



## CATTLE HEALTH SCHEME TESTING SERVICES TERMS AND CONDITIONS

### 1. Definitions, Interpretation and Basis of Contract

- a. In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Business Day" means any day from Monday to Friday inclusive on which we are open for business;

"Conditions" mean the terms and conditions of supply as set out in this document;

"Contract" means the agreement formed by the completion and signature by all parties of the AFBI Cattle Health Scheme - Application for Membership Form incorporating the Conditions concluded between us and you for the supply of Cattle Health testing services incorporating the Conditions;

"Purchaser" shall mean the individual or company to whom we are supplying Services under the Contract;

"Services" means the services to be supplied under the Contract, as more particularly described in the CHeCS Technical document; and

"VAT" means value added tax.

- b. All references to "us", "our", "we" and "AFBI" shall mean Agri-Food and Biosciences Institute and references to "you" and "your" shall mean the Purchaser.
- c. Condition, paragraph and schedule headings shall not affect interpretation of these Conditions
- d. Words in the singular shall include the plural and vice versa
- e. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment.
- f. A reference to "writing" or "written" includes faxes and email.

- g. All purchase transactions between us and you are, unless otherwise agreed to in writing by us, subject to these Conditions which are deemed to be incorporated into any Contract. These Conditions shall apply to the Contract to the exclusion of any other terms and conditions including without limitation, any terms and conditions of yours. No variation to the Contract or these Conditions shall be binding unless accepted in writing by us.

## 2. Cattle Health Scheme Testing Services

- a. Cattle Health Scheme Testing Services as set out in the CHeCS Technical Document together with any other Cattle Health Scheme Testing Services which AFBI provides or agrees to provide to you shall be performed by AFBI on the following basis:-
- b. All specimens accepted for examination become the property of AFBI and may be used for further disease surveillance or research work. This includes looking for new or emerging diseases and monitoring changes in disease patterns or infectious agents.
- c. All specimens submitted by mail, train, bus or courier must be packaged in compliance with current Health and Safety and the Road Transportation regulations.
- d. AFBI will test samples from your cattle as instructed by your private veterinary practitioner (PVP). Results will be reported through your nominated veterinary practice and to your own email address (if requested).
- e. AFBI, in compliance with Data Protection legislation, may issue results of samples tested via a secure encrypted e-mail method, which may result in the customer or the veterinary surgeon holding both the encryption password and the encrypted results files together in the same in-box. If either the veterinary surgeon or the customer or, if different, the person who signs the AFBI Sample Submission form does not wish to receive the results of the testing using an encrypted method they should notify AFBI in writing at [DSIBSample.Enquiries@afbini.gov.uk](mailto:DSIBSample.Enquiries@afbini.gov.uk) before or at the same time as the AFBI Sample Submission Form is completed and signed.
- f. AFBI shall have no liability whatsoever to any party including but not limited to the veterinary surgeon, the Customer and/or the owner of the animal to which the sample relates in respect of the encryption method which AFBI chooses to use or the use or transfer of any data provided to AFBI whether or not it is personal data and whether or not the personal data is received directly from the owner or data subject of such data and whether or not they have given consent for it to be provided to AFBI by a third party and each veterinary surgeon. Customer and/or owner of any animal hereby indemnifies AFBI accordingly to the maximum extent permitted by law. Further AFBI shall have no liability whatsoever to any party in circumstances where an encryption method is used including in circumstances where AFBI has not received a written notification requesting that encryption should not be used or where results are sent unsecurely not using encryption as a result of AFBI having received written notification from a veterinary surgeon, customer or owner of an animal requesting that encryption should not be used.

- g. The veterinary surgeon, the customer and/or owner of the animal hereby indemnifies AFBI in respect of any claim, loss, costs or expenses which he/she may have or any third party may bring against them resulting from the use or non-use of any encryption method by AFBI in the delivery of results by AFBI.
- h. If either party requests a change to the scope or execution of the Services, AFBI will, within a reasonable time, provide a written estimate to you of:
  - (i) the likely time required to implement the change;
  - (ii) any variations to our charges arising from the change;
  - (iii) the likely effect of the change on the timescale for the supply of the Services; and
  - (iv) any other impact of the change on the terms of the Contract.
- i. AFBI may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If AFBI requests a change to the scope of the Services for any other reason, you will not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services and, where practicable, we will give you at least 1 months' notice of any change.
- j. If you want us to proceed with any change, we have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to our charges, and any other relevant terms of the Contract to take account of the change.
- k. We may charge you for our time spent in assessing a request for change from you on a time and materials basis.

### 3. Prices and Payment

- a. AFBI's fees for the provision of the Services are available on request and are as shown on our website ([www.afbini.gov.uk](http://www.afbini.gov.uk)).
- b. AFBI reserves the right to alter the fees charged for the Services and will normally give not less than one months' written notice of its intention to do so.
- c. AFBI retains the right to withdraw temporarily or suspend the Services without prior notice.
- d. If a sample is received in a condition considered by AFBI to be unsuitable for testing, we will inform you as soon as reasonably practicable and request submission of a repeat sample for testing at no additional charge.
- e. All prices are subject to VAT at the current rate.
- f. Invoices will be issued to customers on a monthly basis. You shall pay the full amount of any invoice (without deduction or set-off) within 30 days from date of invoice.
- g. Without prejudice to any other right or remedy that we may have, if you fail to pay

AFBI on the due date, we may suspend all Services until payment has been made in full. We may also charge interest on late payment from the due date until the date of receipt of cleared funds in our account at the rate of 3 per cent over the base rate of Royal Bank of Scotland from time to time.

- h. Time for payment shall be of the essence of the Contract.
- i. Government accounting (Northern Ireland) procedures will be used for recovery of all outstanding debts.

#### 4. Warranty of Performance

We shall exercise all reasonable skill, care and professional due diligence in the performance of Services, however we do not guarantee or warrant that any particular result is correct or otherwise.

#### 5. Limitation of Liability (your attention is particularly drawn to the provisions of this condition)

- a. This condition sets out the entire financial liability of AFBI (including any liability for any acts of omissions of its employees, agents or sub-contractors) to you in respect of any breach of the Contract; the results of the Services; any representation, statement of tortuous act or omission (including negligence) arising under or in connection with the Contract.
- b. All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract.
- c. Under no circumstances shall our liability for any loss or damage suffered by you or any other person as a result of our performance or non-performance of our obligations under this Contract be greater than £10,000 or the total sums received by us under the provisions of the Contract, whichever is the lower. Where any of your loss or damage results in personal injury or death caused by our negligence our liability shall not be limited. We shall not be liable in any circumstances for any special, indirect or consequential loss or any other economic loss, loss of anticipated profits, loss of anticipated savings, loss of business, loss of goodwill or similar loss, loss of contract, or loss of use.
- d. You will indemnify us on demand in respect of all costs, charges or losses sustained or incurred by us (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from your fraud, negligence, breach of the Contract, failure to perform or delay in the performance of any of your obligations under the Contract, subject to our confirming such costs, charges and losses to you in writing.
- e. Notwithstanding the provisions of this Condition 5, neither party excludes or limits liability to the other party for death or personal injury arising from the breach of duty of such party.
- f. If AFBI's performance of its obligations under the Contract is prevented or delayed

by any act or omission of you, your agents, sub-contractors or employees, we will not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay.

- g. Should any limitation or provision contained in this Condition 5 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if either party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## 6. Force Majeure

- a. Any delay or failure by either party in performance hereunder, other than your obligation to pay us any monies due to us, shall be excused if and to the extent that such delay or failure is caused by occurrences beyond such party's reasonable control including but not limited to, acts of God, decrees or restraints of government, strikes, war, fire, riot, sabotage, terrorism and any other cause or causes whether similar or dissimilar to those already specified which cannot reasonably be controlled by either party. Such performance shall be so excused for the period during which such inability of the party to perform is so caused but for no longer period and shall be remedied as far as possible with all reasonable despatch. Any time period for performance shall be extended by a period equal in duration to any period during which such performance is excused by this Condition.
- b. If any of the events detailed in Condition 6a above prevents either party from performing all of its obligations under the Contract for a period in excess of one month, the party affected by such non-performance may terminate the Contract.

## 7. Termination

- a. We may terminate this Contract by providing one months' written notice to that effect to you.
- b. In addition to, but without prejudice to, our other rights and remedies under and in terms of this Contract, we may terminate this Contract forthwith if:-
- (i) you commit a material breach of any of the terms of the Contract including failure to pay any part of the price payable to us in accordance with Condition 3 above;
  - (ii) you enter into any arrangement with your creditors;
  - (iii) a petition is presented, or a resolution proposed, for the winding-up of your business;
  - (iv) any procedure is commenced with a view to the appointment of an administrator, receiver or administrative receiver in relation to you or any other party gives notice of its intention to appoint an administrator to you;
  - (v) you are unable to pay your debts as they fall due;
  - (vi) you cease trading or threaten to cease trading; or
  - (vii) any equivalent or analogous event or action as outlined in Conditions 7b(i) - 7b(vi) occurs in any jurisdiction.
- c. In the event of termination of this Contract you shall immediately pay to us all

amounts which remain outstanding for Services performed and invoiced. In respect of Services performed but not yet invoiced, we may submit an invoice which shall be payable immediately upon receipt.

- d. The accrued rights of the parties at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **8. Assignment**

We shall be entitled to assign, transfer or sub-contract any of our rights or obligations under this Contract. You shall not assign, transfer or sub-contract any of your rights or obligations under this Contract or purport to do so unless you have obtained our prior written consent.

## **9. Complaints procedure and Dispute Resolution**

- a. If you are dissatisfied with any aspect of our Services, please contact the Head of DSIB at the AFBI Stormont laboratory (028 9052 5649) in the first instance.
- b. Should any dispute arise between AFBI and you, the parties will attempt to resolve the dispute in good faith. If the parties are unable to resolve any such dispute between them, either party may request that the parties seek to resolve the dispute through mediation; this shall not prejudice a party's right to raise court or other proceedings.

## **10. Entire Agreement**

- a. This Contract and any other document referred to herein as being applicable contains the entire agreement of the parties with respect to the subject matter of this Contract and supersedes all prior agreements and arrangements whether written or oral between the parties with respect to the subject matter of this Contract.
- b. You acknowledge and agree that in entering into this Contract you are not relying on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or note) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract other than an expressly set out in the Contract.
- c. AFBI reserves the right to amend these terms and conditions.

## **11. Severability**

If any provision of this Contract is held by the appropriate court or other competent authority to be void or unenforceable in whole or in part this Contract shall continue to be valid as to the other provisions of it and the remainder of the affected provision.

## **12. Governing Law**

This Contract shall be governed by and construed in accordance with the law of

Northern Ireland and the parties hereby submit to the exclusive jurisdiction of the Northern Ireland courts.

### 13. Data protection and freedom of information issues

- a. AFBI takes data protection and freedom of information issues seriously. It takes care to ensure that any personal information supplied to it is dealt with in a way which complies with the requirements of the UK Data Protection Act 2018 and EU General Data Protection Regulation. In providing your own or a third party's personal information to AFBI, you acknowledge that any personal information you supply will be processed principally for the purpose for which it has been provided. However, AFBI may also use it for other lawful purposes in line with appropriate legislation. Please refer to the AFBI Cattle Health Scheme Privacy Notice (<https://www.afbini.gov.uk/publications/privacy-notice-afbi-cattle-health-scheme>) for further information.
- b. AFBI may contact you if information is required about your herd. This information will be treated in confidence.
- c. For the purpose of participation in the AFBI Cattle Health Scheme, all relevant information will be retrieved from the APHIS/NIFAIS database by AFBI, with the agreement of DAERA. This information will be treated in strictest confidence.
- d. Where necessary, AFBI will access the BVD results of your cattle collated as part of the BVD eradication programme for Northern Ireland administered by Animal Health & Welfare NI (AHWNI).
- e. On request from a CHS herdowner or submitting veterinary surgeon, on a case by case basis and where appropriate, AFBI will upload BVD test results (non-ear tag) for your cattle to the Animal Health and Welfare Northern Ireland (AHWNI) database to be considered as a part of the BVD eradication programme for Northern Ireland.
- f. Your data will be shared with breed societies who request herd and animal information. This is only performed when we receive notification from the breed society with a consent form signed by yourself.