

Environmental Risk Assessment Services - Chemical/Toxicology) (ERAS2)

FRAMEWORK AGREEMENT No:

Project_29581



The Environment Agency
Horizon House
Deanery Road
Bristol
BS1 5AH

OPERATION OF THE FRAMEWORK

The framework agreement will allow the Environment Agency to place specific call off contracts as and when required.

FORM OF AGREEMENT

FRAMEWORK AGREEMENT No: Project_29581

FRAMEWORK RELATING TO: **Environmental Risk Assessment Services – Chemical/Toxicology (ERAS2)**

Framework Agreement dated _____ between:

- (1) The Environment Agency whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH ("the Agency"); and
- (2) [**Contractor Name**] whose registered address is [**Address**] and which is registered with Companies House with Company Number [**company number**] ("the Contractor").

IT IS AGREED as follows:

1. The provisions of the following documents form part of this Framework Agreement:
 - the 'Conditions of Contract — Services' below and associated Appendix and Schedules ("the Conditions of Contract") –
Schedule A – Data Protection Schedule
Schedule B – Project Proposal Form
 - the 'Framework scope and technical specification' for [**framework number**] and associated Appendices and Schedules ("the Framework Scope") –
ITT Information Guidance Document containing the Specification
 - the Contractor's financial proposal in response to the Environment Agency's Invitation to Tender [**framework number**] as agreed with the Environment Agency [*refer to any specific document setting out the agreed pricing*] ("the Pricing Schedule"),
and, in the case of conflict, have precedence in the order listed.
2. Capitalised terms used in this Framework Agreement have the meanings given to them in the Conditions of Contract.
3. The framework shall begin on [**framework start date**] and end on [**framework end date**] ("Framework Period").
4. The Agency may order Services within the Framework Scope from time to time during the Framework Period by issuing a Confirmation of Instructions. The Contractor shall complete and deliver to the Agency such Services in accordance with and subject to the provisions of the relevant Confirmation(s) of Instructions (which shall incorporate the Conditions of Contract and the Pricing Schedule).
5. Conditions 27 to 31 of the Conditions of Contract shall apply to this Framework Agreement as they apply to the Conditions of Contract. No variation to this Framework Agreement shall have effect unless made by a written instrument signed by an authorised representative of each party.

Signed for and on behalf of the Contractor:

Signed for and on behalf of the Agency:

Signature:

Signature:

Name:
(BLOCK CAPITALS)

Name:
(BLOCK CAPITALS)

Position:

Position:

Conditions of Contract - Services

Ref: [framework number]

Title: Environmental Risk Assessment Services – Chemical/Toxicology (ERAS2)

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Appendix

Schedule A – Data Protection Schedule

Schedule B – Project Proposal Form

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1. DEFINITIONS

1.1 In the Contract, unless the context otherwise requires the following words and expressions shall have the following meanings assigned to them.

1.1.1 Agency The Environment Agency, its successors and assigns.

1.1.2 Agency Property
All property issued or made available for use by the Agency to the Contractor in connection with the Contract.

1.1.3 The Appendix The Appendix to these Conditions of Contract.

1.1.4 Confirmation of Instructions
Means the form at Schedule 2 that will be completed by the Contract Supervisor and Contractor each time Services are required of the Contractor under the Framework.

1.1.5 The Contract
The Confirmation of Instructions in which these Conditions of Contract (including the Appendix and Schedules) and the Pricing Schedule are incorporated and any variations agreed in accordance with these Conditions of Contract.

1.1.6 The Contractor
The person, firm company or body who undertakes to supply the Services to the Agency as defined in the Contract.

1.1.7 Contract Period
The time period stated in the Confirmation of Instructions or otherwise provided in the Contract for the performance of the Services.

1.1.8 Contractor Personnel
Means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under the Contract.

1.1.9 Contract Price
Means in respect of Services to be provided pursuant to any Confirmation of Instructions the total overall cost of such Services exclusive of VAT as set out in such Confirmation of Instructions (which shall be consistent with the Pricing Schedule).

1.1.10 Contract Supervisor
Any duly authorised representative of the Agency notified in writing to the Contractor for all purposes connected with the Contract. Any Notice or other written instruction given by or made to the Contract Supervisor, shall be taken as given by or made to the Agency.

1.1.11 Contracting Authority
Means any contracting authorities (other than the Environment Agency) as defined in regulation 2 of the Public Contract Regulations 2015 (SI 2015/102) (as amended).

1.1.12 Data Protection Legislation
Means: (i) the General Data Protection Regulation (Regulation (EU)

2016/679) or GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) ("LED") and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 1998 ("DPA 1998") and/or the Data Protection Act 2018 ("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.

1.1.13 Data Protection Annex

Annex 1 to the Confirmation of Instructions (Schedule of Processing, Personal Data and Data Subjects Processing, Personal Data and Data Subjects).

1.1.14 Data Protection Schedule

The Schedule attached to these Conditions of Contract describing how the Parties will comply with the Data Protection Legislation (Schedule A).

1.1.15 Framework

Means the Agency's Environmental Risk Assessment Services – Chemical/Toxicology (ERAS2) (framework number – Project_29581 and "Framework Agreement" means the agreement establishing such Framework between the Agency and the Contractor.

1.1.16 Insolvency Event

Means any of the following:

- (a) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (b) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (c) 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 of the Contractor (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Contractor (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over all or any of the assets of the Contractor or a receiver is appointed over all or any of the assets of the Contractor;
- (g) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
- (h) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (g) (inclusive).

1.1.17 Intellectual Property Rights

Patents, rights to inventions, rights in designs, registered designs, utility models, trade and service marks, copyright and related rights, database rights,

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.

- 1.1.18 Law Means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.
- 1.1.19 Notice Any written instruction or notice given to the Contractor by the Contract Supervisor, delivered by:
- i. fax, or hand delivery to the Contractor's registered office or other address notified for the purposes of the Contract and deemed to have been served at the date and time of delivery;
 - ii. first class post to the Contractor's registered office. Such Notices are deemed to have been served 48 hours after posting.
- 1.1.20 Permission Express permission given in writing before the act being permitted.
- 1.1.21 Pricing Schedule Has the meaning given in the Framework Agreement.
- 1.1.22 Prior Rights Means, in respect of a party, the Intellectual Property Rights of such party other than the Resulting Rights (including Intellectual Property Rights listed, or in respect of documents or things listed, in the Prior Rights Schedule).
- 1.1.23 Prior Rights Schedule A schedule annexed to a Confirmation of Instructions listing Prior Rights of the parties and/or documents or things in respect of which the parties have or will have Intellectual Property Rights.
- 1.1.24 Project The Services to be provided under the Confirmation of Instructions.
- 1.1.25 Project Completion Date Means the date specified as such in the Confirmation of Instructions
- 1.1.26 Regulations Means the Public Contract Regulations 2015 (SI 2015/102) as amended from time to time.
- 1.1.27 Results All things produced in performing the Services including maps, plans, photographs, drawings, databases, tapes, statistical data, experimental results, field data, analysis of results, published and unpublished results and reports, inventions, computer programmes and user documentation.
- 1.1.28 The Resulting Rights All Intellectual Property Rights which may from time to time subsist in, or in respect of, the Results or otherwise result from the performance of the Contract.
- 1.1.29 Services All Services detailed in the Specification including any additions or

substitutions as may be requested by the Contract Supervisor.

1.1.30 Specification The specification set out in Part 1 of the Confirmation of Instructions (at numbered paragraphs 1, 2 and 3).

1.2 Except as set out above and in the Data Protection Schedule, the Contract shall insofar as applicable be interpreted in accordance with the rules of interpretation set out in the Interpretation Act 1978 (as if the Contract were an Act of Parliament).

1.3 All headings in these Conditions are for ease of reference only, and shall not affect the construction of the Contract.

1.4 Any reference in the Contract to a statutory provision includes all amendments from time to time.

1.5 All undefined words and expressions are to be given their normal English meaning within the context of the Contract.

2. PRECEDENCE

To the extent that the following documents form the Contract, in the case of conflict of content, they shall have the following order of precedence:

1. Conditions of Contract including the Data Protection Schedule, Appendix and Schedules;
2. Specification;
3. Pricing Schedule.

3. CONTRACT SUPERVISOR

The Contractor shall strictly comply with any instruction given by the Contract Supervisor concerning or about the Contract. All such instructions shall be in writing. The Contractor is not obliged to comply with any verbal instruction from the Contract Supervisor that is not confirmed in writing within 7 working days.

4. THE SERVICES

4.1 The Contractor shall provide all staff, equipment, materials and any other requirements necessary for the performance of the Contract using all reasonable skill, care and diligence, and to the reasonable satisfaction of the Contract Supervisor.

4.2 The Contractor shall only employ in the execution and superintendence of the Contract persons who are suitable and appropriately skilled and experienced. The Contract Supervisor shall be at liberty to object to and require the Contractor to remove any person employed in or about the Contract who is unsuitable, misconducts himself, is incompetent or negligent in the performance of his duties or persists in conduct which could endanger the health or safety of others. Such persons shall not be employed again on the Contract without the Permission of the Contract Supervisor.

5. ASSIGNMENT

5.1 The Contractor shall not assign, transfer or sub-contract the Contract, or any part of it, without the Permission of the Contract Supervisor.

5.2 Any assignment, transfer or sub-contract entered into shall not relieve the Contractor of any of its obligations or duties under the Contract.

- 5.3 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of the Contract.

6. PROJECT COMPLETION DATE

The Contractor shall perform the Services by the Project Completion Date stated in the Confirmation of Instructions, subject to any changes arising from Condition 10 (Variations,) and/or Condition 11 (Extensions of Time.)

7. PROPERTY

- 7.1 All property issued by the Agency to the Contractor in connection with the Contract shall remain the property of the Agency, and shall be used in the execution of the Contract, and for no other purpose whatsoever without the prior approval of the Contract Supervisor.
- 7.2 The Contractor shall keep all Agency Property in safe custody and good condition, set aside and clearly marked as the property of the Agency.
- 7.3 On expiry or earlier termination of the Contract the Contractor shall, if so required, either surrender such property to the Agency or otherwise dispose of it as instructed by the Contract Supervisor.

8. MATERIALS

- 8.1 The Contractor shall be responsible for establishing its own sources of supply for goods and materials and will be responsible for ensuring the reasonable and proper conduct of its Contractors and staff whilst on the Agency's premises.
- 8.2 The Contractor shall not place, or cause to be placed, any orders with contractors or otherwise incur liabilities in the name of the Agency or any representative of the Agency.

9. SECURITY

- 9.1 The Contractor shall be responsible for the security of all goods and equipment belonging to the Agency and used by the Contractor in the provision of the Services, or belonging to the Contractor, or the Contractor's staff, or sub-contractors whilst on Agency premises.
- 9.2 This Condition shall not prejudice the Agency's rights under Condition 15.

10. VARIATIONS

- 10.1 The Contract Supervisor may vary the Contract by adding to, deleting or otherwise modifying the Services to be supplied, by written order to the Contractor provided such variations are reasonable and consistent with the nature, scope and value of the Contract.
- 10.2 The value of any such variation, other than any variation arising out of Condition 10.3, shall be determined by reference to the rates contained in the Pricing Schedule. Where the Services so ordered are not covered in the Pricing Schedule, they shall be valued at a fair and reasonable rate agreed between the Contract Supervisor and the Contractor.
- 10.3 Where a variation is the result of some default or breach of the Contract by the Contractor or some other cause for which he is solely responsible, any additional cost attributable to the variation shall be borne by the Contractor.
- 10.4 The Contractor may also propose a variation to the Services but no such variation shall take effect unless agreed and confirmed in writing by the Contract Supervisor.

- 10.5 The Agency may vary the Contract to comply with a change in Law. Such a change will be effected by the Contract Supervisor notifying the Contractor in writing.
- 10.6 The Agency may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 10.6.1 any Contracting Authority; or
 - 10.6.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Agency; or
 - 10.6.3 any private sector body which substantially performs the functions of the Agency, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 10.7 Any change in the legal status of the Agency such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Agency.
- 10.8 Save in the case of any variation under clauses 10.1 to 10.7, no variation of the Contract shall be effective unless:
- 10.8.1 made by a written instrument signed by an authorised representative of each party; or
 - 10.8.2 set out in a Confirmation of Instructions signed by or on behalf of each party (and for the avoidance of doubt any variation so set out shall have effect for the purposes of such Confirmation of Instructions only).

11. EXTENSIONS OF TIME

- 11.1 Should the performance of the Contract or any Services be directly delayed by any cause beyond the reasonable control of the Contractor, and provided that the Contractor shall first have given the Contract Supervisor written notice within five working days after becoming aware that such delay was likely to occur, then the Contract Supervisor, if satisfied that this Condition applies:
- 11.1.1 in the case of any delay of which the Agency is not the cause, may grant the Contractor such extension of time as in his opinion is reasonable, having regard without limitation to any other delays or extensions of time that may have occurred or been granted under the Contract. The Contract Price shall not increase as a result of such an extension of time.
 - 11.1.2 in the case of any delay of which the Agency is the cause, shall grant the Contractor a reasonable extension of time to take account of the delay.
- 11.2 No extension of time shall be granted where in the opinion of the Agency the Contractor has failed to use best endeavours to avoid or reduce the cause and/or effects of the delay.
- 11.3 Any extension of time granted under this Condition shall not affect the Agency's rights to terminate or determine the Contract under Conditions 13 and 14.

12. DEFAULT

- 12.1 The Contractor shall be in default if he:

12.1.1 fails to perform the Contract with due skill, care, diligence and timeliness;

12.1.2 refuses or neglects to comply with any reasonable written instruction given by the Contract Supervisor; or

12.1.3 is in breach of the Contract.

12.2 Where in the opinion of the Contract Supervisor the Contractor is in default, the Contract Supervisor may serve a Notice giving at least seven days in which to remedy the default.

12.3 If the Contractor fails to comply with such a Notice the Contract Supervisor may, without prejudice to any other rights or remedies under the Contract, take over for as such a period as is necessary the performance of the relevant part of the Contract and make other arrangements for its completion. Any extra costs arising from this action will be paid by the Contractor or deducted from any monies owing to it.

13. TERMINATION

13.1 The Agency may immediately, without prejudice to any other rights and remedies under the Contract, terminate all or any part of the Contract by Notice in writing to the Contractor, if:

13.1.1 the Contractor fails in the opinion of the Contract Supervisor to comply with (or take reasonable steps to comply with) a Notice under Condition 12.2; or

13.1.2 an Insolvency Event occurs.

13.2 The Agency may terminate the Contract on written Notice to the Contractor if:

13.2.1 the contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

13.2.2 the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

13.2.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

14. DETERMINATION

14.1 Without prejudice to any other rights or remedies under the Contract, the Agency reserves the right to determine the Contract at any time by giving not less than one month's Notice (or such shorter time period as may be appropriate).

14.2 The Agency shall pay the Contractor such amounts as may be necessary to cover its reasonable costs and outstanding and unavoidable commitments necessarily and solely incurred in properly performing the Contract prior to determination.

14.3 The Agency will not pay for any costs or commitments that the Contractor is able to mitigate and shall only pay those costs that the Agency has validated to its satisfaction. The Agency's total liability under this Condition shall not in any circumstances exceed the Contract Price that would have been payable for the Services under the Contract if the Contract had not been determined.

15. INDEMNITY

15.1 Without prejudice to the Agency's remedies for breach of Contract, the Contractor shall fully indemnify the Agency and its staff against any liability, loss, costs, expenses, claims or proceedings in respect of:

15.1.1 death or injury to any person;

15.1.2 loss or damage to any property;

15.1.3 infringement of third party Intellectual Property Rights,

which might arise as a direct consequence of the actions or negligence of the Contractor, its staff or agents in the performance of the Contract.

15.2 This Condition shall not apply where the loss, damage, injury, death or infringement is a direct result of the actions or negligence of the Agency or its staff.

15.3 If any third party makes a claim, or notifies an intention to make a claim, against the Agency which may reasonably be considered likely to give rise to a liability under this indemnity (a **Claim**), the Agency shall:

- (a) as soon as reasonably practicable, give written notice of the Claim to the Contractor, specifying the nature of the Claim in reasonable detail;
- (b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Contractor (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Agency may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Contractor, but without obtaining the Contractor's consent) if the Agency reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect; and
- (c) give the Contractor access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Agency, so as to enable the Contractor and its professional advisers in strict confidence to examine them and to take copies (at the Contractor's expense) for the purpose of assessing the Claim.

16. LIMIT OF CONTRACTOR'S LIABILITY

16.1 The limit of the Contractor's liability for each and every claim by the Agency, other than for death or personal injury, whether by way of indemnity or by reason of breach of contract, or statutory duty, or by reason of any tort shall be:

16.1.1 the sum stated in the Confirmation of Instructions;

16.1.2 if no sum is stated, the Contract Price for the Services performed or to be performed under the Contract or five million pounds whichever is the greater.

16.2 Neither party shall be liable to the other for:

16.2.2 any indirect or consequential loss; or

16.2.2 any pure economic loss including without limitation loss of goodwill, loss of business, loss of anticipated profits or savings,

arising out of or in connection with the Contract.

17. INSURANCE

- 17.1 The Contractor shall insure and maintain insurance against liabilities under Condition 15 (Indemnity) in the manner and to the values listed in the Appendix to these Conditions. If no sum is stated, the value insured shall be £5,000,000 (five million pounds).
- 17.2 If specifically required by the Agency, nominated insurances shall be in the joint names of the Contractor and the Agency.
- 17.3 The Contractor shall, upon request, produce to the Contract Supervisor documentary evidence that the insurances required are fully paid up and valid for claims made during a period of at least six years from completion of the Services.

18. PREVENTION OF FRAUD AND CORRUPTION

- 18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Contractor's staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Agency immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 18.3 If the Contractor or the Contractor's staff engages in conduct prohibited by this clause 18 or commits fraud in relation to the Contract or any other contract with the Crown or the Agency, the Agency may:
- 18.3.1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Agency resulting from the termination, including the cost reasonably incurred by the Agency of making other arrangements for the provision of the Services and any additional expenditure incurred by the Agency throughout the remainder of the Contract Period; or
- 18.3.2. recover in full from the Contractor any other loss sustained by the Agency in consequence of any breach of this clause.
- 18.4. The Contractor shall not directly or indirectly through intermediaries commit any offence under the Bribery Act 2010 in any of its dealings with the Agency.

19. MONITORING AND AUDIT

The Contract Supervisor may inspect and examine the Services being carried out on the Agency's premises or elsewhere at any reasonable time. Where the Services are being performed on other than the Agency's premises, reasonable notice to inspect shall be given to the Contractor. The Contractor shall give all such facilities as the Contract Supervisor may reasonably require for such inspection and examination.

20. CONTRACT PRICE

- 20.1 The Contract Price will be paid by the Agency to the Contractor as amended by any Variations under Condition 10 (Variations).
- 20.2 In addition to the Contract Price, the Agency will pay to the Contractor such Value Added Tax (if any) as may properly be chargeable at rates applying at the time of invoice.

21. INVOICING AND PAYMENT

- 21.1 Invoices shall only be submitted for work already satisfactorily completed, and accompanied by such information as the Contract Supervisor may reasonably require to verify the Contractor's entitlement to payment. Such invoices will be paid within 30 days from receipt by the Agency.
- 21.2 If any sum is payable under the Contract by the Contractor to the Agency, whether by deduction from the Contract Price or otherwise, it will be deducted from the next available invoice.
- 21.3 If the Contractor enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due from it to the sub-contractor within 30 days from the receipt of a valid invoice.
- 21.4 The Contractor shall on its own forms render invoices to the Agency at the following address stating the purchase order number provided:

SSCL (Environment Agency)
PO Box 797
Newport
Gwent
NP10 8FZ

22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 All Prior Rights used in connection with the Services shall remain the property of the party introducing them. Details of each party's Prior Rights are set out in the Prior Rights Schedule to the Confirmation of Instructions.
- 22.2 All Results shall be the property of the Agency.
- 22.3 The Resulting Rights in any Results, and any interim results shall, from the time they arise, be the property of the Agency and the Agency shall be free, should it so wish, to apply at its own expense for patent or other protection in respect of the Results or any interim results. The Agency's intention to apply for such patent or other protection shall be notified to the Contractor. Such applications for patents or other registered intellectual property rights shall be filed in the name of the Agency.
- 22.4 The Contractor hereby:
- 22.3.1 assigns to the Agency with full title guarantee all Resulting Rights; and
- 22.3.2 grants to the Agency a non-exclusive, non transferable (save for the purposes of sub-licensing, reorganisation or transfer to a successor body, for the purposes of all the successor body's normal business use), irrevocable, royalty free, worldwide, perpetual licence to use the Contractor's Prior Rights as necessary in order for the Agency to use or exploit the Resulting Rights.
- 22.5 The Contractor undertakes to the Agency not to use, exploit or deal with any of the Agency's Prior Rights, other than in the performance of the Contract unless the Contractor has first obtained an express written licence from the Agency, to do so.
- 22.6 The Agency undertakes to the Contractor not to use or exploit the Contractor's Prior Rights, save as provided in Condition 22.3.2.

- 22.7 The Contractor undertakes to the Agency as a Condition of the Contract that the performance of the Services, the Contractor's Prior Rights and the Results shall not in any way infringe any Intellectual Property Rights of any third party.
- 22.8 If the Contractor is prevented from carrying out its obligations under the Contract due to any infringement or alleged infringement of any Intellectual Property Rights, the Agency may without prejudice to any other rights and remedies under the Contract, exercise the powers and remedies available to it under Conditions 13 and 14, Termination and Determination respectively.
- 22.9 The Contractor shall not be liable if such infringement arises from the use of any design, technique or method of working provided by or specified by the Agency.
- 22.10 The Contractor waives in favour of the Agency its rights to object to derogatory treatment of the Results and the Contractor also agrees that it will not assert or seek to enforce against the Agency and/or any other person, firm or company any of its moral rights as defined in the Copyright Designs and Patents Act 1988 without the prior agreement of the Agency.
- 22.11 The Contractor shall not be liable for any consequential losses, damage or injuries arising from third party misuse of the Results of which the Contractor is not aware.
- 22.12 The Contractor shall do all such acts and things (including executing documents) as the Agency may reasonably require for the purpose of giving effect to the intentions of the parties expressed in this Condition 22.

23. WARRANTY

The Contractor warrants that the Services supplied by it will be performed with reasonable skill, care and diligence.

24. STATUTORY REQUIREMENTS

The Contractor shall fully comply with all relevant statutory requirements in the performance of the Contract including, but not limited to, the giving of all necessary notices and the paying of all fees.

25. ENVIRONMENT, SUSTAINABILITY AND DIVERSITY

- 25.1. The Contractor in the performance of this Contract should adopt a sound proactive environmental approach, designed to minimise harm to the environment, to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of single-use plastic and ozone depleting substances, and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and/or the environment, and be able to provide proof of so doing to the Agency on demand.
- 25.2. The Agency is committed to ensuring that workers employed within its supply chains are treated fairly, humanely and equitably. The Agency expects the Contractor to share this commitment, to understand any areas of risk associated with this and work to ensure it meets International Labour Standards. The Contractor shall ensure that it, its sub-contractors and its supply chain:
- 25.2.1. comply with the provisions of the Modern Slavery Act 2015;
- 25.2.2. pay staff fair wages (and pays its staff in the UK not less than the Living Wage Foundation Living Wage Rate); and

25.2.3. implement fair shift arrangements, providing sufficient gaps between shifts, adequate rest breaks and reasonable shift length, and other best practices for staff welfare and performance.

25.3. The Contractor should support the Agency to achieve its Public Sector Equality Duty by complying with the Agency's policies (as amended from time to time) on Equality, Diversity and Inclusion (EDI). This includes ensuring that the Contractor (and their sub-contractors) in the delivery of its obligations under this Contract:

25.3.1. eliminates discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

25.3.2. advances equality of opportunity between people who share a protected characteristic and those who do not; and

25.3.3. fosters good relations between people who share a protected characteristic and those who do not.

26. PUBLICITY

The Contractor shall not advertise or publicly announce that it is supplying Services or undertaking work for the Agency without the Permission of the Contract Supervisor.

27. LAW

This Contract shall be governed by and construed in accordance with English law and subject to the jurisdiction of the courts of England.

28. WAIVER

28.1 No delay, neglect or forbearance by the Agency in enforcing any provision of the Contract shall be deemed to be a waiver of, or in any other way prejudice, any right or remedy of the Agency under the Contract.

28.2 No waiver by the Agency shall be effective unless made in writing.

28.3 No waiver by the Agency of a breach of the Contract shall constitute a waiver of any subsequent breach.

29. ENFORCEABILITY AND SURVIVORSHIP

29.1 If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid or legally unenforceable, that part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by law.

29.2 The following provisions shall survive termination of the Contract, howsoever caused: clauses 13, 14, 15, 22, 23, 24, 27, 29, 30, 31, 32 and 33, and schedule 4 (Sustainability).

30. DISPUTE RESOLUTION

30.1 All disputes under or in connection with the Contract shall be referred first to negotiators nominated at a suitable and appropriate working level by the Agency and the Contractor.

30.2 If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their

advisers).

- 30.3 If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
- 30.4 Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
- 30.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
- 30.6 The parties shall bear their own legal costs of this dispute resolution procedure, but the other costs and expenses of mediation shall be borne by the parties equally.
- 30.7 Any of the time limits in this Condition 30 may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution.

31. GENERAL

- 31.1 Neither party to the Contract will be liable to the other for any delay in performing or failing to perform its obligations (other than a payment obligation) under the Contract because of any cause outside its reasonable control. Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligation will be extended by a reasonable period.
- 31.2 The Contract contains the whole agreement between the parties and supersedes all previous communications, representations and arrangements, written or oral. It is accepted that the Contract has not been entered into on the basis of any representations that are not expressly contained in the Contract or in documentation submitted by or on behalf of the Contractor in the course of the Agency's procurement process for the Framework.

32. FREEDOM OF INFORMATION ACT

- 32.1. The Agency is committed to open government and to meeting its responsibilities under the Freedom of Information Act 2000 (as amended) ('Act') and the Environmental Information Regulations 2004 (as amended) ('Regulations').
- 32.2. The Contractor agrees that:
- 32.2.1. All information submitted to the Agency may need to be disclosed by the Agency in response to a request under the Act or the Regulations; and
- 32.2.2. The Agency may include information submitted (in whole or in part) in the publication scheme which it maintains under the Act or publish the Contract, including from time to time agreed changes to the Contract, to the public.
- 32.3. If the Contractor considers that any of the information included in its tender, or that it has submitted to the Agency or that is otherwise contained in the Contract, is commercially

sensitive, it shall identify and explain (in broad terms) what harm may result from disclosure if a request is received, and the time period applicable to that sensitivity. The Contractor acknowledges that if it has indicated that information is commercially sensitive, such information may still be required to be disclosed by the Agency under the Act or the Regulations. The receipt of any material marked 'confidential' or equivalent by the Agency shall not be deemed to infer that the Agency agrees any duty of confidentiality by virtue of that marking.

33. DATA PROTECTION

- 33.1 In the event that the Contract requires data to be processed within the meaning of the Data Protection Legislation, the Data Protection Annex shall be completed by the Parties within the Confirmation of Instructions and the provisions therein and in the Data Protection Schedule shall apply and bind the Parties as part of the Contract.

Appendix to Conditions of Contract - Services

Ref: Project_29581

Title: Environmental Risk Assessment Services – Chemical/Toxicology (ERAS2)

		Condition
1	Contract Supervisor	3
	Address:-	
2	Contractor	
	Address:	
3	Insurance	17
	Public Liability Min. Cover	[£5 million]
	Professional Indemnity Min. Cover	[£5 million]

Schedule A - Data Protection Schedule

Definitions:

Annex: the Data Protection Annex.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer: takes the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Subject Access Request: 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.

Party: a Party to this Contract.

Protective Measures: appropriate technical and organisational measures which may include but not limited to: 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.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract.

1. DATA PROTECTION

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the Annex by the Agency and may not be determined by the Contractor.

1.2 The Contractor shall notify the Agency immediately if it considers that any of the Agency's instructions infringe the Data Protection Legislation.

1.3 The Contractor shall provide all reasonable assistance to the Agency in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the sole discretion of the Agency, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and;
- (d) the measures envisaged to address the risks, including safeguards, security measures

and mechanisms to ensure the protection of Personal Data.

1.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

(a) process that Personal Data only in accordance with the Annex, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Agency before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Agency as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that :

(i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Annex);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Contractor's duties under this clause;
- (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Agency or as otherwise permitted by this Contract; and
- (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Agency has been obtained and the following conditions are fulfilled:

(i) the Agency or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Agency;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor 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 best endeavours to assist the Agency in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance

by the Agency with respect to the processing of the Personal Data;

(e) at the written direction of the Agency, delete or return Personal Data (and any copies of it) to the Agency on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Contractor shall notify the Agency immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- (e) 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
- (f) becomes aware of a Data Loss Event.

1.6 The Contractor's obligation to notify under clause 1.5 shall include the provision of further information to the Agency in phases, as details become available.

1.7 Taking into account the nature of the processing, the Contractor shall provide the Agency with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Agency) including by promptly providing:

- (a) the Agency with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Agency to enable the Agency to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Agency, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) prompt assistance as requested by the Agency following any Data Loss Event;
- (e) prompt assistance as requested by the Agency with respect to any request from the Information Commissioner's Office, or any consultation by the Agency with the Information Commissioner's Office.

1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Agency determines that the processing is not occasional;
- (b) the Agency 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
- (c) the Agency determines that the processing is likely to result in a risk to the rights and

freedoms of Data Subjects.

1.9 The Contractor shall allow for audits of its Data Processing activity by the Agency or the Agency's designated auditor.

1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Agency in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Agency;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this 1.11 such that they apply to the Sub-processor; and
- (d) provide the Agency with such information regarding the Sub-processor as the Agency may reasonably require.

1.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

1.13 The Agency may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Agency may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule B – Project Proposal Form



Appendix B -
Project Proposal For