless such failure or delay is caused by a Force Majeure event or by Cefas' failure to comply with its obligations under the Agreement in respect of the Goods:
- a) delivery of the Goods shall be arranged by Cefas at another location and time at the Customer's risk and expense; or
  - b) Cefas shall store the Goods until delivery takes place at the Customer's risk and expense including the cost of relevant insurance.

- 2.7 If the Customer has not accepted or taken delivery of the Goods within 20 business days of being notified that they are ready for delivery, Cefas may resell or otherwise dispose of the Goods.
- 2.8 Cefas may deliver Goods by instalments which may be invoiced and paid for separately.

### **3. Acceptance and Warranty**

- 3.1 The Customer may reject any Goods delivered to it that do not comply with the Specification provided that:
- a) the Customer gives Cefas notice of rejection:
    - i) in the case of a defect which is apparent on normal visual inspection, within 5 business days of Delivery;
  - and
  - b) none of the events listed in Clause 3.5 apply.
- 3.2 If the Customer fails to give notice of rejection in accordance with Clause 3.1 it shall be deemed to have accepted the Goods.
- 3.3 If the Customer rejects Goods pursuant to Clause 3.1 of this Schedule B it may require Cefas to:
- a) repair or replace the rejected Goods; or
  - b) if already paid for, repay the price of the rejected Goods in full.
- Once Cefas has complied with the Customer's request it shall have no further liability to the Customer in respect of the rejected Goods' failure to comply with Clause 3.4 of this Schedule B.
- 3.4 Cefas warrants that on Delivery and for a period of 12 months from the date of Delivery the Goods shall:
- a) conform in all material respects with the Specification;
  - b) be free from material defects in design, material and workmanship; and
  - c) be fit for any purpose stated by Cefas.
- 3.5 Subject to Clause 3.6 of this Schedule B if:
- a) the Customer gives notice in writing during the 12 month warranty period that some or all of the Goods do not comply with the warranty set out in Clause 3.4;
  - b) Cefas is given a reasonable opportunity to examine the Goods; and
  - c) the Customer (if asked to do so by Cefas) returns the Goods to Cefas' at Cefas' direction and at the Customer's expense.

Cefas shall, at its option, repair or replace the Goods.

3.6 Cefas shall not be liable for the Goods' failure to comply with the warranty in Clause 3.4 of this Schedule B if:

- a) the Customer makes any further use of such Goods after giving a notice in accordance with Clauses 3.1 or 3.5 of this Schedule B;
- b) the defect arises because the Customer did not follow Cefas' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c) the defect arises because Cefas followed any drawing, design or Specification supplied by the Customer;
- d) the Customer alters or repairs the Goods without the written consent of Cefas;
- e) the Customer subjects the Goods to any chemical, physical, radiological or thermal treatment or process without the written consent of Cefas;
- f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- g) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.7 The terms of this Clause 3 shall apply to any repaired or replacement Goods supplied by Cefas pursuant to Clauses 3.3 a) or 3.5 of this Schedule B.

3.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Agreement.

#### **4. Title and Risk in Goods**

4.1 Risk in the Goods shall pass to the Customer on Delivery.

4.2 Title to the Goods shall not pass to the Customer until Cefas has received:

- a) payment in full (in cash or cleared funds) for the Goods; and
- b) all other sums which are or become due to Cefas from the Customer for Goods or on any account.

4.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) hold the Goods on a fiduciary basis as Cefas' bailee;
- b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Cefas' property;
- c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Cefas' behalf with an insurer which is acceptable to Cefas from Delivery. On request the Customer shall allow Cefas to inspect such Goods and the insurance policy;
- e) notify Cefas immediately if it becomes subject to any of the events listed in Clause 11.3 of the Terms and Conditions of Sale; and
- f) give Cefas such information relating to the Goods as Cefas may require from time to time.

but the Customer may resell or use the Goods in the ordinary course of its business.

- 4.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 11.3 of the Terms and Conditions of Sale or Cefas reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Cefas may have, Cefas may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.