

**Official-Sensitive-Commercial
V1.0**

SP-19-037

FRAMEWORK AGREEMENT

-between-

(1) THE SCOTTISH MINISTERS (THE “AUTHORITY”)

-and-

(2) MOTT MACDONALD LTD (THE “CONTRACTOR”)

-relating to the provision of-

A Project Support Unit for Non Domestic Energy Efficiency 2020-2024

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PREAMBLE:

- ONE The Authority requires the supply of Services to Framework Public Bodies;
- TWO On 18 November 2019 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number OJEU 547299-2019
- THREE On 20 December 2019 the Contractor completed its ESPD;
- FOUR On 18 November 2019 the Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 20 December 2019 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Contractor to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Contractor has undertaken to provide , including Service Levels setting out particular levels of service that the Contractorhasundertakentomeet;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - Award Procedures prescribing the mandatory procedures for entering into Call-off Contracts; and
 - Management Arrangements for the strategic management of the relationship between the Authority and the Contractor.

SECTION A

1. Definitions and Interpretation

1.1. In this Framework Agreement unless the context otherwise requires the following terms have the meanings given to them below:

“Affiliate” means in relation to a body corporate, any other entity which directly or indirectly controls, is controlled by, or is under direct or indirect control with, that corporate body from time to time;

“Authority” means the Scottish Ministers.

“Authority Protected Information” means any information provided by the Authority to the Contractor which:

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

“Authority Requirements” means the operational requirements, functions and characteristics of the Framework set out in Schedule 1 (Specification & Service Levels)

“Award Procedures” means the procedures for entering into Call-off Contracts set out at Schedule 3 (Award Procedures).

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“Call-off Contract” means any contract for the Supply of Services between a Framework Public Body and the Contractor entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.

“Commencement Date” has the meaning given in clause 4.1.

“Contracting Authority” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

“Contractor” means Mott Macdonald Ltd (01243967) of Mott Macdonald House, 8-10 Sydenham Road, Croydon, Surrey, CR0 2EE;

“Contractor Sensitive Information” means any information provided by the Contractor to the Authority (disregarding any protective marking or assertion of confidentiality) which:

- is specified as Contractor Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and
- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“Control” has the meaning given in section 450 of the Corporation Tax Act 2010.

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Requests” have the meanings given in the Data Protection Laws.

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

“Default” means any breach of the obligations of the Contractor (including but not limited to material breach) or any negligent act, omission or statement of the Contractor in connection with or in relation to this Framework Agreement.

“Deliverable” means anything to be delivered to the Authority by the Contractor under this Agreement;

“Employee Liabilities” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.

“Employee Liability Information” has the meaning given in TUPE.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004.

“ESPD” means the European Single Procurement Document completed by the Contractor and sent to the Authority on 20 December 2019;

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Framework from the Contractor to the Authority or any Replacement Contractor as set out in Clause 44 (Exit Management) and Schedule 8 (Exit Management).

“Exit Plan” means the exit management plan developed by the Contractor and approved by the Authority in accordance with Clause 44 (Exit Management).

“Exit Management Date” means each of the following:

- (a) the date of a Termination Notice; and
- (b) if no Termination Notice has been served in relation to this Agreement except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Agreement agreed in writing.

“FOISA” means the Freedom of Information (Scotland) Act 2002.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“Framework Agreement” or **“Agreement”** means this framework agreement between the Authority and the Contractor consisting of clauses and 10 Schedules.

“Framework Public Bodies” means Scottish Ministers (including Agencies), Scottish Non-Departmental Public Bodies, offices in the Scottish Administration which are not ministerial offices, cross-border public authorities within the meaning of section 88(5) of the Scotland Act 1998, the Scotland Office, the Scottish Parliamentary Corporate Body, councils constituted under section 2 of the Local Government etc. (Scotland) Act 1994, the Scottish Fire and Rescue Service, the Scottish Police Authority, Scottish health boards or special health boards, all NHS Scotland, The Integrated Joint Boards established further to the Public Bodies (Joint Working) Act 2014, bodies registered as social landlords under the Housing (Scotland) Act 2001, Student Loans Company Limited, the Forestry Commission, the Commissioner of Northern Lighthouse operating as the Northern Lighthouse Board, Equality and Human Rights Commission, Business Stream Ltd, the Business Gateway National Unit at the Convention of Scottish Local Authorities, Further or Higher Education Institutions being fundable bodies within the meaning of section 6 of the Further and Higher Education (Scotland) Act 2005, any public body established by or under the Scotland Act 1998 or any Act of the Scottish Parliament, any association of or formed by one or more of the foregoing, bodies financed wholly or mainly by one or more of the foregoing, bodies subject to management supervision by one or more of the foregoing and bodies more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by one or more of the foregoing. In addition to the contracting authorities listed, the Framework Agreement will be available to charities entered on the Scottish Charity Register and voluntary organisations entered on the Membership Database of the Scottish Council for Voluntary Organisations.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

“Incoming Employees” means individuals whose employment transfers to the Contractor on the commencement of the provision of the Services by operation of TUPE.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITT” means the Authority’s invitation to tender dated 18 November 2019

“Key Individuals” means the Contractor Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5;

“Key Performance Indicators” or **“KPIs”** means the particular performance indicators that the Contractor has undertaken to meet, and identified as key performance indicators mentioned in Schedule 1;

“**Law**” means (a) any applicable statute or proclamation or any delegated or subordinate legislation;

- (b) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;
- (c) any applicable guidance, direction, determination or regulations with which the Authority and/or the Contractor is bound to comply;
- (d) any applicable judgement of a relevant court of law which is a binding precedent in Scotland; and
- (e) any requirements of any regulatory body,

in each case in force at any time during the period of the Framework Agreement in Scotland.

“**LCITP**” means the European Regional Development Fund’s Low Carbon Infrastructure Transition Programme.

“**Management Arrangements**” means the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor’s compliance with the Specification, Service Levels the Award Procedures and the terms of this Framework Agreement, set out in Schedule 4.

“**NDEE**” stands for Non-Domestic Energy Efficiency.

“**NDEE Framework**” means the multi-user and multi-provider framework formed under the NDEE Framework Agreement.

“**NDEE Framework Agreement**” means the framework agreement entered into by the Authority and the NDEE Framework Contractors relating to the supply of NDEE works and services.

“**NDEE Framework Contractors**” means those contractors appointed to the Authority’s NDEE Framework Agreement(s),

“**Outgoing Employees**” means individuals whose employment transfers from the Contractor on the ceasing of the provision of the Services by the Contractor by operation of TUPE.

“**Party**” to this Framework Agreement means either of the Authority or the Contractor and does not include any other party who may have the benefit of this Framework Agreement.

“**Personal Data**” has the meaning given in the Data Protection Laws.

“**Pricing Schedule**” means the details of the pricing of the Services as at the Commencement Date set out in Schedule 2.

“**Processing**” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

“Relevant Transfer” has the meaning given in regulation 2(1) of TUPE.

“Replacement Contractor” means any third party contractor appointed by the Authority from time to time in succession to the Contractor.

“Request for Information” means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

“Schedule” means a schedule annexed to this Framework Agreement.

“Services” means the services as are to be supplied by the Contractor to the Authority or Framework Public Bodies as set out in the Specification.

“Service Levels” means the particular levels of service that the Contractor has undertaken to meet, and identified as service levels in the Specification.

“Specification” means the specification of the Services that the Contractor has undertaken to provide set out in Schedule 1.

“Standard Terms of Supply” means the standard terms and conditions for Call-off Contracts set out in Schedule 5.

“Staff” means all employees, agents, consultants and individual contractors of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor;

“Staffing Information” means such information as the Authority may request in an anonymised format or otherwise including:

- ages;
- dates of commencement of employment or engagement;
- gender;
- job or role descriptions and objectives of role;
- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- the identity of the employer or relevant contracting party;
- their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- their wages, salaries and profit sharing arrangements as applicable;
- details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

- copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- any other Employee Liability Information.

“**Supervisory Authority**” has the meaning given in the Data Protection Laws.

“**Tender**” means the tender submitted by the Contractor to the Authority in response to the ITT dated 20 December 2019;

“**Termination Notice**” means a notice to terminate this Framework Agreement or part of the Framework either immediately or at a date specified in the notice.

“**Transparency Information**” means the Transparency Reports and the content of this Framework Agreement.

“**Transparency Reports**” means a report in accordance with Schedule 7 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Authority in the interests of transparency.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“**Working Day**” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“**Working Hour**” means an hour between 0900 hours and 1700 hours on a Working Day.

1.2. The interpretation and construction of this Framework Agreement is subject to the following provisions:

- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
- 1.2.2. words importing the masculine include the feminine and neuter;
- 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument or re-enacted;
- 1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- 1.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.7. headings are included in this Framework Agreement for ease of reference only and do not affect the interpretation or construction of this Framework Agreement.

2. **Condition Precedent: Requirement for Parent Company Guarantee**

It shall be a condition of this Framework Agreement that, if required by the Authority, the Contractor shall deliver a validly executed parent company guarantee in the form set out in Schedule 6 to this Framework Agreement. The rights and obligations of the Parties shall

have no force or effect unless the parent company guarantee has been properly executed and delivered to the Authority. The parties acknowledge that if this condition has not been fulfilled any performance of this Framework Agreement by the Contractor shall be at the risk of the Contractor and the Authority shall not be liable for and the Contractor irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Contractor has failed to fulfil this condition within 14 days of the date of last subscription of the Framework Agreement the Authority shall have the right to terminate the Framework Agreement by notice in writing to the Contractor.

3. Nature of this Agreement

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a single-supplier framework agreement and the contractor that is party to it is the Contractor. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a multi-user framework agreement and the public bodies that are party to it are the Framework Public Bodies. No other public bodies are party to the Framework Agreement.
- 3.4. Save to the extent specifically provided for in this Agreement, the Contractor acknowledges that it is not the exclusive supplier of the Services to Framework Public Bodies and as such no guarantee of work or volume of work has been granted by the Authority or any Framework Public Body.
- 3.5. The Contractor acknowledges that the Framework Public Bodies are separate legal persons and as such the Authority has no liability in relation to the performance or non-performance of other Framework Public Bodies' obligations under this Framework Agreement or any Call-off Contracts.

4. Period

- 4.1. The period of this Framework Agreement is from and including 15 April 2020 (the "Commencement Date") to and including 14 April 2023 unless it is terminated earlier or extended under Clause 4.2.
- 4.2. The Authority may, by giving notice to the Contractor, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

The Authority may terminate the Contractor's interest in the Framework Agreement at any time by giving not less than 3 months' notice to the Contractor.

6. Specification and Service Levels

The Specification sets out the Services that the Contractor has undertaken to provide. The Specification includes Service Levels setting out particular levels of service that the Contractor has undertaken to meet.

7. Price

7.1. The Pricing Schedule sets out details of the pricing of the Services as at the Commencement Date.

7.2. The prices in the Pricing Schedule may be varied in accordance with the arrangements set out in the Pricing Schedule (Schedule 2).

7.3. Accordingly, the Contractor may not unilaterally increase the prices in the Pricing Schedule. But nothing in this Framework Agreement prevents the Contractor from improving on the prices in the Pricing Schedule for the purposes of a Call-off Contract.

8. Award Procedures

8.1. The Award Procedures may be invoked by the Authority **or** any Framework Public Body and Call-off Contracts may be entered into at any time during the period of the Framework Agreement.

8.2. But the Award Procedures may not be invoked and Call-off Contracts may not be entered into with the Contractor if:

8.2.1. the period of the Framework Agreement has expired;

8.2.2. the Contractor's interest in the Framework Agreement has been terminated; or

8.2.3. the Contractor's appointment to provide Services to the Authority **or** Framework Public Bodies has been suspended in accordance with clause 9.2 (Management Arrangements).

8.3. The the Authority **or** Framework Public Bodies and the Contractor must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.

8.4. The Contractor must maintain the capacity to enter into and perform Call-off Contracts throughout the period of the Framework Agreement.

9. Management Arrangements

9.1. The Management Arrangements set out the arrangements for the strategic management of the relationship between the Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement.

9.2. The Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to the Authority **or** Framework Public Bodies for a notified period of time:

9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination Rights) or 43 (Termination on Insolvency or Change of Control); or

9.2.2. in any other circumstance provided for in the Management Arrangements.

9.3. Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.

9.4. The Contractor must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

10. Official Secrets Acts

The Contractor undertakes to abide and procure that the Contractor's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

SECTION B

11. Contractor's Status

At all times during the term of this Framework Agreement the Contractor is an independent Contractor and nothing in this Framework Agreement establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Framework Agreement.

12. Notices

12.1. Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:

12.1.1. given in writing;

12.1.2. addressed in accordance with clause 12.3; and

12.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.

12.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:

12.2.1. 2 Working Days after the day on which the letter was posted; or

12.2.2. 4 Working Hours, in the case of fax or e-mail.

12.3. For the purposes of this clause, the address of each Party is:

12.3.1. For the Authority:
Scottish Government
Area 3A South, Victoria Quay
Edinburgh EH6 6QQ
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

12.3.2. For the Contractor:
Mott MacDonald Ltd
St Vincent Plaza
319 St Vincent Street
Glasgow
G2 5LD
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

- 12.4. Either Party may change its address details by serving a notice in accordance with this clause.

13. Recovery of Sums Due

Wherever under this Framework Agreement any sum of money is recoverable from or payable by the Contractor to the Authority, the Authority may deduct that sum from any sum due to the Contractor whether under a Call-off Contract or otherwise, provided that the Authority:

- (a) provides advance notice to the Contractor and explains the reason for such set-off; and
- (b) provides evidence of any such set-off.

14. Data Protection

- 14.1. The Contractor will, in conjunction with the Authority and in its own right and in respect of the Services, ensure it will be compliant with the Data Protection Laws.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Parties under Data Protection Laws and the Parties agree to comply with those obligations and duties.
- 14.3. The Parties acknowledge that the Contractor may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Contractor acts as the Data Processor and the Authority acts as the Data Controller.
- 14.4. The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Contractor should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

- 15.1 The Contractor acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Contractor shall:
- (a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that the Contractor receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Contractor's possession or control. The information must be provided within 5 Working Days (or

such other period as the Authority may reasonably specify) in the form that the Authority requires.

- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

- 15.2 If the Request for Information appears to be directed to information held by the Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.
- 15.3 If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Contractor acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Contractor or the Framework Agreement:
 - 15.4.1 in certain circumstances without consulting the Contractor, or
 - 15.4.2 following consultation with the Contractor and having taken its views into account.
- 15.5 Where 15.4.1 applies the Authority must take reasonable steps, if practicable, to give the Contractor advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Contractor after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 15.6 Where a Request for Information concerns Contractor Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Contractor before disclosing it pursuant to a Request for Information.
- 15.7 The Contractor acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Contractor Sensitive Information. However, if the Authority believes that publication of any element of the Transparency Information should be treated as Contractor Sensitive Information the Authority may, in its discretion exclude such information from publication.
- 15.8 Notwithstanding any other provision of this Agreement, the Contractor hereby gives consent for the Authority to publish to the general public, the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 15.9 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Contractor.
- 15.11 The Contractor agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the

Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information,(subject to clause 17.3.3) publish such Information. The Contractor shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Authority Protected Information

16.1. The Contractor must:

- 16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
- 16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
- 16.1.3. only disclose the Authority Protected Information to such Contractor Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and
- 16.1.4. not disclose any Authority Protected Information without the prior written consent of the Authority.

16.2. The Contractor must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Contractor must fully co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.

16.3. Clause 16 does not apply to the extent that:

- 16.3.1. disclosure is required by law or by order of any competent court or tribunal;
- 16.3.2. information is in the possession of the Contractor without restriction as to its disclosure prior to its disclosure by the Authority;
- 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
- 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
- 16.3.5. information is independently developed without access to the Authority Protected Information.

16.4 Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).

17. Contractor Sensitive Information

17.1. The Authority must:

- 17.1.1. treat all Contractor Sensitive Information as confidential and safeguard it accordingly; and
- 17.1.2. not disclose any Contractor Sensitive Information to any other person without the prior written consent of the Contractor.

- 17.2. Clause 17.1 does not apply to the extent that:
- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Contractor;
 - 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 17.2.5. information is independently developed without access to the Contractor Sensitive Information.
- 17.3. Nothing in this Framework Agreement prevents the Authority from disclosing any Contractor Sensitive Information or any other information concerning the Contractor or the Framework Agreement:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Framework Agreement; or
 - 17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4. The Contractor consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Contractor to inform its decisions concerning redaction (for example to exclude any Contractor Sensitive Information) but any decisions taken by the Authority are final and conclusive.

18. Audit

- 18.1. The Contractor must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Contractor must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.

19. Publicity

The Contractor must not make any press announcement or otherwise publicise the Framework Agreement in any way, except with the written consent of the Authority.

SECTION C

20. Key Individuals

- 20.1. The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services to the Authority.
- 20.2. The Key Individuals must not be released from providing the Services without the approval of the Authority, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Contractor must immediately give notice of that fact to the Authority.
- 20.3. The Contractor may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
- 20.3.1. appropriate arrangements must be made to minimise any adverse impact on the Framework Agreement which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
- 20.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 20.4. Any proposed replacement to a Key Individual is subject to the approval of the Authority. Subject to the Contractor's compliance with this clause, the Authority must not unreasonably withhold such approval.

21. Offers of Employment

- 21.1. For the duration of the Framework Agreement and for a period of 12 months thereafter the Contractor must not employ or offer employment to any of the Authority's employees who have been associated with the Framework Agreement and/or the contract management of the Framework Agreement without the Authority's prior approval.
- 21.2. This clause does not prevent the Contractor from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Authority's employees.

22. Staff transfer at commencement

- 22.1. The Parties agree that the commencement of the provision of the Services by the Contractor does not involve a Relevant Transfer.

- 22.2. The Parties agree that the commencement of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Incoming Employees.
- 22.3. The Contractor is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 22.4. The Contractor indemnifies the transferor (as defined in TUPE) against all Employee Liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.3.

23. Information about Employees

- 23.1. The Authority may at any time by notice require the Contractor to disclose such information as the Authority may require to the Authority or at the direction of the Authority to any prospective Replacement Contractor relating to the manner in which the Services are organised or information about any employee who is wholly or mainly assigned to carrying out activities in provision of the Services whether employed by the Contractor or Affiliate of the Contractor or a sub-contractor ("Assigned Employee"). The information required by the Authority about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 23.2. The Contractor must disclose by notice all such information as is required by the Authority under clause 23.1, within such reasonable period specified by the Authority. The Contractor acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.
- 23.3. The Contractor warrants for the benefit of the Authority and any Replacement Contractor that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Authority may at any time require the Contractor to confirm whether information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
- 23.4. The Authority shall be permitted to use and disclose the information provided by the Contractor under this clause for the purpose of informing any prospective Replacement Contractor.

24. Staff transfer on expiry or termination

- 24.1. The Parties agree that the ceasing of the provision of the Services by the Contractor does not involve a Relevant Transfer.
- 24.2. The Parties agree that the ceasing of the provision of the Services by the Contractor may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.3. The Contractor shall comply and shall procure that each Affiliate of the Contractor and each sub-contractor shall comply with all of its obligations under TUPE and shall perform and discharge and procure that each Affiliate of the Contractor and each sub-contractor shall perform and discharge all its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 24.4. The Contractor indemnifies the Authority and any Replacement Contractor against any and all Employee Liabilities which the Authority or any Replacement Contractor may suffer as a result of or in connection with:
- 24.4.1. the provision of information pursuant to clause 24;

- 24.4.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Relevant Transfer arising directly or indirectly from any act, fault or omission of the Contractor or any Affiliate of the Contractor or any sub-contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 24.4.3. any failure by the Contractor or any Affiliate of the Contractor or any sub-contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE;
 - 24.4.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by the Contractor or any Affiliate of the Contractor or any sub-contractor to comply with any legal obligation to such trade union, body or person;
 - 24.4.5. any act or omission of the Contractor or any Affiliate of the Contractor or any sub-contractor whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer;
 - 24.4.6. the breach or non-observance by the Contractor or any Affiliate of the Contractor or any sub-contractor occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Replacement Contractor is contractually obliged to honour;
 - 24.4.7. any claim made by or in respect of any person employed by the Contractor or any Affiliate of the Contractor or any sub-contractor other than an Outgoing Employee for whom it is alleged the Authority or a Replacement Contractor may be liable by virtue of this Framework Agreement or TUPE.
- 24.5. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.6. The Contractor indemnifies the Authority and any Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Authority or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.5.
- 24.7. The Contractor shall and shall procure that each Affiliate of the Contractor and each sub-contractor shall promptly provide to the Authority and any Replacement Contractor in writing such information as is necessary to enable the Authority and/or the Replacement Contractor to carry out their respective duties under regulation 13 of TUPE as the case may be.
- 24.8. The Contractor shall provide and shall procure that each Affiliate of the Contractor and each sub-contractor shall provide all reasonable co-operation and assistance to the Authority and any Replacement Contractor to ensure the smooth transfer of the Outgoing Employees including without prejudice to the foregoing generality providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.

- 24.9. The Contractor warrants to the Authority that during the period of 6 months immediately prior to the expiry of the Framework Agreement it will not (and will ensure that any Affiliate of the Contractor and any sub-contractor will not) without the prior consent of the Authority:
- 24.9.1 increase the total employment costs of the Assigned Employees in any material way;
 - 24.9.2 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt pay) of any Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services;
 - 24.9.3 terminate or give notice to terminate the employment or engagement of any Assigned Employee other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
 - 24.9.4 transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - 24.9.1.1. was planned as part of the individual's career development;
 - 24.9.1.2. takes place in the normal course of business; and
 - 24.9.1.3. will not have any adverse impact upon the delivery of the Services by the Contractor provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services.
 - 24.9.5 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior to the expiry of the Framework Agreement.

25. Security

- 25.1 The Contractor must comply with the Authority's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Contractor from time to time.
- 25.2 The Contractor must notify the Authority of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION D

26. Parties' pre-existing Intellectual Property Rights

Except as expressly provided for in the Framework Agreement, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Framework Agreement.

27. Specially Created Intellectual Property Rights

- 27.1. All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Framework Agreement belong to the Authority.

- 27.2. The Contractor assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor must execute all documentation necessary to effect this assignment.

28. Licences of Intellectual Property Rights

- 28.1. The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to enjoy the benefit of the Services.
- 28.2. The Contractor grants to the Authority a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 28.1 above (Specially Created Intellectual Property Rights).
- 28.3. The Contractor must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Framework Agreement grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

29. Claims relating to Intellectual Property Rights

- 29.1. The Contractor must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Framework Agreement and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 29.2. The Contractor must promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 29.3. Where a claim to which this clause applies is made, the Contractor must, at its expense, use its best endeavours to:
- 29.3.1. modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
 - 29.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Authority, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 29.4. The Contractor must not without the consent of the Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

30. Assignment and Change of Control

- 30.1. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Authority.
- 30.2. The Contractor must notify the Authority:

- 30.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
- 30.2.2. immediately following a change of Control that has occurred; and
- 30.2.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.
- 30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignation, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.
- 30.4. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.5, affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 30.5. If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 30.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Authority in clauses 42 (Termination Rights) and 43 (Termination on Insolvency and Change of Control) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof with the prior consent in writing of the Contractor.
- 30.6. The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

31. Sub-Contracting

- 31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2. The Contractor may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Framework Agreement. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

- 31.3. Where the Contractor enters into a sub-contract the Contractor must ensure that a provision is included which:
- 31.3.1. requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Contractor in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;
 - 31.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;
 - 31.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 31.3.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.
- 31.4. The Contractor shall include in every sub-contract:
- 31.4.1 a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 42.4 occur; and
 - 31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.
- In this Clause 31.4, 'sub-contract' means any contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement.
- 31.5. Where requested by the Authority, copies of any sub-contract must be sent by the Contractor to the Authority as soon as reasonably practicable.
- 31.6. Where the Contractor proposes to enter into a sub-contract it must:
- 31.6.1 advertise its intention to do so in at least one trade journal, at least one newspaper circulating in Scotland and the Public Contracts Scotland Portal; and
 - 31.6.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

32. Amendment

- 32.1. The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Contractor may not unilaterally amend the Framework Agreement
- 32.2. Clause 7 (Price) makes special provision for the variation of the Pricing Schedule.

SECTION E

33. Warranties and Representations

The Contractor warrants and represents that:

- 33.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Contractor;
- 33.1.2. in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 33.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 33.1.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;
- 33.1.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and
- 33.1.8. as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

34. Indemnity

Without prejudice to any rights or remedies of the Authority, the Contractor will indemnify the Authority against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities which may arise out of, or in consequence of, any Default of the Contractor, its agents and employees.

35. Limitation of Liability

- 35.1. Neither Party is liable to the other Party under the Framework Agreement for any:
- 35.1.1. loss of profits, business, revenue or goodwill; or
 - 35.1.2. indirect or consequential loss or damage.
- 35.2. But clause 35.1 does not exclude any liability of the Contractor for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Contractor.
- 35.3. The liability of either Party under the Framework Agreement for Defaults is limited to £3,000,000.
- 35.4. But neither Party excludes or limits liability to the other Party for:
- 35.4.1. death or personal injury caused by its negligence;
 - 35.4.2. misrepresentation;
 - 35.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

36. Insurance

- 36.1. The Contractor must effect and maintain with a reputable insurance company:
- 36.1.1. public liability insurance in the sum of not less than REDACTED **sterling () for each and every claim;**
 - 36.1.2. professional indemnity insurance in the sum of not less REDACTED **() for each and every claim** and
 - 36.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 36.2. Such insurance must be maintained for the duration of the Framework Agreement and for a minimum of 5 years following the expiry or termination of the Framework Agreement.
- 36.3. The Contractor must give the Authority, on request, a broker's verification of insurance to demonstrate that the appropriate cover is in place.

37. Dispute Resolution

- 37.1. The Parties must attempt in good faith to resolve any dispute or difference between them arising out of or in connection with the Framework Agreement, including any question regarding its existence, validity or termination, in accordance with the Management Arrangements.
- 37.2. Any dispute or difference arising out of or in connection with this Framework Agreement, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, or failing agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of arbitration shall be Scotland. The language used in the arbitral proceedings shall be English.
- 37.3. Any arbitration under clause 37.2 is subject to the Arbitration (Scotland) Act 2010.

38. Severability

If any provision of the Framework Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Framework Agreement continue in full force and effect as if the Framework Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

39. Waiver and Cumulative Remedies

- 39.1. Any failure of either Party to insist upon strict performance of any provision of the Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Framework Agreement.
- 39.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 12 (Notices).
- 39.3. The rights and remedies provided by this Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

40. Force Majeure

- 40.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Framework Agreement to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Framework Agreement for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Framework Agreement for a period in excess of 3 Months either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2. Any delay or other failure by the Contractor in performing its obligations under the Framework Agreement which results from any failure or delay by a Contractor Representative is only to be regarded as due to Force Majeure if that Contractor Representative is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 40.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 40.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 40.4. The only events that afford relief from liability for failure or delay under the Framework Agreement are Force Majeure events or failure of the Authority/Public Body to satisfy its obligations under the contract.

41. Disruption

- 41.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other Contractor employed by the Authority.
- 41.2. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.
- 41.3. In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Framework Agreement.

41.4 If the Contractor's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority may by notice terminate the Framework Agreement with immediate effect.

42. Termination Rights

42.1. The Authority may terminate the Contractor's interest in the Framework Agreement by notice to the Contractor with immediate effect if the Contractor commits a Default and if:

42.1.1. the Contractor has not remedied the Default to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;

42.1.2. the Default is not in the opinion of the Authority, capable of remedy; or

42.1.3. the Default is a material breach of the Framework Agreement.

42.2. The Authority may also terminate the Framework Agreement:

42.2.1. in accordance with any provision of the Schedules;

42.2.2. in accordance with any provisions of the Standard Terms of Supply relating to the following activities:

42.2.2.1. entering, attending or occupying the Authority's premises;

42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Contractor's property or information technology systems;

42.2.2.3. having dealings with the Authority's employees, Contractors, suppliers or contractors;

42.2.2.4. soliciting the Authority's employees;

42.2.2.5. making representations or giving professional advice to the Authority;

42.2.2.6. generating information for or giving information to the Authority;

42.2.2.7. receiving information from or holding information on behalf of the Authority; and

42.2.2.8. carrying out publicity or marketing activities;

42.2.3. where a Call-off Contract with the Contractor under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.

42.2.4. where, at any time before the term of the Framework Agreement, the Contractor or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.

42.3 The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.

42.4 The Authority may terminate the Contract in the event that:

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
- (b) the Contractor has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

42.5 The Authority may also terminate the Framework Agreement in the event of a failure by the Contractor to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

43. Termination on Insolvency and Change of Control

43.1. The Authority may terminate the Framework Agreement with immediate effect by notice where in respect of the Contractor:

43.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

43.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);

43.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;

43.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

43.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;

43.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

43.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;

43.1.8. a debt relief order is entered into; or

43.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.

43.2. The Authority may terminate the Framework Agreement by notice with immediate effect within 6 months of:

- 43.2.1. being notified that a change of Control has occurred in accordance with clause 30 (Assignment and Change of Control); or
 - 43.2.2. where no such notification has been given, the date that the Authority becomes aware of the change of control.
- 43.3. But the Authority may not terminate the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Authority.

44. Exit Management

The Contractor shall perform its relevant Exit Management obligations as part of the Framework whether applicable on either the expiry or early termination of this Agreement.

- 44.1 The Contractor agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Authority may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 37 (Dispute Resolution). If a court of competent jurisdiction finds that the Contractor has breached (or attempted or threatened to breach) any such obligation, the Contractor agrees that without any additional findings of irreparable injury, or other conditions to interdict, the Contractor shall not oppose the entry of an appropriate order compelling performance by the Contractor and restraining the Contractor from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 44.2 A draft of the Exit Plan shall be produced by the Contractor and supplied to the Authority within three (3) months after the Commencement Date and shall include or address the matters specified in Clause 44.3. The Authority shall provide to the Contractor the Authority's comments on the plan within one (1) month of the Authority's receipt of the plan. The Contractor shall take into account the comments and suggestions of the Authority and shall issue the final version of the Exit Plan to the Authority within ten (10) Working Days of receipt of the Authority's comments.
- 44.3 The Contractor shall throughout the period of the Agreement review, maintain and continuously update the Exit Plan which shall include:
 - 44.3.1 the activities required to enable the Authority to re-tender the Authority Requirements and/or the provision of the Services;
 - 44.3.2 the activities necessary to support any Replacement Contractor or the Authority in carrying out any necessary due diligence relating to all or part of the Services;
 - 44.3.3 details of the Exit Management to be provided by the Contractor prior to the Exit Management Date;
 - 44.3.4 support for the Replacement Contractor or the Authority during their preparation of any relevant plan for the transition of the System to the Replacement Contractor or Authority, including prior to and during such transition period;
 - 44.3.5 the maintenance of a 'business as usual' environment for the Authority during the period when Exit Management obligations are applicable; and
 - 44.3.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Contractor or the Authority.
- 44.4 No amendment of the Exit Plan shall be made without prior written consent of the Authority.

45. Compliance with the Law and Changes in the Law

- 45.1 The Contractor shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Contractor's agents, employees and representatives whomsoever comply with the Law.
- 45.2 Without prejudice to the generality of clause 45.1 above (general compliance with the Law provision), the Contractor must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.
- 45.3 The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 45.1 above by all of their servants, employees, agents, consultants and sub-contractors.
- 45.4 If the cost to the Contractor of the performance of its obligations under the Framework Agreement shall be increased or reduced by reason of the making after the date of the Framework Agreement of any relevant Law that shall be applicable to the Framework Agreement the amount of such increase shall be borne by the Contractor.

46. Offences

- 46.1. The Contractor must not commit or attempt to commit any offence:
 - 46.1.1. under the Bribery Act 2010;
 - 46.1.2. of fraud, uttering, or embezzlement at common law; or
 - 46.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 46.2. Breach of clause 46.1 is a material breach for the purposes of clause 42 (Termination Rights).

47. Tax Arrangements

- 47.1 Where the Contractor is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 47.2 Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this Framework Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 47.3 The Authority may, at any time during the term of this Framework Agreement, request the Contractor to provide information which demonstrates how the Contractor complies with sub-clauses 47.1 and 47.2 above or why those clauses do not apply to it.
- 47.4 A request under sub-clause 47.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 47.5 The Authority may supply any information which it receives under clause 47 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 47.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of this clause 47 by all of their servants, employees, agents, consultants and sub-contractors.
- 47.7 Where the Contractor enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Contractor must ensure that a provision is included which is in the same terms as this clause 47 subject only to modification to refer to the correct designation of the equivalent party as the Contractor.

48. Blacklisting

The Contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Authority to terminate the Framework Agreement.

49. Conflicts of interest

- 49.1. The Contractor must take appropriate steps to ensure that the Authority is not placed in a position where, in the reasonable opinion of the Authority, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Authority under the Framework Agreement.
- 49.2. The Contractor must disclose by notice to the Authority full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 49.3. Breach of this clause by the Contractor is a material breach for the purposes of clause 42 (Termination Rights).

50. Consequences of Expiry or Termination

- 50.1. Where the Authority terminates the Contractor's interest in the ; Framework Agreement under clause 42 (Termination Rights) and makes other arrangements for the supply of Services, the Contractor indemnifies the Authority against all costs incurred in making those arrangements.
- 50.2. The termination of this Framework Agreement in accordance with clause 42 (Termination Rights) and/or clause 43 (Termination on Insolvency and Change of Control) or its expiry shall not affect the accrued rights of either party.
- 50.3. Following the service of a termination notice, the Contractor shall continue to perform its obligations in accordance with the provisions of this Framework Agreement until termination.
- 50.4. The following provisions survive the expiry or termination of this Framework Agreement
 - 50.4.1. clause 1 (Definitions and Interpretation);
 - 50.4.2. clause 8 (Award Procedures);
 - 50.4.3. clause 10 (Official Secrets Acts);
 - 50.4.4. clause 13 (Recovery of Sums Due);
 - 50.4.5. clause 14 (Data Protection);
 - 50.4.6. clause 15 (Transparency and Freedom of Information);
 - 50.4.7. clause 16 (Authority Protected Information);
 - 50.4.8. clause 17 (Contractor Sensitive Information);
 - 50.4.9. clause 18 (Audit and Records Management);
 - 50.4.10. clause 19 (Publicity);
 - 50.4.11. clause 21 (Offers of Employment);
 - 50.4.12. clause 23 (Information about Contractor Employees);
 - 50.4.13. clause 26 (Parties pre-existing Intellectual Property Rights);
 - 50.4.14. clause 27 (Specially created Intellectual Property Rights);
 - 50.4.15. clause 28 (Licences of Intellectual Property Rights);
 - 50.4.16. Clause 29 (Claims relating to Intellectual Property Rights);
 - 50.4.17. clause 33 (Warranties and Representations);
 - 50.4.18. clause 34 (Indemnity);
 - 50.4.19. clause 37 (Dispute Resolution Procedure);
 - 50.4.20. clause 39 (Waiver and Cumulative Remedies);
 - 50.4.21. clause 47 (Tax arrangements);
 - 50.4.22. this clause 50 (Consequences of Termination); and

50.4.23. clause 52 (Governing Law and Jurisdiction).

50.5. Immediately upon termination of the Framework Agreement for any reason whatsoever the Contractor shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a Replacement Contractor of the Services previously performed by the Contractor under the Framework Agreement. The Contractor shall be entitled to charge for such termination services in accordance with clause 7 (Price).

50.6. On expiry or termination of the Framework Agreement the Contractor must:

50.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and

50.6.2 destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession.

51. Entire Agreement

51.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).

51.2 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:

51.2.1 the clauses of this Framework Agreement;

51.2.2 the Standard Terms of Supply;

51.2.3 the other Schedules; and

51.2.4 any other document referred to in the clauses of this Framework Agreement.

52. **Governing Law and Jurisdiction**

This Framework Agreement is governed by and interpreted in accordance with Scots law and, subject to clause 37 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the 35 preceding pages together with the 5 Schedules annexed hereto are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of Mott MacDonald Ltd REDACTED

At.....	At.....
On.....	On.....
Signature.....	Signature.....
Full name	Full name.....
Position	Position.....
Address.....	Address.....

In the presence of REDACTED

Signature.....
Full name

Address.....

In the presence of REDACTED

Signature.....
Full name.....

Address.....

This and the following 14 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 1 – Statement of Requirements

1. Overview

1.1 The Contractor shall raise awareness of Authority's NDEE Framework(s); assist Framework Public Bodies to call off the Contractor's services under it and run their projects and to support Authority to manage a successful NDEE Framework(s).

1.2 The core work areas that it is anticipated the Contractor will contribute towards are detailed in paragraph 4 (Core Work Areas) below.

1.3 The Contractor must have the capacity to deliver or to procure via its supply chain the delivery of multiple services across all regions of Scotland including the Highlands and Islands throughout the period of the Framework Agreement.

2. Objectives and outcomes

2.1. Objectives

The overarching aim of the Contractor is to support Framework Public Bodies to secure value for money through works and services that will: maximise energy savings, cut fuel bills and reduce carbon emissions in non-domestic public sector buildings in Scotland, as set out in the Section A of this Framework Agreement.

2.2. Outcomes

The Contractor's performance will be measured against the following Key Performance Indicators (KPIs) as detailed in Schedule 1 -

- Framework Public Body call-off contracts supported
- Carbon Saved
- Capital Invested
- Project Delivery
- Substantive Complaints Upheld

3. Overview of Core Service

3.1 Core work areas that it is anticipated the Contractor will contribute towards include the following: -

- **Marketing and Engagement** – on-going promotion of Authority's NDEE Framework(s), establish positive relationships with Framework Public Bodies in order to establish a pipeline of projects; set out the corporate approvals and senior management buy-in required to access the Contractor's services and facilitate formal sign up to them. This includes, but is not limited to running annual events for public bodies to attend, holding contractor forums on a quarterly basis and attending other conferences and events to promote the NDEE Framework(s).
- **Prepare** – assist Framework Public Bodies /users to determine user specific requirements, develop business cases, support Framework Public Bodies and other users in considering funding and financing opportunities and most appropriate procurement route under the NDEE Framework. This will include reviewing Framework Public Bodies' long lists of buildings and associated data to assist in the identification of a short list of buildings for inclusion in the tender under the NDEE Framework(s) and guiding Framework Public Bodies on the gathering

- of more in depth, relevant data about short listed buildings for issue with the Invitation to Mini Competition (“ITMC”). This will include undertaking high level energy audits.
- **Procure** - assist Framework Public Bodies to issue tender notices and ITMC packs; to run their mini competitions to select an NDEE Framework Contractor; provide support on tender evaluations and manage the completion of development contracts and Energy Performance Contracts (“EnPC”) - including requirements and support required for D&B and DBFM contracts - for the purposes of the NDEE Framework(s)
- **Save** – facilitate the successful delivery of the contracts entered into pursuant to the Authority’s NDEE Framework and provide technical quality assurance and guidance associated with these contracts. Support the achievement of high performance of the Authority’s NDEE Framework(s). The Contractor will support Framework Public Bodies to manage their NDEE Framework Contractors to complete their construction phases successfully; ensure the requisite Measurement and Verification (“M&V”) processes are completed, leading to Framework Public Bodies (or any other third parties making payments for the Framework Public Bodies) making the appropriate payments, as follows:
 - a) For Design and Build (“D&B”) contracts to make Milestones 1 and 2 payments (in whatever structure agreed between the Framework Public Body and Contractor)
 - b) For Design Build Finance and Maintain (“DBFM”) contracts to make payments in accordance with the relevant payment mechanism
 - c) For hybrid D&B/DBFM contracts to make payments in accordance with Milestones and the relevant payment mechanism for assets and services respectively, as required
- **Programme Support** –maintain and continuously improve, as appropriate, the existing range of processes to support Contractor’s activities; the existing range of templates, standardised documents and toolkits and develop and maintain a monitoring framework and database
 Note: all changes to process or documentation must be approved by the Authority prior to being made “live”.

3.2 Each Framework Public Body will be provided with a bespoke support service by the Contractor, which could range from part of a single core service, through to all core services, based on the needs of each Framework Public Body.

3.3 The Contractor has in its Tender submission defined the deliverables and outputs it will produce to deliver all services detailed in this Specification. However, the Authority and Framework Public Bodies will not be bound to engage the Contractor to deliver any or all of these services.

Further details on each of these core work areas are provided below.

4. Core Work Areas

Marketing and Engagement

4.1 The Contractor shall be responsible for engaging and keeping Framework Public Bodies interested in the Authority’s NDEE Framework(s) and signed up to receiving the Contractor’s support, using the NDEE Framework(s), proceeding into the project preparation phase and initiating further projects and project phases.

Tasks and responsibilities include the following:

- i). General promotion and marketing of the NDEE Framework(s). This will include:
 - Following up referrals from Scottish Government Low Carbon Team , including: -

- enquiries directly from Framework Public Bodies
 - enquiries via Scottish Government's partnering organisations: Scottish Futures Trust; Zero Waste Scotland; Highlands and Islands and Scottish Enterprise
 - enquiries via other stakeholders
 - Undertaking on-going promotion, marketing and communications to increase awareness of the Authority's NDEE Framework(s), including:-
 - engaging with organisations individually, and more broadly through newsletters, social media, websites and events
 - engaging with sector leads, membership organisations, procurement bodies, specialist / professional networks etc., such as: -
 - Scottish Cities Alliance
 - Scottish Energy Officers Network
 - Convention of Scottish Local Authorities
 - Scottish Funding Council
 - Advanced Procurement for Universities and Colleges
 - Scotland Excel
 - Association of Public Sector Excellence, Scotland
 - Energy Efficient Scotland
 - Salix Finance Limited
 - organising annual events to share information and experience for the NDEE Framework Contractors and Framework Public Bodies. (*This is expected to include facilitating networking and sharing of best practice between participating organisations*)
 - Identifying applicable organisations that have not yet taken up the Authority's NDEE Framework(s) and the Contractor's support and undertaking targeted marketing activity,
 - Establishing positive and long-lasting relationships with existing Framework Public Bodies to enable additional phases of current projects and the development of new projects
 - Generating opportunities for participating organisations to share their experiences in the form of case studies which can be used to promote the benefits of the framework
 - A programme of formal engagement with Salix Finance Ltd (or another body as applicable) to ensure suitable Salix funded projects are delivered through the NDEE Framework(s).
- ii). Informing, persuading and Recruiting new Framework Public Bodies to participate in the NDEE Framework(s) programme and achieving agreement from existing Framework Public Bodies for further phases of works supported by the Authority's NDEE Framework(s) and the Contractor
- Informing Framework Public Bodies about the Authority's NDEE Framework(s) and the Contractor and the Services, including energy performance contracting, and about the financing mechanisms available to enable organisations to fund projects
 - Conducting meetings and engaging more widely with decision-makers at all levels within Framework Public Bodies
 - Advising Framework Public Bodies of the levels of internal commitment, corporate approvals and preparatory data gathering they must achieve to be eligible for the Contractor's services

- Making Framework Public Bodies aware of the support available through the Authority to achieve this level of preparedness
 - Gaining formal commitment to take up the Contractor support expressed by Framework Public Bodies by way of submitting a pricing schedule and call off template to the SG Contract Manager
 - Direct Framework Public Bodies to Salix Finance Limited for advice on loan funding. and the Call-off Contract template to engage Contractor's Services, where appropriate
- iii). Reporting to the Authority on marketing and engagement activities including through:
- Maintaining an up to date database of prospective Framework Public Bodies, contact made with them by the Contractor and their progress towards commitment and eligibility to access the Contractor's Services
 - Marketing and engagement reports provided once every six months in a form approved by the Authority.
 - Annual marketing events

Prepare

4.2 The Contractor shall be responsible for supporting Framework Public Bodies to prepare for calling off under the NDEE Framework(s).

4.2.1 Client Preparation

Tasks and responsibilities include the following:

- Review Framework Public Bodies' corporate approvals and preparatory data to assess their eligibility for the NDEE Framework Contractor's services
- Enter into a call-off contract for delivery of NDEE Framework Contractor's bespoke services in accordance with SG Contract Manager and Framework Public Bodies' approvals
- Scope out and agree an appropriate plan of Contractor support to meet the Framework Public Bodies' requirements, including: -
 - gaining a more detailed understanding of their needs, aims, and key drivers and how the Contractor can best support these
 - resourcing appropriately to meet challenging project time frames arising from Framework Public Bodies' key priorities, such as securing approvals within requisite committee cycles and carrying out retrofit NDEE works in schools, or colleges or NHS premises during appropriate periods,
- Prepare and educate Framework Public Bodies, influencing and managing their expectations, to ensure their full understanding of and buy in to all stages and elements of the NDEE Framework process and the NDEE Framework Contractor's services

4.2.2 Project Preparation

Tasks and responsibilities include the following:

- Assisting Framework Public Bodies in determining buyer-specific requirements for each project and supporting users in considering the range of Energy Conservation Measures

("ECMs") to be installed to best meet the Framework Public Bodies' motivations and finance/risk appetite

- Assisting Framework Public Bodies to select from a long list, the buildings and assets to be included in each project, ensuring that the most appropriate buildings are incorporated to enable the project to be successful. This will include guiding them on the preparation of building data and the gathering of key baseline energy data. It may include incorporating asset management and planned maintenance priorities in projects calling off the NDEE Framework(s) to enable facility-wide retrofit
- Collating the information gathered into an appropriate format.

4.2.3 Developing Business Cases

Tasks and responsibilities include the following:

- Assisting Framework Public Bodies to establish the percentage of energy savings to be achieved; the capital investment and the project payback period; support on the most appropriate approach for asset performance, savings performance and asset ownership; identifying performance and commercial/finance/funding structures and the direct benefits and co-benefits to the organisation
- Economic modelling, carbon accounting and other analyses will be carried out to meet Framework Public Bodies' reasonable requirements. These could be expected to include the application of variable costs arising from energy use, its taxation and incentives; carbon emission factors; persistence factors; inflation; discount rates and the calculation of simple payback period; net present values and whole life costs.
- Supporting Framework Public Bodies on funding and financing opportunities, supporting finance and funding applications, facilitating stakeholder partnerships and supporting funding negotiations to facilitate the most suitable funding and financing sources for each project. The Contractor will not be expected to have the ability to provide full financial solution support, but it must be capable of explaining financial aspects of NDEE, confidently answering finance-related questions, having knowledge of general client financing issues and highlighting potential options. This support must cover both D&B EnPCs and DBFM EnPCs and take cognisance of the likelihood of involvement from the Authority and Scottish Futures Trust, particularly in relation to DBFM ENPCs. Note that none of the above will constitute formal financial advice and Framework Public Bodies must seek this advice independently
 - Assisting Framework Public Bodies in securing approval to proceed, by engaging relevant stakeholders in their organisations. These may include asset management, finance, and procurement teams as well as senior stakeholders.
 - All tools developed for the production of business cases will become the property of the Authority, as set out in 4.5 (Programme Support).

4.2.4 Outputs

4.2.4.1 The Contractor will support each Framework Public Body to produce all outputs and Deliverables that they require to call off the NDEE Framework(s), procure and manage a successful NDEE project.

4.2.4.2 This requirement will include ensuring Framework Public Bodies are able to provide the underpinning information and knowledge upon which their Outline Business Cases ("OBC") are to be based. It is essential that all Framework Public Bodies base their decision to call off the NDEE Framework(s) upon a robust OBC. The Contractor will develop an effective approach to ensuring that this is achieved.

4.2.4.3 The Contractor shall build on, and continuously improve the current robust and reliable methodology used to assist Framework Public Bodies to establish and communicate the relevant Framework Public Body's Minimum Requirements ("MRS") (both in relation to D&B EnPCs and DBFM EnPCs). The Contractor will assist Framework Public Bodies to express their Authority's Minimum Requirements ("AMRs") in its Statement of Requirements. This may include, but is unlikely to be limited to the following metrics: -

- Energy cost reduction (%)
- minimum avoided carbon emissions (tCO_{2e})
- capital cost (£)
- net present value (NPV)
- net present value: capital ratio
- annual energy cost avoidance (£)
- simple payback period (years)
- programme requirements

4.2.5 The Contractor will determine an appropriate format to set out the key data and assumptions that are available to the NDEE Framework Contractors when developing their proposals for the delivery of the NDEE project for the Framework Public Body, including, but not limited to the following elements:-

- Building Data
- Energy Data
- Desktop Energy Review
- Procuring Authority Energy Assessments and Project Register

Procure

4.3 This area of work focuses upon supporting Framework Public Bodies to call off the Authority's NDEE Framework(s). The Contractor will formulate a robust approach that will support Framework Public Bodies to secure value for money and identify the most economically advantageous tenders under the NDEE Framework(s) mini-competitions for their projects, in full compliance with the description of mini-competition processes; the requirements of the NDEE Framework(s) and the NDEE Framework(s) agreement between Scottish Government and the NDEE Framework Contractors.

4.3.1 This requirement will involve supporting the procurement process under the NDEE Framework(s); advising on specification and procurement documentation and tender evaluation, including, but limited to the following tasks:-

- Providing guidance on producing mini-competition specifications for a range of different retrofit measures and property types
- Providing guidance on managing contractors
- Answering any questions from existing and target Framework Public Bodies regarding the NDEE Framework(s)
- Facilitating technical quality assurance and guidance on building audits and investment grade proposals or detailed design including assisting Framework Public Bodies in designing an approach to technical quality assurance and guiding them in its execution, as required.
 - This may include providing feedback on the types and appropriateness of measures and works and optimisation services and clarifying client responsibilities
- Supporting the NDEE Framework(s) mini-competition processes, including tendering, clarification, evaluation and supplier selection. This may range from light touch to in-depth support, depending on the Framework Public Bodies' requirements and the projects' sizes

- Progressing agreement to detailed design stage, signature of development contracts and completion of EnPC as appropriate in relation to D&B EnPCs and DBFM EnPCs in readiness for commencement of NDEE works or optimisation services

4.3.2 Key Tasks

The Contractor will support Framework Public Bodies to successfully complete the following stages of a NDEE Framework(s) mini-competition in compliance with both the Authority's NDEE Framework mini-competition process and the Framework Public Bodies' procurement policies and practices: -

- ITMC Pack, volumes 1 to 3.
- Supporting and providing guidance to Framework Public Bodies on the design and execution of compliant tender evaluation processes for both ITMC proposals and investment grade proposals
- Assisting Framework Public Bodies to complete the template development contract that forms part of volume 2 of the ITMC pack and its technical schedule parts and guidance documents form part of volume 3 of the ITMC pack
- Assisting Framework Public Bodies to develop appropriate EnPCs based on the following template EnPCs as appropriate, the EnPC DBFM forming part of the NDEE Framework ITT Volume 2 and/or the EnPC D&B that forms part of volume 2 of the ITMC pack and its technical Schedule Parts and guidance documents that form part of volume 3 of the Pack.

Save

4.4 Overview

4.4.1 The Contractor shall be responsible for facilitating the successful delivery of contracts and, in particular, the successful operation of the NDEE Framework(s) and its energy performance contracting approach. The Contractor will assist Framework Public Bodies in designing an approach to technical quality assurance and guiding them in its execution. The Contractor will not conduct quality assurance of the works at a project level, as this is the responsibility of, and will be overseen by, Framework Public Bodies. The Contractor's role in facilitating high quality outcomes at the NDEE Framework level is set out in the following paragraph 4.8 (Programme Support)

4.4.2 Contracts for retrofit projects will normally be managed by Framework Public Bodies (the Contractor may be requested to act as Project Manager on some projects), with the Contractor's tasks and responsibilities including the following:

- Supporting Framework Public Bodies from contract signature with an NDEE Framework Contractor through to final payment and contract close. This will include:
 - Providing advice on contract management to the Framework Public Body and troubleshooting problems with contracts between parties
 - Providing support to the Framework Public Body during the implementation of works or optimisation services.
 - This includes troubleshooting delivery problems, such as problems with contracts or NDEE Framework Contractors and their sub-contractors
 - Acting as mediator between the Framework Public Bodies and NDEE Framework Contractor.

- Supporting the achievement of good value for money and high performance of the NDEE programme between the Framework Public Body and the NDEE Framework Contractor.
- Undertaking close out reviews or similar after works or optimisation services have been completed
- Supporting the Framework Public Body to determine the effectiveness and compliance of the outputs of the Contractor's commissioning and handover at the close of the construction phase
- Reviewing NDEE Framework Contractors' execution of M&V processes, checking compliance with both Schedule Part 3 of the EnPC and their M&V Plan produced during the procurement stage of the NDEE projects, through use of an independent M and V professional.
- Supporting Framework Public Bodies' performance management of NDEE Framework Contractors and associated decisions to make or withhold payments, such as Milestone 1 and 2 payments and payments made under any relevant payment mechanism set out in the DBFM and hybrid DBFM-D&B template EnPCs.
- Assessment of Framework Public Bodies' satisfaction with the NDEE service provided and a review of their needs for future support
- Undertaking lesson learned workshops and applying these to deliver continuous improvements

Programme Support

4.5 The Contractor shall have the capacity and capability of promoting, managing and developing the Authority's NDEE Framework(s). This will include the following tasks and responsibilities:

4.5.1 Managing the Programme

- Managing the NDEE Framework(s) so that it has high usage levels, good supplier participation and positive client feedback, including:
 - managing the relationship with Framework Public Bodies and suppliers, and the relationships between them
 - undertaking supplier management with NDEE Framework Contractors to manage their performance
 - developing and maintaining an effective relationship with the Scottish Energy Efficiency Loan Scheme (currently Salix Finance Ltd)

4.5.2 Project Pipeline

- Compiling and maintaining a pipeline of retrofit projects for Scotland. This will consist of ready to implement, near-term and longer-term retrofit projects.
- The pipeline must be kept as a live resource, updated at least fortnightly in liaison with, and with the most up to date version always available to the Authority's contract manager

4.5.3 Contractor Processes

- Maintaining and developing a range of processes to cover the Contractor's activities. These should cover the entire Contractor processes, from initial client engagement, to successful tender and implementation of improvements, to review and monitoring
- Maintaining and continuously improving a range of standardised documents, templates, databases, models and measurement toolkits that can be accessed by the Authority,

Framework Public Bodies; the Contractor's Key Individuals and the NDEE Framework Contractors to aid understanding of buildings' and projects' performance reporting

- All such templates, tools and models originated or developed by the Contractor and any data collected as part of this Agreement to support Framework Public Bodies and deliver its services to them will remain the property of the Authority. This will apply in all cases, but particularly where these are of strategic importance to the continuity of the Contractor's functions after the expiry of the Initial Term or subsequent 1 year period and following the end of the maximum 4 year term of the Framework Agreement.
- Any proposed changes to documents must be approved by the Authority
- The types of tools to which this requirement will apply will include, but not be limited to:
 - building and energy data gathering templates / forms
 - building energy benchmarking tools
 - economic modelling tools
- Where the Contractor applies tools that predate the Framework Agreement and the Services, all data inputs, reporting outputs and the benchmarks, yardsticks and rules of thumb developed using the data of Framework Public Bodies will become the property of Scottish Government and / or Framework Public Bodies, as appropriate.
- All calculations and analyses carried out to arrive at the outputs, conclusions and recommendations of the Contractor service will be transparently communicated to the Framework Public Bodies and the Authority.
- Maintaining and developing a knowledge base, including developing case studies of retrofit best practice covering key measures and issues; liaising with and, where required, attending the Authority's NDEE Framework(s) governance groups and other meetings as required to develop and disseminate case study materials and to fulfil requirements of Schedule 4 (Governance and Management Arrangements).
- Maintaining and developing and implementing a process to monitor and aggregate progress of all the NDEE projects.

4.5.4 Reporting

The Contractor will provide the Authority with up-to-date information on Framework Public Bodies and target Framework Public Bodies to support potential information needs (including the need to obtain information from and provide information to other organisations. This could be through monthly reports in a format to be agreed during mobilisation and regular information downloads, supported by fast responses on specific information requirements. Any costs of this must be borne by the Contractor and is factored into the Pricing Schedule.

4.5.5 Reporting on Contractor Performance

The Contractor will report upon outcomes and performance, as set out in: -

- Performance:
 - Schedule 4 (Management Arrangements)
 - The Pricing Schedule: Incentivisation KPI target bands achieved
 - This Schedule of Service Requirements

4.5.6 Reporting Tools & Templates

The Contractor will maintain and continuously improve data gathering templates and reporting tools to meet the reporting requirements of Framework Public Bodies and at the NDEE Framework level. Tools and templates so developed will remain the property of the Authority, as set out in 4.8.3 (Contractor Processes).

4.5.7 Reporting on NDEE Framework(s) Performance

The Contractor's Key Individual shall review and report upon the performance of the NDEE Framework(s).

- Items to be monitored at the NDEE Framework(s) level include, but will not be limited to: -
 - emissions reductions (e.g. CO₂, NO_x)
 - energy savings
 - project costs
 - capital invested & payback periods
 - buildings, assets and square metres retrofitted
 - cost savings
 - Project route (D&B, DBFM)
 - Project finance route
 - types of energy conservation and energy generation measures or equipment installed
 - changes to energy performance certificates as a result of projects

- The level of actual and target performance for the following key parameters as achieved by NDEE Framework Contractors under call-off contracts pursuant to the NDEE Framework will be updated quarterly:
 - Guaranteed Energy Cost Performance ("GECP") In relation to D&B EnPCs this is currently calculated through the following formula: $\text{Guaranteed Energy Cost Performance Analysis (GECP)} = \frac{\text{Contractor's GECP Forecast}^3}{1000} \times (\text{Authority's set GECP aspiration p/a} \times \text{Contractor's Total Contract Value})$
 - Total carbon emission reduction;
 - Low and zero carbon ("LZC") technology heat generation (kWh)
 - LZC technology power generation (kWh)
 - Carbon reduction

4.5.8 SG's NDEE Framework Contractors' Reporting

The Contractor shall report upon the contract and management information that the NDEE Framework Contractors are required to provide in terms of their reporting obligations under the NDEE Framework or the individual NDEE Framework call-off contracts, including that set out in Schedule 4 (Management Arrangements) to NDEE Framework Contract and Sections 1, 2, 4 and 5 (Roles & Responsibilities, Framework Agreement Management Information Report, Complaints and Supplier Relationship Management, respectively) in particular. This will include, but not be limited to the following items: -

- Obtaining, reviewing and providing the NDEE Framework Agreement management information reports received from NDEE Framework Contractors

- Acting as the first point of contact for complaints raised in relation to complaints surrounding NDEE Framework Contractors performance under the NDEE Framework

- Providing such supplier relationship management support as the Authority requires, to improve the performance by NDEE Framework Contractors under any call-off by Framework Public Bodies of the NDEE Framework
- Number of mini-competitions that NDEE Framework Contractors have bid on;
- Number of development contracts (Schedule 5(a) of the NDEE Framework Agreement) that NDEE Framework Contractors are currently performing;
- Number of: (i) EnPC-D&B (Schedule 5(b) of the NDEE Framework Agreement); and/or (ii) EnPC-DBFM (Schedule 5(c) of the NDEE Framework Agreement) contracts that NDEE Framework Contractors are currently performing
- Summary of NDEE Framework Contractors' activity under the NDEE Framework Agreement in the last 3 months;
- Level of spend with each Framework Public Body under call-off contracts invoked under the NDEE Framework Agreement;
- Financial savings achieved as a result of added value opportunities offered to Framework Public Bodies under call-off contracts entered into under the NDEE Framework Agreement;

4.5.9 Reporting community benefits Delivered by NDEE Framework Contractors under the NDEE Framework Agreement.

The Contractor shall report upon community benefits achieved with Framework Public Bodies under call-off contracts under the NDEE Framework Agreement , including: -

- Relevant community benefits achieved by NDEE Framework Contractors (not relating to a specific call-off contract);

4.5.10 Reporting sustainability benefits delivered by NDEE Framework Contractors

The Contractor shall report upon sustainability benefits achieved with Framework Public Bodies under call-off contracts, including: -

- Relevant sustainability benefits achieved by NDEE Framework Contractors (not relating to a specific call-off contract);

4.5.11 Complaints and NDEE Framework Contractor Management

The Contractor shall report upon the following in relation to complaints: -

- Number of complaints by Framework Public Bodies surrounding performance of a call-off contract by NDEE Framework Contractors;
- Number of complaints by Framework Public Bodies surrounding performance of a call-off contract that were not acknowledged within the prescribed time-limits by NDEE Framework Contractors; and

- Overview of any and all outstanding disputes between NDEE Framework Contractors and any Framework Public Bodies and their anticipated resolution time.

4.5.12 Reporting Units

The Contractor shall apply the units of measurement and conversion factors set out in Schedule 4 to the NDEE Framework Agreement when preparing reports deriving from data from SG NDEE Framework Contractors' Framework Agreement Management Information Reports (as defined in the NDEE Framework Agreement). In summary these apply monetary values in sterling; all physical parameters in Système Internationale (SI) units; and the highest quality Scottish, UK and international standards of calculation and reporting of carbon emissions as appropriate to the emission source and time of reporting.

4.6. Innovation, Development and Continuous Improvement

4.6.1 The Contractor shall develop a programme of innovation, development and continuous improvement. Tasks and responsibilities will include the following: -

- Showcasing NDEE Framework including through applying for awards and speaking at conferences and other events
- Ensuring the continuous improvement of the NDEE Framework programme, services offered by the Contractor and the NDEE Framework, in accordance with the Management Arrangements, detailed at Schedule 4, through reflecting on lessons learned, monitoring and evaluating client satisfaction on an on-going basis and developing and implementing new or different approaches as appropriate
- Creating and maintaining information to enable Contractor web pages to be hosted on the LCITP website. This will cover all public tools, guidance and information. Content should be reviewed and updated at least once per quarter and be available from the end of the first quarter (i.e. the third month) of the Framework Agreement.
- Meeting ad-hoc requirements that could be reasonably expected of a team responsible for the delivery of a major contract of this nature. This will include providing ad-hoc updates, responses to questions (including assisting the Authority / Framework Public Body in responding to Requests for Information) and briefings

5. General

5.1. Community Benefits

- 5.1.1. In view of the Procurement Reform (Scotland) Act 2014 (the Act), the Authority seeks to maximise community and economic wellbeing, training and employment opportunities and involvement of SMEs and the third sector in contract delivery.
- 5.1.2. Relevant to the above, the Contractor will develop a robust approach to the delivery of community benefits and the involvement of SMEs, the third sector and sheltered workshops in particular in the delivery of the Contractor's services. This should include the setting, reporting and achievement of community benefit KPIs.

5.2. Sustainability ,Low Carbon and the Environment

- 5.2.1. Sustainability is at the core of the NDEE Framework the Contractor is being procured to support. The Authority is seeking to support the transition to a low carbon

economy, as set out in the Authority's Economic Strategy and contribute to climate change targets. The Climate Change (Scotland) Act 2009 sets legally binding targets in relation to greenhouse gas emissions reduction (42% by 2020, based on a 1990 baseline) and places various duties on public bodies. To support this there are linked ambitions; an energy efficiency target to reduce total final energy consumption in Scotland by 12% (against baseline of average consumption in 2005-07) and delivery of 11% of non-electrical heat demand by renewable sources. Relevant policy notes are available via the following links: -

- <https://www.gov.scot/publications/protecting-scotlands-future-governments-programme-scotland-2019-20/>
- <https://www.gov.scot/policies/public-sector-procurement/sustainable-procurement-duty/>

5.2.2. Increasing sustainable economic growth is important if we are to create a more successful country, with opportunities for all of Scotland to flourish. Promoting the transition to a low carbon economy is seen as a strategic priority within this. The Scottish Sustainable Procurement Action Plan supports the Authority's purpose for successful sustainable economic growth. National Outcomes have been established through the Concordat and Single Outcome Agreement and national environmental targets have been set by Climate Change legislation for Scotland, including the Climate Change (Scotland) Act 2009. Sustainable procurement promotes collaboration, best practice and best value across the public sector. Moreover, the Procurement Reform (Scotland) Act 2014 includes a sustainable procurement duty on public sector bodies.

5.2.3. Relevant to the above, the Contractor is required to develop a robust approach to the delivery of sustainability benefits in the delivery of the NDEE Framework services. This should include the setting, reporting and achievement of sustainability benefit KPIs.

5.2.4. Compliance Requirements:

- Waste (Scotland) Regulations 2012 – see for example: (<http://www.zerowastescotland.org.uk/content/waste-scotland-regulations>)
- All relevant Producer Responsibility requirements including WEEE;
- Special Waste; (<http://www.sepa.org.uk/regulations/waste/special-waste/>)
- Public Bodies Duties under the Climate Change Act (Scotland) Act 2009; (<http://www.gov.scot/Topics/Environment/climatechange/howyoucanhelp/publicbodies/publicsector>)

5.2.5 Potential / Future Requirements:

- The Scottish Government's Zero Waste Plan; (<http://www.gov.scot/Topics/Environment/waste-and-pollution/Waste-1/wastestrategy>) (Opportunities to refer to reporting requirements here too).
- Zero Waste Scotland's Circular Economy programme;
- Procurement Reform (Scotland) Act 2014 and section 36 'Procurement of recycled and recyclable products etc.' as part of Amendment of Climate Change Act;
- Procurement Reform (Scotland) Act 2014 and measures aimed at promoting fairly and ethically traded goods; and
- Climate Change Public Bodies Duties Reporting Requirements.
- Changes to the Scottish Building Standards

5.3. Workforce Matters

- 5.3.1. The Authority considers that the delivery of high quality public services is critically dependent on a workforce that is well-motivated, well-led and has appropriate opportunities for training and skills development. These factors are also important for workforce recruitment and retention, and thus continuity of service.
- 5.3.2. The Authority itself has adopted workforce policies to meet these requirements. These policies include:
- A pay policy that includes a commitment to supporting the living wage for the duration of the current parliament until the 2020 general election;
 - Fair employment practices (employment practices that promote equalities)
 - Clear managerial responsibility to nurture talent and help individuals fulfil their potential;
 - A strong commitment to modern apprenticeships and to the development of Scotland's young workforce;
 - Support for learning and development;
 - No inappropriate use of zero hours contracts;
 - No inappropriate use of "umbrella companies";
 - Flexible working;
 - Flexi-time; and
 - Career breaks.
- 5.3.3. The Authority also attaches importance to ensuring effective consultation and involvement of staff and Authority's management work in partnership with the trade union. While it is, of course, a personal decision whether or not to join a trade union, the Authority encourages its staff to join an appropriate Union and to play an active part within it, making sure their views are represented.
- 5.3.4. The Framework Public Bodies involved, alongside the Authority in establishing the NDEE Framework share the Authority's views on the importance of the above.
- 5.3.5. In order to ensure the highest standards of service quality in this Agreement the Contractor whose workers work alongside those of the Authority and Framework Public Bodies using the NDEE Framework will take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.
- 5.3.6. Any Sub-contractor personnel responsible for delivering services on behalf of Framework Public Bodies, are unlikely to be solely dedicated to providing NDEE services under the Contractor. The Authority will monitor the situation for the duration of the Contractor's appointment and, in order to ensure the highest standards of service quality, it is expected that the Contractor and its sub-contractors whose workers work alongside those of Framework Public Bodies will take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

6. Service Levels

- 6.1. The Service Levels relating to this Framework Agreement can be found in Table 1 below.
- 6.2. Targets and KPIs have been set based on historical volumes and spend, and that it is anticipated these targets will be reviewed on an annual basis to account for increased volumes and spend from forecasted increased usage through the declared Climate Change Emergency and current Scottish Government targets.

Table 1 - Service Levels

KPI Category	Definition of KPI	Measurement of Achievement of KPI					Cumulative Target
			Year 1	Year 2	Year 3	Year 4	
			Target	Target	Target	Target	
1 Call Offs (nr)	This KPI measures the number of Call Offs awarded from the NDEE PSU Framework in the period.	Call Off	6	6	8	10	30
		Cumulative	6	12	20	30	30
2 Carbon Saved (tCO ₂ e)	This KPI measures the total amount of Carbon saved across all projects that have reached the end of the M&V period within the measurement period.	End of M&V Period	N/A	3,000	4,000	6,000	14,000
		Cumulative		4,000	8,000	14,000	14,000
3 Capital Committed (£'000)	This KPI measures the total amount of capital committed upon signing of ENPC between Framework Public Body and NDEE Framework Contractor.	Contract Award	Redacted	Redacted	Redacted	Redacted	Redacted
		Cumulative					
4 Project Delivery	This KPI measures the successful delivery of projects from PSU Call Off to successful completion of the M&V stage.	End of M&V Period	90%	90%	90%	90%	90%
5 Complaints	This KPI measures the number of substantive complaints upheld against the Mott MacDonald Ltd by Public Bodies who have called off the framework	Annual	<1	<1	<1	<1	<4

This and the following 8 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 2 - PRICING SCHEDULE

1 Pricing

1.1 Overview

The following covers the fee basis for undertaking the Contractor's activities. This will comprise a fixed fee for Marketing and Engagement & Programme Support and maximum day rates for the Prepare, Procure & Save Core Work areas. These fixed fees and day rates will be applicable to any labour either internal or external (contracted) to the bidding organisation.

Core Work areas that the Contractor is expected to contribute towards are included below (see Schedule 1 for further details), alongside the profession / specialism it is anticipated would carry out the work and the fee basis in each of the core work areas outlined in Table 1 below ("**Core Work Areas**"):

Table 1 Core Work Areas

Core Work Area		Profession / Specialism	Fee Basis ³
Ref	Title		
1	Marketing and Engagement	Marketing	Fixed Fee ¹
2	Prepare	Technical and Project Management	Day Rate ²
3	Procure	Procurement and Project Management	Day Rate ²
4	Save	Technical and Project Management	Day Rate ²
5	Programme Support	Project Management	Fixed Fee ¹

Notes

1. A single, combined fixed fee will be bid for Core Work Areas 1 and 5 (Marketing and Engagement & Programme Support)
2. Day rates are for each profession / specialism in each Core Work Area
3. An incentivisation payment will be made, subject to performance criteria set out in the incentivisation section, section 3, below

In Tables 2 and 3 included below, where less than 2 decimal places are used in the tables "0" will be assumed for the missing decimal place (s) and where more than 2 decimal places are used the values will be rounded to 2 decimal places.

1.2 Indexation

These values will be fixed for the initial 12 months of the Framework Agreement i.e. no indexation will be applied. On an annual basis the average change in the Consumer Price Index ("**CPI**"), as provided by the Office for National Statistics, over the preceeding 12 months will be applied to the values.

If a 1 year extension is undertaken to the Framework Agreement in terms of clause 4.2 of the Framework Agreement then the average change in the Consumer Price Index ("**CPI**"), as provided by the Office for National Statistics, over the preceeding 12 months will be applied to the values. These indexed fixed fees and day rates will be applicable over the 1 year extension period.

1.3 Price Schedules

Table 2: Schedule of Fixed Fees

Core Work Area (as defined within Schedule 1 - Specification)		Specialism / Profession	Percentage of Spend for Marketing, Engagement and Programme Support (%)
Specification Ref	Section Title		
4.1	Marketing and Engagement	Marketing	REDACTED
4.8	Programme Support	Project Management	

Notes

- 1 The fixed fee is a percentage of annual spend through the framework (i.e. total value of call offs in a 12 month period).
- 2 The fixed fee for Marketing and Engagement & Programme Support is not anticipated to exceed REDACTED for the total contract period, including extensions.

Table 3: Schedule of Day Rates (REDACTED)

Specialism	Project Management					Technical Advisor								Procurement Advisor				
PSU Role (as defined within Schedule 2 - Pricing Schedule)	1. Partner / Director REDACTED	2. Principal Consultant REDACTED	3. Senior Consultant REDACTED	4. Consultant REDACTED	5. Junior Consultant REDACTED	Partner / Director REDACTED	Principal Consultant REDACTED	Senior Consultant REDACTED	Consultant REDACTED	Junior Consultant REDACTED	6. Designer REDACTED	7. Energy Consultant REDACTED	8. M & V Consultant REDACTED	Partner / Director REDACTED	Principal Consultant REDACTED	Senior Consultant REDACTED	Consultant REDACTED	Junior Consultant REDACTED

Notes

1 Day Rates: exclude VAT in all cases on the table above. Note, the Authority will withhold 10% of the payment as part of the incentivisation scheme. See the Incentivisation section (Section 2), below for further information.

Grade (or equivalent) is as follows:

- Grade 1: Partner or Director**
- Grade 2: Principal Consultant**
- Grade 3: Senior Consultant**
- Grade 4: Consultant**
- Grade 5: Junior Consultant**
- Grade 6: Designer**
- Grade 7: Energy Consultant**
- Grade 8: M&V Consultant**

The following points should be noted:

- The Contractor should note that Grades 6 to 8 are technical specialisms that are to be costed independently of Grades 1 to 5. Their Day Rates will only be applicable to project inputs for which their specialist knowledge and experience is required.
- The Contractor should note that Scottish Government (and Framework Public Bodies, as appropriate) may request fixed or capped fees for individual instructions made under the Agreement. The above Day rates will be applied when calculating these fees.
- The Contractor must only charge the Day Rates detailed in the Pricing Schedule. Fees and Expenses for individual instructions may only be charged in accordance with clause 7.2 (Pricing Schedule) of the Agreement.
- Fees may only be charged on a Day rate for time actually spent carrying out productive work. Accordingly, no charge may be made in respect of time spent travelling.
- A Day is defined as 7.5 hours of work plus all breaks that form part of the employees' employment conditions and custom and practice. Partial days are to be calculated by dividing the number of hours worked (excluding all breaks) by 7.5 hours and rounded to one decimal place.

1.4 Definitions of Project Roles

1.4.1 Overview of Project Roles

It is recognised that there are no universally accepted terms covering Job Titles, Grades and Specialisms across the roles required for the Contractor. Summary descriptions of the three specialisms and 8 grades / specialist roles are given in 1.4.2 to 1.4.3 below.

Grades 1 to 5 are set out in order of decreasing seniority and decreasing Day Rates.

- Grade 1 (Partner or Director) will be applicable to project input that is of a strategic and leadership nature. It is appropriate to a project director role. Partners / Directors will not carry out work that is operational in nature.
- Grade 2 (Principal Consultant) is appropriate for input requiring seniority and extensive experience in the profession or specialism it is associated with. It is appropriate to a project management role, primarily focusing upon strategic input into the direction of the NDEE SU service across projects for multiple Framework Public Bodies.
- Grade 3 (Senior Consultant) covers professionals with at least five years' post qualification experience, working at an operational level on individual NDEE SU service projects.
- Grade 4 (Consultant) is a practitioner role, working at an operational level on individual NDEE SU service projects.
- Grade 5 (Junior Consultant) is graduate role, working under supervision on individual NDEE SU service projects.

Table 4.1 contains examples of Key Individuals allocated against the above rates across all grades and specialism based on the day rates in the Schedule of Day Rates above.

The definitions covered below must be applied by the Contractor when completing Table 3 Schedule of Day Rates above.

1.4.2 Project Management

The primary role of the Contractor will be Project Management of retrofit construction projects, with a significant energy efficiency content. The Project Management role on the contract will include the Programme Support Core Work Area, in addition to overarching management of the service. A broad range of professional backgrounds will be applicable to this role, including, but not limited to Architects, Management Consultants, Building Surveyors, Quantity Surveyors, Building Services Engineers and others.

The Contractor is likely to be led at the leadership and strategic management levels by personnel of a Project Management background.

1.4.3 Technical Advisors

Technical advisors will include all technical specialisms required for the execution of the service. This will include, but not be limited to professions such as: Building Services Engineers, Energy Management Engineers, Measurement and Verification Professionals and others.

Grades 6 (Designer), 7 (Energy Consultant) and 8 (Measurement and Verification Consultant) are specific to the Technical Advisors Category, as outlined below: -

- Grade 6 Designer: design engineers, providing high level input into the identification and assessment of technical solutions; providing advice relating to practical and detail aspects relevant to buildability, programming and cost.

- Grade 7 Energy Consultant: energy engineers, experienced at site energy surveys, capable of providing advice relating to plant and equipment optimisation, replacement and refurbishment.
- Grade 8 Measurement and Verification Consultant: Consultants with experience and familiarity with the International Performance Management and Verification Protocol; capable of reviewing NDEE Framework Contractors' M&V Plans and their execution of them. This role is critical to the success of the Guaranteed Energy Performance element of the EnPC. The M&V Consultant will not contribute to elements of the service provision unrelated to M&V.

1.4.4 Procurement Advisors

The Procurement stage of the Contractor service is a procurement process that will require highly experienced Procurement Professionals to both lead and advise. Procurement Professionals will be members of professional bodies, such as Chartered Institute of Procurement & Supply, as appropriate to their Grade and role in the delivery of the Contractor service.

1.5 Schedule of Grades and Specialisms

The Contractor must complete Tables 4.1 to 4.3 below outlining examples of key personnel allocated against the all grades and specialism. The Contractor's responses must be consistent with the Pricing Schedule and the terminology they have applied for job titles, grades and specialisms etc. they have used in their responses to Part 4 - Technical Response and in relation to meeting the requirements of Schedule 1 in particular.

Table 4.1 Project Management Advisors		
Grade (or equivalent)	Contractor's Equivalent Term¹	Examples of Key Named Personnel
1. Partner or Director		
2. Principal Consultant		
3. Senior Consultant		
4. Consultant		
5. Junior Consultant		

Notes

1. The Contractor should state the equivalent terms / job titles they have used in their response to Part 4 – Technical Response Questions in the table above.

Table 4.2 Technical Advisors		
Grade (or equivalent)	Contractor Equivalent Term¹	Examples of Key Named Personnel
Grade (or equivalent)		
1. Partner or Director		
2. Principal Consultant		
3. Senior Consultant		
4. Consultant		
5. Junior Consultant		
6. Designer		
7. Energy Consultant		
8. M&V Consultant		

Notes

1. The Contractor should state the equivalent terms / job titles they have used in their response to Part 4 – Technical Response Questions in the table above.

Table 4.3 Procurement Advisors		
Grade (or equivalent)	Contractor's Equivalent Term¹	Examples of Key Named Personnel
1. Partner or Director		
2. Principal Consultant		
3. Senior Consultant		
4. Consultant		
5. Junior Consultant		

Notes

1. The Contractor should state the equivalent terms / job titles they have used in their response to Part 4 – Technical Response Questions in the table above.

2 Incentivisation

2.1 Incentivisation Methodology

The Authority intends to ensure value for money and a continued focus on performance from the Contractor. This Framework Agreement will therefore operate under an incentivisation model whereby a proportion of the Contractor's total day rates is payable only on the achievement of targets relating to the identified Key Performance Indicators (KPIs) (Table 5).

In summary, the incentivisation approach will operate as follows:

- Total day rates are included in the Pricing Schedule in paragraph 2.1 above
- The Authority has targets to be achieved for a set of KPIs by the end of each 12 month period of the project
- Authority withholds 10% of payment at least until the end of the 12 month period (relating to 10% of the total day rates) and pays 90% on a project specific milestone payment basis agreed with the Contractor.

- Each KPI is allocated a weighting, as set out in Table 5 below. These weightings represent how the proportion of the day rate which is subject to the incentivisation model (i.e. the 10% of the total day rates) is allocated against each KPI.
- If the Contractor achieves the target for all KPIs, they will be paid the remaining 10% payment at the end of the 12 month period (equating to full total day rates being paid).
- Where the Contractor achieves a combination of outcomes for the 5 KPIs (i.e. failing to meet all targets) then the weighting, as set out in the table 5 below will be applied to the incentivisation payment in order to establish the appropriate payment for each KPI.
- Payments will be rounded up or down to the nearest penny.

2.2 Incentivisation KPIs and Weightings

Targets are set against 5 KPIs, each of which has a weighting, as set out in Table 5 below, applied against the proportion of the KPI which is subject to the incentivisation model.

Table 5 Incentivisation KPIs and Weightings

	KPI	Weighting	Measurement of Achievement of KPI
1	Framework Public Body Call Offs	15%	See table 6 below
2	Carbon Saved	15%	
3	Capital Committed	15%	
4	Project Delivery	50%	
5	Complaints	5%	

2.3 Schedule of KPI Targets

Table 6 below details the 5 KPIs and targets, and their scheduling.

Table 6 Schedule of KPI Targets

KPI Category	Definition of KPI	Measurement of Achievement of KPI					Cumulative Target
			Year 1	Year 2	Year 3	Year 4	
			Target	Target	Target	Target	
1 Call Offs (nr)	This KPI measures the number of Call Offs awarded from the NDEE PSU Framework in the period.	Call Off	6	6	8	10	30
		Cumulative	6	12	20	30	30
2 Carbon Saved (tCO ₂ e)	This KPI measures the total amount of Carbon saved across all projects that have reached the end of the M&V period within the measurement period.	End of M&V Period	N/A	3,000	4,000	6,000	14,000
		Cumulative		4,000	8,000	14,000	14,000
3 Capital Committed (£'000)	This KPI measures the total amount of capital committed upon signing of ENPC between Framework Public Body and NDEE Framework Contractor.	Contract Award	£8,000	£8,000	£10,000	£14,000	£40,000
		Cumulative	£8,000	£16,000	£26,000	£40,000	£40,000
4 Project Delivery	This KPI measures the successful delivery of projects from PSU Call Off to successful completion of the M&V stage.	End of M&V Period	90%	90%	90%	90%	90%
5 Complaints	This KPI measures the number of substantive complaints upheld against the service provider by Public Bodies who have called off the framework	Annual	<1	<1	<1	<1	<4

The KPI's and targets set are based on the historical throughput in relation to the current Framework Agreement. As policy ambitions, objectives and targets grow and change through the Framework Agreement's lifetime it is anticipated that these targets and KPI's will be reviewed and amended as appropriate on an annual basis.

On a project by project basis Scottish Government will retain 10% of the overall value of services being provided by the PSU. The successful meeting of targets as set out above will result in the 10% being released on an annual basis. This process is set out within Schedule 2 of the Framework Agreement.

The Cumulative Target is calculated by adding the current period KPI to the sum of preceding values.

This and the following 2 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 3 – AWARD PROCEDURES

1. PLACING AN ORDER

- 1.1 The Framework Public Body shall give a notice sent by email to the Contractor which refers to the Framework Agreement and:
 - 1.1.1 states the Services; and
 - 1.1.2 seeks a quotation, or alternatively states the price payable for the Services in accordance with the Framework Agreement Pricing Schedule.
- 1.2. The Contractor shall provide a response and a firm price (i.e. not subject to change), and send a notice by email or fax to the Authority and the Framework Public Body.
- 1.3. Subject to the Framework Public Body notifying the Contractor that their response has been accepted, the Call-off Contract shall be formed on the Commencement Date set out in the notice.
- 1.4. Framework Public Bodies may place an order using the following example or may use their own order templates. Below at Part A is an **example** template for information only.

Example templates for ordering

Call off order form

Part A – For completion by framework public body

Framework public body	
Contract manager and address for notices	Name: Address: Tel: Email:
Invoice address (if different)	
Order number	To be quoted on all correspondence relating to this order form:
Order date	

Requirements
Commencement date:
Details of Project Support Unit Non-Domestic Energy Efficiency service required: As per attached specification.
Date(s) and time(s) for supply of xxxxxxxxx (and any alternative working hours):
Invoicing frequency:
Disclosure Scotland requirements (if basic, standard or enhanced Disclosure is required):
Other security requirements (e.g. security standards) (optional):
Limitation of Liability for the purposes of clause 51.3 of the Call-off Contract is to be agreed upon a project to project basis between the Contractor and the Framework Public Body.
Milestones (including dates for completion) (optional):
Additional information for monthly reports (optional, if required):
Completion Date:
The Call Off Contract shall be awarded in accordance with this Order Form and the Framework Terms and Conditions for Support Unit for the Non-Domestic Energy Efficiency service.

For and on behalf of the Framework Public Body:

Name and Title	
Signature	
Date	

Part B – For completion by contractor

Contractor	
Contract Manager and address for Notices	Name: Address: Tel: Fax: Email:

Contractor's response
Contractor's response to the specification: As per attached contractor response.
Confirm price:
Confirm commencement date:
List proposed sub-contractors:
List key personnel:

The contractor's response is appended.

For and on behalf of the contractor:

Name and Title	
Signature	
Date	

This and the following 6 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

Governance

1. Contract Manager

1.1 A contract manager from the Scottish Government Energy and Climate Change Directorate or such other person as the Authority may appoint (“**Contract Manager**”) will be the main point of contact for the Contractor. The Contract Manager will have responsibility for strategic management in relation to the NDEE Framework(s) and the services to be provided by the Contractor.

1.2 The Contract Manager will manage the performance of the Contractor including, but not limited to, the following:

- reviewing the overall management, operation and delivery of the Contractor
- appraising the Contractor against its KPIs
- setting the strategic direction of the Contractor’s activities
- developing and implementing agreed marketing and communication approaches for key sectors and their ability to increase the NDEE Framework(s) project pipeline and number of projects delivered
- monitoring the cost-effectiveness of the operation of the Contractor and the NDEE Framework(s) to ensure value for money
- responding to escalated key issues raised by the Contractor and/or Framework Public Bodies and NDEE Framework Contractors in relation to the operation of and delivery under the framework, including, for example relating to performance, budget and other issues that are likely to have an impact upon the Authority’s priorities and objectives.
- ensuring effective collaboration and links between the NDEE Framework(s) and the Contractor
- agreeing changes to the operation of the Contractor

1.3 The Contract Manager will also receive the various performance reports as detailed below and as required in terms of Schedule 1 to the Framework Agreement. The Contract Manager may request relevant information from the Contractor, as the need arises, and act as a key contract contact point for questions, proposals or requests from the Contractor .

1.4 Office facilities for the Contractor will not be provided by the Authority.

2. Reporting Arrangements

2.1 The Contractor will report to the Authority on a range of aspects of both the NDEE Framework(s) and in relation to its performance under the Framework Agreement on a regular basis as part of it meeting its requirements under the appointment.

2.2 Monthly Meetings, Monitoring, Progress and issues meetings

2.2.1 During the first **three** months from the Commencement Date (or longer as the Authority may consider necessary), there will be monthly monitoring and issues meetings between the Contract Manager and the Contractor core team to discuss progress and identify any performance issues. All relevant current and pipeline projects will be discussed at these meetings, with a focus on those where there are issues to report and other relevant matters arising from time to time.

2.2.2 Written dashboards, or similar, outlining activity and progress against each core work area will be provided by the Contractor to the Authority in reasonable time prior to each meeting for

consideration by the Contract Manager, and in any event not less than 3 Working Days prior to the meeting. This will form the basis for identifying any performance and/or compliance issues at an early stage.

2.2.3 Issues and risks will be discussed, and actions agreed and minuted by the Contractor (such minutes to be provided to the Contract Manager for approval as agreed as soon as possible after the meeting or in any event no later than three Working Days prior to the next scheduled meeting).

2.2.4 The Contractor will report to the Contract Manager monthly on:

- performance
- performance against KPIs – current and forecast
- activities and resource use for each agreed core work area
- programme-wide and project-specific risks and issues
- timesheets for approval in advance of invoicing and submitting claims

2.2.5 These monthly reporting activities will also be raised and considered in one to one and quarterly performance review meetings as the Contract Manager deems appropriate.

2.2.6 The first three of these monthly meetings will take place in Glasgow or Edinburgh. Thereafter, the frequency, location and format of these meetings will be decided by the Authority as it deems necessary, with meetings taking place either in person or via teleconference or video conference, as necessary.

2.3 One to One Meetings

2.3.1 Separately, one-to-one meetings will also be held between the Contractor team manager and Contract Manager. These meetings will occur on a monthly basis and will take place in person in Glasgow or Edinburgh. The meetings will cover:

- project and programme progress
- risk and issues
- expenditure and resourcing profiles
- any programme change requests
- any performance or compliance issues
- other strategic project and project activity topics and
- any other relevant matters arising from time to time

2.4 Quarterly Performance Review Meetings

2.4.1 Every third month the one-to-one meeting will be a quarterly performance review. This meeting will take place in person in Glasgow and will cover performance, finance and any other key issues.

2.4.2 Reports will be prepared by the Contractor and provided to the Contract Manager not less than 3 Working Days in advance of these meetings for review and discussion at the meeting (reports should contain information regarding performance, including performance against KPIs, finance and incentivisation performance, management information as per Schedule 1 and other relevant performance matters arising from time to time)

2.5 Meetings with Framework Public Bodies

2.5.1 In addition to the above meetings the Contractor will be required to undertake regular Project Management related meetings with Framework Public Bodies.

2.5.2 The frequency and scheduling of these meetings will be agreed with independently with the Framework Public Bodies.

3. Information Management

3.1 Information will be provided for each retrofit project in line with LCITP requirements as follows:

- energy consumption and building data. This will be collected from all Framework Public Bodies for the purposes of any required energy consumption and building benchmarking and to assist Framework Public Bodies preparing to call off from the NDEE Framework(s); and
- detail of the NDEE projects' scope of works, the agreed detailed design stage works covering type of energy saving measures and energy services, investment and savings, and annual reconciliation reports (as per Schedule 1)

3.2 All documents shall be submitted in electronic format and compatible with the Authority systems to enable access to and use of such documents by the Contract Manager as necessary.

4. Performance Reporting

4.1 The Contractor's monthly performance report will be provided to the Contract Manager within five Working Days following the end of each calendar month. Each monthly performance report will include, but not be limited to, the following areas and will cover both actual and forecast performance:

4.1.1 Measuring Outcomes

4.1.1.1 Data from the Framework Agreement will support the measurement of the following outcomes, either directly or by appropriate extrapolation and modelling, and the Contractor's performance against these will be measured by reference to relevant Key Performance Indicators and incentivisation payments detailed in the KPI Schedule:

- (a.) the number of Framework Public Body call off contracts supported by the Contractor
- (b.) the impact on annual and lifetime carbon dioxide emissions
- (c.) the capital invested in NDEE Framework(s) projects
- (d.) project delivery
- (e.) complaints

4.1.1.2 The Contractor will report upon its performance in securing the outcomes arising from the delivery of Contractor's Services, making use of the contract and management information that NDEE Framework Contractors provide through compliance with their reporting obligations, including that set out in the NDEE Framework Agreement(s) in particular and referred to in more detail in Schedule Part 1 (Specification) of this Framework Agreement. This will include, but not be limited to the following items: -

- obtaining, reviewing and providing the NDEE Framework Agreement(s) management information reports received from NDEE Framework Contractors
- acting as the first point of contact for complaints raised in relation to complaints surrounding the NDEE Framework Contractors' performance under the NDEE Framework Agreement(s) or the call-off contracts entered into pursuant to the NDEE Framework Agreement(s);
- providing such supplier relationship management support as the Authority requires, to improve the performance by NDEE Framework Contractors under any call-off by Framework Public Bodies of the NDEE Framework(s)

- the number of mini-competitions that NDEE Framework Contractors have bid on;
- the number of development contracts (contained in Schedule 5(a) of the NDEE Framework Agreement(s)) that NDEE Framework Contractors are performing at the time of the relevant report;
- the number of: (i) EnPC-D&B (contained in Schedule 5(b) of the NDEE Framework Agreement(s)); and/or (ii) EnPC-DBFM (contained in Schedule 5(c) of the NDEE Framework Agreement(s)) contracts that NDEE Framework Contractors are performing at the time of the relevant report;
- a summary of each NDEE Framework Contractor's activity per Core Work Area under the NDEE Framework Agreement(s) in the last 3 months preceding the date of the relevant report – including details regarding number of public bodies engaged, details of future engagement and any other relevant marketing and engagement information
- the number of buildings retrofitted per project
- the level of spend with each Framework Public Body under any call-off contracts pursuant to the NDEE Framework(s); and
- financial savings achieved as a result of added value opportunities offered to Framework Public Bodies under call-off contracts entered into pursuant to the NDEE Framework(s).

4.1.2 Resource plan

The monthly performance report shall include a resource plan which include at least the following elements:

- resources usage details and costs from previous period including hours per person shown per role and per work area
- forecast forward resource profile and costs; and
- forecast key deliverables

4.1.3 Reporting requirements - to be produced in line with LCITP requirements and timescales (quarterly and annual):

1. progress reports to accompany grant claims (to cover staffing and resourcing, spend, progress, results, key risks and opportunities, issues, mitigations and exploitations, next steps);
2. evaluation requirements;
3. final monitoring report following the final monitoring visit

other compliance data requested by LCITP at any time before or after the termination or expiry of the Framework Agreement.

4.2 All variables should be able to be cross-tabulated so, for example, it is possible to calculate the costs and cost savings of particular types of energy conservation measure (“**ECM**”) and/or service, or investment and cost savings across a specific sector.

4.3 Where the Contractor fails to present a progress report or the final monitoring report and fails to furnish an acceptable written explanation of the reasons why it is unable to comply with this

obligation, the Authority may, in terms of the Framework Agreement, terminate this Framework Agreement, refuse to pay any outstanding amount and recover any amounts unduly paid.

5. Risk Management

5.1 A programme and project risk register will be developed and maintained by the Contractor and made available at all times to the Authority.

5.2 Risks and issues will also be raised on an ad hoc basis with the Contract Manager by the Contractor as soon as possible after they are identified.

5.3 The Contractor and the Contract Manager shall agree a formal procedure to record all risks and issues, the approved actions or mitigations, and the timetable for implementing these.

6. Contract deliverables

6.1 The Contractor will cover all the requirements set out above and deliver the outcomes/KPIs stated in the ITT, the Contractor's Tender and this Framework Agreement.

7. Dispute Resolution

7.1 Any difference of opinion relating to the Contractor's delivery in accordance with this Framework Agreement and the Call-off Contract between the Contractor and the Framework Public Body will, in the first instance, be presented to the Contractor's Key Individual and the Framework Public Body's contract manager for resolution.

7.2 If the Contractor's Key Individual and the Framework Public Body's contract manager cannot agree on a resolution, then a separate meeting will be held between the senior management of the Contractor and the Framework Public Body for resolution in accordance with Clause 54 of the Call-off Contract.

8. Continuous Service Improvement

8.1 Both Parties acknowledge the need for continuous improvement over the duration of this Framework Agreement and that the Authority and the Framework Public Bodies have paid / will pay the Contractor for resources that are expected to deliver service improvement.

8.2 The Contractor will deliver continuous improvement in the Services provided under this Framework Agreement, throughout the full duration of the Framework Agreement.

8.3 The Contractor recognises continuous improvement is defined as on-going quantitative improvements delivered for:

- a) Reduction in whole life costs to the Framework Public Bodies
- b) Service quality enhancements including:
 - Reliability
 - Delivery method
 - Quality assurance
 - User satisfaction.

8.4 Continuous improvement will be monitored by the Authority as part of the process for Contractor management and review.

8.5 The Contractor must put in place appropriate policies, processes, tools, methodologies and/or resources to continuously improve the service throughout the duration of the Framework Agreement and provide improved value for money.

8.6 During the period of the Framework Agreement, the Contractor shall be required to make proposals to the Authority and / or Framework Public Bodies which will:

- a) improve the Service(s);
- b) improve technology or methodology used in connection with the Services;
- c) reduce costs, including, where appropriate, consequent reductions in prices charged to the Authority and Framework Public Bodies.

8.7 The Contractor must put in place a process to capture, assess, report and make recommendations to the Authority and Framework Public Bodies on initiatives and proposals for continuous improvement in the provision of the Services.

8.8 Examples of sources of initiatives may include, but are not restricted to:

- a) customer feedback and documentation;
- b) service level and KPI reporting;
- c) technology developments;
- d) governance;
- e) benchmarking; and
- f) internal audit.

9. Communication with Framework Public Bodies

9.1 The Contractor must clear all literature with the Authority during mobilisation. Any subsequent changes to literature must be cleared with the Authority prior to issue. The cost of any changes required by the Authority will be met by the Contractor.

9.2 Literature includes:

- any leaflets or brochures provided to the Framework Public Bodies in support of the Call-off contract and the NDEE Framework(s);
- all standard letters issued to Framework Public Bodies; and
- customer satisfaction surveys.

9.3 All literature must be in plain English, highlighting any key facts and deadlines to Framework Public Bodies.

10. Complaints: Definition

10.1 Any communication from a customer which meets any of the following criteria shall be classed as a complaint:

10.1.1 any communication identified by the customer as a complaint;

10.1.2 any query or concern about the quality and/or performance of the service received by the Framework Public Body;

10.1.3 any query or concern about any communications, or failure to communicate, through telephone, electronic means, letter or face to face, including the behaviour of anyone, involved in the delivery of the Service.

10.2 Where a Framework Public Body raises more than one query or concern relating to different areas of service or delivery, these shall be treated as separate complaints.

11. Complaints: Handling

11.1 The Contractor shall put in place a system for handling complaints, which shall be defined and monitored centrally, be transparent, be easily accessible Framework Public Bodies and be well publicised, as detailed in Schedule 1.

12. Complaints: Resolution

12.1 Within 5 Working Days from receipt of the complaint, the Contractor must write to the Framework Public Body advising the action and timescale that will be taken to resolve the complaint and the timetable for doing so in the event that the complaint cannot be resolved within 5 Working Days.

13. Complaints: Reporting

13.1 The Contractor shall report bimonthly to the Authority on the number and nature of complaints received, source of the complaint, and the average time taken to resolve complaints as detailed within Schedule 1 (Specification and Service Levels).

14.1. Mobilisation Plan

14.1.1 The mobilisation period is the time from the date when the Framework Agreement is awarded to the Contractor by the Authority to the Commencement Date ("**Mobilisation Period**").

14.1.2 The Contractor must submit a detailed mobilisation plan with sufficient supporting material, within **2** weeks of the Framework Agreement being awarded to the Contractor, which may include a detailed programme plan and activity schedule, based upon the Contractor's Tender response as part of the Technical Response Document. The mobilisation plan must demonstrate how the Contractor will be ready to undertake service provision from the Commencement Date without delay.

14.1.3 The mobilisation plan must set out how the individuals in the Contractor management roles will be involved in delivery of the mobilisation plan.

14.1.4 The mobilisation plan must include clearly identified stages, Milestones and quality gateways and a proposal for reporting to the Authority and / or the Contract Manager on progress against these. This proposal must include the evidence which could be available to the Authority and / or the Contract Manager on request in order to confirm that each Milestone has been met.

14.1.5 The Contractor must explain how it proposes to project manage the mobilisation plan, illustrating practical project stages with important end of stage events set out with quality assurance review and approval processes described. The use of stage and event configuration control will assist in understanding the Contractor's project specific solution.

14.1.6 The mobilisation plan must set out clearly the interdependencies and sequencing of activities so that the impact of missing any Milestone is clear.

14.1.7 The mobilisation plan must set out how all parts of the supply chain required to deliver services under the Framework Agreement will be put in place.

14.1.8 As soon as practicable after receiving and reviewing the mobilisation plan, the Authority will arrange a meeting with the Contractor to discuss mobilisation.

14.1.9 The Contractor may not charge for its time in connection with preparing the mobilisation plan or any mobilisation meetings

This and the following 40 pages comprise Schedule 5 to the Framework Agreement between the Public Body and Mott Macdonald Ltd

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

CONTRACT REFERENCE NUMBER (IF ANY)

SERVICES CONTRACT

-between-

(1) THE PUBLIC BODY

-and-

(2) MOTT MACDONALD LTD

-relating to the supply of-

Project Support Unit for NDEE 2020-2024

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PREAMBLE:

- ONE The Public Body requires the provision of services;
- TWO On the date Public Body's contract notice relating to the Services was published in the Official Journal of the European Union with reference number
- THREE On the date Mott MacDonald Ltd completed its ESPD;
- FOUR On the date Public Body issued its ITT to Mott MacDonald Ltd in respect of the provision of services;
- FIVE On the date Mott MacDonald submitted its Tender;
- SIX On the basis of the Tender, the Public Body has selected Mott MacDonald Ltd to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that Mott MacDonald Ltd has undertaken to provide , including Service Levels setting out particular levels of service that Mott MacDonald Ltd has undertaken to meet»;
 - a Pricing Schedule setting out details of the pricing of the Services«including provision for Service Credits»;
 - details of Key Individuals involved in the provision of the Services»;
 - Details of sub-contractors;
 - details of Mott MacDonald Ltd 's information which is deemed to be Mott MacDonald Ltd Sensitive Information»;
 - Ordering Procedures prescribing the procedures for ordering particular Services; and
 - Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

1.1. In the Contract, unless the context otherwise requires, the following terms have the meanings given to them below:

“Assignee” has the meaning given in clause 32.2 (Assignment).

“Baseline Personnel Security Standard” means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

“Commencement Date” has the meaning given in clause 4.1 (Period).

“Contract” means this Contract between the Parties consisting of clauses and 10 Schedules.

“Contracting Authority” has the meaning given in regulation 2 of the Public Contracts (Scotland) Regulations 2015;

“Control” has the meaning given in section 450 of the Corporation Tax Act 2010.

“Data Controller”, **“Data Processor”**, **“Data Subject”** and **“Data Subject Access Request”** have the meanings given in the Data Protection Laws.

“Data Protection Laws” means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.

“Default” means any breach of the obligations of a Party (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Contract.

“Deliverable” means any thing to be delivered by Mott MacDonald Ltd to the Public Body and identified as a deliverable in accordance with the Ordering Procedures.

“Employee Liabilities” means all claims (whether in delict, contract, under statute or otherwise), demands, actions, orders, complaints, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment by way of settlement and costs and expenses and legal costs reasonably incurred in connection with any claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory, or supervisory body and of implementing any requirements which may arise from such investigation) including:

- claims for redundancy payments, unlawful deduction of wages, claims for equal pay, unfair, wrongful or constructive dismissal compensation; and
- compensation for discrimination on grounds of sex, sexual orientation, race, disability, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity and age or less favourable treatment of part-time workers or fixed term employees.

“Employee Liability Information” has the meaning given in TUPE.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any

superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

“Equipment” means equipment, plant, tackle, materials and other items supplied and used by Mott MacDonald Ltd 's Representatives in the performance of Mott MacDonald Ltd 's obligations under the Contract.

“ESPD” means the European Single Procurement Document completed by Mott MacDonald Ltd and sent to the Public Body on.

“Exit Management” means the obligations and rights of the Parties to ensure a smooth transition of the Contract from Mott MacDonald Ltd to the Public Body or any Replacement Service Provider as set out in Clause 59 (Exit Management) and Schedule 10 (Exit Management).

“Exit Plan” means the exit management plan developed by Mott MacDonald Ltd and approved by the Public Body in accordance with Clause 59 (Exit Management).

“Exit Management Date” means each of the following:

- (a) the date of a Termination Notice; and
- (b) if no Termination Notice has been served in relation to this Contract except for any Partial Termination, the expiry of the later of the Initial Term and any extension of the Contract agreed in writing.

“FOISA” means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under this Act from time to time or any superseding or amending enactments or regulations, together with any guidance and/or codes of practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such legislation.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

“Good Industry Practice” means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as Mott MacDonald Ltd under the same or similar circumstances.

“Incoming Employees” means individuals whose employment transfers to Mott MacDonald Ltd on the commencement of the provision of the Services by operation of TUPE.»

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITT” means the Public Body's invitation to tender dated

“**Judicial Order**” means an ineffectiveness order or an order shortening the duration of the contract made in relation to the Contract under Chapter 6 of the Public Contracts (Scotland) Regulations 2015.

“**Key Individuals**” means the Mott MacDonald Ltd Representatives identified as being key individuals for the provision of the Services as set out in Schedule 5.»

“**Management Arrangements**” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of Mott MacDonald Ltd’s compliance with the Specification, «, the Ordering Procedures and the terms of the Contract, set out in Schedule 4.

“**Milestone**” means any event or task which must be completed by a particular date, such as the delivery of a Deliverable, identified as a milestone in accordance with the Ordering Procedures.

“**Order**” means an order for particular Services placed in accordance with the Ordering Procedures.

“**Ordering Procedures**” means the procedures for ordering particular Services set out at Schedule 3.

“**Outgoing Employees**” means individuals whose employment transfers from Mott MacDonald Ltd on the ceasing of the provision of the Services by Mott MacDonald Ltd by operation of TUPE.»

“**Party**” means either of the Public Body or Mott MacDonald Ltd .

“**Personal Data**” has the meaning given in the Data Protection Laws.

“**Pricing Schedule**” means the details of the pricing of the Services, including provision of service credits set out in Schedule 2.

“**Processing**” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.

“**Public Body**” means the []

“**Public Body Property**” means any corporeal moveable property issued or made available to Mott MacDonald Ltd by the Public Body in connection with the Contract.

“**Public Body Protected Information**” means any information provided by the Public Body to Mott MacDonald Ltd which:

- carries a protective marking such as “Official”, “Secret” or “Top Secret”; or
- is exempt information as set out in Part 2 of FOISA (disregarding for that purpose whether a provision of Part 2 does not confer absolute exemption within the meaning of section 2(2) of FOISA).

“**Relevant Transfer**” has the meaning given in regulation 2(1) of TUPE.

“**Replacement Service Provider**” means any third party Mott MacDonald Ltd appointed to perform the Services by the Public Body from time to time.

“**Request for Information**” means a request for information within the meaning of section 8 of FOISA or the Environmental Information Regulations and any attempted or apparent such request.

“**Schedule**” means a schedule annexed to, and forming part of, the Contract.

“**Service Levels**” means the Service Levels identified as such in the Specification.

“**Mott MacDonald Ltd**” means Mott MacDonald Ltd legal name and details».

“**Mott MacDonald Ltd Representatives**” means all persons engaged by Mott MacDonald Ltd in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of Mott MacDonald Ltd);
- its agents, Mott MacDonald Ltd and carriers; and
- any sub-contractors of Mott MacDonald Ltd (whether approved under clause 34 (Sub-contracting) or otherwise) and any employees of and workers of any such sub-contractors wholly or mainly assigned to carrying out activities in provision of the Services under the Contract.

“**Mott MacDonald Ltd Sensitive Information**” means any information provided by Mott MacDonald Ltd to the Public Body (disregarding any protective marking or assertion of confidentiality) which:

- is specified as Mott MacDonald Ltd Sensitive Information in Schedule 7 and has not lost its sensitivity according to the justifications and durations set out in that Schedule; and»
- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“Services” means the Services as are to be supplied by Mott MacDonald Ltd to the Public Body as set out in the Specification and as may be ordered in accordance with the Ordering Procedures.

“Specification” means the Purchser’s general requirements for the provision of services including Service Levels set out in Schedule 1.

“Staffing Information” means such information as the Public Body may request in an anonymised format or otherwise including:

- ages;
- dates of commencement of employment or engagement;
- gender;
- job or role descriptions and objectives of role;
- details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- the identity of the employer or relevant contracting party;
- their relevant contractual notice periods and any other terms relating to termination of employment including redundancy procedures and redundancy payments;
- their wages, salaries and profit sharing arrangements as applicable;
- details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- any other Employee Liability Information.

“Supervisory Authority” has the meaning given in Data Protection Laws.

“Tender” means the tender submitted by Mott MacDonald Ltd to the Public Body in response to the ITT dated

“Transparency Information” means the Transparency Reports and the content of this Contract.

“Transparency Reports” means a report in accordance with Schedule 7 Part 1 (Transparency Reports) containing the contract information as set out in the table for that Part for publication by the Public Body in the interests of transparency

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Working Day” means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971.

“Working Hour” means an hour between 0900 hours and 1700 hours on a Working Day.

- 1.2. The interpretation and construction of the Contract is subject to the following provisions:
- 1.2.1. words importing the singular meaning include, where the context so admits, the plural and vice versa;
 - 1.2.2. words importing the masculine include the feminine and neuter;
 - 1.2.3. reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4. references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;
 - 1.2.5. references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
 - 1.2.6. reference to “expiry or termination” of the Contract includes the making of a Judicial Order;
 - 1.2.7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.8. headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

2. Condition Precedent: Requirement for a Parent Company Guarantee

It shall be a condition of this Contract that, if required by the Public Body, Mott MacDonald Ltd shall deliver a validly executed parent company guarantee in the form set out in Schedule 8 to this Contract. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Public Body. The parties acknowledge that if this condition has not been fulfilled any performance of this Contract by Mott MacDonald Ltd shall be at the risk of the Mott MacDonald Ltd and the Public Body shall not be liable for and Mott MacDonald Ltd irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where Mott MacDonald Ltd has failed to fulfil this condition within 14 days of the date of last subscription of the Contract the Public Body shall have the right to terminate the Contract by notice in writing to Mott MacDonald Ltd .

3. Nature of the Contract

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. Save to the extent specifically provided for in this Contract, Mott MacDonald Ltd acknowledges that it is not the exclusive Mott MacDonald Ltd of the Services to the Public

Body and as such no guarantee of work or volume of work has been granted by the Public Body.

4. Period

- 4.1. The period of the Contract is from and including (the “**Commencement Date**”) to and including « unless it is terminated earlier or extended under clause 4.2.
- 4.2. The Public Body may, by giving notice to Mott MacDonald Ltd, extend the period of the Contract to a date falling no later than. Subject to that constraint, the Public Body may extend the period of the Contract on more than one occasion.

5. Break

The Public Body may terminate the Contract at any time by giving not less than 3 months’ notice to Mott MacDonald Ltd .

6. Specification and Service Levels

Mott MacDonald Ltd must comply with the Specification. In particular, the Mott MacDonald Ltd must meet or exceed the Service Levels.

7. Pricing Schedule

- 7.1. The Pricing Schedule sets out details of the pricing of the Services
- 7.2. The prices in the Pricing Schedule are not to be increased for the period of the Contract.
- 7.3. Accordingly, Mott MacDonald Ltd may not unilaterally increase the prices in the Pricing Schedule. But nothing in the Contract prevents Mott MacDonald Ltd from improving on the prices in the Pricing Schedule for the purposes of a particular Order.

8. Ordering Procedures and Management Arrangements

- 8.1. The Ordering Procedures may be invoked by the Public Body at any time during the period of the Contract.
- 8.2. The Parties must comply with the Ordering Procedures.
- 8.3. Mott MacDonald Ltd must maintain the capacity to supply the Services throughout the period of the Contract.
- 8.4. The Parties must comply with the Management Arrangements.

SECTION B: MISCELLANEOUS PROVISIONS INCLUDING THOSE RELATING TO PRICE, PAYMENT AND INFORMATION

9. Mott MacDonald Ltd 's Status

At all times during the period Mott MacDonald Ltd is an independent Mott MacDonald Ltd and nothing in the Contract establishes a contract of employment, a relationship of agency or partnership or a joint venture between the Parties or between the Public Body and any Mott MacDonald Ltd Representative. Accordingly, neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

10. Notices

- 10.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:
 - 10.1.1. given in writing;
 - 10.1.2. addressed in accordance with clause 10.3; and
 - 10.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 10.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
 - 10.2.1. 2 Working Days after the day on which the letter was posted; or
 - 10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.
- 10.3. For the purposes of this clause, the address of each Party is:
 - 10.3.1. For the Public Body:
 - Public Body address for notices»
 - For the attention of: Public Body individual contact for notices»
 - Tel: Public Body phone number»
 - Fax: Public Body fax number for notices»
 - E-mail: Public Body e-mail address for notices»
 - 10.3.2. For Mott MacDonald Ltd :
 - Mott MacDonald Ltd address for notices»
 - For the attention of: Mott MacDonald Ltd individual contact for notices»
 - Tel: Mott MacDonald Ltd phone number»
 - Fax: Mott MacDonald Ltd fax number for notices»
 - E-mail: Mott MacDonald Ltd e-mail address for notices»
- 10.4. Either Party may change its address details by serving a notice in accordance with this clause.
- 10.5. Notices under clause 58.1 (Termination on Insolvency or Change of Control) may be sent to the Public Body's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

- 11.1. In consideration of Mott MacDonald Ltd 's performance of its obligations relating to an Order, the Public Body must pay:
 - 11.1.1. the price due in accordance with the Pricing Schedule and the Ordering Procedures; and
 - 11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.
- 11.2. Mott MacDonald Ltd may not suspend the provision of services if it considers that the Public Body has failed to pay the price due.

12. Payment and Invoicing

- 12.1. The Public Body must pay all sums due to Mott MacDonald Ltd within 30 days of receipt of a valid invoice.
- 12.2. Mott MacDonald Ltd must render invoices as determined at call off.
- 12.3. Mott MacDonald Ltd must ensure that each invoice contains appropriate Contract and Order references and a detailed breakdown of the Services provided. Mott MacDonald Ltd must supply such other documentation reasonably required by the Public Body to substantiate any invoice.
- 12.4. Value added tax, where applicable, must be shown separately on all invoices as a strictly net extra charge.
- 12.5. Interest is payable on the late payment of any undisputed sums of money in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the case of sums due by the Public Body, the sums referred to in this clause must be properly invoiced by Mott MacDonald Ltd .
- 12.6. In this clause 12, 'valid invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

13. Recovery of Sums Due

- 13.1. Wherever under the Contract any sum of money is recoverable from or payable by Mott MacDonald Ltd to the Public Body, the Public Body may deduct that sum from any sum due to the Mott MacDonald Ltd whether under the Contract or otherwise, provided that the Public Body:
 - (a) provides advance notice to the Contractor and explains the reason for such set-off; and
 - (b) provides evidence of any such set-off.
- 13.2. Mott MacDonald Ltd must make any payments due to the Public Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Mott MacDonald Ltd has a valid court order requiring an amount equal to such deduction to be paid by the Public Body to Mott MacDonald Ltd .

14. Data Protection

- 14.1. Mott MacDonald Ltd acknowledges that Personal Data described in the scope of Schedule 9 (Data Protection) may be Processed in connection with the Services under this Contract. For

the purposes of any such Processing, Parties agree that Mott MacDonald Ltd acts as the Data Processor and the Public Body acts as the Data Controller.

- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on Mott MacDonald Ltd under Data Protection Laws and Mott MacDonald Ltd hereby agrees to comply with those obligations and duties.
- 14.3. Mott MacDonald Ltd will, in conjunction with the Public Body and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 14.4. Mott MacDonald Ltd will provide the Public Body with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. Mott MacDonald Ltd must:
 - 14.5.1. process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Public Body (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which Mott MacDonald Ltd is subject; in which case Mott MacDonald Ltd must, unless prohibited by that law, inform the Public Body of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of Mott MacDonald Ltd's obligations under this Contract or as is required by the Law;
 - 14.5.2. subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Public Body's prior written consent;
 - 14.5.3. take all reasonable steps to ensure the reliability and integrity of any Mott MacDonald Ltd Representatives who have access to the Personal Data and ensure that the Mott MacDonald Ltd Representatives:
 - (a) are aware of and comply with Mott MacDonald Ltd 's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with Mott MacDonald Ltd or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Public Body or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
 - 14.5.4. implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 14.6. Mott MacDonald Ltd shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Public Body. In the case of general written authorisation, Mott MacDonald Ltd must inform the Public Body

of any intended changes concerning the addition or replacement of any other sub-contractor and give the Public Body an opportunity to object to such changes.

- 14.7. If Mott MacDonald Ltd engages a sub-contractor for carrying out Processing activities on behalf of the Public Body, Mott MacDonald Ltd must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. Mott MacDonald Ltd shall remain fully liable to the Public Body for the performance of the sub-contractor's performance of the obligations.
- 14.8. Mott MacDonald Ltd must provide to the Public Body reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 14.9 Mott MacDonald Ltd must notify the Public Body if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;
- and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Public Body from time to time.
- 14.10 Taking into account the nature of the Processing and the information available, Mott MacDonald Ltd must assist the Public Body in complying with the Public Body's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
 - (b) notifying a Personal Data breach to the Public Body without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - (c) assisting the Public Body with communication of a personal data breach to a Data Subject;
 - (d) supporting the Public Body with preparation of a data protection impact assessment;
 - (e) supporting the Public Body with regard to prior consultation of the Supervisory Authority.
- 14.11 At the end of the provision of Services relating to processing Mott MacDonald Ltd must, on written instruction of the Public Body, delete or return to the Public Body all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

14.12 Mott MacDonald Ltd must:

- (a) provide such information as is necessary to enable the Public Body to satisfy itself of Mott MacDonald Ltd 's compliance with this clause 14;
- (b) allow the Public Body, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this clause 14 and contribute as is reasonable to those audits and inspections;
- (c) inform the Public Body, if in its opinion, an instruction from the Public Body infringes any obligation under Data Protection Laws.

14.13 Mott MacDonald Ltd must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of the Public Body containing the information set out in Article 30(2) of the GDPR.

14.14 If requested, Mott MacDonald Ltd must make such records referred to clause 14.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.

14.15 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under clause 14.14 with minimum disruption to Mott MacDonald Ltd 's day to day business.

14.16 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Public Body publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. Mott MacDonald Ltd should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment) in the both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

15. Transparency and Freedom of Information

15.1 Mott MacDonald Ltd acknowledges that the Public Body is subject to the requirements of FOISA and the Environmental Information Regulations. Mott MacDonald Ltd shall:

- (a) provide all necessary assistance and cooperation as the Public Body may reasonably request to enable the Public Body to comply with its obligations under FOISA and Environmental Information Regulations;
- (b) transfer to the Public Body all Requests for Information relating to this Agreement that Mott MacDonald Ltd receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Public Body with a copy of all information held on behalf of the Public Body which is requested in a Request For Information and which is in Mott MacDonald Ltd's possession or control. The information must be provided within 5 Working Days (or such other period as the Public Body may reasonably specify) in the form that the Public Body requires.
- (d) not respond directly to a Request For Information addressed to the Public Body unless authorised in writing to do so by the Public Body.

15.2 If the Request for Information appears to be directed to information held by the Public Body, Mott MacDonald Ltd must promptly inform the applicant in writing that the Request for Information can be directed to the Public Body.

15.3 If the Public Body receives a Request for Information concerning the Framework Agreement, the Public Body is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.

15.4 Mott MacDonald Ltd acknowledges that the Public Body may, acting in accordance with the Public Body's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning Mott MacDonald Ltd or the Framework Agreement:

15.4.1 in certain circumstances without consulting Mott MacDonald Ltd , or

15.4.2 following consultation with Mott MacDonald Ltd and having taken its views into account.

15.5 Where 15.4.1 applies the Public Body must take reasonable steps, if practicable, to give Mott MacDonald Ltd advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of Mott MacDonald Ltd after such disclosure to the extent that it is permissible and reasonably practical for it to do.

15.6 Where a Request for Information concerns Mott MacDonald Ltd Sensitive Information specified in Schedule 7 (having regard to the justifications and durations set out there), the Public Body must take reasonable steps, where practicable, to consult with Mott MacDonald Ltd before disclosing it pursuant to a Request for Information.

15.7 Mott MacDonald Ltd acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Mott MacDonald Ltd Sensitive Information. However, if the Public Body believes that publication of any element of the Transparency Information should be treated as Mott MacDonald Ltd Sensitive Information the Public Body may, in its discretion exclude such information from publication.

15.8 Notwithstanding any other provision of this Agreement, Mott MacDonald Ltd hereby gives consent for the Public Body to publish to the general public, the Transparency Information in its entirety. The Public Body shall, prior to publication, consult with Mott MacDonald Ltd on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

15.9 Mott MacDonald Ltd shall assist and co-operate with the Public Body to enable the Public Body to publish the Transparency Information including the preparation of Transparency Reports.

15.10 The Public Body shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with Mott MacDonald Ltd .

15.11 Mott MacDonald Ltd agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Public Body upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Public Body may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3) publish such Information. Mott MacDonald Ltd shall provide to the Public Body within 5 working days (or such other period as the Public Body may reasonably specify) any such Information requested by the Public Body.

16. Public Body Protected Information

16.1. Mott MacDonald Ltd must:

16.1.1. treat all Public Body Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Public Body Protected Information against disclosure;

16.1.2. only use the Public Body Protected Information for the purposes of performing its obligations under the Contract;

16.1.3. only disclose the Public Body Protected Information to such Mott MacDonald Ltd Representatives that are directly involved in the performance of the Contract and need to know the information; and

16.1.4. not disclose any Public Body Protected Information without the prior written consent of the Public Body.

16.2. Mott MacDonald Ltd must immediately notify the Public Body of any breach of security concerning the Public Body Protected Information. Mott MacDonald Ltd must fully co-operate with the Public Body in any investigation that the Public Body considers necessary to undertake as a result of any such breach of security.

16.3. Clause 16 does not apply to the extent that:

16.3.1. disclosure is required by law or by order of any competent court or tribunal;

16.3.2. information is in the possession of Mott MacDonald Ltd without restriction as to its disclosure prior to its disclosure by the Public Body;

16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;

16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

16.3.5. information is independently developed without access to the Public Body Protected Information.

16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by Mott MacDonald Ltd is a material breach for the purposes of clause 57.1.3 (Termination Rights).

17. Mott MacDonald Ltd Sensitive Information

17.1. The Public Body must:

17.1.1. treat all Mott MacDonald Ltd Sensitive Information as confidential and safeguard it accordingly; and

17.1.2. not disclose any Mott MacDonald Ltd Sensitive Information to any other person without the prior written consent of the Mott MacDonald Ltd .

17.2. Clause 17.1 does not apply to the extent that:

17.2.1. disclosure is required by law or by order of any competent court or tribunal;

17.2.2. information is in the possession of the Public Body without restriction as to its disclosure prior to its disclosure by Mott MacDonald Ltd ;

- 17.2.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 17.2.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 17.2.5. information is independently developed without access to the Mott MacDonald Ltd Sensitive Information.
- 17.3. Nothing in this Contract prevents the Public Body from disclosing any Mott MacDonald Ltd Sensitive Information or any other information concerning Mott MacDonald Ltd or the Contract:
- 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Public Body's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Public Body concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Mott MacDonald Ltd or other person engaged by the Public Body, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament , a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Public Body shall if the Public Body sees fit disclose such information but is unable to impose any restrictions upon the information that the Public Body provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Contract; or
 - 17.3.8. for the purpose of any examination by any auditors of the Public Body (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Public Body has used its resources.
- 17.4. Mott MacDonald Ltd consents to the publication of the Contract by the Public Body, subject to such redactions as the Public Body may decide to make. The Public Body may consult with Mott MacDonald Ltd to inform its decisions concerning redaction (for example to exclude any Mott MacDonald Ltd Sensitive Information) but any decisions taken by the Public Body are final and conclusive.

18. Audit

- 18.1. Mott MacDonald Ltd must retain and maintain until 5 years after the end of the Contract period full and accurate records of the Contract including the Orders placed, the Services provided and payments made and reimbursed under it.

- 18.2. Mott MacDonald Ltd must on request, and without any charge to the Public Body, afford the Public Body, or the Public Body's representatives, such access to those records as may reasonably be requested by the Public Body in connection with the Contract.

19. Publicity

Mott MacDonald Ltd must not make any press announcement or otherwise publicise the Contract in any way, except with the written consent of the Public Body.

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

- 20.1. Mott MacDonald Ltd must provide the Services:
- 20.1.1. in accordance with the Specification the Service Levels and the Ordering Procedures and Section F (Mott MacDonald Conduct Requirements);
 - 20.1.2. in accordance with the particular requirements of each Order; and
 - 20.1.3. to the satisfaction of the Public Body acting reasonably.
- 20.2. Mott MacDonald Ltd acknowledges that the Public Body relies on the skill, care, diligence and judgment of Mott MacDonald Ltd in the supply of the Services and the performance of its obligations under the Contract.
- 20.3. For each Order for the provision of services, subject to any contrary requirements of the Public Body communicated in accordance with the Ordering Procedures, the provisions of this Section C apply.
- 20.4. The period for any Order agreed in accordance with the Ordering Procedures may be brought to an earlier end upon 3 months' notice by the Public Body.

21. Deliverables and Milestones

- 21.1. Mott MacDonald Ltd must provide the Services, including any Deliverables:
- 21.1.1. at the date(s), time(s) and location(s) required by the Public Body; and
 - 21.1.2. in good time to meet any Milestones required by the Public Body.
- 21.2. When Mott MacDonald Ltd believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Public Body.
- 21.3. The Public Body may thereafter by notice to Mott MacDonald Ltd :
- 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate), having regard to any acceptance criteria communicated in accordance with the Ordering Procedures; or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.

- 21.4. Where the Public Body rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, Mott MacDonald Ltd must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Public Body upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Public Body or not, Mott MacDonald Ltd shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Public Body, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

- 22.1. Mott MacDonald Ltd acknowledges that the Key Individuals are essential to the proper provision of the Services to the Public Body.
- 22.2. The Key Individuals must not be released from providing the Services without the approval of the Public Body, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, Mott MacDonald Ltd must immediately give notice of that fact to the Public Body.
- 22.3. Mott MacDonald Ltd may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
 - 22.3.1. appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and
 - 22.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.
- 22.4. Any proposed replacement to a Key Individual is subject to the approval of the Public Body. Subject to Mott MacDonald Ltd's compliance with this clause, the Public Body must not unreasonably withhold such approval.

23. Offers of Employment

- 23.1. For the duration of the Contract and for a period of 12 months thereafter Mott MacDonald Ltd must not employ or offer employment to any of the Public Body's employees who have been associated with the Contract and/or the contract management of the Contract without the Public Body's prior approval.
- 23.2. This clause does not prevent Mott MacDonald Ltd from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Public Body's employees.

24. Staff transfer at commencement - TBC

- 24.1. The Parties agree that the commencement of the provision of the Services by Mott MacDonald Ltd does not involve a Relevant Transfer.»

- 24.2. The Parties agree that the commencement of the provision of the Services by Mott MacDonald Ltd may constitute a Relevant Transfer in respect of the Incoming Employees.
- 24.3. Mott MacDonald Ltd is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.
- 24.4. Mott MacDonald Ltd indemnifies the transferor (as defined in TUPE) against all Employee Liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.3.

25. Information about employees

- 25.1. The Public Body may at any time by notice require Mott MacDonald Ltd to disclose such information as the Public Body may require to the Public Body or at the direction of the Public Body to any prospective Replacement Mott MacDonald Ltd relating to the manner in which the Services are organised or about any employee who is wholly mainly assigned to carrying out activities in provision of the Services, whether employed by Mott MacDonald Ltd or Mott MacDonald Ltd Representatives ("**Assigned Employee**"). The information required by the Public Body about Assigned Employees may include Employee Liability Information and/or Staffing Information.
- 25.2. Mott MacDonald Ltd must disclose by notice all such information as is required by the Public Body under clause 25.1, within such reasonable period specified by the Public Body. Mott MacDonald Ltd acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not Personal Data.
- 25.3. Mott MacDonald Ltd warrants for the benefit of the Public Body and any Replacement Mott MacDonald Ltd that all information provided pursuant to this clause shall be true and accurate in all material respects at the time of providing the information. The Public Body may at any time require Mott MacDonald Ltd to confirm whether information provided under this clause remains true and accurate in all material respects or ask it to provide updated information.
- 25.4. The Public Body shall be permitted to use and disclose all of the information provided by Mott MacDonald Ltd under this clause for the purpose of rendering the Services and/or inviting bids from any prospective Replacement Service Supplier .

26. Staff transfer on expiry or termination - TBC

- 26.1. The Parties agree that the ceasing of the provision of the Services by Mott MacDonald Ltd does not involve a Relevant Transfer.»
- 26.2. The Parties Agree that the ceasing of the provision of the Services by Mott MacDonald Ltd may constitute a relevant Transfer in respect of the Outgoing Employees.
- 26.3. Mott MacDonald Ltd shall comply, and shall procure that each Mott MacDonald Ltd Representative shall comply, with all of its obligations under TUPE and shall perform and discharge, and procure that each Mott MacDonald Ltd Representative shall perform and discharge all of its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 26.4. Mott MacDonald Ltd indemnifies the Public Body and any Replacement Service Provider against any and all Employee Liabilities which the Public Body or any Replacement Service Provider may suffer as a result of or in connection with:

- 26.4.1. the provision of information pursuant to clause 25;
- 26.4.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Relevant Transfer arising directly or indirectly from any act, fault or omission of Mott MacDonald Ltd or any Mott MacDonald Ltd Representative in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
- 26.4.3. any failure by Mott MacDonald Ltd or any Mott MacDonald Ltd Representative to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Public Body or any replacement Service Provider to comply with its obligations under regulation 13 of TUPE; and
- 26.4.4. any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Outgoing Employees arising from or connected with any failure by Mott MacDonald Ltd or any Mott MacDonald Ltd Representative to comply with any legal obligation to such trade union, body or person.
- 26.4.5. any act or omission of Mott MacDonald Ltd or any Mott MacDonald Ltd Representative whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer.
- 26.4.6. the breach or non-observance by Mott MacDonald Ltd or any Mott MacDonald Ltd Representative occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Replacement Service Provider is contractually bound to honour.
- 26.4.7. any claim made by or in respect of any person employed by the Mott MacDonald Ltd or any Mott MacDonald Ltd Representative other than an Outgoing Employee for whom it is alleged the Public Body or a Replacement Service Provider may be liable by virtue of this Contract or TUPE.
- 26.5. Mott MacDonald Ltd is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 26.6. Mott MacDonald Ltd indemnifies the Public Body and any replacement Service Provider against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Public Body or replacement Mott MacDonald Ltd may incur in respect of the emoluments and outgoings referred to in clause 26.5.
- 26.7. Mott MacDonald Ltd shall, and shall procure that each Mott MacDonald Ltd Representative shall, promptly provide to the Public Body and any Replacement Mott MacDonald Ltd, in writing such information as is necessary to enable the Public Body and/or the Replacement Mott MacDonald Ltd to carry out their respective duties under regulation 13 of TUPE, as the case may be.
- 26.8. Mott MacDonald Ltd shall provide, and shall procure that each Mott MacDonald Ltd Representative shall provide, all reasonable cooperation and assistance to the Public Body and any Replacement Service Provider to ensure the smooth transfer of the Outgoing Employees including, without prejudice to the foregoing generality, providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary

payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.

26.9. Mott MacDonald Ltd warrants to the Public Body that during the period of 6 months immediately prior to the expiry of the Contract it will not (and will ensure that any Mott MacDonald Ltd Representatives will not) without the prior consent of the Public Body:

- increase the total employment costs of the Assigned Employees [in any material way];
- amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services;
- terminate or give notice to terminate the employment or engagement of any Assigned Employee, other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
- transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - was planned as part of the individual's career development;
 - takes place in the normal course of business; and
 - will not have any adverse impact upon the delivery of the Services by the Service Provider, provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
- recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior expiry of the Contract.

27. Security

27.1 Mott MacDonald Ltd must comply with the Public Body's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to Mott MacDonald Ltd from time to time.

27.2 Mott MacDonald Ltd must notify the Public Body of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

Except as expressly provided for in the Contract, neither Party acquires any interest in or license to use the other Party's Intellectual Property Rights as they subsist at the Commencement Date or as developed independently of the Contract.

29. Specially Created Intellectual Property Rights

29.1 All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or

other material prepared by or for Mott MacDonald Ltd on behalf of the Public Body for use, or intended use, in relation to the performance by Mott MacDonald Ltd of its obligations under the Contract belong to the Public Body.

- 29.2 Mott MacDonald Ltd assigns to the Public Body, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 29.1 This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by Mott MacDonald Ltd . Mott MacDonald Ltd must execute all documentation necessary to effect this assignment.

30. Licences of Intellectual Property Rights

- 30.1. Mott MacDonald Ltd grants to the Public Body a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Public Body reasonably requires in order to enjoy the benefit of the Services.
- 30.2. Mott MacDonald Ltd grants to the Public Body a perpetual, royalty-free, irrevocable and exclusive license to use all Intellectual Property Rights referred to in clause 29.1 above (Specially Created Intellectual Property Rights).»
- 30.3. Mott MacDonald Ltd must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Public Body a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Public Body an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

31. Claims relating to Intellectual Property Rights

- 31.1. Mott MacDonald Ltd must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 31.2. Mott MacDonald Ltd must promptly notify the Public Body if any claim or demand is made or action brought against Mott MacDonald Ltd for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.
- 31.3. Where a claim to which this clause applies is made, Motts McDonald Ltd must, at its expense, use its best endeavours to:
- 31.3.1. modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or
 - 31.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Public Body, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.
- 31.4. Mott MacDonald Ltd must not without the consent of the Public Body make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

32. Assignment

- 32.1. Mott MacDonald Ltd may not assign its interest in the Contract or any part of it without the prior written consent of the Public Body.
- 32.2. Notwithstanding clause 32.1, Mott MacDonald Ltd may assign to another person (an "**Assignee**") the right to receive the price due to Mott MacDonald Ltd under the Contract subject to:
- 32.2.1. deduction of sums in respect of which the Public Body exercises its right of recovery under clause 13 (Recovery of Sums Due); and
- 32.2.2. all the related rights of the Public Body under the Contract in relation to the recovery of sums due but unpaid.
- 32.3. Mott MacDonald Ltd must notify or ensure that any Assignee notifies the Public Body of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Public Body to redirect payments or invoices accordingly. In the absence of such notification the Public Body is under no obligation to vary its arrangements for making payments or for handling invoices.
- 32.4. Subject to clause 32.6, the Public Body may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Public Body; or
- (c) any private sector body which substantially performs the functions of the Public Body, provided that any such assignment, novation or other disposal shall not increase the burden of Mott MacDonald Ltd 's obligations under the Contract.
- 32.5. Any change in the legal status of the Public Body such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Public Body.
- 32.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Public Body such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Public Body in clauses 57 (Termination Rights) and 58 (Termination on Insolvency or Change of Control) shall be available to Mott MacDonald Ltd in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of Mott MacDonald Ltd .
- 32.7. The Public Body may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of Mott MacDonald Ltd's obligations under the Contract. In such circumstances the Public Body shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of Mott MacDonald Ltd 's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

Mott MacDonald Ltd must notify the Public Body:

- 33.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur; and
- 33.2. immediately following a change of Control that has occurred.

34. Sub-Contracting

- 34.1. The Public Body approves the appointment of the sub-contractors specified in Schedule 6 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 34.2. Mott MacDonald Ltd may not sub-contract its obligations under the Contract to other sub-contractors without the prior written consent of the Public Body. Sub-contracting of any part of the Contract shall not relieve Mott MacDonald Ltd of any obligation or duty attributable to the Mott MacDonald Ltd under the Contract. Mott MacDonald Ltd shall be responsible for the acts and omissions of its sub-contractor as though they are its own.
- 34.3. Where Mott MacDonald Ltd enters into a sub-contract Mott MacDonald Ltd must ensure that a provision is included which:
 - 34.3.1. requires payment to be made of all sums due by Mott MacDonald Ltd to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Public Body has made payment to Mott MacDonald Ltd in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided Mott MacDonald Ltd is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to Mott MacDonald Ltd, payment must be made to the sub-contractor without deduction;
 - 34.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Public Body and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Public Body;
 - 34.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and
 - 34.3.4. is in the same terms as that set out in this clause 34.3 (including for the avoidance of doubt this clause 34.3.4) subject only to modification to refer to the correct designation of the equivalent party as Mott MacDonald Ltd and sub-contractor as the case may be.
- 34.4 Mott MacDonald Ltd shall also include in every sub-contract:
 - 34.4.1 a right for Mott MacDonald Ltd to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 57.3 occur; and

- 34.4.2 a requirement that the sub-contractor includes a provision having the same effect as 34.4.1 in any sub-contract which it awards.

In this clause 34.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Public Body in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

- 34.5. Where requested by the Public Body, copies of any sub-contract must be sent by Mott MacDonald Ltd to the Public Body as soon as reasonably practicable.
- 34.6. Where Mott MacDonald Ltd proposes to enter into a sub-contract it must:
- 34.6.1 advertise its intention to do so in at least one trade journal, and the Public Contracts Scotland Portal; and
- 34.6.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

35. Amendment

The Contract may be amended only by the written agreement of both Parties, including but not limited to, agreed variations to Schedule 1 Specification and Services Levels, Schedule 2 Pricing Schedule and/or changes to programme. Accordingly, Mott MacDonald Ltd may not unilaterally amend the Contract.

SECTION F MOTT MACDONALD LTD CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

In providing the Services and otherwise when performing the Contract, Mott MacDonald Ltd must comply in all respects with:

- 36.1. all applicable law;
- 36.2. any applicable requirements of regulatory bodies; and
- 36.3. Good Industry Practice.

37. Official Secrets Acts

Mott MacDonald Ltd undertakes to abide and procure that Mott MacDonald Ltd's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

38. Mott MacDonald Ltd's responsibility for staff etc.

- 38.1. Mott MacDonald Ltd is responsible for the acts and omissions of all Mott MacDonald Ltd Representatives relating to the Contract as though such acts and omissions are the Mott MacDonald Ltd's own.

Mott MacDonald Ltd must ensure that all Mott MacDonald Ltd Representatives:

- 38.1.1. are appropriately experienced, skilled, qualified and trained;
- 38.1.2. carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and

38.1.3. obey all lawful and reasonable directions of the Public Body when carrying out activities under the Contract.

39. Access to the Public Body's premises

- 39.1. Any access to, or occupation of, the Public Body's premises which the Public Body may grant Mott MacDonald Ltd from time to time is on a non-exclusive licence basis free of charge. Mott MacDonald Ltd must use the Public Body's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Public Body's premises to such individuals as are necessary for that purpose.
- 39.2. Mott MacDonald Ltd must comply with the Public Body's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to Mott MacDonald Ltd from time to time.
- 39.3. At the Public Body's written request, Mott MacDonald Ltd must provide a list of the names and addresses of all persons who may require admission to the Public Body's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Public Body may reasonably request.
- 39.4. Mott MacDonald Ltd must ensure that any individual Mott MacDonald Ltd Representative entering the Public Body's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. Mott MacDonald Ltd acknowledges that the Public Body has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 39.5. In accordance with the Public Body's policies concerning visitor access, entry to the Public Body's premises may be granted to individual Mott MacDonald Ltd Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 39.6. The Public Body may, by notice to Mott MacDonald Ltd, refuse to admit onto, or withdraw permission to remain on, the Public Body's premises any Mott MacDonald Ltd Representative whose admission or continued presence would, in the opinion of the Public Body acting reasonably, be undesirable.
- 39.7. The Public Body must provide advice and assistance acting reasonably to Mott MacDonald Ltd to facilitate Mott MacDonald Ltd's compliance with this clause.
- 39.8. All decisions of the Public Body under this clause are final and conclusive.

40. Mott MacDonald Ltd's Equipment

- 40.1. Mott MacDonald Ltd must provide all Equipment necessary to perform any required activities on the Public Body's premises or otherwise necessary for the provision of Services.
- 40.2. But Mott MacDonald Ltd must not, without the Public Body's approval:
 - 40.2.1. bring Equipment onto the Public Body's premises; or
 - 40.2.2. leave Equipment on the premises.
- 40.3. Any Equipment brought onto the Public Body's premises:
 - 40.3.1. remains the property of Mott MacDonald Ltd ; and

- 40.3.2. is at Mott MacDonald Ltd 's own risk and the Public Body has no liability for any loss of or damage to the Equipment unless Mott MacDonald Ltd is able to demonstrate that such loss or damage was caused or contributed to by the Public Body's Default.
- 40.4. Mott MacDonald Ltd must keep all Equipment brought onto the Public Body's premises in a safe, serviceable and clean condition. The Public Body may at any time require the Mott MacDonald Ltd to remove from the Public Body's premises any Equipment which in the opinion of the Public Body acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at Mott MacDonald Ltd 's expense as soon as reasonably practicable.
- 40.5. On completion of any required activities on the Public Body's premises or at the end of a Working Day (as appropriate), Mott MacDonald Ltd must at its own expense:
- 40.5.1. remove all Equipment; and
- 40.5.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Mott MacDonald Ltd 's activities.
- 40.6. Mott MacDonald Ltd is solely responsible for making good any damage to the Public Body's premises or any objects contained therein, other than wear and tear, which is caused by Mott MacDonald Ltd .

41. Public Body Property

- 41.1. Where the Public Body issues Public Body Property to Mott MacDonald Ltd , the Public Body Property remains at all times the property of the Public Body.
- 41.2. Mott MacDonald Ltd undertakes the safe custody of the Public Body Property and to that end must:
- 41.2.1. keep the Public Body Property in good order and condition (excluding wear and tear);
- 41.2.2. comply with any particular security requirements communicated to the Public Body in relation to the Public Body Property;
- 41.2.3. use any Public Body Property solely in connection with the Contract and for no other purpose; and
- 41.2.4. store the Public Body Property separately and ensure that it is clearly identifiable as belonging to the Public Body.
- 41.3. The Public Body Property is deemed for the purposes of clause 41.2.1 to be in good order and condition when received by Mott MacDonald Ltd unless Mott MacDonald Ltd notifies the Public Body otherwise within 5 Working Days of receipt.
- 41.4. Mott MacDonald Ltd must not:
- 41.4.1. modify or replace the Public Body Property;
- 41.4.2. use the Public Body Property as security for a loan or other obligation;
- 41.4.3. sell, or attempt to sell or part with possession of the Public Body Property; or
- 41.4.4. allow anyone to obtain a lien over, or right to retain, the Public Body Property.
- 41.5. Mott MacDonald Ltd licences the Public Body to enter any premises of Mott MacDonald Ltd during Working Hours on reasonable notice to recover any Public Body Property.

- 41.6. Mott MacDonald Ltd undertakes the due return of the Public Body Property and as such is liable for all loss of, or damage to, the Public Body Property (excluding wear and tear), unless such loss or damage was caused or contributed to by the Public Body's Default. Mott MacDonald Ltd must notify the Public Body promptly and, in any event within 2 Working Days, upon becoming aware of any defects appearing in or losses or damage occurring to the Public Body Property.

42. Health and Safety etc.

- 42.1. While on the Public Body's premises, Mott MacDonald Ltd must comply with the Public Body's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to Mott MacDonald Ltd from time to time.
- 42.2. Mott MacDonald Ltd must immediately inform the Public Body in the event of any incident occurring in the performance of its obligations under the Contract on the Public Body's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. Mott MacDonald Ltd must then promptly notify the Public Body of that fact.
- 42.3. The Public Body must promptly notify the Mott MacDonald Ltd of any health and safety hazards which may exist or arise at the Public Body's premises and which may affect Mott MacDonald Ltd in the performance of its obligations under the Contract.
- 42.4. Mott MacDonald Ltd must promptly make available its statutory health and safety policy statement to the Public Body on request.

43. Offences

- 43.1. Mott MacDonald Ltd must not commit or attempt to commit any offence:
- 43.1.1. under the Bribery Act 2010;
 - 43.1.2. of fraud, uttering, or embezzlement at common law; or
 - 43.1.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.
- 43.2. Breach of clause 43.1 is a material breach for the purposes of clause 57.1.3 (Termination Rights).

44. Tax Arrangements

- 44.1 Where Mott MacDonald Ltd is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 44.2 Where the Mott MacDonald Ltd is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 44.3 The Public Body may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Mott MacDonald Ltd complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.
- 44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.

- 44.5 The Public Body may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 44.6 The Mott MacDonald Ltd shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 Where the Mott MacDonald Ltd enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, Mott MacDonald Ltd must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as Mott MacDonald Ltd .

45. Discrimination

Mott MacDonald Ltd must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Public Body.

46. Blacklisting

Mott MacDonald Ltd must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Public Body to terminate the Contract.

47. Sustainability etc

- 47.1 Mott MacDonald Ltd shall perform its obligations under this Contract in a manner so as to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimize the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Service Provider shall make all reasonable efforts to minimise its use of packaging and avoid the use of packaging which consumes a disproportionate amount of energy during manufacture, use, or disposal or which contains materials derived from threatened species or threatened environments. If requested by the Purchaser, the Service Provider shall provide the Purchaser with a copy of its environmental policy.
- 47.2 Mott MacDonald Ltd is expected to have appropriate standards for its organisation and its supply chain regarding legal, ethical and social issues. This should include for example: health and safety, security of employment rights, equality and fair trade, in particular in low cost or developing countries. If requested by the Purchaser, the Service Provider shall provide the Purchaser with a copy of its ethical sourcing policy.
- 47.3 Mott MacDonald Ltd must take all reasonable steps to ensure that all products supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin, in particular in relation to working conditions and the use of child labour.

48. Conflicts of interest

- 48.1. Mott MacDonald Ltd must take appropriate steps to ensure that the Public Body is not placed in a position where, in the reasonable opinion of the Public Body, there is an actual

or potential conflict between the interests of the Mott MacDonald Ltd and the duties owed to the Public Body under the Contract.

- 48.2. The Mott MacDonald Ltd must disclose by notice to the Public Body full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 48.3. Breach of this clause by the Mott MacDonald Ltd is a material breach for the purposes of clause 57.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

49. Warranties and Representations

Mott MacDonald Ltd warrants and represents that:

- 49.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 49.2. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 49.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 49.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Public Body prior to execution of the Contract;
- 49.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 49.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of Mott MacDonald Ltd or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of Mott MacDonald Ltd's assets or revenue;
- 49.8. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 49.9. in the 3 years prior to the Commencement Date:
- 49.9.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- 49.9.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 49.10. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 49.11. it has made appropriate inquiries (for example as regards the Public Body's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 49.12. it is familiar with the Public Body's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 49.13. it has in place appropriate technical and organisational measures to safeguard any Public Body Protected Information provided by the Public Body;
- 49.14. there are no actual or potential conflicts between the interests of Mott MacDonald Ltd and the duties owed to the Public Body under the Contract, save as may have been specifically disclosed in writing to the Public Body prior to execution of the Contract; and
- 49.15. it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

50. Indemnity

50.1 Mott MacDonald Ltd shall indemnify the Public Body against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of Mott MacDonald Ltd .

50.2 The Public Body shall indemnify Mott MacDonald Ltd in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of Mott MacDonald Ltd acting in accordance with the Public Body's specific written instructions. This indemnity provision shall not apply if Mott MacDonald Ltd -

(a) acts on the Public Body's specific written instructions but fails to notify the Public Body in accordance with clause 14.12(c) of this Contract;

(b) fails to comply with any other obligation under the Contract.

51. Limitation of Liability

51.1. Neither Party is liable to the other Party under the Contract for any:

51.1.1. loss of profits, business, revenue or goodwill; or

51.1.2. indirect or consequential loss or damage.

51.2. But clause 51.1 does not exclude any liability of the Mott MacDonald Ltd for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of Mott MacDonald Ltd .

51.3. The liability of either Party under the Contract for Defaults is limited to £3,000,000.

- 51.4. But neither Party excludes or limits liability to the other Party for:
- 51.4.1. death or personal injury caused by its negligence;
 - 51.4.2. misrepresentation;
 - 51.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982; or
 - 51.4.4. any breach of any obligations under Data Protection Laws.

52. Insurances

- 52.1. Mott MacDonald Ltd must effect and maintain with a reputable insurance company:
- 52.1.1. public liability insurance in the sum of not less than **REDACTED sterling for each and every claim;**
 - 52.1.2. professional indemnity insurance in the sum of not less than **REDACTED sterling for each and every claim** and
 - 52.1.3. employer's liability insurance in accordance with any legal obligation for the time being in force.
- 52.2. Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.
- 52.3. Mott MacDonald Ltd must give the Public Body, on request, a broker's verification of insurance to demonstrate that the appropriate cover is in place.

53. Force Majeure

- 53.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 12 months, either Party may terminate the Contract with immediate effect by notice.
- 53.2. Any delay or other failure by Mott MacDonald Ltd in performing its obligations under the Contract which results from any failure or delay by a Mott MacDonald Ltd Representative is only to be regarded as due to Force Majeure if that Mott MacDonald Ltd Representative is itself impeded by Force Majeure from complying with an obligation to Mott MacDonald Ltd .
- 53.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any delay or failure on its part as described in clause 53.1, it must immediately notify the other Party of the Force Majeure and the estimated period for which the failure or delay is to continue.
- 53.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events or failure of the Authority/Public Body to satisfy its obligations under the contract.

54. Dispute Resolution

- 54.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract in accordance with the Management Arrangements.
- 54.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 54.3. Any arbitration under clause 54.2 is subject to the Arbitration (Scotland) Act 2010.

55. Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision is severed and the remainder of the provisions of the Contract continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

56. Waiver and Cumulative Remedies

- 56.1. Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.
- 56.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 10 (notices).
- 56.3. A waiver of any Default is not a waiver of any subsequent Default.
- 56.4. The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

57. Termination Rights

- 57.1. The Public Body may terminate the Contract by notice to Mott MacDonald Ltd with immediate effect if Mott MacDonald Ltd commits a Default and:
 - 57.1.1. Mott MacDonald Ltd has not remedied the Default to the satisfaction of the Public Body within 20 Working Days, or such other period as may be specified by the Public Body, after issue of a notice specifying the Default and requesting it to be remedied;
 - 57.1.2. the Default is not in the opinion of the Public Body, capable of remedy; or
 - 57.1.3. the Default is a material breach of the Contract.
- 57.2. The Public Body may also terminate the Contract in accordance with any provisions of the Schedules.

- 57.3. The Public Body may terminate the Contract in the event that:
- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) Mott MacDonald Ltd has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to Mott MacDonald Ltd in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- 57.4. The Public Body may also terminate the Contract in the event of a failure by Mott MacDonald Ltd to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.
- 57.5. The Public Body may also terminate the Contract where, at any time before the term of the Contract, Mott MacDonald Ltd or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

58. Termination on Insolvency and Change of Control

- 58.1. Mott MacDonald Ltd shall notify in writing immediately, and the Public Body may terminate the Contract with immediate effect by notice, where in respect of Mott MacDonald Ltd :
- 58.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignation for the benefit of, its creditors;
 - 58.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 58.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 58.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 58.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 58.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;

- 58.1.7. being a “small company” within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 58.1.8. a debt relief order is entered into; or
 - 58.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 58.2. The Public Body may terminate the Contract by notice with immediate effect within 6 months of:
- 58.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or
 - 58.2.2. where no such notification has been given, the date that the Public Body becomes aware of the change of control.
- 58.3. But the Public Body may not terminate the Contract under clause 58.2 where approval of the change of control has been granted by notice by the Public Body.

59. Exit Management

- 59.1 Mott MacDonald Ltd shall perform its relevant Exit Management obligations as part of the Contract whether applicable on either the expiry or early termination of this Contract.
- 59.2 Mott MacDonald Ltd agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Public Body and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Mott MacDonald Ltd agrees that the Public Body may proceed directly to court notwithstanding anything to the contrary in the dispute resolution procedure outlined in Clause 54 (Dispute Resolution). If a court of competent jurisdiction finds that Mott MacDonald Ltd has breached (or attempted or threatened to breach) any such obligation, Mott MacDonald Ltd agrees that without any additional findings of irreparable injury, or other conditions to interdict, Mott MacDonald Ltd shall not oppose the entry of an appropriate order compelling performance by Mott MacDonald Ltd and restraining Mott MacDonald Ltd from any further breaches or attempted or threatened breaches of its obligations in relation to Exit Management.
- 59.3 A draft of the Exit Plan shall be produced by Mott MacDonald Ltd and supplied to the Public Body within [three (3) months] after the Commencement Date and shall include or address the matters specified in Clause 59.3. The Public Body shall provide to the Mott MacDonald Ltd the Public Body’s comments on the plan within one (1) month of the Public Body’s receipt of the plan. Mott MacDonald Ltd shall take into account the comments and suggestions of the Public Body and shall issue the final version of the Exit Plan to the Public Body within ten (10) Working Days of receipt of the Public Body’s comments.
- 59.4 Mott MacDonald Ltd shall throughout the period of the Contract review, maintain and continuously update the Exit Plan which shall include:
- 59.4.1 the activities required to enable the Public Body to re-tender the Public Body Requirements and/or the provision of the Services;
 - 59.4.2 the activities necessary to support any Replacement Service Providers or the Public Body in carrying out any necessary due diligence relating to all or part of the Services;
 - 59.4.3 details of the Exit Management to be provided by Mott MacDonald Ltd prior to the Exit Management Date;

- 59.4.4 support for the Replacement Service Providers or the Public Body during their preparation of any relevant plan for the transition of the System to the Replacement Service Providers or Public Body, including prior to and during such transition period;
 - 59.4.5 the maintenance of a 'business as usual' environment for the Public Body during the period when Exit Management obligations are applicable; and
 - 59.4.6 all other necessary activities to support the preparation for, and execution of, a smooth and orderly Exit Management and transfer of all or part of the Services to either a Replacement Service Providers or the Public Body.
- 59.5 No amendment of the Exit Plan shall be made without prior written consent of the Public Body.

60. Consequences of Expiry or Termination

- 60.1. Where the Public Body terminates the Contract under clause 57 (Termination Rights) and makes other arrangements for the provision of services, Mott MacDonald Ltd indemnifies the Public Body against all costs incurred in making those arrangements.
- 60.2. Where the Public Body terminates the Contract under clause 5 (Break), the Public Body indemnifies Mott MacDonald Ltd against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).
- 60.3. Any indemnity given by the Public Body under clause 60.2 is subject to Mott MacDonald Ltd :
 - 60.3.1. taking all reasonable steps to mitigate its loss;
 - 60.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and
 - 60.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Public Body together with supporting evidence.
- 60.4. Except as provided for in clauses 50 (General Indemnity), 50.1 and 50.2 and the Management Arrangements , no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 60.5. On expiry or termination of the Contract Mott MacDonald Ltd must:
 - 60.5.1. immediately return to the Public Body all Public Body Property and Public Body Protected Information in its possession; and
 - 60.5.2. destroy or delete any copies of Public Body Protected Information (whether physical or electronic) in its possession.
- 60.6. The following provisions survive the expiry or termination of the Contract:
 - 60.6.1. clause 1 (Definitions and Interpretation);
 - 60.6.2. clause 13 (Recovery of Sums Due);
 - 60.6.3. clause 14 (Data Protection);
 - 60.6.4. clause 15 (Transparency and Freedom of Information);
 - 60.6.5. clause 16 (Public Body Protected Information);
 - 60.6.6. clause 17 (Mott MacDonald Ltd Sensitive Information);
 - 60.6.7. clause 18 (Audit [and Records Management]);
 - 60.6.8. clause 19 (Publicity);
 - 60.6.9. clause 23 (Offers of Employment);
 - 60.6.10. clause 25 (Information about Mott MacDonald Ltd Employees);
 - 60.6.11. clause 26 (Staff transfer on expiry or termination);

- 60.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
 - 60.6.13. clause 29 (Specially Created Intellectual Property Rights);
 - 60.6.14. clause 30 (Licences of Intellectual Property Rights);
 - 60.6.15. clause 31 (Claims relating to Intellectual Property Rights);
 - 60.6.16. clause 37 (Official Secrets Acts);
 - 60.6.17. clause 40 (Mott MacDonald Ltd 's Equipment);
 - 60.6.18. clause 41 (Public Body Property);
 - 60.6.19. clause 44 (Tax arrangements);
 - 60.6.20. clause 47 (Sustainability);
 - 60.6.21. clause 49 (Warranties and Representations);
 - 60.6.22. clause 50 (Indemnity);
 - 60.6.23. clause 51 (Limitation of Liability);
 - 60.6.24. clause 52 (Insurances);
 - 60.6.25. clause 54 (Dispute Resolution);
 - 60.6.26. clause 56 (Waiver and Cumulative Remedies);
 - 60.6.27. clause 60 (Consequences of Expiry or Termination)
 - 60.6.28. clause 61 (Entire Agreement)
 - 60.6.29. clause 62 (Governing Law and Jurisdiction).
- 60.7. If a Judicial Order is made, the provisions of the Management Arrangements referring to that possibility apply.
- 60.8. Immediately upon termination of the Contract for any reason whatsoever Mott MacDonald Ltd shall render such reasonable assistance to the Public Body or third party nominated by the Public Body, if requested, as may be necessary to effect an orderly assumption by a Replacement Service Provider of the Services previously performed by Mott MacDonald Ltd under the Contract. Mott MacDonald Ltd shall be entitled to charge for such termination services.

61. Entire Agreement

- 61.1. The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with herein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).
- 61.2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, the Schedules and any document referred to in the Contract, the following order of precedence applies:
- 61.2.1. the clauses of the Contract;
 - 61.2.2. the Schedules; and
 - 61.2.3. any other document referred to in the Contract.

62. Governing Law and Jurisdiction

The Contract is governed by and interpreted in accordance with Scots law and, subject to clause 54 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten on this and the 40 preceding pages together with the 10 Schedules annexed are executed as follows:

SIGNED for and on behalf of the Scottish Ministers
Ltd

SIGNED for and on behalf of Mott MacDonald

At.....

At.....

On.....

On.....

Signature.....

Signature.....

Full name

Full name.....

Position

Position.....

Address.....

Address.....

In the presence of

In the presence of

Signature.....

Signature.....

Full name

Full name.....

Address.....

Address.....

SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS
Confirmed at call off – in line with Framework Agreement.

SCHEDULE 2 - PRICING SCHEDULE

Confirmed at call off – in line with Framework Agreement

SCHEDULE 3 – ORDERING PROCEDURES

Confirmed at call off – in line with Framework Agreement

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

Confirmed at call off – in line with Framework Agreement

SCHEDULE 5 – KEY INDIVIDUALS

Confirmed at call off – in line with Framework Agreement

1. e.g. Joe Bloggs, Contract Manager
2. e.g. Jane Doe, Software Specialist

SCHEDULE 6 – APPROVED SUB-CONTRACTORS

Confirmed at call off – in line with Framework Agreement

approved Sub-Mott MacDonald Ltd (s)

Relevant obligations

1. e.g. Subco Limited (SC123456)

e.g. high risk consultancy services

2. eg

This and the following [insert Page numbering at call off] pages comprise Schedule 7 to the foregoing Contract between (Insert Public Body) and Mott MacDonald Ltd

SCHEDULE 7 – TRANSPARENCY REPORTS AND MOTT MACDONALD LTD SENSITIVE INFORMATION

Part 1- Transparency Reports

The Public Body will routinely publish information in relation to the Contract. This information will be released in Transparency Reports. An **example** of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Public Body within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Contract Document)</i>			
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

Part 2

MOTT MACDONALD LTD SENSITIVE INFORMATION

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity
Framework personnel rates	This information is potentially commercially sensitive for our competitors in regards to pricing for similar project/Framework opportunities	Duration of Framework and 3 months post.

SCHEDULE 8 – PARENT COMPANY GUARANTEE

1. We [here insert the full name of the parent company], a company incorporated under the Companies Acts (Company number []) and having our Registered Office at [] refer to the Contract dated [] and [] between the Scottish Ministers and [insert name of contractor], a company incorporated under the Companies Acts (Company number []) and having its Registered Office at [] (“the Company”) of which we are the ultimate holding company, for the provision [specify nature of the services] (“the Contract”) and in security of the Company's obligations thereunder guarantee the same in the following manner:-

1.1 We guarantee that the Company shall perform all its obligations contained in the Contract.

1.2 If the Company shall in any respect fail to perform its obligations under the Contract or shall commit any breach thereof, we undertake, forthwith on first demand by the Scottish Ministers, to perform or to take whatever steps may be necessary to achieve performance of said obligations under the Contract and shall indemnify and keep indemnified the Scottish Ministers against any loss, damages, claims, costs and expenses which may be incurred by them by reason of any such failure or breach on the part of the Company.

1.3 Our guarantee and undertakings hereunder shall be unconditional and irrevocable, and without prejudice to the foregoing generality we shall not be released or discharged from our liability hereunder by:

1.3.1 any waiver or forbearance by the Scottish Ministers of or in respect of any of the Company's obligations under the Contract whether as to payment, time, performance or otherwise howsoever, or by any failure by the Scottish Ministers to enforce the Contract or this instrument, or

1.3.2 any alteration to, addition to or deletion from the Contract or the scope of the work to be performed under the Contract, or

1.3.3 any change in the relationship between ourselves and the Company; or

1.3.4 the bankruptcy, insolvency, liquidation, amalgamation, reconstruction, reorganisation, administrative or other receivership or dissolution of the Company, and any equivalent or analogous proceeding by whatever name known and in whatever jurisdiction,

and our guarantee and undertakings shall continue in force until all the Company's obligations under the Contract and all our obligations hereunder have been duly performed.

2. This Guarantee shall be construed and take effect in accordance with Scots Law.

3. Our obligations under this Guarantee may be enforced by the Scottish Ministers at their discretion without first having taken any steps or proceedings against the Company or any other person.

4. We shall, on demand by the Scottish Ministers, execute such documents or take such action as the Scottish Ministers may require, for protecting the Scottish Ministers rights under this Guarantee.

5. If at any time any provision of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the other provisions of this Guarantee shall not be affected or impaired.

6. No single or partial exercise by the Scottish Ministers of any right, power or remedy provided by law or under this Guarantee shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

7. The rights, powers and remedies provided in this Guarantee are cumulative with, and not exclusive of, any rights, powers and remedies provided by law.

8. All notices and other communications required or permitted to be given in terms of this Contract, or any proceedings relating to it, shall be in writing and will be sufficiently served:

8.2 if delivered by hand; or

8.2 if sent by fax; or

8.3 if sent by prepaid recorded or special delivery post; or

8.4 if sent by email

to the address specified below or to such other address as is from time to time notified to the other party in accordance with the provisions of this Clause 8:

Scottish Ministers:

[to be completed]

[Guarantor]

[to be completed]

9. Any such notice or communication shall be deemed to have been served,

9.1 if delivered by hand, on the date of delivery;

9.2 if sent by fax, 4 working hours after the time at which the fax was sent;

9.3 if sent by pre-paid recorded or special delivery post, on the date of delivery; or

9.4 if sent by electronic mail, 4 working hours after the time at which the email was sent,

9.5 provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any working day, such notice or communications shall be deemed to have been served at the start of the working hour on the next working day thereafter.

9.6 For the purposes of this Clause 9:

'working day' means a day other than a Saturday, Sunday or bank holiday in Scotland, within the meaning of the Banking and Financial Dealings Act 1971; and

'working hour' means an hour between 0900 hours and 1700 hours on a working day.

10. Each person giving a notice or making a communication hereunder by fax or email shall promptly confirm such notice or communication by post to the person to whom such notice or communication was addressed but the absence of any such confirmation shall not affect the validity of any such notice or communication or time upon which it is deemed to have been served: IN WITNESS WHEREOF these presents typewritten on this and the [2] preceding pages are executed as follows:

SIGNED for and on behalf of [DN: insert name of the Company]

At.....

On.....

Signature.....

Full name

Position

Address.....

.....

In the presence of

Signature.....

Full name

Address.....

.....

SCHEDULE 9 – DATA PROTECTION

Data Processing provision as required by Article 28(3) GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are set out in the Contract.

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Public Body

The obligations and rights of the Public Body as the Data Controller are set out in Clause 14 of the Contract.

SCHEDULE 10 – EXIT MANAGEMENT

Confirmed at call off – in line with Framework Agreement

This and the following 1 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 6 - NOT USED

This and the following 1 pages comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 7 – TRANSPARENCY REPORTS AND CONTRACTOR SENSITIVE INFORMATION

Part 1- Transparency Reports

The Authority will routinely publish information in relation to the Framework, this information will be released in Transparency Reports. An example of the type and frequency of the information is as follows:

TRANSPARENCY REPORTS (to be completed by the Authority within 3 months of Contract Award)

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>			
<i>(Charges)</i>			
<i>(Major subcontractors)</i>			
<i>(Technical)</i>			
<i>(Performance management)</i>			

CONTRACTOR SENSITIVE INFORMATION

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity
Framework personnel rates	This information is potentially commercially sensitive for our competitors in regards to pricing for similar project/Framework opportunities	Duration of Framework and 3 months post.

This and the following 1 pages comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 8 – Exit Strategy

1. Contract re-tender and re-negotiation

The Contractor shall carry out services necessary to allow Authority to undertake the competitive re-bid of a framework agreement, or to take over the provision of the Services itself.

2. Assistance with termination

2.1 The Exit Plan shall be produced and delivered by the Contractor to the Authority in accordance with the steps defined in clause 44.2.

2.2 The Contractor shall throughout the period of the Framework Agreement, maintain and continuously update the Exit Plan which shall include the contents listed in clause 44.3.

3. Post termination

In accordance with clause 50 (Consequences of termination), following the termination of the Framework Agreement the Contractor shall return to the Authority all Authority Property and Authority Protected Information in the Contractor's possession and destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession, and a duly authorised officer of the Contractor shall certify that this has been done.

This and the following 1 pages comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 9 – DATA PROTECTION

This and the following 1 pages comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd (REDACTED)

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

Approved Sub-contractors	Relevant obligations
1. REDACTED	REDACTED
2. REDACTED	REDACTED
3. REDACTED	REDACTED
4. REDACTED	REDACTED
5. REDACTED	REDACTED
6. REDACTED	REDACTED
7. REDACTED	REDACTED

This and the following 31 pages comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and Mott Macdonald Ltd

SCHEDULE 11 – CONTRACTORS SUBMISSION

REDACTED