

Highways England Company Limited

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

SCOPE

in relation to *services* for
Supply Chain and Market Analytics, 2020.

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CLIENT'S SCOPE

1. Purpose of the service

1.0.1 Highways England requires a supply chain and market analytics service to support Highways England in being better informed about our current and potential supply chain and better reacting to market challenges.

This service should provide, but will not be limited to; market analysis, category analysis, product analysis, commodity analysis, economic trend analysis, future state analysis, supply chain risk management and the management of risk. The delivery of this service will be integral in supporting the delivery of the Roads Investment Strategy (RIS) 2 Programme (**Annex 02**).and contributing to the development of RIS 3.

Objectives of the service

1.0.2 The objective of this Contract is to drive better value and minimise risk for Highways England by providing clarity around Highways England's current and potential supply chain to allow the modernisation and re-shaping of the supply base and supply chain in line with current and future business needs.

1.0.3 The services under this Contact include;

- Sourcing and providing research, intelligence and analysis on markets, sectors, suppliers, products, commodities and categories as required by Highways England by utilising intelligence databases and access to industry and sector experts.
- Delivering analysis reports and visualisations which interpret the intelligence and research and enable Highways England to make specific decisions on commercial, procurement and supply chain strategies.

1.0.4 The *Service* will allow Highways England to understand all aspects of the supply market including, but not limited to, formulating sourcing strategy, spend profiling and categorisation, demand analysis, supply market analysis, value chain and supply chain analysis and category risk analysis.

1.0.5 The *Service* will allow Highways England to identify, evaluate and short list suppliers through supplier identification, capability and capacity assessments, analytics and evaluation reporting.

1.0.6 The *Service* will allow Highways England to manage suppliers through risk assessment, cost analysis, commodity tracking and price forecasting as well as assessing and managing category and supplier risk.

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 2020-2025 (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 and
 - 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 and
 - 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

- 2.1.1 The *Consultant* provides the Service in accordance with this Scope.

- 2.1.2 The Service will provide research, intelligence and supply chain analytics services and reports around:

Market Analysis

Focusing on capability and capacity, demand and supply, forecasting and supplier stability.

Category Analysis

Focusing on level of competition, spend, demand profiles, innovation, value opportunities, capability and capacity.

Product Analysis

Providing insight into products, innovation and value opportunities on single products.

Commodity Analysis

Forecasting of risks and opportunities linked to the supply and pricing of commodities.

Economic Trend Analysis

Analysis on economic trends and impacts on the UK Construction industry

Future State Analysis

Providing insight into the future state of markets, categories and products, considering disruptive influences.

Supply Chain Risk Management

Providing risk advice on contingency planning and fragility, monitoring, mitigation and management of risk in general.

Providing specific risk monitoring and advise on issues arising.

- 2.1.3 The *Service* will cover the UK, Europe and Global requirements for research and analysis on supply chains and markets across multiple categories.

- 2.1.4 The key responsibilities of the resources required to provide the Services are set out below:

Role	Key Responsibilities
Analyst(s)	<ul style="list-style-type: none"> • Carrying out research, analysis and reporting as described within this Scope for each Project, as per the requirement of the specific Project Request. • Liaising with Project Requestors to arrange clarification calls and other communication required to manage the delivery of Project Requests, • Writing of Project Proposals, ensuring this meets the needs of the <i>Client</i> and is fit for purpose to deliver the desired outcomes of the <i>Clients</i> Project Proposal, • Communicating directly with stakeholders across the Supply Chain as required, ensuring that the correct process is followed and ensuring all communication demonstrates the <i>Client's</i> values, as set out within 1.2.8, • Developing, formatting and presenting reports for the <i>Client</i> as per Project Proposals and as set out in this Scope to manage the delivery the Contract, • Ensuring that Proposals, resource hours and any changes to either are approved by the Contract Manager prior to the undertaking of any work, • Keeping accurate records of all work including data, reports and analysis, • Gathering customer feedback and presenting this to the <i>Client</i> as per agreed intervals and • Any other reasonably expected Analyst duties as required.
Senior Analyst/ Project Management resource	<ul style="list-style-type: none"> • Capability to provide technical and industry specific advice as required, • Project Management activities including managing workload and overseeing the delivery of the Contract as set out within this Scope • Delivery and any clarification of the Management Information, as set out at 2.2.2, • Attendance at Bi-weekly meetings as required, as per 2.2.2, • Overall responsibility for the accuracy of Contract reporting and delivery of the Contract, • Planning of work and resources to ensure delivery of agreed timescales, • Review and escalation point for the Analyst(s) and Highways England, • If required, this resource will have the overall responsibility of any Improvement Plan that is requested and

	<ul style="list-style-type: none"> Any other reasonably expected Senior Analyst / Project Management Duties as required.
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2.1.5 The Consultant will be required to source information from primary and secondary sources.

Primary sources of information could be members of the supply chain.

In contacting members of the supply chain, the Consultant should include on all requests for information:

- A proposed response date for the information requested and state that the consultant will send reminders to support the proposed date.
- That suppliers should inform the Consultant if they are unable to meet the proposed date and when information could be provided
- A request for suppliers to advise if they do not want to be part of our exercises

All communications must adhere to Highways England's values and behaviours (1.2.8).

2.1.6 The Consultant shares information; communicates openly with the *Client*, continuously shares lessons learnt and achievements and enables embedded learning.

2.1.7 Expert interviews may be required and will sit outside the costings of this Contract, but will need to be undertaken by the supplier as appropriate.

The *Consultant* must get three quotes for any additional resources. The only acceptable reason for not getting three quotes would be that there is insufficient expertise with the necessary skills and knowledge to offer a quote that would meet the requirement within the required timescales.

Any proposed Expert Interviews and quotes for additional resource should be included within Project Proposals for approval by the Contract Manager. If an Expert Interview is agreed following the initial Proposal, it must be approved by the Contract Manager in writing via email.

The *Client* will only accept invoices from the *Consultant* and will not pay any invoices directly to the Subcontractor.

The *Client* will not pay any finders fees and will only pay the cost price of the Expert Interview. The Consultant shall forward evidence of their payment of these invoices

alongside the usual invoicing procedure to the *Client*.

2.2 Management of the service

2.2.1 A named team lead is required to be provided by the *Consultant*.

The named team lead will be responsible for the support provided by the Contract and will manage project delivery, work quality and *Client* communications.

2.2.2 The *Consultant* is to send bi-weekly Management Information reports to the Contract Manager via email. This will include the sharing of a work tracker with the *Client*, which must include, as a minimum;

- Contract Progress Reports (either in .ppt or .xlsx format)
- Project Progress Reports (either in .ppt or .xlsx format)
- Completed Project Reports (either in .ppt or .xlsx format) and data underpinning the report (in .xlsx format)
- Proposed and actual time, date and overall cost of each project completed and
- Lessons learned and
- Risk Register

The Contract Manager can request a clarification meeting via phone if required. This should be held within reasonable time. Otherwise, the *Consultant* must provide availability for Bi-Weekly telephone calls, as required, to discuss progress.

2.2.3 Projects are to be dealt with on a first come first served basis unless reprioritised by Highways England, at the discretion of the Contract Manager.

2.2.4 The *Consultant* will be expected to have all necessary subscriptions for this service to source the information required, including access to Dunn and Bradstreet. If additional subscriptions are required to deliver this Scope, the *Consultant* will be responsible for this cost.

2.2.5 The *Client* is responsible for identifying projects for the *Consultant* to complete through a Project Request Form (**Annex 05**).

2.2.6 *Client* and *Consultant* responsible for following the process as outlined below;



2.2.7 Project Request Forms are to be reviewed by the *Consultant*. The *Consultant* should issue an invitation for a Clarification Call to the Project Requestor within three working

days of receipt of the Project Request Form

2.2.8 The Consultant must provide a Project Proposal following receipt of the Project Request Form to the Project Requestor and Contract Manager within 3 days of the Clarification Call, unless the time frame is otherwise agreed at the Clarification Call or in a subsequent email. Contract Manager must approve the Proposal and committed resource hours before any Project work commences.

2.2.9 The Consultant must re-submit any change request to the working hours via an updated Project Proposal for acceptance by the Contract Manager.

2.2.9 The Consultant must submit a base template for use when preparing Project Proposals within two weeks from the start date of the Contract, for acceptance by the *Client*. The *Client* will respond with acceptance or feedback within 2 weeks.

The Project Proposal template should include, as a minimum;

- Methodology,
- Data Sources,
- People resources and allocated work hours,
- Reporting methods and
- Initial project specific risk register.

2.2.10 Other timelines to be agreed directly between the Project Requestor and *Consultant* and should be fair and reasonable.

2.2.11 The Highways England Contract Manager will adjudicate any disagreements between the Project Requestor and the *Consultant*.

2.2.12 The Consultant must submit to the Contract Manager for acceptance; the resource hours required to manage the delivery of the Contract as stated within this Scope. This includes all billable hours required to provide the Management Information reporting and delivery as stated within this Scope and as agreed with the Contract Manager. This should initially be agreed at, or following on from the Project Initiation meeting and reviewed, as required, to meet the requirements of the *Client*. All approvals of resource hours must be made by the Contract Manager, in writing (via email is acceptable).

2.3 Communications system

2.3.1 Highways England to provide:

- Letter of authorisation for use when contacting the Supplier
- Project Request Forms detailing the requirements of the project to be undertaken

2.3.2 *Consultant* to provide:

- Contract Progress Reports (either in .ppt or .xlsx format)
- Project Progress Reports (either in .ppt or .xlsx format)
- Completed Project Reports (either in .ppt or .xlsx format) and data underpinning the report (in .xlsx format)
- Project Proposal Template
- Customer feedback template and master document
- Report on overall resource hours including expected and used hours
- Risk register
- Project Proposals as requested and
- Reports as agreed at Project Proposal stage or as requested following subsequent communications with the *Client*.

2.3.3 The *Consultant* is to communicate with the *Client* via email and telephone as required.

2.3.4 The *Consultant* is to provide reports to the *Client* in .ppt or .xlsx when appropriate, and as per the request of the Project Requester or Contract Manager.

2.4 Quality Management

2.4.1 The *Consultant* is to source feedback from Project Requestors and share this with the *Client*. The *Consultant* must keep a master spreadsheet which contains all customer feedback and headline statistics, as agreed at meetings with the Contract Manager.

The *Client* and *Consultant* will agree KPI's on Customer Feedback following the acceptance of the Customer Feedback template, and performance against these should be shared and reviewed monthly with the *Client*.

2.4.2 The *Consultant* is to submit their proposed template for customer feedback forms and a Customer feedback log to the *Client* for acceptance within 2 weeks of the Contract start date. The *Client* will respond with acceptance or feedback on the templates within 2 weeks.

2.4.3 If at any time during the delivery of the Contract, the *Client* believes the quality of service has fallen below an acceptable level, the Contract Manager will request the *Consultant* to prepare an Improvement Plan for submission within 2 weeks and indicate which areas of the service are not meeting the expected standard as set out within this Scope. The *Consultant* must submit the improvement plan to the *Client*, and the *Client* will either accept the plan or reject with feedback within 2 weeks. The Improvement Plan will remain in place until the Contract Manager is content the service has reached a reasonable standard or the *Contract* is ended.

3 Existing information

Not Used

4 Specifications and standards

Not Used

5 Constraints on how the *Consultant* Provides the Service

- 5.1.1 The *Consultant* will work with the *Client's* supply chain, extended supply chain and the marketplace in undertaking the Service through various methods of communication as appropriate. In providing the service, the *Consultant* will act always in line with the *Client's* values and behaviours as set out within this Scope and associated appendixes.
- 5.1.2 The *Client* will provide a Letter of Authorisation to the *Consultant* that should be issued to suppliers and other external stakeholders that are contacted on behalf of the *Client*.
- 5.1.3 The *Consultant* programmes the service in a manner that minimises the impact on the *Client*.
- 5.1.4 The *Consultant* does not enter into commitments when dealing with third parties that might impose any obligations on the *Client* except with the consent of the *Client*.
- 5.1.5 The *Consultant* delivers upon the Tender Promises made at Tender stage, as per the Commitment Register.

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 in **Annex 04** of the Scope.

5.2 People Strategy

- 5.2.1 The *Consultant* complies with the *Client's* People Strategy outlined in **Annex 06**.

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 1st 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*) that procures any subcontractor (at any stage of remoteness from the *Client*), who are Providing the Service that they do 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 who procures any subcontractor (at any stage of remoteness from the *Client*) ensures any of its employees, who are Providing the Service, comply with the Counter fraud bribery and corruption policy and Response Plan as 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*, the client may
- require the *Consultant* to stop Providing the Service until any conflict of interest is resolved and
 - 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" (attached to the Tender documents).

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 clause 5.7.
- 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" ("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 Health and safety requirements

5.10.1 The *Consultant* complies with the *Client's* Health and Safety Requirements outlined in **Annex 15**.

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 The *Consultant* obtains a minimum of 3 competitive written quotations for the appointment of any subcontractor or supplier for works/services.
- 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 Not used

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 sub-subcontractor 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** if required.

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 Not Used

6 Requirements for the programme

Not Used

7 Information and other things provided by the *Client*

Not Used