



Crown
Commercial
Service

The Department for Transport

- and -

Pegasus Planning Group Ltd

ANNEXES

relating to

Provision of a Post-Consultation Peer Review

Contract Reference: CCCC16A81

CONTENTS

ANNEX 1 – TERMS AND CONDITIONS	4
1 INTERPRETATION	4
2 BASIS OF AGREEMENT	5
3 SUPPLY OF SERVICES	6
4 TERM.....	6
5 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE.....	6
6 PREMISES AND EQUIPMENT	7
7 STAFF AND KEY PERSONNEL.....	8
8 ASSIGNMENT AND SUB-CONTRACTING	9
9 INTELLECTUAL PROPERTY RIGHTS	9
10 GOVERNANCE AND RECORDS.....	10
11 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY	10
12 FREEDOM OF INFORMATION.....	11
13 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA.....	12
14 LIABILITY.....	12
15 FORCE MAJEURE.....	13
16 TERMINATION.....	13
17 COMPLIANCE.....	14
18 PREVENTION OF FRAUD AND CORRUPTION.....	15
19 DISPUTE RESOLUTION.....	15
20 GENERAL	15
21 NOTICES	16
22 GOVERNING LAW AND JURISDICTION.....	16
ANNEX 2 – PRICE SCHEDULE	17
ANNEX 3 – STATEMENT OF REQUIREMENT	18
1. INTRODUCTION.....	19
2. PURPOSE.....	19
3. BACKGROUND TO THE AUTHORITY	20
4. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT	21
5. SCOPE OF REQUIREMENTS	21
6. SERVICE LEVELS AND PERFORMANCE	22

OFFICIAL

7.	LOCATION	25
8.	SECURITY REQUIREMENTS.....	25
9.	PROJECT TIMETABLE	26
10.	BUDGET	26
	ANNEX 4 – SUPPLIERS RESPONSE.....	27
	(AS PROVIDED WITHIN THE E-SOURCING EVENT)	27
	ANNEX 5 – CLARIFICATIONS	28
	ANNEX 6 – ADDITIONAL TERMS & CONDITIONS.....	29

ANNEX 1 – TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In these terms and conditions:

“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier’s countersignature of the Award Letter and includes the Award Letter;
“Award Letter”	means the letter (including the Annexes thereto) from the Customer to the Supplier via the e-Sourcing Suite at the point of award;
“Central Government Body”	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Customer”	means the person named as Customer in the Award Letter;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Award Letter;
“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Key Personnel”	means any persons specified as such in the Award Letter or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Purchase	means the Customer’s unique number relating to the supply of the

OFFICIAL

Order Number”	Services;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Award Letter;
“Start Date”	means the commencement date of the Agreement as set out in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Award Letter;
“Term”	means the period from the Start Date of the Agreement set out in the Award Letter to the Expiry Date as such period may be terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2 BASIS OF AGREEMENT

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Supplier on receipt by the Customer, within 7 days of the date of the award letter, of a copy of the Award Letter countersigned by the Supplier.

OFFICIAL

3 SUPPLY OF SERVICES

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services and comply with all the Customer's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions, requirements, service levels and specifications set out in the Specification;
 - 3.2.5 comply with all applicable laws; and
 - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4 TERM

- 4.1 The Agreement shall take effect on the Start Date and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause Error! Reference source not found. or terminated in accordance with the terms and conditions of the Agreement.

5 CHARGES, PAYMENT AND RECOVERY OF SUMS DUE

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

OFFICIAL

- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
 - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
 - 5.8.3 In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6 PREMISES AND EQUIPMENT

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Supplier or the Staff shall be at the Supplier’s risk.
- 6.2 If the Supplier supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer’s premises, remove the Supplier’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable

OFFICIAL

notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.

- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

7 STAFF AND KEY PERSONNEL

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
- and the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, parental leave and termination of employment or other extenuating circumstances.
- 7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

OFFICIAL

8 ASSIGNMENT AND SUB-CONTRACTING

- 8.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All intellectual property rights in any materials provided by the Customer to the Supplier for the purposes of this Agreement shall remain the property of the Customer or the respective owner of such intellectual property rights but the Customer hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 9.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Supplier hereby grants the Customer:
- 9.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
- 9.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and
- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 9.4 The Supplier shall indemnify, and keep indemnified, the Customer in full against all costs,

OFFICIAL

expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

10 GOVERNANCE AND RECORDS

10.1 The Supplier shall:

10.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

10.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

11 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

11.1 Subject to clause 11.2, each Party shall:

11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

11.2.2 to its auditors or for the purposes of regulatory requirements;

11.2.3 on a confidential basis, to its professional advisers;

11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is the Customer:

OFFICIAL

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

AND FOR THE PURPOSES OF THE FOREGOING, REFERENCES TO DISCLOSURE ON A CONFIDENTIAL BASIS SHALL MEAN DISCLOSURE SUBJECT TO A CONFIDENTIALITY AGREEMENT OR ARRANGEMENT CONTAINING TERMS NO LESS STRINGENT THAN THOSE PLACED ON THE CUSTOMER UNDER THIS CLAUSE 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12 FREEDOM OF INFORMATION

- 12.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
- 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

OFFICIAL

12.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

13.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

13.2 Notwithstanding the general obligation in clause 13.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:

13.2.1 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA;

13.2.2 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

13.2.3 promptly notify the Customer of:

- (a) any breach of the security requirements of the Customer as referred to in clause 13.3; and
- (b) any request for personal data; and

13.2.4 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

13.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

14 LIABILITY

14.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the

OFFICIAL

supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clauses 9.4 and 18.3, in no event shall the Supplier be liable to the Customer for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited.

15 FORCE MAJEURE

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16 TERMINATION

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

OFFICIAL

- 16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;
- 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
- 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 16.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.
- 17 COMPLIANCE**
- 17.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 17.2 The Supplier shall:
- 17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 17.3 The Supplier shall:
- 17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.
- 17.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
-

OFFICIAL

17.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.5.1 the Official Secrets Acts 1911 to 1989; and

17.5.2 section 182 of the Finance Act 1989.

18 PREVENTION OF FRAUD AND CORRUPTION

18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

19 DISPUTE RESOLUTION

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20 GENERAL

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

OFFICIAL

- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21 NOTICES

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15 (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22 GOVERNING LAW AND JURISDICTION

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

OFFICIAL

ANNEX 2 – PRICE SCHEDULE

REDACTED

For the avoidance of doubt this contract will not exceed the value of £20,000 (excluding VAT).

ANNEX 3 – STATEMENT OF REQUIREMENT

APPENDIX B

Statement of Requirements

CONTENTS

1.	INTRODUCTION.....	19
2.	PURPOSE.....	19
3.	BACKGROUND TO THE AUTHORITY	20
4.	BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT STAGE 1	21
5.	SCOPE OF REQUIREMENTS	21
6.	SERVICE LEVELS AND PERFORMANCE	22
7.	LOCATION.....	25
8.	SECURITY REQUIREMENTS.....	25
9.	PROJECT TIMETABLE.....	26
10.	BUDGET	26

1. INTRODUCTION

- 1.1 The Department for Transport (DfT) is a central Whitehall Government Department whose core responsibility is to plan and invest in transport infrastructure to keep the UK on the move. To achieve this, the department works with its agencies and partners to support the transport network that helps the UK's businesses and gets people and goods travelling around the country.
- 1.2 Aviation is a key part of the transport infrastructure. The UK has the third largest aviation network in the world second only to the US and China. However, passenger numbers have reached record levels and London's aviation network will be full by 2040.
- 1.3 The DfT is in the process of considering the policies, evidence and activities required to achieve planning consents for the construction of an additional runway.
- 1.4 In addition, the DfT is also considering wider changes to national aviation policies, that are not location specific, which could be taken forward separately from any decisions on new runway capacity.
- 1.5 This procurement is not intended to pre-judge any ministerial decisions, nor is it intended to come to any view on which, if any, of the shortlisted options for airport expansion the Government might support, or what route to securing powers might be preferred if the Government was to support future airport expansion.
- 1.6 In responding all shortlisted suppliers must respect the highly sensitive level of confidentiality and ensure that they implement tight restrictions on the dissemination of this project within their organisation and do not disclose to other parties any information about the client or the subject matter for which services are being procured.

2. PURPOSE

- 2.1 Any consultation on airport capacity for an additional runway is likely to attract high levels of interest. It will be essential to effectively consider local sensitivities and the high profile nature of these issues when engaging with the public.
- 2.2 The purpose of this procurement would be to ensure that DfT has the necessary expert resources to peer review the consultation on a draft national policy statement for airports for the development of an additional runway, to reduce the prospect of bias and potential for legal challenge on the consultation questions and the way the responses have been analysed.
- 2.3 This invitation to tender relates to the commissioning of peer review services after the consultation has been launched. Pre consultation peer review services (i.e. to review the consultation questions and response mechanisms) has been commissioned separately.
- 2.4 The supplier already selected to undertake the main consultation delivery/analysis work is ineligible to deliver peer review services.
- 2.5 We envisage that pre- and post-consultation peer review services will be of similar financial value and levels of resource commitment. We would particularly welcome bids from organisations specialising in social research methods (e.g. questionnaire design and qualitative analysis). We envisage that one contractor will be commissioned to provide this service.

OFFICIAL

- 2.6 The consultation will be digital by default with an ambition to encourage as many people as possible to participate using digital channels specifically hard to reach and vulnerable groups and the young eg 16 to 34 year olds who live and work in the local area or at the relevant airport and those with reduced online access.
- 2.7 The key objectives for the peer review would be to:
- 2.7.1 Review and advise on the development of a coding framework to analyse responses to make sure best practice is followed
 - 2.7.2 Review and advise on the final report to make sure it is balanced
 - 2.7.3 Compile a report on the peer review process indicating whether or not sufficient action was taken to make sure that consultation was fair and free from bias.
- 2.8 Responses to this tender must be flexible enough to reflect the variables within the programme particularly:
- 2.8.1 The potential uncertainty on when the consultation may begin;
 - 2.8.2** The duration of the consultation which has not been decided and could be 16 weeks.

3. BACKGROUND TO THE AUTHORITY

- 3.1 Aviation in the UK is largely privatised and operates in a competitive international market.
- 3.2 Airports and Airlines support the UK economy and form a key part of the transport infrastructure. The DfT makes sure they provide the domestic and international connections the UK needs to grow and prosper.
- 3.3 In 2012 the government set up the Airports Commission, an independent body, to identify and recommend options to maintain the UK's position as Europe's most important aviation hub.
- 3.4 The Airports Commission published an 'Interim Report' in 2013 which concluded that there was a clear case for one net additional runway in London and the South East, to come into operation by 2030. In its final report published in July 2015 the Airports Commission set out recommendations on how to meet any need for additional airport capacity. In December 2015 the Government accepted the case for expansion and the Commission's shortlisted options but has not decided on a preferred location.
- 3.5 The intention is to deliver a new runway seeking powers through the provisions in the Planning Act 2008 which relates to nationally significant infrastructure. This requires public and parliamentary scrutiny with a suite of documents produced by DfT to support a consultation process.
- 3.6 The proposals on new runway capacity would be particularly sensitive to local communities and this is likely to invoke strong opinions and result in a high level of interest.

OFFICIAL

3.7 A package of policy proposals relating to aircraft and airspace policy may also be consulted upon. These relate to the Government's framework for how airspace is managed by the Civil Aviation Authority, including how decisions are made about flight paths and how noise is taken into account. These national policies are separate to any decision which may be taken on a new runway. However, they are related because robust airspace and noise policies will be important if it came to making decisions on flight paths for any new runway capacity, and some of the proposals have been developed following recommendations from the Airports Commission.

3.8 Potential providers should take these factors into account in formulating their responses. Potential Providers will need to draw on their experience of successfully peer reviewing high-profile, high response public consultations.

4. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT

4.1 The consultation work will be supported by a programme of events and engagement activities. The winning supplier will need to be aware of activities taking place within the stakeholder programme as well as what is happening on the analysis work.

4.2 The events will provide background information to the public and give them the opportunity to speak to officials within the department about the consultation.

4.3 All consultation activity must take place within the consultation timetable. DfT will agree cut off times for responses once the timing of the consultations has been agreed.

4.4 Examples of the types of audiences the Department would like to reach for these areas of work are as follows eg member of the public affected by expansion and wider aviation policy changes, airlines, campaign groups, local authorities, elected representatives, trade groups and bodies. The audiences listed above are only indications of the groups the Department would like to reach. You will need to advise on whether the audience is right.

4.5 Potential providers do not need to have experience in transport or transport related areas. We are looking for providers with experience of carrying out peer reviews for high-profile consultations.

5. SCOPE OF REQUIREMENTS

5.1 The scope of the project is defined as:

5.1.1 To review development of the coding framework to analyse responses for the consultation and development of the final report:

5.1.2 The consultation on runway capacity will run for a period of up to 16 weeks.

5.2 Requirements

5.2.1 Review and advise on the development and approach of a framework to code and analyse responses pre, during and post consultation;

OFFICIAL

- 5.2.2 Advise on methods for collecting and collating data from responses to questions
- 5.2.3 Review final report generated by the Analysis Agency. Review after 2nd proofs and penultimate proofs;
- 5.2.4 Review work without delaying overall progress on project or final deadlines;
- 5.2.5 Write a report on the peer review process;
- 5.2.6 All data collected for this project should be handed over to the DfT on completion of this project in both electronic and hard copy formats.

5.3 Service requirements

- 5.3.1 The Supplier will be expected to compile the following reports:
 - 5.3.1.1 A short report (4-8 sides) making clear recommendations for the consultation on the development of the framework to code consultation responses (recommendations for improving the development of the coding framework).
 - 5.3.1.2 A short report (1-2 sides) on the development of the final report which analyses the consultation responses produced by the analysis agency making clear recommendations on possible improvements to the report.
 - 5.3.1.3 A short and focussed report on the peer review process (1-2 sides) indicating whether or not sufficient action was taken to make sure that the consultation was fair and free from bias. The report should be produced within 2 weeks of the analysis agency producing their final report on the analysis of all consultation responses.
 - 5.3.1.4 It is anticipated that the majority of correspondence will be carried out by email or telephone. The reviewer may only be expected to attend a limited number of meetings.

6. SERVICE LEVELS AND PERFORMANCE

- 6.1 The following identifies some key milestone which potential suppliers should consider in preparing responses and populating where required. Also, they should identify other milestones which they consider will be important to ensure effective planning and monitoring of the project.

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Deliverable / Key Point Indicators	Milestone Date	Customer Responsibilities (if applicable)
Task 1 Review development of a framework to code and analyse responses	<ul style="list-style-type: none"> Review approach to develop a framework to code and analyse consultation responses and suggest areas for improvement if required Update DfT Consultation Manager on findings verbal and written update and discuss options for possible changes with DfT 	Short report 4–8 sides recommending any changes	Dec 2016 tbc Feb 2017 tbc March 2017 (tbc)	Supply details of the coding at periodic intervals
Task 2 Report on analysis	<ul style="list-style-type: none"> Produce a report(s) analysing and or summarising responses to consultation(s). Assume at least 3 rounds of proofs for each report. Output to pdf and Word. Must follow DfT guidelines on the production of materials 	Short report (1-2 sides) recommending any changes	June/ July tbc	Supply draft copies of the final report
Task 3 Final Report	Final report on the peer review process developed (1-2 sides)	Short report on peer review process	June / July 2017 (tbc)	

- 6.2 The Potential Provider should produce a milestone plan (based on the above plan) within 5 days of request and in such further detail as the Authority may reasonably require. The Potential Provider shall ensure that each version of the plan is subject to approval by DfT. The Potential Provider shall ensure that the plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the services.
- 6.3 The Authority shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the implementation plan.
- 6.4 The Supplier shall perform its obligations so as to achieve each milestone by the Milestone Date.
- 6.5 Changes to the milestones shall only be made in accordance with the variation procedure that would need to be agreed with the Authority Department upon contract award.

OFFICIAL

6.6 Potential providers are expected to ensure and demonstrate that they have the expertise, capability and capacity to undertake this work. The team /persons engaged on this project must to be flexible, adaptable and responsive to changing circumstances, ensuring ample availability of key personnel working on this project.

6.6.1 Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.

6.6.2 Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.

6.7 Project Management

6.7.1 The potential provider will be expected to provide a proposed top level project plan in response to the tender. Once the tender has been awarded, a detailed project plan showing key activity and milestones for each phase of work, including any dependencies will be required.

6.7.2 The successful supplier will be responsible for ensuring that the project plan is maintained and updated on a weekly basis as may be necessary to reflect the then current state of the progress of work streams. This includes changes and additions directed by the DfT project manager.

6.7.3 The successful supplier will be responsible for maintaining other key project management documents such as a risk and issues register and quality assurance log. All documents developed should be agreed by the two parties in the first instance and then updated at weekly intervals as agreed by the DfT project manager.

6.8 Quality Assurance

6.8.1 Outputs from the work produced under this contract will directly inform and support high profile DfT policy decisions, it is therefore essential that the potential provider has thorough and effective quality assurance processes in place.

6.8.2 Proposals should set out a quality assurance plan for work that will be undertaken under this contract. The quality assurance plan should describe the processes that will ensure that drafts and analysis submitted to DfT do not contain content errors, as well as presentational errors, therefore requiring minimum amendment and re-drafting by DfT.

6.8.3 Proposals should outline clear procedures for maintaining high ethical standards throughout this work, drawing on an accepted ethical framework of best practice.

6.9 Invoicing Arrangements

- 6.9.1 A purchase order will be raised. The supplier should issue invoices in accordance with the milestones in Appendix E – Price Matrix and as set out in heading 6.

6.10 Invoicing Process

- 6.10.1 Invoices must show DfT's purchase order number. This information will be handed over at the inception meeting.
- 6.10.2 The Supplier must send the invoice (no accompanying information needs to be included with this invoice) to DfT's Shared Service Centre at:

DfT Shared Service Centre

5 Sandringham Park,

Llansamlet

Swansea Vale,

Swansea

SA7 0EA

- 6.11 The contract will be subject to reviews at monthly intervals. In the event of contract termination prior to the end of the expected contract duration, the DfT retains the option to terminate the contract on provision of 30 days written notice. Therefore the termination date will be invoked by whichever of the two dates is the sooner.

7. LOCATION

- 7.1 The services will be carried out at the Suppliers premises and the default location for the Authority meetings at:

Department for Transport

33 Horseferry Road

London,

SW1P 4DR.

8. SECURITY REQUIREMENTS

- 8.1 Once the supplier is appointed and the commencement of the contract is approved, it is likely that the supplier will be privy to information that is not in the public domain.
- 8.2 The Potential Provider should detail all the measures they will take to maintain the confidentiality, integrity and availability of information during both the procurement process and in the production of work and services in the course of this contract.

- 8.3 As the data that will be processed under this contract will be considered to be at the Official level (and also with a Sensitive caveat) it is important that all systems that are processing or storing this data are of an approved standard.
- 8.4 All data should be encrypted when at rest and in the course of transmission. Only systems or solutions accredited to hold data at HMG OFFICIAL/OFFICIAL-SENSITIVE and/or that currently conform to BS27001 will be considered. Particular emphasis will be placed upon the security of the data systems and how the security of the data is protected by all staff (including contractors) and in all premises where work is carried out to support this contract.
- 8.5 Potential Providers should provide detail on the security clearances held by personnel handling the data, as well as those who hold system administration rights for building the solution. Potential Providers should also be able to articulate how their solution meets HMG's requirements for OFFICIAL/OFFICIAL-SENSITIVE specifically for the data in question. In order to facilitate the contract, it is preferred that the storage of data is done within the UK.

9. PROJECT TIMETABLE

Project Timelines:

Dec 2016	Award contract inception meeting
Dec 2016	Outline development of framework to code responses based on question structure
Jan 2017	Consultation Starts
Jan 2017	Review development of framework to code responses
Feb 2017	Review coding framework
April 2017	Review coding framework / Consultation Ends
June 2017	Review final report
July 2017	Submit final report / Contract finishes

10. BUDGET

- 10.1 Prices should be submitted in pounds sterling and be inclusive of expenses and exclusive of VAT. The budget for this procurement is £20,000 (excluding VAT).

IMPORTANT NOTICE:

- 10.2 Potential providers should note that a preferred supplier is expected to be identified through this procurement process but a contract between the Supplier and Department will only become active should Ministers take decisions to pursue the national policy changes and potential proposals for new runway capacity. We therefore reserve the right not to spend against this contract and to stop this procurement any stage depending on Ministerial decisions.

OFFICIAL

ANNEX 4 – SUPPLIERS RESPONSE

(As provided within the e-Sourcing event)

REDACTED



ANNEX 5 – CLARIFICATIONS

Not Applicable



ANNEX 6 – ADDITIONAL TERMS & CONDITIONS

Not Applicable

