

**Highways England Company Limited**

**NEC4 Professional Service Short Contract**  
**(June 2017 with amendments January 2019)**

**SCOPE**

in relation to *services* for

**Motorway Service Area – Access Survey and  
Guide  
20/01/2020**

### CONTENTS AMENDMENT SHEET

<b>Issue No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>

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## CLIENT'S SCOPE

### 1 Purpose of the service

#### 1.1 Identified and Defined Terms

- 1.1.1 In this Scope terms identified in the Contract Data are in italics and defined terms have capital initials. Other terms used with capital letters are defined in the *conditions of contract* or have the meaning given to them in **Annex 01**.

#### 1.2 Client's objectives

- 1.2.1 The purpose of this section is to communicate the *Client's* vision, values, outcomes and the key objectives of this contract. Outlining the *Client's* expectations regarding how the *Consultant* must support the delivery of these.

#### About us

- 1.2.2 The *Client* is a road operator responsible for managing the busiest network in Europe, carrying one-third of all road traffic and two thirds of Freight traffic in England
- 1.2.3 The roads that make up Highways England's strategic road network are a key enabler of economic growth and prosperity and are essential to the quality of life of the nation.
- 1.2.4 The *Client's* role is to deliver a better service for road users and to support a growing economy. It must operate, manage and improve the Strategic Road Network in the public interest and maintain the network on a day-to-day basis and provide effective stewardship of the network's long-term operation and integrity.

#### The *Client's* Vision

- 1.2.5 The *Client's* vision, as set out in the Road Investment Strategy (RIS), (see link in **Annex 02**) is to revolutionise our roads and create a modern strategic road network across England over the next 25 years. We will play our part in supporting economic growth and shaping a modern Britain to make a real difference to people's lives and businesses' prospects.

#### The *Client's* Imperatives

- 1.2.6 The *Client's* vision comprises of the three imperatives which are:
- **Safety** – The safety of our employees, our service partners and our road users.

- **Customer Service** – The customer service and experience that road users have.
- **Delivery** – The delivery of the governments' road building and maintenance programme which includes spending over £4 billion a year delivering our road network to our road users, stakeholders and customers.

1.2.7 The *Client's* imperatives set out what we do, and the *Consultant* aligns with these imperatives and supports the *Client* in achieving the *Client's* outcomes.

#### The *Client's* Values and Expectations

1.2.8 The *Client's* values are:

- **Safety** – We care about our customers, delivery partners and workforce and strive to see that no one is harmed when using or working on our network.
- **Integrity** – We are custodians of the network, acting with integrity and pride in the long-term national interest.
- **Ownership** – We have a clear vision for the future of the network and find new ways to deliver by embracing difference and innovation, while challenging conventions.
- **Teamwork** – We have an open and honest dialogue with each other, as well as our customers, stakeholders and delivery partners.
- **Passion** – Building on our professionalism and expertise, we are always striving to improve, delivering a network that meets the needs of our customers.

1.2.9 The *Client's* values describe how we deliver our vision and imperatives, how we treat each other, and expect to be treated, how we want to be seen as an organisation and how we do business.

1.2.10 The *Consultant* has values that support those of the *Client* and that engender constructive and desired behaviours that enable a collaborative approach to achieving the *Client's* outcomes.

#### The *Client's* Outcomes

1.2.11 The Strategic Business Plan 2015 - 2020 (see link in **Annex 02**) sets out the *Client's* main activities to improve the capacity and performance of the network and how the *Client* will do it.

1.2.12 This contract plays a key role in assisting and enabling the *Client* to achieve its outcomes of:

- Supporting economic growth
- A safe and serviceable network
- A more free flowing network
- An improved environment

More accessible and integrated network.

- 1.2.13 This will be achieved through:
- Planning for the future,
  - Growing capability,
  - Building Relationships,
  - Efficient and effective delivery
  - Improving customer interface.

### 1.3 Reference documents

- 1.3.1 References to documents within this Scope can be found in **Annex 02**.

## 2 Description of the service

The *Consultant* shall undertake comprehensive access surveys of all Motorway Service Areas (MSA) in England and make this information available to the public in easy to use and accessible ways, enabling disabled road-users to plan journeys on the strategic road network that meet their own specific access needs. The access guides should be accurately maintained and published for the duration of the contract, until March 2023.

## 3 Existing information

## 4 Specifications and standards

### Purpose

The provision of the disability access guides will help Highways England to:

- Meet its Public-Sector Equality duty to identify and remove inequalities and barriers experienced by our customers.
- Move closer towards fulfilling the DfT's [Inclusive Transport Strategy](#) ambition of an accessible and inclusive strategic road network.
- Respond to the identified needs of our disabled customers as identified by the Transport Focus [research](#) into the experiences of disabled road-users and feedback provided by the National Mobility and Disabled Road-Users Forum.

### Disability Access Guides

The *Consultant* shall undertake access surveys of every Motorway Service Area (MSA) in England. The full list of MSAs, and their location, can be found in Appendix A

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### **Facilities to include:**

The disability access surveys will inform the preparation of access guides for each MSA. These will include detailed access information to enable disabled visitors to access and use the facilities and less detailed, key accessibility features to the shop units and services within the MSA.

Detailed access guides (including measurements and photographs where relevant) to cover:

- Car, coach and minibus parking
- Entrance to the service facilities and retail areas.
- Toilets, showers, baby changing and any other related facilities.
- All areas within the confines of the MSA provided for visitors to relax, walk dogs, eat picnics, smoking areas etc.
- All intervening access routes, entrances, exits, changes of levels etc.

Guides to the key accessibility features will be provided to the following:

- All café and restaurants, fast-food units, coffee shops and shared seating areas,
- All retail and entertainment units including newsagents, food retailers, arcade facilities etc.
- Filling stations, and associated services and facilities such as shops, car washes, air and water.

### **Facilities not to include:**

The access surveys and guides should not include:

- Approach roads, slip roads and signage.
- Hotels and associated car parking.
- Outdoor food and drink vans and stalls
- Drive-thru facilities
- Other facilities not associated with the routine rest and refreshment of travellers.

### **Standards and Principles:**

The access surveys and subsequent access guides should meet the following principles and standards:

- *Independent:* The surveys should be undertaken by an organisation that is independent of any organisation that owns or manages the MSAs, and is trusted by the public to provide reliable and trusted access information.
- *Objectivity:* The information gathered in the access surveys and published in the access guides should be factual and based on published objective criteria.

- *Professional:* The access surveys should be undertaken by trained professionals.
- *Quality assurance:* The access surveys and guides should be quality assured.
- *Consistent:* The same objective standards for assessing accessibility will be applied consistently across every MSA surveyed.
- *Tried, tested and trusted:* The access surveys and guides should be designed according to the latest evidence about the access information needs of disabled people, ideally gathered through first-hand experience of this area of work.

### **All impairment types and access needs:**

The access surveys and guides should enable disabled people and their travelling companions to plan accessible and inclusive journeys on the strategic road network. Needs to meet the wide variety of access needs that disabled people have – e.g. physical, hearing, visual, hidden impairments, behavioural and cognitive impairments, learning disabilities etc. Some example questions of the type of information that disabled people may wish to know before deciding where to plan their breaks on their journey include:

- I need assistance to get from my car to the toilet? Will staff be available to help me?
- How far is the disabled toilet from the disabled parking bay? Will I be able to walk that far?
- Will there be space to transfer to the disabled toilet from the left-hand side, because I cannot do this from the right?
- Will the café have a menu in large print?
- Have the staff in the service area been trained in Deaf awareness?
- Are the doors automatic or at least easy to open for people with limited mobility and reduced strength?
- Is there a quiet space that people with autism or those with dementia could use if they become distressed?
- Are the directional signs easy to read and understand?
- Is there a wheelchair available for customers to borrow and is the baby changing bench height adjustable?
- Do I need a RADAR key to use the Changing Place?
- Will someone at the petrol station be able to assist me to fuel my car? How can I request this?

### **Stakeholder Relationships**

There are a number of stakeholder groups with whom communication and positive working relationships will need to be maintained during the course of this contract. These include:

*MSA Operators:*

- The MSA Operators will invite potential suppliers to visit their sites to ensure proposals to meet the tender contract are developed with a full understanding of the access issues specific to MSAs.
- The operators will need to be kept fully informed of the plans to undertake the access surveys, of the progress being made, and when the access guides are due to be published.
- The information contained in the access guides should be shared with the operators in advance of publication to confirm their accuracy.
- The supplier should work with the operators to help them understand the information contained in the access guides and to share any (anonymised) management information regarding disabled customer's access requirements and use of the access guides during the period of the contract.
- The supplier may wish to consider how it could provide added value to the contract by helping MSA Operators to better understand the accessibility of their facilities and which elements of accessibility could be prioritised for improvement to deliver maximum benefit to disabled customers.

*Department for Transport / Transport Focus:*

- The supplier may also be asked to attend meetings or provide reports at Highways England request to help keep DfT and TF informed of the progress of the access surveys and any assessment of the overall accessibility of the road network (and how this changes over time).

*Highways England Roads for All Forum:*

- Highways England has a Roads for All Forum which involves a wide range of stakeholders who represent the interests of disabled road-users. The supplier may be required to attend meetings of this forum to update on progress or the findings of the access surveys, take up of the access guides etc. maintaining positive working relationships with the stakeholders may also enable the supplier to reach the membership of the external disability organisations on this forum to help promote awareness and use of the access guides.

**Published Access Guides**

The supplier, having completed the access surveys, will be required to publish the information in the form of access guides to each venue. The information should be published so that it is:

*Available both on-line and off-line:*

This could be on a website, printed copies or downloadable to devices to be viewed off-line.

*Searchable:*

Users of the guides should be able to easily search for and identify MSAs that are on or close to their preferred route and that meet their specific disability access requirements.

*Free and anonymous:*

Users should be able to search, browse and view the disability access guides for the MSAs free of charge and without having to establish log-in details.

*Open data:*

The access guides should be freely available for any other provider to link to, analyse or publish for the purpose of improving the journey planning of disabled road-users.

*Accessible publication:*

The access guides should be available in ways that are accessible to the diverse range of disabled road-users. This means any on-line or downloadable guides should meet established web accessibility standards, and compatible with accessibility software commonly used by disabled people.

**Accuracy**

The supplier will be required to keep the information in the access guides up to date and accurate, and indicate to the user when the information was last assessed or confirmed to be accurate. As a minimum the accuracy of the access information provided in the guides should be reviewed annually.

The supplier may use a variety of ways to ensure the accuracy of the guides, including:

- Seeking feedback from users of the guides as to their accuracy.
- Encouraging MSA Operators to inform them of any planned closures, new services, refurbishments and scheduling access reviews accordingly.
- Enabling MSA Operators to notify them of any inaccuracies identified.

Suppliers should outline how they will enable MSA Operators to alert customers to any temporary issues that may inhibit or alter access at an MSA, for example due to maintenance or construction work.

**Customer Engagement**

The supplier will be required to undertake annual customer feedback and report to Highways England on the following:

- How satisfied disabled customers and their travel companions are with the disability access information provided.
- How useful and accurate they find the information, including how this could be improved.
- How accessible the information is, including how this could be improved.

**Communications and Marketing**

The supplier will work with Highways England and the MSA Operators to coordinate the marketing and publicity associated with the publication of the access guides to ensure the maximum positive engagement with disabled road-users.

**Performance Reporting**

The supplier will be required to provide annual performance reports to Highways England detailing:

- How many people are consulting the access guides.

- Which access guides and which disability access features are most often / least often searched for.
- How, when and where people are consulting the access guides – e.g. which types of device, the time of day etc.

## 5 Constraints on how the *Consultant* Provides the Service

### 5.1 Security & identification of people

- 5.1.1 The *Consultant* carries out a security check on its Staff before they Provide the Service. The checks are carried out in accordance with the *Client's* procedures.

### 5.2 People Strategy

- 5.2.1 The *Consultant* complies with the *Client's* People Strategy.

### 5.3 Discrimination, Bullying & Harassment

- 5.3.1 The *Consultant* does not discriminate directly or indirectly or by any way of victimisation or harassment against any person contrary to the Discrimination Acts.

- 5.3.2 In Providing the Service, the *Consultant* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to

- eliminate unlawful discrimination, harassment and victimisation,
- advance equality of opportunity between different groups and
- foster good relations different groups.

- 5.3.3 Where any *Consultant's* employee or subcontractor, and its employees (at any stage of remoteness from the *Client*), is required to carry out any activity on the *Client's* premises or alongside the *Client's* employees on any other premises, the *Consultant* ensures that each such employee or subcontractor, and its employees (at any stage of remoteness from the *Client*), complies with the requirements of the Discrimination Acts and with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities. (see link in **Annex 02**).

- 5.3.4 The *Consultant* notifies the *Client* as soon as it becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with the contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,

- attends (and permits a representative from the *Client* to attend) any associated meetings,
  - promptly allows access to any relevant documents and information and
  - co-operates fully and promptly with the investigatory body, court or tribunal.
- 5.3.5 The *Consultant* complies with all applicable human rights and employment laws in the jurisdictions in which they work and have robust means of ensuring that the subcontractors (at any stage of remoteness from the *Client*) also comply.
- 5.3.6 The *Consultant* implements due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 5.3.7 The *Consultant* carries out an annual audit to monitor its compliance with the Modern Slavery Act 2015 which covers all its obligations under all its existing *Client* contracts. The *Consultant* prepares and delivers to the *Client* no later than 1<sup>st</sup> August each year an annual
- slavery and human trafficking report,
  - transparency statement and
  - a risk register with mitigating actions
- which complies with the Modern Slavery Act 2015 and sets out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 5.3.8 The *Consultant* notifies the *Client* as soon as it becomes aware of any actual or suspected slavery or human trafficking in any of its supply chains or any part of its business.
- 5.3.9 The *Consultant* uses reasonable endeavours not to purchase any raw materials, resources or products from any country that has been sourced from producers or manufacturers using forced labour and child labour in its operations or practice.
- 5.3.10 The *Consultant* complies (and ensures that any subcontractor complies) with the *Client's* policies relating to bullying and harassment. If the *Client* considers that the presence or conduct of any of employees (at any stage of remoteness from the *Client*) at any location relevant to the performance of the *service* is undesirable or in breach of the *Client's* policies, the *Client* instructs the *Consultant* to implement corrective action.
- 5.3.11 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, contains provisions to the same effect as this section. The *Consultant*, may propose to the *Client* for acceptance, that a specific subcontract (at any stage of remoteness from the *Client*) relevant to the performance of the *service*, does not comply with the requirements of this section 5.3. The *Consultant* provides a detailed reason for not including some or all of the requirements of this section 5.3 in the specific contract. The *Consultant* provides further detail when requested by the *Client* to assist their consideration. If

accepted by the *Client*, the *Consultant* is relieved from including some or all of the requirements of this section 5.3 in the specific contract.

- 5.3.12 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## 5.4 Conflict of Interest

- 5.4.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection to the contract. The *Consultant* notifies the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise.
- 5.4.2 The *Consultant* notifies its employees and subcontractors (at any stage of remoteness from the *Client*) and procures any subcontractor (at any stage of remoteness from the *Client*), who are Providing the Service that they does not take any action which would cause an actual or potential conflict of interest to arise in connection with the service
- 5.4.3 The *Consultant* ensures that any employee and procures any subcontractor (at any stage of remoteness from the *Client*) ensures any of its employees, who are Providing the Service, completes a declaration of interests and conflict in the form set out in **Annex 02**.
- 5.4.4 The *Consultant*
- procures any subcontractor (at any stage of remoteness from the *Client*) immediately notifies the *Consultant* and the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise and
  - immediately notifies the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise.
- 5.4.5 If the *Consultant* or subcontractor (at any stage of remoteness from the *Client*) immediately notifies the *Client*, may
- require the *Consultant* to stop Providing the Service until any conflict of interest is resolved,
  - require the *Consultant* to submit to the *Client* for acceptance a proposal to remedy the actual or potential conflict of interest.
- 5.4.6 A reason for not accepting the submission is that it does not resolve any conflict of interest. The *Consultant* amends the proposal in response to any comments from the *Client* and resubmits it for acceptance by the *Client*. The *Consultant* complies with the proposal once it has been accepted.

## 5.5 Client's Counter Fraud, Bribery & Corruption Policy & Response Plan

- 5.5.1 The *Consultant* complies (and ensure that any person employed by it or acting on its behalf complies with the *Client's* Anti-Fraud, Bribery and Corruption Policy & Response Plan and Fair Payment Charter and collectively the "Codes" (see link in **Annex 02**.)

- 5.5.2 The *Consultant* complies with the Codes throughout with the contract and with
- paragraph 1.3 and 1.4 of the Client's Anti-Fraud, Bribery and Corruption Policy and
  - paragraph 1 of Client's Fair Payment Charter.
- for a period not less than 6 years after Completion.
- 5.5.3 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## 5.6 Data Protection

- 5.6.1 The *Consultant* complies with the requirements in **Annex 08**.

## 5.7 Offshoring of data

- 5.7.1 In this section Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with the HMG Security Policy Framework (SPF) (see link in **Annex 02**) and the *Client's* Information Security Data Security Standard (see link in **Annex 02**).
- 5.7.2 The *Consultant* does not store any of the *Client's* data that is classified as OFFICIAL (including OFFICIAL SENSITIVE) or higher in accordance with the HMG Government Security Classifications (see **Annex 02**)
- offshore or
  - in any way that it could be accessed from an offshore location
- until the *Client* has confirmed to the *Consultant* that either
- the *Client* has gained approval for such storage in accordance with the Information Security Data Security Standard or
  - such approval is not required.
- 5.7.3 The *Consultant* ensures that no offshore premises are used in Providing the Service until
- such premises have passed a Risk Assessment or
  - the *Client* confirms to the *Consultant* that no Risk Assessment is required.
- 5.7.4 The *Consultant* complies with a request from the *Client* to provide any information required to allow the *Client* to
- gain approval for storing data or allowing access to data from an offshore location in accordance with 5.7.2 or
  - conduct a Risk Assessment for any premises in accordance with 5.7.3.
- 5.7.5 The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains provisions to the same effect as this clause.

- 5.7.6 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## 5.8 Information Security and Security Systems

- 5.8.1 The *Consultant* meets the requirements of **Annex 09** in relation to Information Systems and Security duties.

## 5.9 Energy Efficiency Directive

- 5.9.1 The *Client's* ambition in developing and implementing affordable solutions is to ensure the safe and efficient operation and maintenance of the strategic road network.

- 5.9.2 The *Consultant* designs and delivers the *service* to support society and the wider national interest, supporting the *Client* to reduce energy consumption to achieve improved efficiency and sustainability.

- 5.9.3 The *Consultant* designs and delivers the *service* to support achievement of the *Client's* sustainable development strategy's carbon management ambition and where relevant comply with the requirements of Procurement Policy Note 7/14 entitled "Implementing Article 6 of the Energy Efficiency Directive" ("PPN 7/14") and any related supplementary Procurement Policy Notes (see link in **Annex 02**).

- 5.9.4 In complying with the requirements of Procurement Policy Note 7/14, the *Consultant*
- ensures that any new products purchased by it for use partly or wholly in Providing the Service comply with the standard for products in the directive,
  - provides evidence to the *Client* to demonstrate how any new products purchased by it for use partly or wholly in Providing the Service comply with the requirements of PPN 7/14,
  - demonstrates efficiency in resource use and maximisation of re-use and recycling of materials to support the *Client's* circular economy ambition as stated in the *Client's* Sustainable Development Strategy (see link in **Annex 02**),
  - ensures that any new products purchased by a subcontractor for use partly or wholly in the performance of its obligations under its subcontract complies with the standard for products in the directive,
  - ensures that subcontractors provide evidence to the *Consultant* to demonstrate how any new products purchased by the subcontractor for use partly or wholly in the performance of its obligations under a subcontract complies with the requirements of PPN 7/14 and
  - includes requirements to the same effect in any subsubcontract (at any stage of remoteness from the *Client*).

## 5.10 Not Used

### 5.10.1

## 5.11 Disclosure Requests

- 5.11.1 The *Consultant* acknowledges that the *Client* may receive a Disclosure Request and the *Client* may be obliged (subject to the application of any relevant exemption and where applicable the Public Interest Test) to disclose information (including commercial sensitive information) pursuant to a Disclosure Request. Where practicable the *Consultant*, consults with the *Client* before doing so in accordance with the relevant code of practice. The *Consultant* responds to any consultation promptly and with any deadlines set by the *Client* to and to the satisfaction of the *Client*. The *Consultant* acknowledges that it is for the *Client* to determine whether such information should be disclosed.
- 5.11.2 When requested to do so by the *Client* the *Consultant* promptly provides information in its possession relating to the contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation (see link in **Annex 02**.)
- 5.11.3 The *Consultant* promptly passes any Disclosure Request receives to the *Client*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do by the *Client*.
- 5.11.4 The *Consultant* acknowledges that the *Client* is obliged to publish information relating to the contract in accordance with Procurement Policy Note 01/17 entitled Update to Transparency Principles dated 6 February 2017 (see link in **Annex 02**) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000 (see link in **Annex 02**). The *Client* consults with the *Consultant* before deciding whether the information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision.
- 5.11.5 The *Consultant*
- co-operates with and assists the *Client* to enable the *Client* to comply with its obligations under to publish information in accordance with PPN 01/17 (see link in **Annex 02**) or
  - agrees with the *Client* a schedule for the release to the public of information relating to the *Client* in accordance with the terms of the PPN 01/17,
  - provides information to assist the *Client* in responding to queries from the public PPN 01/17 as required by the *Client* and
  - supplies the *Client* with financial data relating to the contract in the form and in the times specified in the PPN.
- 5.11.6 The *Consultant* acknowledges that the *Client* is obliged to publish the provisions of the contract in accordance with the Crown Commercial Service's Guidance Note entitled Publication of Central Government Tenders and Contracts dated November 2017 (see link in **Annex 02**), except to the extent in it is exempt from

disclosure pursuant to the Freedom of Information Act 2000 (see link in **Annex 02.**)  
The *Client* consults with the *Consultant* before deciding whether the information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision. The *Consultant* co-operates and with assists the *Client* and the *Client* to publish the contract in accordance with the *Client's* obligation.

## 5.12 Official Secrets Act

- 5.12.1 The Official Secrets Act 1989 applies to the contract from the *starting date* until Completion.
- 5.12.2 The *Consultant* notifies its employees and subcontractor (at any stage of remoteness from the *Client*) of its duties under the Official Secrets Act 1989 (see link in **Annex 02.**)
- 5.12.3 A failure to comply with this section is treated as a substantial failure by the *Consultant* to comply with its obligations.

## 5.13 Confidentiality

- 5.13.1 The *Consultant* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person
- the terms of the contract and
  - any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Service
- except that the *Consultant* may disclose information to
- to its legal or other professional advisers,
  - to its employees and subcontractors as needed to enable the *Consultant* to Provide the Service,
  - where required to do so by law or by any professional or regulatory obligation or by order of any court or government agency, provided that prior to disclosure the *Consultant* consults the *Client* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
  - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
  - which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
  - with the consent of the *Client*.
- 5.13.2 The *Consultant* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service.

## 5.14 Deed of Novation

- 5.14.1 Should a deed of novation be required pursuant to Z5 in the *conditions of contract*, the form of novation agreement is issued by the *Client* for agreement as set out in **Annex 13** and **14**.

## 5.15 Subcontracting

- 5.15.1 Except as required by the operational requirements of a Category Purchase Agreement, the *Consultant* obtains a minimum of 3 competitive written quotations for the appointment of any subcontractor or supplier for works/services with a value in excess of £10,000.
- 5.15.2 The *Consultant* includes a provision in all subcontracts stating that retention is not deducted from any amount due to the subcontractor and procures that its subcontractors (subcontractors at any stage of remoteness from the *Client*) do the same.
- 5.15.3 The *Consultant* ensures that all subcontractors (at any stage of remoteness from the *Client*) are Named Suppliers.
- 5.15.4 The *Consultant* may propose to the *Client* that a subcontractor (at any stage of remoteness from the *Client*) is not a Named Supplier. The *Consultant* does not, and procures that a subcontractor (at any stage of remoteness from the *Client*) does not, appoint a subcontractor (at any stage of remoteness from the *Client*) who is not a Named Supplier unless the *Client* has accepted the *Consultant's* proposal. A reason for not accepting the *Consultant's* proposal is that it is practicable for the subcontractor (at any stage of remoteness from the *Client*) to be a Named Supplier.
- 5.15.5 Not Used
- 5.15.6 Not Used
- 5.15.7 Not Used
- 5.15.8 The *Consultant* ensures that any subcontract is capable of being novated to a replacement contractor.
- 5.15.9 The *Consultant* may propose to the *Client* that a subcontract is not capable of being novated to a replacement contractor. The *Consultant* does not award a subcontract that is not capable of being novated to a replacement contractor unless the *Client* has accepted the *Consultant's* proposal. A reason for not accepting the *Consultant's* proposal is that it is practicable for the subcontract to be novated to a replacement contractor.
- 5.15.10 When requested by the *Client*, the *Consultant* executes, and procures a Subcontractor executes, an agreement in the form set out in the Scope (see link in **Annex 02**) or such other form as the *Client* may reasonably require to novate the benefit and burden of a subcontract to a replacement contractor.

## 5.16 Contract Finder

- 5.16.1 Contracts Finder is the government website for information about contracts worth over £10,000 with the government and its agencies.
- 5.16.2 The requirements of this section 5.16 do not apply to subcontracts placed under a Category Purchase Agreement.
- 5.16.3 Where the total of the Prices is £5,000,000 or more at the Contract Date is used, the *Contractor*
- subject to paragraphs 5.16.5, 5.16.6 and 5.16.7, advertises on Contracts Finder all subcontract opportunities arising from or in connection with Providing the Service above a minimum threshold of £25,000 that arise before the end of the *service period*,
  - within 90 days of awarding a subcontract to a subcontractor, updates the notice on contracts finder with details of the successful subcontractor,
  - monitors the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain prior to the end of the *service period* and provides reports on this information to the *Client* in the format and frequency as reasonably specified by the *Client* and
  - promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- The calculation of £5,000,000 or more per annum in this section is in accordance with footnote 1 to PPN 01/18 based on an advertised contract value, averaged over the life of the contract.
- 5.16.4 Each advert referred to in paragraph 5.16.3 provides a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Consultant*.
- 5.16.5 The obligation at paragraph 5.16.3 only applies in respect of subcontract opportunities arising after the Contract Date.
- 5.16.6 The *Consultant*, may propose to the *Client* for acceptance, that a specific subcontract is not advertised on Contracts Finder. The *Consultant* provides a detailed reason for not advertising the specific contract. The *Consultant* provides further detail when requested by the *Client* to assist his consideration. If accepted by the *Client*, the *Consultant* is relieved from advertising that subcontract opportunity on Contracts Finder.

## 5.17 Fair payment

- 5.17.1 The *Consultant* includes in the contract with each subcontractor

- a period for payment of the amount due to the subcontractor not greater than 19 days after the date on which payment becomes due under the contract. The amount due includes payment for work which the subcontractor has completed from the previous assessment date up to the current assessment date in the contract,
- a provision requiring the subcontractor to include in each subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under the contract and
- a provision requiring the subcontractor to assess the amount due to a subsubcontractor without taking into account the amount paid by the *Consultant*.

5.17.2 Where a Project Bank Account is used the period for payment is in accordance with the requirements of the Project Bank Account provisions. Where a Project Bank Account is not used the periods for payment in this section apply.

5.17.3 The *Consultant* notifies non-compliance with the timescales for payment through the Cabinet Office Supplier Feedback Service. The *Consultant* includes this provision in each subcontract and requires subcontractors to include the same provision in each subsubcontract.

## 5.18 Records and reporting for SMEs

5.18.1 For Small, Medium or Micro Enterprises (SME) employed on the contract, as defined in table below:

Company category	Staff headcount	Turnover	or	Balance sheet total
Medium size	<250	< £50 m		< £43 m
Small	<50	< £10 m		< £ 10 m
Micro	<10	< £2 m		< £ 2m

the *Consultant* reports to the *Client* each quarter from the *starting date* until Completion Date

- the name of the SME,
- the class of SME (Small, Medium or Micro),
- the value of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

5.18.2 The *Consultant* acknowledges that the *Client* may

- publish the information supplied under the section, along with the *Consultant's* name and the name of the contract and

- pass the information supplied under this section to any Government Department who may then publish it along with the names of the SMEs, the *Consultant's* name or the contract.

5.18.3 The *Consultant* ensures that the *conditions of contract* for each subcontractor who is an SME include

- a term allowing the *Client* to publish the information supplied under this section and
- obligations similar to those set out in this section.

5.18.4 The *Consultant* further ensures that the *conditions of contract* for each subcontractor include a requirement that the *conditions of contract* for any further sub-subcontractor engaged by the subcontractor who is an SME include obligations similar to those set out in this section.

## 5.19 Parent Company Guarantee

5.19.1 The Form of Parent Company Guarantee is set out in **Annex 16**.

## 5.20 Legal Opinion

5.20.1 If the *Consultant* is required to provide a Parent Company Guarantee, it is provided in the form set out in **Annex 16**. If the entity that is to provide the Parent Company Guarantee is a non-UK registered company required by this contract, the *Consultant* provides a legal opinion in support of a Parent Company Guarantee.

5.20.2 Any legal opinion provided by the *Consultant* in support of a Parent Company Guarantee from a non-UK registered company includes (among others) the following matters

- confirmation that
  - the Controller is a corporation duly incorporated in the relevant jurisdiction, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated,
  - the Controller has full power to execute, deliver, enter into and perform its obligations under the Parent Company Guarantee,
  - all necessary corporate, shareholder and other action required to authorise the execution and delivery by the Controller of the Parent Company Guarantee and the performance by it of its obligations under it have been duly taken,
  - execution by the proposed signatories in accordance with the method of execution proposed will constitute valid execution by the Controller,
  - the execution and delivery by the Controller of the Parent Company Guarantee and the performance of its obligations under it will not conflict with or violate

- the constitutional documents of the Controller,
- any provision of the laws of the jurisdiction in which it is incorporated,
- any order of any judicial or other authority in the jurisdiction in which it is incorporated or
- any mortgage, contract or other undertaking which is binding on the bidder or its assets and
  - (assuming that it is binding under English law) the Parent Company Guarantee constitutes legal, valid and binding obligations of the Controller enforceable in accordance with its terms,
- notification of any other formalities to be complied with under local law which may be necessary to enforce the Parent Company Guarantee in the Controller's place of incorporation, including (for example) notarisation, legalisation or registration of the Parent Company Guarantee,
- notification of whether withholding is required to be made by the Controller in relation to any monies payable to the *Client* under the Parent Company Guarantee,
- confirmation of whether the *Client* will be deemed to be resident or domiciled in the foreign jurisdiction by reason of its entry into the Parent Company Guarantee and

confirmation that the Controller and its assets are not entitled to immunity from suit, pre-judgment attachment or restraint or enforcement of a judgment on grounds of sovereignty or otherwise in the courts of England in respect of proceedings against it in relation to the Parent Company Guarantee.

## 5.21 Transfer of rights

*Consultant's* rights over material prepared for the design of the *service*

5.21.1 The *Consultant* acquires no rights over material prepared for the design of the *service*.

Other rights to be obtained by the *Consultant*

5.21.2 The *Consultant* grants to the *Client* licences to use, modify and develop the *Consultant's* Consultant Background IPR for any purpose relating to the *service* (or substantially equivalent services its maintenance, operation, modification and for any purpose relating to the exercise of the *Client's* business or function.

5.21.3 The *Consultant* procures a direct grant of a licence to the *Client* to use, modify and develop any third party's Consultant Background IPR for any purpose relating to the *service*, (or substantially equivalent services), its maintenance, operation, modification and for any purpose relating to the exercise of the *Client's* business or function.

5.21.4 The *Client* does not acquire any ownership right, title or interest in or to the Consultant Background IPR.

## 5.22 Project Bank Account (Option Y(UK)1)

5.22.1 NEC Option Y(UK) 1 is mandated for all contracts. The *Consultant* complies with paragraph S1600.5.

5.22.2 The *Consultant* ensures that any deeds associated with the Project Bank Account (PBA) are issued with sufficient time to allow the *Client* to apply original signatures to prevent any payment issues.

5.22.3 The *Consultant* ensures that

- there is one original copy of deed for each party to the deed issued to the *Client* for the attachment of the *Client's* original signatures and
- each original copy of the deed has original signatures from the authorised signatories.

Adding a Supplier

5.22.4 The *Consultant* ensures that all its supply chain sign a Joining Deed to be paid via the PBA. For any subcontractor or supplier that declines to join the PBA (having been offered the opportunity) written evidence needs to be provided to the *Client* detailing the reasons why it does not want to sign up. The *Client* may at any time, contact that subcontractor or supplier directly to improve their knowledge and understanding of the benefits of PBAs.

Project Bank Account (PBA) Tracker

- 5.22.5 The Tracker is the tracker used for measuring and monitoring performance of the PBA. The *Consultant* completes and submits to the *Client* on a monthly basis:
- a fully populated PBA Tracker (with the 'Supplier Cumulative Totals' tab up to date - including the assignment of Small Medium Enterprises(SME) categories against each subcontractor and each subsubcontractor) and
  - detailed bank statements and payment runs (required to reconcile payment dates and amounts to the application breakdown in the PBA Tracker (for PBA supply chain and non-PBA supply chain). Any data relating to other clients should be redacted from your main account statement before submission) in .pdf format.
- 5.22.6 All variances from the previous month are explained and further information is submitted in response to any queries raised.
- The SME percentage is calculated from the full application value.
- Time in the PBA Tracker (and any associated performance indicator) is measured in calendar days.
- 5.22.7 The *Client* monitors the time it takes the *Consultant* to pay its supply chain (including subcontractors and subsubcontractors) through the PBA, following deposit of funds into the PBA.
- The related performance score is calculated when the majority of the funds have been deposited into the PBA by the *Client* that covers amount due to supply chain joined to the PBA.
- 5.22.8 If any data/evidence is missing or still required (if not covered in the tracker) spot checks are undertaken directly by the *Client* with the supply chain (at various intervals) to verify that they are paid in a timely manner.
- The *Client* may carry out audits to assess the full extent of how supply chain payments are made.
- 5.22.9 Where the *Consultant* transfers monies from other accounts into the PBA this is stated on the bank statement.

## 6 Requirements for the programme

Suppliers will be required to commence and complete the delivery of the contract according to the following timetable:

- Commence access surveys: March 2020
- Complete access surveys: November 2020
- Publish access guides: January 2021
- Maintain access guides: January 2021 to end of contract (March 2023)

## 7 Information and other things provided by the *Client*