

## **VESSEL SERVICES AGREEMENT**

**THIS AGREEMENT** is made this 13th day of September 2021

### **B E T W E E N:**

- (1) THE CORPORATION OF TRINITY HOUSE OF DEPTFORD STROND of Tower Hill, London EC3N 4DH (hereinafter called "the Corporation");
- (2) The Secretary of State for Environment, Food and Rural Affairs of Nobel House, 17 Smith Square, London, SW1P 3JR acting through CEFAS of Pakefield Road, Lowestoft, Suffolk NR33 0HT (hereinafter called "the Customer").

(each a "Party" and together the "Parties").

### **WHEREAS:**

- (A) The Corporation is a statutory undertaker with responsibility for the superintendence and management of all lighthouses, buoys and beacons within its lighthouse area as defined in Section 193 of the Merchant Shipping Act 1995 as amended;
- (B) The Customer requires the provision of vessel services "the Services" in respect of the work referred to in the Schedule to this Agreement and the Corporation is accordingly willing to provide such services on behalf of the Customer.

### **NOW IT IS HEREBY AGREED as follows:-**

#### **1. Interpretation**

- 1.1. In this Agreement words importing the neuter gender include the masculine or feminine gender (as the case may be) and words importing the masculine gender include the feminine gender and vice versa and words in the singular shall include the plural and vice versa.

#### **2. Entire Agreement**

- 2.1 The terms and provisions of this Agreement shall replace any previous formal or informal arrangements or discussions between the Corporation and the Customer in respect of the provision of the Services.

### **3. The Services**

- 3.1 Subject to the provisions herein contained and in consideration of the payments to be made to the Corporation by the Customer as hereinafter provided, the Corporation shall provide the Services set out in the Schedule PROVIDED THAT at all times the responsibility for the vessel shall remain with the Corporation.
- 3.2 The Corporation warrants and represents for the Agreement Term that:
- (a) it has full capacity and authority and all necessary consents and regulatory approvals to enter into the Agreement and to provide the Services;
  - (b) the Agreement is executed by a duly authorised representative of the Corporation;
  - (c) in entering the Agreement it has not committed any Fraud;
  - (d) as at the Commencement Date, all information contained in its tender or other offer made by the Corporation to the Customer remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Agreement and that it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render such information false or misleading;
  - (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
  - (f) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to provide the Services;
  - (g) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Corporation or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar in relation to any of the Corporation's assets or revenue;
  - (h) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary to provide the Services; and
  - (i) Staff shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

- (j) it will comply with its obligations under the Immigration, Asylum and Nationality Act 2006.

3.3 The Corporation warrants and represents that in the 3 years prior to the date of the Contract:

- (a) it has conducted all financial accounting and reporting activities in compliance with generally accepted accounting principles and has complied with relevant securities;
- (b) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as a going concern or its ability to provide the Services; and
- (c) it has complied with all relevant tax laws and regulations and no tax return submitted to a relevant tax authority has been found to be incorrect under any anti-abuse rules.

3.4 The Corporation shall provide the Services or procure that they are provided with reasonable skill and care, in accordance with Good Industry Practice prevailing from time to time and with Staff who are appropriately trained and qualified.

3.5 If the Services do not meet the Schedule, the Corporation shall at its own expense re-schedule and carry out the Services in accordance with the Specification within a reasonable time.

**4. Order of Precedence**

- 4.1 The terms and conditions of this Agreement shall prevail over the terms and conditions in the Schedule to the extent that there is any inconsistency between them.

**5. Variations**

- 5.1 Any variation required prior to the provision of the Services shall be agreed upon by correspondence between the parties hereto or notified to the Corporation by the Customer as appropriate and any such variation agreed as aforesaid shall thenceforth be substituted for the Services described in the Schedule.

**6 Payment**

- 6.1 The Customer will whether or not demanded pay to the Corporation in consideration of the provision of the Services:

- (i) The Hourly Ship Rate [REDACTED] [REDACTED] for the Services provided by the Corporation as described in the Schedule to this Agreement exclusive of VAT which shall be charged in addition plus the amounts payable under the provision of Clauses 6.1(ii).
  - (ii) Any communications, port and harbour dues and other Incidentals as defined in the Schedule incurred by the Corporation during the performance of the Services provided under this Agreement.
- 6.2 All undisputed sums payable by the Customer under this Clause shall become due upon completion by the Corporation of the Services within 30 days of receipt of a valid invoice for the Services from the Corporation.
- 6.3 A Valid Invoice shall:
- (a) contain the correct PO Number;
  - (b) express the sum invoiced in pounds sterling; and
  - (c) include VAT at the prevailing rate as a separate sum or a statement that the Corporation is not registered for VAT.
- 6.4 The Corporation shall submit invoices to the Customer at the following addresses:
- [finance@cefas.co.uk](mailto:finance@cefas.co.uk)
- or
- Transactions Team, Cefas Laboratory, Pakefield Road, Lowestoft, Suffolk, NR33 0HT.
- 6.5 The Corporation acknowledges that:
- a) if the Corporation does not include VAT on an invoice or does not include VAT at the correct rate, the Customer will not be liable to pay the Corporation any additional VAT;
  - b) invoices which do not include the information set out in Clause 6.3 will be rejected.
- 6.6 Any late payment by the Customer of an undisputed Valid Invoice will be subject to interest at the rate of 3% above the base rate from time to time of Barclays Bank plc.

6.7 Not used

6.8 Not used

6.9 Each party will pay its own costs charges and disbursements incurred in relation to the preparation stamping and completion of this Agreement and termination thereof.

## **7. Liability, Indemnity and Insurance**

7.1 In addition to the other liabilities and indemnities herein contained the respective liabilities of the Corporation and the Customer shall be as detailed below in this Clause 7.

7.2 Subject to the provisions of Clauses 7.4 to 7.7 below the Corporation shall indemnify the Customer its servants and agents from and against any liabilities arising from the Corporation's negligence in carrying out the Services.

7.3 The Customer shall indemnify the Corporation its servants and agents from and against any liabilities arising from the Customer's negligence under this Agreement.

7.4 Neither Party shall be liable and shall be indemnified and held harmless by the other Party for any consequential loss of whatsoever nature arising from or in connection with this Agreement or otherwise.

7.5 Subject to Clause 7.6 below the total aggregate liability (including liability for interest) of either Party its servants and agents whether in contract tort (including negligence) or otherwise to the other arising from or in connection with this Agreement shall be limited to the appropriate level as defined below:

- a) Ten times the total value of the payments made by the Customer to the Corporation under Clause 6 of this Agreement (where such total value due under Clause 6 is under £5,000); or
- b) £50,000, where the total value of payments due by the Customer to the Corporation is £5,000 or greater than £5,000 but below £50,000; or
- c) The total value of the payments made by the Customer to the Corporation under Clause 6 of this Agreement in the event that such amount is £50,000 or greater than £50,000.

- 7.6 Neither Party shall restrict or exclude liability to the other Party for:
- a) Death or personal injury to the extent that such death or injury results from its negligence or of the negligence of its servants and agents under this Agreement.
  - b) Fraud or fraudulent misrepresentation
- 7.7 The Parties acknowledge that they both have an interest in the limitation of the liability of their servants and agents including their employees and that accordingly the Parties hereby agree not to bring any claim of any kind against the servants, agents or employees of the other Party personally in connection with this Agreement.
- 7.8 The provisions of this Clause 7 shall survive the termination however it arises of this Agreement.
- 7.9 The Corporation shall, with effect from the commencement date and for such period as necessary to enable the Corporation to comply with its obligations under the Agreement, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Corporation, arising out of the Corporation's performance of its obligations under the Agreement, including employer's liability, death or personal injury, loss of or damage to property or any other loss, including financial loss arising from any advice given or omitted to be given by the Corporation. Such insurance shall be maintained for the Agreement term and for a minimum of 6 years following the end of the Agreement.
- 7.10 The Corporation shall give the Customer on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 7.11 If the Corporation fails to comply with Clauses 7.9 and 7.10 the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Corporation.
- 7.12 The provisions of any insurance or the amount of cover shall not relieve the Corporation of any liabilities under the Agreement.
- 7.13 The Corporation shall not take any action or fail to take any reasonable action, or (to

the extent that it is reasonably within its power) permit anything to occur in relation to the Corporation, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Corporation is an insured, a co-insured or additional insured person.

## **8. Suspension**

8.1 The Corporation may vary the dates contained in the Schedule in the event that the Corporation at its sole discretion considers it reasonably necessary to do so in connection with its duties as a General Lighthouse Authority. The Corporation its servants and agents shall not be held liable by the Customer for any losses damages liabilities actions claims costs and demands of any kind arising from its decision to vary the dates contained in the Schedule.

8.2 The Corporation may at its sole discretion temporarily suspend the provision of the Services contained in the Schedule solely for the purposes of its vessel attending a wreck or Aid to Navigation casualty in connection with the Corporation's statutory duties and powers as a General Lighthouse Authority. The vessel shall also be permitted to deviate during the performance of the services contained in the Schedule for the purpose of saving life at sea. The Corporation its servants and agents shall not be held liable by the Customer for any losses, damages, liabilities, actions, claims, costs and demands of any kind suffered by the Customer arising from the Corporation's decision to temporarily suspend the provision of services for the purposes outlined under this Clause 8.2

## **9. Not Used**

## **10. Delays**

In the event that any delay to the work contained in the Schedule is caused by the actions or otherwise of the Customer's employees servants or agents or as a result of a malfunction or otherwise of the Customer's equipment the Corporation may in addition to the sums detailed in Clause 6 charge the Customer the sum specified in the Schedule, per hour pro rata for each hour or part thereof that the Corporation's vessel is prevented from carrying out the Services. All sums so payable by the Customer shall become due upon notice from the Corporation for the cost to the Corporation of the delay calculated in accordance with the method of charging detailed in this Clause. In the event that any delay to the work contained in the Schedule from the causes detailed in this Clause exceeds two calendar months the Corporation shall

be entitled to terminate this Agreement by giving one calendar months' notice in writing of its intention to do so and all obligations of the Corporation shall cease and the Agreement shall determine without prejudice to the rights of either party against the other in respect of any antecedent claim or breach of contract.

## **11. Force Majeure**

11.1 Neither of the parties hereto shall be liable for any failure to fulfil any of their respective obligations under this Agreement insofar as such failure is due to force majeure or "Act of God" (collectively referred to as "force majeure") for which purpose force majeure shall include all events beyond the control of the party claiming force majeure which cannot be avoided, which occur during the continuance of this Agreement which prevent the performance of the obligations of the party claiming force majeure or render such performance considerably more onerous PROVIDED THAT:-

- (i) The party affected by force majeure shall promptly give notice to the unaffected party of the occurrence of a force majeure event and shall also promptly notify the unaffected party of the cessation of force majeure.
- (ii) In the case of either of the parties hereto claiming force majeure then if force majeure lasts for more than one calendar month from the date of the notice claiming force majeure and has prevented the affected party from performing such party's obligations in whole or in part during that period, the unaffected party shall be entitled but not obliged to terminate this Agreement by giving not less than fourteen days written notice to the other party after expiry of the said one calendar month period; provided that such notice shall lapse if notice of cessation of the force majeure is received prior to the expiry of the fourteen days period of notice.

## **12. Termination**

12.1 The Customer may terminate the Agreement at any time by giving 30 days written notice to the Corporation.

12.2 Either Party may terminate the Agreement with immediate effect and without giving compensation if:

- a) Either Party shall become bankrupt or insolvent or shall suspend payment or make any conveyance or assignment of its estate and effects or the principal part thereof for the benefit of its creditors or being a public company shall have an Order to wind up made against it or there shall be passed a Resolution of



Voluntary winding up or suffer any execution to be levied on its property then in such case and immediately upon the happening of such event it shall be lawful for the other Party after notification in writing to terminate this Agreement.

- b) There is a change of control of the other Party
- c) The other Party or its staff commits fraud in relation to the Agreement or any other Agreement.

12.3 The Customer may terminate the Agreement if the Corporation commits a default, provided that if such default is capable of remedy the Customer has allowed the Corporation 10 working days to remedy such default.

### **13. Subcontracting & Assignment**

13.1 Subject to clause 13.2 the Corporation may if in its opinion it considers it necessary whether for operational or cost efficiency reasons to do so sub-contract the Services to one of the other General Lighthouse Authorities for the United Kingdom or Ireland.

13.2 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, except in the case of the Corporation to another General Lighthouse Authority.

### **14. Notices**

14.1 Any notice given in pursuance of any of the provisions of this Agreement shall be in writing and shall be delivered by hand or sent by prepaid registered post in the case of the Corporation to its principal office addressed to the Deputy Secretary and in the case of the Customer to its office referred to above and addressed to the Office Manager and shall be deemed to be received by the addressee on the first business day following the date of delivery, if delivered by hand, and on the fifth business day after posting, if sent by prepaid registered post.

### **15. Disputes**

15.1 The Parties shall attempt in good faith to resolve any dispute between them arising out of the Agreement and such efforts shall include the escalation of the dispute to an Executive Officer (or equivalent) of each Party.

15.2 Any claim or dispute arising between the parties hereto out of or in connection with this Agreement, including any question regarding its existence, validity or termination, which

cannot be resolved by discussion (in accordance with clause 15.1) shall be referred to and finally resolved by arbitration. Arbitration shall take place in London and shall be conducted by a single arbitrator appointed jointly by the parties or in default of agreement within twenty-eight (28) days of receipt by the Corporation or the Customer, as the case may be, of any notice given by the other party requiring arbitration, by the President for the time being of the Law Society of England on the application of either or both of the parties. Any arbitration award rendered shall be final and binding and judgement thereon may be entered in any court having jurisdiction or application may be made to such court for any order of enforcement as the case may be required.

## **16. Environmental and Ethical Policies**

- 16.1 Both parties hereto shall comply with all relevant environmental legislation and regulations and ensure that due regard is paid to the environment ,sustainability and ethical procurement by acting to conserve non renewable energy sources and to preserve air, water, animal and plant life in the performance of this Agreement.

## **17. Health and Safety**

- 17.1 Each Party will promptly notify the other Party of any health and safety hazards which may arise in connection with the Services.
- 17.2 The Corporation shall have in place and comply with its own health and safety policies suitable for the providing the Services. In addition to such policies the Corporation shall also have regard to the specific requirements provided by the Customer in the Schedule as far as reasonably practicable but at all times the responsibility for health and safety shall belong to the Corporation.
- 17.3 The Corporation shall notify the Customer immediately if any incident occurs in providing the Services which causes or may cause personal injury.
- 17.4 The Corporation shall comply with the requirements of the Merchant Shipping Act 1995 (as amended), and with any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons when providing the Services.
- 17.5 The Corporation's Health and Safety and Environmental Objectives Policy Statement shall be made available to the Customer on request.

## **18. Prevention of Corruption and Fraud**

- 18.1 The Corporation shall act within the provisions of the Bribery Act 2010.

- 18.2 The Corporation shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Corporation (including its shareholders, members and directors) in connection with the receipt of money from the Customer.
- 18.3 The Corporation shall notify the Customer immediately if it has reason to suspect that Fraud has occurred, is occurring or is likely to occur.

## **19. Discrimination**

- 19.1 The Corporation shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.
- 19.2 The Corporation shall notify the Customer immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by Staff on the grounds of discrimination arising in connection with the Services.

## **20. Freedom of Information**

- 20.1 The Corporation acknowledges that the Customer is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (the “**Information Acts**”) and may be required to disclose certain information to third parties including information relating to this Agreement pursuant to the Information Acts.
- 20.2 If the Customer receives a request for information relating to the Agreement pursuant to either of the Information Acts, the Customer may disclose such information as necessary in order to comply with its duties under the Information Acts.
- 20.3 The Customer acknowledges that the Corporation, whilst not designated as a public authority pursuant to the Freedom of Information Act 2000, has elected to act within the spirit of the legislation, and as such the Corporation will provide such information as requested, with the exception of information of which the disclosure would:
- (a) constitute an actionable breach of confidence owed to the party providing the information;
  - (b) be likely to prejudice the commercial interests of the party providing the information; or
  - (c) by its involvement with marine navigation, represent a threat to international marine security.

## **21 Confidentiality and Data Protection**

- 21.1 Subject to Clause 21.2, unless agreed otherwise in writing, the Corporation shall, and shall procure that Staff shall, keep confidential all matters relating to the Agreement.
- 21.2 Clause 21.1 shall not apply to any disclosure of information:

- (a) required by any applicable law;
- (b) that is reasonably required by persons engaged by the Corporation in performing the Corporation's obligations under the Contract;
- (c) where the Corporation can demonstrate that such information is already generally available and in the public domain other than as a result of a breach of Clause 21.1; or
- (d) which is already lawfully in the Corporation's possession prior to its disclosure by the Customer.

## **22 Intellectual Property Rights**

- 22.1 Ownership and rights in any equipment and materials shall remain with the party bringing such equipment and materials to the Agreement.

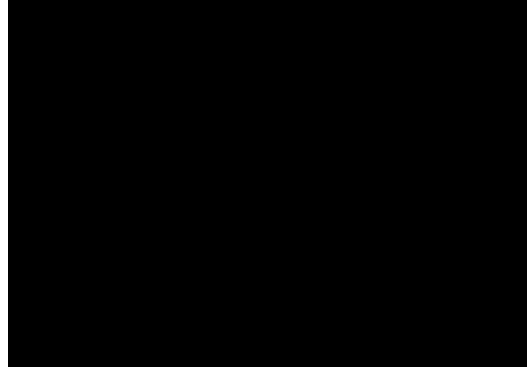
## **23 Law**

- 23.1 The law of this Agreement is the law of England and any dispute arising under this Agreement shall be subject to the exclusive jurisdiction of the English courts.

**IN WITNESS** whereof this Agreement has been entered into the day and year first before written.

for and on behalf of

THE CORPORATION OF  
TRINITY HOUSE OF DEPTFORD STROND

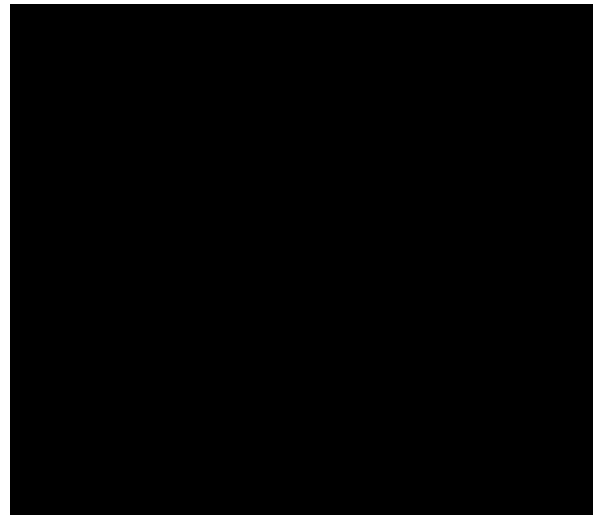


IN the presence of

SIGNED by

for and on behalf of

The Secretary of State for Environment, Food  
and Rural Affairs acting through Cefas



IN the presence of

## SCHEDULE TO VESSEL SERVICES AGREEMENT

1. The Corporation will provide services ("the Services") for the deployment and recovery of scientific instrumentation (Cefas-owned Waverider Buoy) at the Scarweather and Scillies sites. Positions for equipment are supplied by the Customer in section 3.1 below.
2. The Customer is responsible for all notices in relation to the deployment location.
3. Buoy Operations

### 3.1 Scope of Work

The Corporation is to provide THV Galatea and crew to undertake the deployment and recovery of the Customer's Waverider Buoys. The equipment will be deployed as close as possible to :

**Scarweather** 51 26'.001N, 003 56'.002W  
**Scillies** 49 49.000' N 006 32.644W

Work is expected to be conducted on or around 25 September 2021, (loading gear on the vessel at a convenient time beforehand) without Cefas personnel on board THV Galatea.

### 3.2 Health and Safety Requirements

#### 3.2.1 Waverider Deployment and Recovery

In relation to operations surrounding scientific instrumentation, where practicable, the Corporation will have regard to the provided Cefas Standard Operating Procedures and Risk Assessments, but at all times the Corporation shall remain responsible for health and safety aboard the vessel and shall undertake its own risk and method statements and shall operate in accordance with its own policies and procedures.

Toolbox Talks are to be conducted (and recorded) prior to the commencement of operations.

Where any problems occur with the deployment, the Corporation is to advise the Customer at the earliest opportunity.

#### 3.2.2 Vessel

##### 3.2.2.1 Vessel Requirements

The vessel is to comply with the MCA regulations appropriate for the vessel engaged in the Services This includes, but is not limited to:

- safety equipment
- manning by qualified personnel
- working hours regulations
- manual handling
- suitability of the vessel for the proposed operation

##### 3.2.2.2 Vessel Audit

To comply with the Customer's health and safety requirements, a Vessel Safety Information Card shall be completed for the vessel and provided to the Customer for sign off.

It is requested that any recent audits (IMCA or similar) are available, and that these are provided for reference.

3.3 Waverider Equipment

The Corporation shall treat the Customer's equipment with the care and attention required to safely deploy without damage to both the Customer's, and third party property.

The Customer requests that the Corporation conduct the necessary due diligence to minimise the environmental impact of the operations. Where this is not possible, the Customer is to be advised at the earliest opportunity.

3.4 Nothing in this Schedule shall be construed to increase the liability of the Parties to each other to a level beyond that stated in the express provisions of the Agreement.

4. Incidentals – There are no incidentals for these Services, the Customer will supply all consumables such as shackle and chains necessary for the scientific instrumentation.
5. Charges for Delay (as detailed under Clause 10 of the Agreement) – “nil” for these Services.