

FRAMEWORK AGREEMENT

-between-

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

-and-

(2) AMERESCO LIMITED (THE “CONTRACTOR”)

AND OTHER FRAMEWORK CONTRACTORS

-relating to the supply of Non-Domestic Energy Efficiency Services – Lot 2 above £1m

-for the benefit of-

THE SCOTTISH MINISTERS AND OTHER PUBLIC BODIES

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PREAMBLE:

- ONE The Framework Authority requires the supply of Services to Framework Public Bodies;
- TWO On 19th August 2019 the Framework Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number OJEU 264784-2019;
- THREE On 3rd October 2019 the Contractor submitted its ESPD;
- FOUR On 19th August 2019 the Framework Authority issued its ITT to potential Contractors (including the Contractor) in respect of the supply of Services;
- FIVE On 3rd October 2019 the Contractor submitted its Tender;
- SIX On the basis of the Tender, the Framework Authority has selected the Contractor, amongst other Framework Contractors, to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes the terms and conditions under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- Service Levels that the Contractor has undertaken to meet;
 - 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 Framework 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;

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

“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 Call-off Contract Terms and Conditions.

“Call-off Contract Terms and Conditions” means the terms and conditions for Call-off Contracts set out in Schedule 5.

“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 Ameresco Limited (06614239) of 11-13 Crosswall, London, EC3N 2JY;

“Contractor Sensitive Information” means any information provided by the Contractor to the Framework 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.

“Controller”, “Processor” and “Data Subject” 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.

“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 3rd October 2019.

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

“Exit Plan” means any exit management plan developed by the Contractor and approved by the Framework 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 Framework Authority and the Contractor consisting of clauses and 11 Schedules.

“Framework Authority” means the Scottish Ministers.

“Framework Authority Protected Information” means any information provided by the Framework 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).

Framework Authority Requirements” means the operational requirements, functions and characteristics of the Framework set out in Schedule 1 (Statement of Requirements)

“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.

"Framework Contractors" means the contractors appointed to deliver the Services under NDEE Lot 2 above £1m:

- Ameresco Limited
- Asset Plus Energy Performance Limited
- Centrica Business Solutions UK Limited
- Easy Heat Systems Limited
- E.ON Control Solutions Limited
- ENGIE Urban Energy Limited
- FES Support Services Limited
- Imtech Low Carbon Solutions Limited
- TESGL Limited T/A SSE Enterprise Energy Solutions Ltd
- Veolia ES Resource Efficiency (UK) Limited
- Vital Energi Utilities Limited

"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.

"Intellectual Property Rights" means patents, inventions, trademarks, 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 Framework Authority's invitation to tender dated 19th August 2019;

- "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 Framework 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.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Framework 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, set out in Schedule 4.

“Outgoing Employee” means any employee, agent, consultant and individual contractor of the Contractor, and Affiliate of the Contractor and/or of any sub-contractor who by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 transfer to the Framework Authority or a Replacement Contractor.

“Party” to this Framework Agreement means either of the Framework 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.

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

“Relevant Transfer” means a transfer of Staff to the Framework Authority from the Contractor or a transfer of staff from the Framework Authority to the Contractor governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“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 Framework Public Bodies as set out in the Statement of Requirements and as may be further defined in the course of a mini-competition process for the purposes of a Call-off Contract.

“Service Levels” means the particular levels of service that the Contractor has undertaken to meet under this Agreement, including the levels set out in the Statement of Requirements (Schedule 1) and the Contractor’s Specific Framework Proposals (Schedule 10) and as may be further defined in the course of a mini-competition process for the purposes of a Call-off Contract.

“Specification” means the specification of the Services that the Contractor has undertaken to provide as set out in the Statement of Requirements (Schedule 1) and as may be further defined in the course of a mini-competition process for the purposes of a Call-off Contract.

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

“Supervisory Authority” means the UK Information Commissioner’s Office (or its successor authority) and any authority within the meaning given in the Data Protection Laws;

“Tender” means the tender submitted by the Contractor to the Framework Authority in response to the ITT dated 3rd October 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.

“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 Framework Authority, the Contractor shall deliver a validly executed parent company guarantee(s) 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 Framework 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 Framework 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 Framework 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.
- 3.2. This Agreement is a multi-supplier framework agreement and the contractors that are party to it are the Framework Contractors. 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 any Framework Public Body.
- 3.5. The Contractor acknowledges that the Framework Public Bodies are separate legal persons and as such the Framework 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 1st April 2020 (the "Commencement Date") for a period of three (3) years, unless it is terminated earlier.
- 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 a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

The Framework 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 and Service Levels set out the Services that the Contractor has undertaken to provide.

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 are not to be increased for the period of the Framework Agreement.
- 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 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 under the Framework Agreement has been suspended in accordance with clause 9.2 (Management Arrangements).
- 8.3. The Framework Public Bodies and the Contractor must comply with the Award Procedures.
- 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 Framework Authority and the Contractor, including arrangements for monitoring of the Contractor's compliance with the Service Levels, the Award Procedures and the terms of this Framework Agreement.
- 9.2. The Framework Authority may by notice to the Contractor suspend the Contractor's appointment to provide Services to Framework Public Bodies for a notified period of time:
 - 9.2.1. if the Framework 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 e-mail.

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

12.3.1. For the Framework Authority:

Scottish Government
5 Atlantic Quay
150 Broomielaw
Glasgow
G2 8LU
For the attention of: REDACTED
Tel: REDACTED
E-mail: REDACTED

12.3.2. For the Contractor:

Ameresco Limited
11-13 Crosswall
London
EC3N 2JY
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 Framework Authority, the Framework Authority may deduct that sum from any sum due to the Contractor whether under a Call-off Contract or otherwise.

14. Data Protection

14.1. The Contractor acknowledges that Personal Data described in Schedule 11 (Processing Details) may be Processed in performing its obligations under this Framework Agreement. For the purposes of any such Processing, the Parties agree that the Contractor acts as the Processor and the Framework Authority acts as the Controller.

14.2. The Contractor will, in conjunction with the Framework Authority and in its own right and in

respect of its obligations under the Framework Agreement, ensure it is compliant with the Data Protection Laws.

- 14.3. 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 Contractor under Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.
- 14.4. 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, the terms of the relevant Call-off Contract shall apply.
- 14.5. The Contractor will provide the Framework 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.
- 14.6. The Contractor must:
 - 14.6.1. Process Personal Data only as necessary in accordance with the Contractor's obligations under the Framework Agreement in accordance with any written instructions given by the Framework Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the UK or the European Economic Area unless required to do so by UK, European Union or European Union Member state law to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform the Framework Authority of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Framework Agreement or as is required by that law;
 - 14.6.2. subject to clause 14.6.1, only Process or otherwise transfer any Personal Data in or to any country outside the UK or the European Economic Area with the Framework Authority's prior written consent;
 - 14.6.3. take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that the Staff:
 - 14.6.3.1. are aware of and comply with the Contractor's duties under this clause;
 - 14.6.3.2. are subject to appropriate confidentiality undertakings with the Contractor, Affiliate or the relevant sub-contractor;
 - 14.6.3.3. 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 Framework Authority or as otherwise permitted by this Framework Agreement; and
 - 14.6.3.4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 14.6.4. implement appropriate technical and organisational measures, including those required 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.

- 14.7. The Contractor shall not engage a sub-contractor to carry out Processing in connection with this Framework Agreement without prior specific or general written authorisation from the Framework Authority. In the case of general written authorisation, the Contractor must inform the Framework Authority of any intended changes concerning the addition or replacement of any other sub-contractor and give the Framework Authority an opportunity to object to such changes.
- 14.8. If the Contractor engages a sub-contractor for carrying out Processing activities on behalf of the Framework Authority, the Contractor must ensure that same data protection obligations as set out in this Framework Agreement 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. The Contractor shall remain fully liable to the Framework Authority for the sub-contractor's performance of the obligations.
- 14.9. The Contractor must provide to the Framework Authority reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 14.10. The Contractor must notify the Framework Authority if it:
- 14.10.1.1. receives a request from a Data Subject pursuant to Article 15 of the GDPR (or a purported request);
 - 14.10.1.2. receives a request to rectify, block or erase any Personal Data;
 - 14.10.1.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
 - 14.10.1.4. receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Framework Agreement; or
 - 14.10.1.5. 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 Working Days of receipt of the request or any other period as agreed in writing with the Framework Authority from time to time.
- 14.11. Taking into account the nature of the Processing and the information available, the Contractor must assist the Framework Authority in complying with the Framework Authority's obligations concerning the security of Personal Data, reporting requirements for Personal Data Breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- 14.11.1. 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;
 - 14.11.2. notifying a Personal Data Breach to the Framework Authority without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data Breach;
 - 14.11.3. assisting the Framework Authority with communication of a Personal Data Breach to a Data Subject;

- 14.11.4. supporting the Framework Authority with preparation of a data protection impact assessment; and
 - 14.11.5. supporting the Framework Authority with regard to prior consultation of the Supervisory Authority.
- 14.12. At the end of the provision of services relating to Processing the Contractor must, on written instruction of the Framework Authority, delete or return to the Framework Authority all Personal Data and delete existing copies unless UK, EU or EU Member State law requires storage of the Personal Data.
- 14.13. The Contractor must:
- 14.13.1. provide such information as is necessary to enable the Framework Authority to satisfy itself of the Contractor's compliance with this clause 14;
 - 14.13.2. allow the Framework Authority, 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;
 - 14.13.3. inform the Framework Authority, if in its opinion, an instruction from the Framework Authority infringes any obligation under Data Protection Laws.
- 14.14. The Contractor must maintain written records including in electronic form, of all Processing activities carried out in the performance of the Framework Agreement or otherwise on behalf of the Framework Authority containing the information set out in Article 30(2) of the GDPR.
- 14.15. If requested, the Contractor must make such records referred to in clause 14.14 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 14.16. The Parties acknowledge that the inspecting Party will use reasonable endeavours to carry out any audit or inspection under clause 14.13.2 with minimum disruption to the Contractor's day to day business.
- 14.17. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Framework Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Framework Authority 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 Framework 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 Framework Authority may reasonably request to enable the Framework Authority to comply with its obligations under FOISA and Environmental Information Regulations;
 - b) transfer to the Framework 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 Framework Authority with a copy of all information held on behalf of the Framework 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 Framework Authority may reasonably specify) in the form that the Framework Authority requires.
 - d) not respond directly to a Request For Information addressed to the Framework Authority unless authorised in writing to do so by the Framework Authority.
- 15.2. If the Request for Information appears to be directed to information held by the Framework Authority, the Contractor must promptly inform the applicant in writing that the Request for Information can be directed to the Framework Authority.
- 15.3. Where the Framework Authority receives a Request for Information concerning the Framework Agreement, the Framework 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 and or the Environmental Information Regulations.
- 15.4. The Contractor acknowledges that the Framework Authority may, acting in accordance with the Framework 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 Clause 15.4.1 applies the Framework 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 practicable 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 Framework 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 Framework Authority believes that publication of any element of the Transparency Information should be treated as Contractor Sensitive Information the Framework 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 Framework Authority to publish to the general public, the Transparency Information in its entirety. The Framework 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 Framework Authority to enable the Framework Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10. The Framework 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 Framework Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Framework Authority may disclose such information under FOISA and the Environmental Information Regulations and may (except for Commercially Sensitive Information, Confidential Information, (subject to Clause 17.3.3) publish such Information. The Contractor shall provide to the Framework Authority within 5 Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Framework Authority Protected Information

- 16.1. The Contractor must:

- 16.1.1. treat all Framework Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Framework Authority Protected Information against disclosure;
- 16.1.2. only use the Framework Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
- 16.1.3. only disclose the Framework 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 Framework Authority Protected Information without the prior written consent of the Framework Authority.

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

- 16.3. Clause 16.1 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 Framework 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 Framework 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 Framework 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 Framework 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 Framework 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 Framework 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 Framework 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 Framework 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 Framework Authority shall if the Framework Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Framework 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 Framework Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish

Parliament) of the economy, efficiency and effectiveness with which the Framework Authority has used its resources.

- 17.4. The Contractor consents to the publication of the Framework Agreement by the Framework Authority, subject to such redactions as the Framework Authority may decide to make. The Framework 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 Framework Authority are final and conclusive.

18. Audit

- 18.1. The Contractor must retain and maintain full and accurate records of the Framework Agreement including the Call-off Contracts placed, the Services provided and payments made and reimbursed under it.
- 18.2. The Contractor must on request, and without any charge to the Framework Authority, afford the Framework Authority, or the Framework Authority's representatives, such access to those records as may reasonably be requested by the Framework 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 Framework Authority.

SECTION C

20. Key Individuals

- 20.1. The Contractor acknowledges that the Key Individuals are essential to the proper provision of the Services.
- 20.2. The Key Individuals must not be released from providing the Services without the approval of the Framework 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 Framework 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 Framework Authority. Subject to the Contractor's compliance with this clause, the Framework 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 Framework Authority's

employees who have been associated with the Framework Agreement and/or the contract management of the Framework Agreement without the Framework Authority's prior approval.

22. Staff transfer at commencement

- 22.1. The Parties agree that the entering into of this Framework Agreement does not involve a Relevant Transfer.

23. Information about Contractor Employees

- 23.1. The Framework Authority may by notice require the Contractor to disclose such information as the Framework Authority may require relating to those of the Contractor's employees carrying out activities under or connected with the Framework Agreement or any Call-off Contract.
- 23.2. The Contractor must disclose by notice all such information as is required by the Framework Authority under clause 23.1, within such reasonable period specified by the Framework 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 consents to the disclosure by the Framework Authority of all information provided by the Contractor under this clause to other Contractors that the Framework Authority may invite to tender or appoint for services to be provided in substitution for the Services.

24. Staff transfer on expiry or termination

- 24.1. The Parties understand that the ceasing, termination or suspension of the Framework Agreement will not involve a Relevant Transfer. In the event that there is a Relevant Transfer the provisions of clauses 24.2 – 24.4 below will apply.
- 24.2. The Contractor indemnifies the Framework Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Framework Authority or any replacement Contractor may suffer as a result of or in connection with:
- 24.1.1. the provision of information pursuant to clause 23;
 - 24.1.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) arising directly or indirectly from any act, fault or omission of the Contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
 - 24.1.3. any failure by the 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 Framework Authority or any replacement Contractor to comply with its obligations under regulation 13 of TUPE; and
 - 24.1.4. 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 Framework Authority to comply with any legal obligation to such trade union, body or person.
- 24.2. The Contractor is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, holiday pay, 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 holiday pay, 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).

- 24.3. The Contractor indemnifies the Framework Authority and any replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Framework Authority or replacement Contractor may incur in respect of the emoluments and outgoings referred to in clause 24.2.

25. Security

- 25.1 The Contractor must comply with the Framework 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 Framework 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 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 Framework Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Framework Agreement belong to and shall vest in the Framework Authority.

- 27.2. The Contractor assigns to the Framework Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This assignation takes effect on the Commencement Date or as an assignation 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 assignation and without further cost to the Framework Authority.

28. Claims relating to Intellectual Property Rights

- 28.1. The Contractor must not infringe any Intellectual Property Rights of any third party in 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.

- 28.2. The Contractor must not without the prior written consent of the Framework Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

29. Assignment and Change of Control - Contractor

- 29.1. The Contractor may not assign its interest in the Framework Agreement without the prior written consent of the Framework Authority.

- 29.2. The Contractor must notify the Framework Authority:
- 29.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
 - 29.2.2. immediately following a change of Control that has occurred; and
 - 29.2.3. where it proposes to make any change to its sub-contractor named by the Contractor in its tender.

30. Assignment and Change of Control – Framework Authority

- 30.1. Subject to clause 30.3, the Framework 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 Framework Authority; or
- (c) any private sector body which substantially performs the functions of the Framework Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Framework Agreement.

- 30.2. Any change in the legal status of the Framework Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.3, 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 Framework Authority.

- 30.3. If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 30.1 to a body which is not a Contracting Authority or if there is a change in the legal status of the Framework 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 Framework 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.

- 30.4. The Framework 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 Framework 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 Contractor may not sub-contract its obligations under the Framework Agreement without the prior written consent of the Framework 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.

31.2. The Contractor shall include in every sub-contract:

31.2.1. 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 Framework Agreement, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Clause 42.4 occur; and

31.2.2. 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 31.2, '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.

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.

SECTION E

33. **Warranties and Representations**

The Contractor warrants and represents that:

33.1.1. it has full capacity and Framework 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 Framework 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 required by the PQQ, ITT and clause 36 below have been effected.

34. Indemnity

Without prejudice to any rights or remedies of the Framework Authority, the Contractor will indemnify the Framework 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 £1 million per Call-off Contract or any greater/other sum as may be agreed with the Framework Authority or a Framework Public Body in the Call off Contract terms and conditions.

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.

35.4.4. any breach of any obligation under the Data Protection Laws or Clause 14 (*Data Protection*)

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 £10 million;

36.1.2. professional indemnity insurance in the sum of not less than £10 million; and

36.1.3. employers liability insurance in the sum of not less than £10 million.

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 Framework Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

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 39.2 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 three (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.

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 Framework Authority, its employees or any other Contractor employed by the Framework Authority.
- 41.2. The Contractor shall immediately inform the Framework 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 Framework Authority acting reasonably, then the Framework Authority may by notice terminate the Framework Agreement with immediate effect.

42. Termination Rights

- 42.1. The Framework 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 Framework Authority within 20 Working Days, or such other period as may be specified by the Framework 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 Framework Authority, capable of remedy; or
 - 42.1.3. the Default is a material breach of the Framework Agreement.
- 42.2. The Framework Authority may also terminate the Contractor's interest in the Framework Agreement:
 - 42.2.1. in accordance with any provision of the Schedules;
 - 42.2.2. in accordance with any provision of this Agreement, the Schedules or any Call-off Contract which is breached and which concerns the following activities:
 - 42.2.2.1. entering, attending or occupying the Framework Authority's premises;
 - 42.2.2.2. making use of the Framework Authority's property or information technology systems, or giving the Framework Authority the use of the Contractor's property or information technology systems;

- 42.2.2.3. having dealings with the Framework Authority's employees, Contractors, suppliers or contractors;
 - 42.2.2.4. soliciting the Framework Authority's employees;
 - 42.2.2.5. making representations or giving professional advice to the Framework Authority;
 - 42.2.2.6. generating information for or giving information to the Framework Authority;
 - 42.2.2.7. receiving information from or holding information on behalf of the Framework Authority; and
 - 42.2.2.8. carrying out publicity or marketing activities; and
- 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.
- 42.3. The Framework Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Contractor.
- 42.4. The Framework Authority may terminate the Agreement in the event that:
- a) the Framework Agreement 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 Framework Agreement 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 Framework 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 Framework Authority may terminate the Contractor's interest in 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 Framework Authority may terminate the Contractor's interest in 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 - Contractor); or
 - 43.2.2. where no such notification has been given, the date that the Framework Authority becomes aware of the change of control.
- 43.3. But the Framework Authority may not terminate the Contractor's interest in the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Framework 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 Framework Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Contractor agrees that the Framework 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 Framework Authority within three (3) months of a written request from the Framework Authority and shall include or address the matters specified in Clause 44.3. The Framework Authority shall provide to the Contractor the Framework Authority's comments on the plan within one (1) month of the Framework Authority's receipt of the plan. The Contractor shall take into

account the comments and suggestions of the Framework Authority and shall issue the final version of the Exit Plan to the Framework Authority within ten (10) Working Days of receipt of the Framework Authority's comments.

- 44.3 An Exit Plan shall include:
- 44.3.1 the activities required to enable the Framework Authority to re-tender the Framework Authority Requirements and/or the provision of the Services;
 - 44.3.2 the activities necessary to support any Replacement Contractor or the Framework 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 the maintenance of a 'business as usual' environment for the Framework Authority during the period when Exit Management obligations are applicable; and
 - 44.3.5 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 Framework Authority.
- 44.4 No amendment of the Exit Plan shall be made without prior written consent of the Framework 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 Framework 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 sub-clause 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 Framework Authority.
- 45.3 The Contractor shall take all reasonable steps to ensure the observance of the provisions of sub-clause 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 Framework 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 Framework 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, in performance of this Framework Agreement, Call-offs or otherwise, 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 for the purposes of clause 42 (Termination on Default) which shall entitle the Framework Authority to terminate the Framework Agreement.

49. Conflicts of interest

49.1. The Contractor must take appropriate steps to ensure that the Framework Authority is not placed in a position where, in the reasonable opinion of the Framework Authority, there is an actual or potential conflict between the interests of the Contractor and the duties owed to the Framework Authority under the Framework Agreement.

49.2. The Contractor must disclose by notice to the Framework 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 Framework 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 Framework 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 (Framework Authority Protected Information);
 - 50.4.8. clause 17 (Contractor Sensitive Information);
 - 50.4.9. clause 18 (Audit);
 - 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 (Claims relating to Intellectual Property Rights);
 - 50.4.16. clause 33 (Warranties and Representations);
 - 50.4.17. clause 34 (Indemnity);
 - 50.4.18. clause 37 (Dispute Resolution Procedure);
 - 50.4.19. clause 39 (Waiver and Cumulative Remedies);
 - 50.4.20. clause 47 (Tax arrangements);
 - 50.4.21. this clause 50 (Consequences of Termination); and
 - 50.4.22. clause 52 (Governing Law and Jurisdiction).

- 50.5. On expiry or termination of the Framework Agreement the Contractor must:
- 50.5.1. immediately return to the Framework Authority all Framework Authority Property and Framework Authority Protected Information in its possession; and
 - 50.5.2. destroy or delete any copies of Framework 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 Call-Off Contract Terms and Conditions contained in Schedule 5;
 - 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 [number of pages before this page] 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 Ameresco Limited REDACTED

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.....

This and the following 12 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 1 – STATEMENT OF REQUIREMENTS

1. Background

1.1. The Scottish Government is the devolved government for Scotland and has a range of responsibilities that include: the economy, education, health, justice, rural affairs, housing, environment, equal opportunities, consumer advocacy and advice, transport and taxation. The core Government consists of six Director Generals: Organisational Development and Operations; Economy; Scottish Exchequer; Health & Social Care; Education, Communities and Justice; Constitution & External Affairs.

1.2. The Scottish Government Energy and Climate Change Directorate work to deliver a low carbon society, with sustainable economic growth and reduced greenhouse gas emissions. They are responsible for:

- helping Scotland become a prosperous low carbon economy, with secure, affordable and sustainable energy
- promoting Scotland's climate change, clean energy and energy efficiency programmes internationally
- working locally to help individuals, businesses and communities make sustainable choice

1.3. Scottish Procurement delivers innovative strategies and contractor relationships that enable public sector organisations in Scotland to access the goods and services they commonly need at market leading prices and terms. We do this through pursuing opportunities for collaborative procurement, and the implementation of leading practices, whilst promoting the economic and sustainable development of the wider Scottish market place.

1.4. The objectives of this Framework are to deliver Best Value to Scottish Public Bodies and Scottish Third Sector Bodies while maximising opportunities for suppliers of all sizes and contributing to the Scottish Government's Purposes (more information available at <https://nationalperformance.gov.scot/>) and to provide Scottish Public Bodies and Scottish Third Sector Bodies with tailored support to help deliver their Energy Efficiency and Zero Carbon energy needs whilst supporting Scotland's Energy Strategy and the Energy Efficient Scotland (EES) Programme.

1.5. Non Domestic Energy Efficiency (NDEE) has been identified as having particular relevance to The Climate Change (Scotland) Act 2009, (Section 63, Energy Performance of Non Domestic Buildings), Scotland's Energy Strategy and the EES Programme. These Scottish Government policy objectives set stringent carbon reduction and energy efficiency targets which the NDDE Framework will look to support and deliver:

- by 2030 the equivalent of 50% of the energy for Scotland's heat, transport and electricity consumption to be supplied from renewable sources;
- increase the productivity of energy use across the Scottish economy by 30% by 2030;
- By 2032 where technically feasible, all buildings – both in the residential and services sectors – will be insulated to the maximum appropriate level;
- By 2032 70% of heat and cooling for non-domestic buildings will be supplied using low carbon heat technologies;
- improvements to the building fabric of Scotland's buildings will result in a 20% reduction in non-residential heat demand.

1.6. Increasing sustainable economic growth is a key driver of economic growth and promoting the transition to a low carbon economy is seen as a strategic priority within this. Best Value is the most appropriate balance of cost of acquisition (including but not limited to price), delivery, service provision and quality.

2. Glossary of Terms

2.1 In this Statement of Requirements the following words have the meanings given to them as detailed below.

2.2 Capitalised terms within this Statement of Requirements shall, where defined in the Legal Documents or Technical Documents have the meaning ascribed to them therein and otherwise are defined as follows.

"Contractor" means an economic operator appointed under the Framework Agreement

"Energy Conservation Measure(s)" (ECM(s)) means the energy efficiency asset(s) installed by the Contractor to meet the Guaranteed Energy Cost Performance, including but not limited to [to be populated on a project specific basis].

"EnPC " means the contract for supply of services between a Framework Public Body and Contractor entered into in accordance with the Award Procedures and based on either Schedule 5a or 5b of the Framework Agreement.

"Framework Authority" means the Scottish Ministers as represented by Scottish Procurement

"Framework Public Body/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. Information about agencies of the Scottish Ministers and offices in the Scottish Administration which are not ministerial offices is available at: <http://www.scotland.gov.uk/Topics/Government/public-bodies/about/public-bodies-guide/government-scotland> Scottish Non-Departmental Public Bodies are listed at: <http://www.scotland.gov.uk/Topics/Government/public-bodies/about/Bodies> Information about the Review of Public Procurement in Scotland and links to the other Centres of Expertise are available at: <http://www.scotland.gov.uk/Topics/Government/Procurement>.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the law and the exercise of 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 within the relevant industry or business sector.

"Scottish Procurement" – A branch within the Scottish Procurement & Property Directorate responsible for facilitating User Intelligence Groups, National Category Forums and collaborative procurement exercises for goods and services classified as Category A and B following the review of public procurement in Scotland (McClelland Report).

3. Introduction

3.1. This requirement is to establish a National Framework Agreement for the provision of Non Domestic Energy Efficiency (NDEE) Works to the Scottish Public Sector and Scottish Third Sector Bodies. The framework will be split into two individual frameworks:

- NDEE Works up to £1m
- NDEE Works over £1m

4. Project Support Unit

4.1. To provide Framework Public Bodies with additional technical and project support Scottish Procurement will be procuring a Project Support Unit (PSU) which will work alongside this framework.

4.2. The PSU provides project support to public bodies undertaking projects through the NDEE framework. This support includes technical support and expertise, energy audits, business case development, project management, measurement and verification and procurement support.

5. Call-off Contract documentation / EnPCs

5.1. It is a requirement of submitting a bid in response to this ITT that a Contractor agrees to enter into Call-off-Contracts in accordance with the Framework Agreement Schedules, as further developed for project specific requirements/terms in a mini-competition.

5.2. The Call-off Contract Terms and Conditions (including: the Development Contract (Legal Document 2 - Schedule 5a to the Framework Agreement); the EnPC-D&B Contract (Legal Document 3 – Schedule 5b to the Framework Agreement) and the EnPC-DBFM Contract (Legal Document 4 – Schedule 5c to the Framework Agreement) set out a considerable number of requirements that a Contractor must adhere to in delivery of projects under the Framework Agreement.

5.3. Call-off Contract Terms and Conditions will be more fully developed to reflect project specific requirements through a mini-competition process so as to be appropriate and proportionate to the specific EnPC requirements.

5.4. The Technical Documents provided to bidders set out a number of technical and/or technical process requirements (which may be further developed by Framework Public Bodies to reflect project specific requirements).

5.5. Call-off contracts may include the scope and option for future phases and/or work packages.

6. Project Bank Account (PBA)

6.1. Within this framework there is an ability to make use of a PBA. Where applicable Framework Bodies should include for this provision within their ITMC. It is anticipated that PBA's will be used where individual project values exceed £2m, but PBA's may also be used for projects below this value.

6.2. A PBA allows participating firms ("beneficiaries") to be paid for work done without the money flowing through the main contractor's bank account. Beneficiaries in a PBA project are the main contractor (tier 1) and firms in tiers 2 and 3 which join the PBA. The main contractor retains control of the amount due to beneficiaries but no longer exclusively controls when it is paid. All beneficiaries, including the main contractor, are paid simultaneously. A main contractor, whether solvent or insolvent, cannot withdraw money allocated to other supply chain beneficiaries from the PBA i.e. it is "ring-fenced".

6.3. Beneficiaries are paid within five days of the amount certified under the main contract being deposited into the PBA. Money is moved along the supply chain and into the general economy more quickly, amplifying the multiplier effect of infrastructure investment leading to wider economic benefits beyond project delivery.

6.4. Where deemed applicable the successful bidder must include the PBA provisions in all invitations to tender for work subcontracted to tier 2 businesses

6.5. Further guidance regarding the implementation and use of PBA's can be found at the following link: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/construction-projects-implementing-project-bank-accounts/documents/project-bank-accounts-pba-implementation-guidance-april-2019/project-bank-accounts-pba-implementation-guidance-april-2019/govscot%3Adocument/Project%2BBank%2BAccounts%2BPBA%2B-%2BImplementation%2Bguidance%2BApril%2B2019.pdf>

6.6. Banking services framework - <https://www.gov.scot/publications/banking-services-framework/>

7. Workforce Related Matters

7.1. The Framework 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.

7.2. The Scottish Government 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 this Parliament;
- 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.

7.3. The Scottish Government also attaches importance to ensuring effective consultation and involvement of staff and Scottish Government 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 Scottish Government encourages its staff to join an appropriate Union and to play an active part within it, making sure their views are represented.

7.4. The Framework Public Bodies involved, alongside Scottish Government in establishing the Framework shares Scottish Government's views on the importance of the above.

7.5. In order to ensure the highest standards of service quality in this contract it is expected that contractors whose workers work alongside those of Scottish Government and Framework Public Bodies using the Framework take a similarly positive approach to workforce-related matters as part of a fair and equitable employment and reward package.

7.6. Sub-contractor personnel responsible for delivering services on behalf of Framework Public Bodies, are unlikely to be solely dedicated to providing Non-Domestic Energy Efficiency Services under the Framework Agreement. The Framework Authority will monitor the situation throughout the life of this Framework Agreements and, in order to ensure the highest standards of service quality, it is expected Contractors and 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.

8. Community Benefits

8.1. Introduction

8.1.1. The Public Procurement Reform Programme delivers value that goes beyond savings and benefits – improving Contractor access to public contracts, particularly for SMEs; maximising efficiency and collaboration; and placing the local, social and economic aspects of sustainability at the heart of the purchasing process.

8.1.2. The Procurement Reform (Scotland) Act 2014 has established a national legislative framework for sustainable public procurement that supports Scotland’s economic growth through improved procurement practice – and requires public bodies to consider how their procurement activity can improve the economic, social and environmental wellbeing of the authority’s area.

8.1.3. It also specifically requires public bodies to consider imposing community benefit requirements as part of a major contract; these might relate to, for example, employment opportunities or to sub-contracting opportunities. An extract from the relevant section of the Act is as follows:

8.1.4. For the purposes of this Act, a community benefit requirement is a contractual requirement imposed by a contracting authority—

- relating to—
- training and recruitment, or
- the availability of sub-contracting opportunities, or
- which is otherwise intended to improve the economic, social or environmental wellbeing of the authority’s area in a way additional to the main purpose of the contract in which the requirement is included.’

8.2. Expectations

8.2.1. During Contract Mobilisation the successfully awarded Contractor is required to finalise the timescales and details of the Community Benefits which the Contractor has committed to within their tender submission.

8.2.2. Monitoring arrangements will also be established during Contract mobilisation, to set up a process for ongoing review both at Contract Management meetings and through general discussions across the full Contract term.

8.2.3. Contractors will be expected to deliver a range of community benefits including:

- Targeted recruitment and training
- Work placements
- Curriculum support
- Community enhancement
- SME supply chain development based on evidence of local need

8.2.4. The Contractor must be able to demonstrate their intention to integrate trainees and new entrants into the labour market without distinction of sex, marital status, race, ethnic origin or political or religious beliefs.

8.2.5. Table 1 sets out the number of Community Benefit Points (CBP) attributed to annual contract value.

8.2.6. The annual value is the cumulative annual value of all Clients spend through the Contract.

Table 1 Community Benefits Points Matrix

Community Benefits Points (CBP) Matrix

Annual Value	Points to be Achieved
£100 - 250k	20
£250 – 500k	30
£500 – 1m	50
£1–3m	75
£3 -5m	100
£5-10m	125
£10-20m	150
£20-30m	175

8.2.7. The Community Benefit Outcomes (Appendix A) provides a selection of the types of Community Benefits that the Scottish Government would expect this Contract to deliver and allocates Community Benefits Points (CBPs) to each of them.

8.2.8. The Contractor must achieve the CBPs in line with Table 1, however, it is up to the tenderer as to what Community Benefits are to be put forward from the menu. All points assigned to each chosen Community Benefit will be added together to achieve the CBPs requirement. The types of Community Benefit that the Contractor proposes to deliver will not form part of the Tender Evaluation.

8.2.9. The applicable Community Benefits are to be delivered in the 12 months following (i.e Year 1 Community Benefits are to be delivered in Year 2).

8.2.10. In the last 12 months of the framework the contractor will be expected to work with the Framework Authority and Framework Public Bodies (as applicable) to ensure all Community Benefits are delivered.

8.3. Remuneration

8.3.1. Trainees and recruits must, as a minimum, be paid in accordance with National Minimum Wage rates (or Living Wage for over 25's) and industry norms and must have terms and conditions of employment that are at least equivalent to those provided to workers that have equivalent skills and experience. Employers are encouraged to increase the remuneration of trainees in line with their experience and productivity.

8.4. Contractor and Sub-contractor Compliance

8.4.1. It is the Contractor's responsibility to develop a working method that will deliver the targeted recruitment and training requirements and related monitoring and verification data, and obtain the full co-operation of Contractors and Subcontractors in delivering these requirements for the full duration of the Contract.

8.5. Equal Opportunities

8.5.1. Framework Contractors will be required to ensure that it complies with equal opportunities and non-discrimination legislation in relation both to the delivery of the service and to employment and demonstrate the policies and practices which it will put in place to achieve this.

8.6. Insurances

8.6.1. Framework Contractors must ensure that insurance cover includes people aged 16 and over and staff from employment and training organisations when on site.

8.7. Definitions

8.7.1. A New Entrant is defined as a person who is employed to do a specific job and is leaving an educational establishment or a training provider, or a person that has been non-employed who has been unemployed and/or is registered with worker or job Centre Plus and is seeking employment.

8.7.2. An Apprentice is a person defined as a New Entrant to the industry who is undertaking a recognised skill qualification or an equivalent apprenticeship scheme for construction or non-construction apprenticeships.

8.7.3. Work Placement is defined as a person undertaking a short term overview of the industry and/or a related training programme with on-site instruction and supervision provided.

8.7.4. Direct indicates that the New Entrant will be employed or trained by the main Contractor.

8.7.5. Indirect indicates that the New Entrant will be employed or trained through a specialist Contractor or Sub-contractor as a result of work procured through the main contractor.

9. Sustainability

9.1. Sustainability is at the core of this Framework and delivery of EnPCs. Scottish Government is seeking to support the transition to a low carbon economy, as set out in the Government'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.

9.2. 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 Scottish Government'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 Act. 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.

9.3. Relevant to the above, it is envisaged that Framework Public Bodies will wish to focus on ensuring robust processes to not only ensure compliance with sustainability and environmental requirements but to go further in achieving sustainability outcomes through the performance of Call-off Contracts. Accordingly, the following are set out as relevant requirements and/or KPIs at Framework Level and it is expected may be developed (including potentially to expand upon) in mini-competitions conducted by Framework Public Bodies.

9.4. Compliance Requirements (note: Framework Contractors should be aware that Framework Public Bodies may supplement / require to supplement the following at mini-competition and the following should not therefore be read as exhaustive):

- Waste (Scotland) Regulations 2012 – see for example:
 - .1.1. (<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/publicsecto>)
- 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

10. Pricing

10.1. Pricing for the initial 3 year period will be as submitted by the Contractor and ultimately set out at Schedule 2 of the Framework Agreement. It is envisaged that in response to mini-competitions, Contractors may offer lower prices than those included in Schedule 2 of the Framework Agreement.

10.2. The Framework Agreement provides details as to how prices will be reviewed if the final 12 month extension is taken up.

11. Continuous Improvement

11.1. Each Framework Contractor will deliver continuous improvement in the services provided under this contract, throughout the full duration of the Framework Agreement.

11.2. The Framework Authority recognises continuous improvement as on-going quantitative improvements delivered for:

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

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

12. Security Clearance

12.1. Due to the collaborative nature of this Framework Agreement, a Framework Public Body may require different security procedures to be carried out prior to an individual taking up any Call-off Contract.

12.2. Staff involved in the delivery of the services who require access to the Framework Public Body's premises may require as a minimum to have obtained, at their or at the Contractor's expense, a Basic Disclosure certificate from Disclosure Scotland, and to have submitted the said certificate to the Framework Public Body, prior to obtaining access to any premises occupied by or on behalf of the Framework Public Body. Where relevant:

- Any such staff must have been resident in the United Kingdom for the twelve month period immediately preceding the date of clearance by Disclosure Scotland.
- The above checks must have been completed prior to staff being put forward for work with the Framework Public Body; however the Framework Public Body reserves the right to carry out additional and/or more in-depth checks where this is deemed necessary. Additional security requirements will be advised by the Framework Public Body prior to, Service Commencement Date.

- Costs, incurred as a result of carrying out the required security procedures, will be borne by the Contractor.
- The Contractor will also be required to inform the Framework Public Body if any staff involved in delivering the services are charged with, or convicted of any offence during the period of their assignment, and, should it be necessary, arrange for the service to be provided by another staff member.
- Since the pre-employment vetting, security and nationality checks can take up to 6 weeks to complete, the Contractor must ensure the availability of a 'pool' of pre-cleared temporary staff of sufficient size to meet the Framework Public Body's requirements.

12.3. All staff working within Central Government premises shall be subject to the Baseline Personnel Security Standard (BPSS), before access is permitted. This requires applicants to complete a BPSS Application Form which must be submitted to Central Government's Departmental Security Unit with the appropriate supporting documentation. The BPSS comprises verification of the following 4 main elements:

- identity;
- employment history;
- nationality and immigration;
- unspent' criminal record history (by means of Basic Disclosure certificates).

13. Business Continuity / Management Information

13.1. The Contractor shall maintain an up to date Business Continuity Plan, for the performance of a Call-off Contract with a Framework Public Body including a specific element relating to the ongoing, uninterrupted provision of service.

13.2. The Contractor shall meet the Management Information requirements of the Framework Agreement (Schedule 4 to the Framework Agreement) relevant to its continued involvement in the Framework together with reporting and monitoring requirements put in place under Call-off Contracts.

14. Performance Management

14.1. Nominated Representatives from Scottish Government and the Contractor shall attend all meetings relating to performance management.

14.2. The Contractor's representative at such meetings shall be a nominated director of the Contractor, the Contract Manager, or in their absence a nominated deputy.

14.3. Any issues raised during the course of these meetings will be addressed as a matter of priority unless otherwise agreed.

14.4. Notwithstanding the performance management meetings the Contractor shall attend both ad hoc and regular operational meetings as per the Terms and Conditions and as required.

14.5. The Contractor shall also attend regular progress meetings with each Framework Public Body which may include a requirement for contractor to provide a risk register and key milestone tracker. Timescales for these meetings will be agreed between the Contractor and the Client during the mobilisation period.

15. Management Information Reporting

15.1. It is a requirement of this contract that Management Information Reports are provided electronically by the Contractor.

15.2. Reports must include as a minimum, as follows:

- Quarterly summary of invoiced spend with each Framework Public Body

- Quarterly summary of verified savings delivered in quarter for each Framework Public Body
- Quarterly summary of verified carbon savings with each Framework Public Body
- Quarterly summary of verified energy savings with each Framework Public Body

16. Hours of Working

16.1. The Contractor is required to provide staff that can work flexible hours. This may include Bank and Public Holidays, weekend and evenings as well as a normal working week. The Framework Public Body will specify the working hours in the Call-off Contract Terms and Conditions.

1. Scope of Requirements

1.1. Lot 2 of the NDEE Framework will cover NDEE retrofit, in its broadest sense, to public sector buildings and grounds including the installation of a wide range of energy efficiency assets that may include, but not limited to:

- prefabricated energy centres;
- combined heat and power units;
- energy efficient boilers – zero carbon heat options must be considered where boilers are being installed through this framework
- voltage management units;
- controls outstations;
- luminaires, lighting controllers and other lighting assets.

1.2. The minimum value of individual projects under an Invitation to Mini Competition (ITMC) from this Framework is £1,000,000.

1.3. Public Bodies have the ability to undertake a single ITMC to appoint a contractor to undertake a programme of multiple projects to a minimum value of £1,000,000.

1.4. The aggregate value of projects forecasted to be procured through Lot 2 of the Framework is estimated to be in the range of £40 m - £80 m within the 4 year Framework term (including optional 12 month extensions) with the options to fund projects via revenue and capital budgets.

1.5. The financing of projects through this Lot may involve:

- 1.5.1. capital funding by the procuring authority;
- 1.5.2. utilising Contractor funding;
- 1.5.3. utilising third party finance; or
- 1.5.4. a combination of (i) (ii) and (iii)

1.6. It is anticipated that only projects (including a programme of projects, as appropriate) with a capital expenditure (capex) of more than £1m will use either finance options (ii) or (iii) above. A minimum value is of £1m is required on the capital funding option but individual projects will vary in value. This Lot provides public bodies with the ability to procure a programme of projects with a minimum value of £1m.

1.7. Ultimate delivery of services by way of Call-Off-Contract under the Framework will be based upon an EnPC with a performance guarantee capable of delivering on the basis of:

- design and build;
- design, build and operate;
- design, build, operate, finance; or
- design, build, operate, finance and maintain

1.8. At a project level, energy efficiency will be achieved through the installation of project specific energy efficiency assets, supported, where necessary, by the delivery of particular energy conservation services (ECS) and underpinned by an energy performance guarantee. Projects can be delivered through targeted and bespoke procurement for each procuring authority, provided for

in an EnPC. Installed energy efficiency assets are defined as Energy Conservation Measures (ECM) and projects are envisaged to include a range of assets.

1.9. Automatic Meter Reading (AMR) is envisaged as an essential asset for the majority of NDEE projects. Where existing AMR assets require to be replaced / extended to meet the requirements of a project, the cost of their supply and installation are to be covered by the EnPC contract, but AMR will be deemed to have a zero energy cost saving.

1.10. The EnPC will include the delivery of a wide range of energy efficiency assets, from zero carbon boilers and chillers to heat emitters, meters and controllers. The following is a list of some of the ECM categories that may be delivered as part of an EnPC, listed in an order to promote energy management hierarchy and facilitate transparency of interactive effects:

- ECM1 AMR: Automatic Metering Reading (AMR) assets including meters, loggers, communication devices and reporting software.
- ECM2 Passive: Solar shading devices, natural ventilation grilles and other passive renewable energy assets.
- ECM3 Building Fabric: Insulation panels, mats etc. and other items to improve the thermal performance of the building envelope.
- ECM4 HVAC: Heating, ventilation and air conditioning (HVAC) energy efficiency assets, such as efficient boilers, fans, chillers and heat emitters etc.
- ECM5 HVAC Controls: Building energy management systems and other HVAC controllers.
- ECM6 Lighting: Lighting and lighting controllers, including internal and external lighting inventories.
- ECM7 Electrical: Electrical Equipment and Distribution assets, such as efficient motors, drives and other equipment and voltage management units
- ECM8 LZC: Low and Zero Carbon plant and equipment, such as biomass boilers, solar thermal collectors, heat pumps, photovoltaic panels, combined heat and power units, etc.
- ECM9 Specialist Systems: Energy efficiency retrofit equipment to specialist systems, e.g. swimming pool covers, lift motors, catering equipment controls, variable speed drives for process equipment, etc.)
- ECM10 Water: Devices to manage water use through outlets such as taps, WC cisterns, urinals etc.
- ECM11 Heat Networks as part of an Energy Efficiency project
- ECM12 Other: Other energy efficiency assets to improve building energy performance.

1.10.1.1. The Scottish Government are committed to promoting zero carbon heat solutions and therefore during the life of the framework it is anticipated that the ability for Public Bodies to install gas powered heating plant (this does not include using gas as a back-up/contingency) will be removed from the scope of this framework.

1.11. Mandatory Services

1.11.1. Measurement and Verification Services shall be required in all projects. The M&V service is important due to the role it has in identifying achievement of the Guaranteed Energy Cost Performance, and the Payment Mechanism Deductions associated with non-performance.

1.11.2. Section 4.26 of this document outlines requirements of the service that must be applied whilst the exact requirements and standards for the managed service shall be identified by the Framework Public Body in its Invitation to Mini-Competition (ITMC), as relevant refined at the Development Contract stage to reflect the Preferred Bidder's Investment Grade Proposal and included in Section 1 of Schedule Part 12 (Services Requirements) of the EnPC.

1.11.3. The Contractor will be required to respond to the ITMC setting out in detail the Contractor's proposals (ITMC Proposals) to managing each service element. ITMC Proposals will be complied with throughout the term of the contract, with deductions levied where unavailability and non-performance is identified.

1.12. Project Specific Services

1.12.1. The following paragraphs provide short descriptions of the elements that may form the managed services that a Contractor may be responsible for under a Call-off Contract. The nature of the service will be project specific and will be selected to meet the requirements of the Framework Public Body, i.e. not all managed services will necessarily be included in all projects. The managed services relating to energy conservation are termed Energy Conservation Services (ECS) and could include the following: -

- ECS1: Bureau Service
- ECS2: Maintenance of installed assets
- ECS3: Lifecycle
- ECS4: Behaviour Change

1.13. Measurement & Verification Service

1.13.1. The Contractor will appoint and pay for impartial and independent measurement and verification of the energy performance delivery of the ECMs within the EnPC, in the form of a Measurement & Verification Service. This service will be required for all projects.

1.13.2. The Contractor will use the principles of the International Performance Measurement and Verification Protocol (IPMVP) to increase certainty, and reliability, through the delivery of a Measurement and Verification Plan (M&V Plan) to demonstrate the project's achievement relative to its goals of improving energy efficiency and saving money.

1.13.3. The M&V Plan will identify the actions and reporting required of the Contractor in the enactment of the Measurement and Verification Service for the project term.

1.13.4. The Contractor will ensure that the M&V Plan and subsequent monitoring and related tasks are undertaken by a Certified Measurement and Verification Professional (CMVP) (or equivalent).

1.13.5. Bureau Service

1.13.5.1. The Contractor may be required to provide a Bureau Service that may include services such as:

- An Automatic Monitoring and Targeting (aM&T) and Energy Reporting Bureau Service
- A Building Energy Management System (BEMS) Bureau Service (24/7)

1.13.5.2. An aM&T and Energy Reporting Bureau Service may provide energy consumption monitoring, targeting and monthly reporting associated with the EnPC ECMs. Such energy reporting shall be provided to the Framework Public Body and their Energy Managers and will include clear consumption reporting, trend analysis (including reporting against agreed benchmarks/baseline performance and previous year performance), identification and resolution of issues within [the month], and where possible, improvement recommendations.

1.13.5.3. A BEMS Bureau Service may include the service management of identifying and monitoring performance of the ECMs, enabling Framework Public Body logging of issues and reporting on issue resolution throughout the EnPC. The BEMS Bureau Service may also provide a platform for reviewing controls and making adjustments of agreed ECMs to optimise and maintain performance.

1.14. Maintenance of the installed ECMs

1.14.1. The Contractor may be required to provide an operations and maintenance service that might range between

1.14.2. Provision of a regular supply of consumables for an ECM, such as lamps following a lighting replacement

1.14.3. Provision of a comprehensive operation and maintenance service covering both programmed and reactive maintenance, for example following installation of a new Combined Heat & Power (CHP) unit.

1.14.4. The maintenance obligations will vary dependent on the proposed ECMs and the Framework Public Body's requirements. Varying levels of maintenance services may be required for a single project where multiple ECMs are provided.

1.14.5. Ultimately, all services provided pursuant to Call-Off Contracts must ensure that the agreed scope of operation and maintenance is undertaken in line with Good Industry Practice, in order that the ECMs continue to operate effectively and with minimal disruption to Framework Public Body operations. Compliance shall be reviewed and reported upon against the ITMC Proposals that form part of the EnPC.

1.15. Lifecycle

1.15.1. The Contractor may be required to provide long term maintenance in relation to the ECMs, ensuring the continued delivery of the energy performance for the full project term. The service should balance the requirements of the EnPC (including handback requirements) for the economic life of assets against the value for money of the project as a whole.

1.16. Behavioural Change

1.16.1. The Contractor may be required to provide a programme of behavioural change initiatives to support the Framework Public Body to encourage staff and facility users to adopt more energy efficient approaches to their use of the built environment.

1.16.2. Behavioural change initiatives shall be designed to optimise energy efficiency of the Framework Public Body's facilities, and minimise interactive effects with ECMs. Initiatives may take the form of a range of approaches including information provision, training provision and awareness campaigns. The Contractor will be expected to report on, and evidence, initiatives that are agreed as part of behavioural change plan.

2. Accreditation

2.1. Where the contractor, or their sub-contractor, are undertaking works which are electrical in nature the contractor must ensure SELECT (or equivalent) accreditation is held.

2.2. Where the contractor, or their sub-contractor, are undertaking works which are gas related the contractor must ensure Gas Safe Register accreditation is held.

2.3. Where the contractor, or their sub-contractor, are undertaking works involving microgeneration technologies used to produce electricity and heat from renewable sources the contractor must ensure MSC (or equivalent) certification is held.

This and the following 3 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 2 - PRICING SCHEDULE

Overheads, Profit and Risk			% make up			Accumulated % for Evaluation
Reference	Description	% mark up	Internal Labour Rates	Other internal costs	Sub-Contract Cost	
% Adjustment Contract Value of up to £2m	Overhead %	Redacted	Redacted	Redacted	Redacted	Redacted
% Adjustment Contract Value of up to £2m	Profit %	Redacted	Redacted	Redacted	Redacted	
% Adjustment Contract Value of up to £2m	Risk %	Redacted	Redacted	Redacted	Redacted	
% Adjustment Contract Value of above £2m to £5m	Overhead %	Redacted	Redacted	Redacted	Redacted	Redacted
% Adjustment Contract Value of above £2m to £5m	Profit %	Redacted	Redacted	Redacted	Redacted	
% Adjustment Contract Value of above £2m to £5m	Risk %	Redacted	Redacted	Redacted	Redacted	
% Adjustment Contract Value of above £5m+	Overhead %	Redacted	Redacted	Redacted	Redacted	Redacted
% Adjustment Contract Value of above £5m+	Profit %	Redacted	Redacted	Redacted	Redacted	
% Adjustment Contract Value of above £5m+	Risk %	Redacted	Redacted	Redacted	Redacted	

Investment Grade Proposal
Costs

Investment Grade Proposal- Costs	In Scope Buildings Energy Bills of Up to £500k	In Scope Buildings Energy Bills of £500k+ to £1.5m	In Scope Buildings Energy Bills of £1.5m+ to £5m	In Scope Buildings Energy Bills of £5m+ to £7.5m	In Scope Buildings Energy Bills of £7.5m+
Investment Grade Proposal- Maximum Fixed Charge (£)	Redacted	Redacted	Redacted	Redacted	Redacted
Independent M&V Professional IGP Costs	Redacted	Redacted	Redacted	Redacted	Redacted

Labour Costs

Labour Rates		
Role	Experience (for guidance)	Hourly Rate
Project Manager	Relevant professional qualification	Redacted
Senior Professional Audit / Analysis Engineering Resource	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Senior Professional Design Engineering Resource	Relevant professional qualification	Redacted
Professional Audit / Analysis Engineering Resource	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Professional Design Engineering Resource	Relevant professional qualification	Redacted
Audit / Analysis Engineering Resource		Redacted
Design Engineering Resource		Redacted
Heating Engineer	Corgi Registered	Redacted
Electrician	Relevant Professional qualification	Redacted
General Labour		Redacted
Joiner		Redacted
Plasterer		Redacted

Senior Quantity Surveyor	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Quantity Surveyor	Professional qualification	Redacted
Measurement and Verification Professional	Professional qualification	Redacted
Construction Manager / Advisor	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Bid / Commercial / Procurement Manager	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Finance Manager	Relevant professional qualification with at least 5 years post-qualification experience	Redacted
Director	Relevant professional qualification with at least 7 years post-qualification experience	Redacted

This and the following 4 pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 3 – AWARD PROCEDURES

1 Call Off Procedures – Option 1 (Standard Mini Competition) Notice of ITMC and Issue of ITMC

- 1.1 As the first stage of a mini-competition process, a Framework Public Body will issue a Notice of ITMC to the Framework Contractors.
- 1.2 Following receipt of the Notice of ITMC, Framework Contractors shall immediately confirm receipt of such Notice of ITMC and either:
 - 1.2.1. respond to the Notice of ITMC confirming an intention to bid; or
 - 1.2.2. notify the Framework Public Body in writing that it does not intend to take part in the mini-competition process.
- 1.3 A Framework Public Body will then:
 - 1.3.1. invite the Framework Contractors capable of performing the Call-off Contract by issuing an invitation to mini-competition ("ITMC")
 - 1.3.2. invite responses ("ITMC Proposals") to its ITMC in accordance with the applicable regulations and guidance within a certain timeframe; and
 - 1.3.3. supplement and refine the Call-off Contracts (Schedule 5) only to the extent permitted by and in accordance with applicable regulations and guidance.
- 1.4 The criteria for a mini-competition will be stated in a Framework Public Body's ITMC and shall be on the basis of the most economically advantageous response.
- 1.5 The selection process for a mini-competition may comprise of one or more stages as determined by the Framework Public Body ("Multi-Stage Tendering").
- 1.6 If a Framework Public Body decides to run Multi-Stage Tendering in a mini-competition, the Framework Public Body shall invite all suppliers on the Framework capable of supplying the Framework Public Body's requirements as outlined in the ITMC to submit bids as part of the initial tendering stage.
- 1.7 The Framework Public Body shall determine the method for shortlisting bidders in a Multi-Stage Tendering, which may cover any reasonable approach, including an outline proposal or explanation of competencies/approach in written and/or presentation format. The Framework Public Body shall ensure that the process is compliant with the relevant procurement regulations and is carried out within the EU principles of equal treatment, transparency, proportionality and non-discrimination.
- 1.8 The Framework Public Body shall determine how many stages may be used in a Multi-Stage Tendering and how selection at the end of the process will be undertaken.

2. Responding to ITMC and evaluation

- 2.1 Framework Contractors will require to respond to the Framework Public Body by the date specified in the ITMC.
- 2.2 The format, style and content of the response (including the ITMC Proposal) to be submitted by the Contractor will be defined in the ITMC.

- 2.3. The Framework Public Body will set out its requirements in the ITMC.
- 2.4. The ITMC Proposal to be submitted by the Contractor in response to the Framework Public Body's ITMC must meet or exceed minimum requirements set out in the ITMC for the Contractor to proceed.
- 2.5. The Contractor will also be required to confirm its costs and mark-up that it will apply to its costs under its ITMC Proposal.
- 2.6. Notwithstanding the type of ITMC Proposal the Framework Public Body requires to be submitted, the Contractor's ITMC Proposal shall provide a commitment that the Contractor has the capability and capacity to undertake the Investment Grade Proposal (and the Services arising out of the Investment Grade Proposal) for the portfolio of premises outlined in the ITMC and shall specify (with sufficient clarity) the cost of providing the Investment Grade Proposals across the whole of the relevant portfolio.
- 2.7. The Contractor's costs in putting together its ITMC Proposal shall be for the Contractor's own account.
- 2.8. A Framework Public Body shall have the right to decide not to select a Framework Contractor to provide the services set out in its ITMC and to discontinue a mini-competition at any stage. If it decides to do so, the Framework Public Body will notify all Framework Contractors invited to submit a response of that fact and the mini-competition shall be discontinued.
- 2.9. A Framework Public Body will evaluate ITMC Proposals in accordance with paragraphs 1.4 to 1.8 above.
- 2.10. A Framework Public Body will notify all Framework Contractors that submitted an ITMC Proposal of the outcome of its evaluation under paragraph 2.9.
- 2.11. Provided it has set out its intention to do so in its ITMC, a Framework Public Body shall have the option pursuant to its evaluation of ITMC Proposals of:
 - (i) proceeding to enter into a Development Contract (Schedule 5(a) of this Framework Agreement) in terms of paragraph 2.12 below with a single Framework Contractor, in which case it may also identify a reserve bidder with whom it may enter into a Development Contract in the event that it ultimately decides not to proceed with the first Framework Contractor in terms of paragraph 2.15 below; or
 - (ii) proceeding to enter into a Development Contract in terms of 2.12 below with more than one Framework Contractor.
- 2.12. A Framework Public Body can then proceed to enter into (a) Development Contract(s) with the successful Framework Contractor(s) who shall comply with the provisions of this Framework Agreement and requirements specified in the Development Agreement.
- 2.13. A Framework Contractor shall then complete the Investment Grade Proposal in line with the Development Agreement and submit its Investment Grade Proposal to the Framework Public Body in accordance with the Development Agreement.
- 2.14. In the event that more than one Framework Contractor has completed Investment Grade Proposals under a Development Contract, the Framework Public Body shall undertake the evaluation process set out in its ITMC in order to select the Framework Contractor with which it intends to enter into an EnPC-D&B or EnPC-DBFM Contract (Schedules 5(a) or 5(b) of this Framework Agreement).
- 2.15. A Framework Public Body shall have discretion, following the completion of the Development Contract stage, not to proceed to enter into an EnPC-D&B or EnPC-DBFM Contract with a Framework Contractor.

- 2.16 The terms of the Development Agreement and/or any relevant stipulations in the ITMC shall apply relevant to costs incurred by Framework Contractors at the Development Contract stage.
- 2.17 Subject to paragraph 2.15 above, the successful Framework Contractor can then proceed to enter into an EnPC-D&B or EnPC-DBFM Contract with the Framework Public Body and perform the services in compliance with that contract and its obligations under this Framework Agreement.

1 Call Off Procedures – Option 2 (Mini Competition with Pre Commercial Project Development Phase) Notice of ITMC and Issue of ITMC

- 1.1 As the first stage of the process, a Framework Public Body will issue a Project Brief and a Notice of ITMC to the Framework Contractors.
- 1.2 Following receipt of the Project Brief and Notice of ITMC, Framework Contractors shall immediately confirm receipt of such Notice of ITMC and either:
 - 1.2.1. respond to the Notice of ITMC confirming an intention to participate; or
 - 1.2.2. notify the Framework Public Body in writing that it does not intend to take part in the mini-competition process.
- 1.3 A Framework Public Body will then:
 - 1.3.1 Enter into a Pre Commercial Project Brief Development Phase with all of the Framework Contractors, to include site visits – this should last a period of 4 weeks – but may be longer.

N.B. Framework Contractors can remove themselves from the development phase process but no Framework Contractor can be eliminated by the Framework Public Body
- 1.4 A Framework Public Body will then:
 - 1.4.1. develop and finalise the project brief from the Pre Commercial Project Development Phase
 - 1.4.2 invite the Framework Contractors capable of performing the Call-off Contract by issuing an invitation to mini-competition ("ITMC")
 - 1.4.3. invite responses ("ITMC Proposals") to its ITMC in accordance with the applicable regulations and guidance within a certain timeframe; and
 - 1.4.4. supplement and refine the Call-off Contracts (Schedule 5) only to the extent permitted by and in accordance with applicable regulations and guidance.
- 1.5 The criteria for a mini-competition will be stated in a Framework Public Body's ITMC and shall be on the basis of the most economically advantageous response.
- 1.6 The selection process for a mini-competition may comprise of one or more stages as determined by the Framework Public Body ("Multi-Stage Tendering").
- 1.7 If a Framework Public Body decides to run Multi-Stage Tendering in a mini-competition, the Framework Public Body shall invite all suppliers on the Framework capable of supplying the Framework Public Body's requirements as outlined in the ITMC to submit bids as part of the initial tendering stage.

1.8 The Framework Public Body shall determine the method for shortlisting bidders in a Multi-Stage Tendering, which may cover any reasonable approach, including an outline proposal or explanation of competencies/approach in written and/or presentation format. The Framework Public Body shall ensure that the process is compliant with the relevant procurement regulations and is carried out within the EU principles of equal treatment, transparency, proportionality and non-discrimination.

1.9 The Framework Public Body shall determine how many stages may be used in a Multi-Stage Tendering and how selection at the end of the process will be undertaken.

2. Responding to ITMC and evaluation

2.1 Framework Contractors will require to respond to the Framework Public Body by the date specified in the ITMC.

2.2 The format, style and content of the response (including the ITMC Proposal) to be submitted by the Contractor will be defined in the ITMC.

2.3. The Framework Public Body will set out its requirements in the ITMC.

2.4. The ITMC Proposal to be submitted by the Contractor in response to the Framework Public Body's ITMC must meet or exceed minimum requirements set out in the ITMC for the Contractor to proceed.

2.5. The Contractor will also be required to confirm its costs and mark-up that it will apply to its costs under its ITMC Proposal.

2.6. Notwithstanding the type of ITMC Proposal the Framework Public Body requires to be submitted, the Contractor's ITMC Proposal shall provide a commitment that the Contractor has the capability and capacity to undertake the Investment Grade Proposal (and the Services arising out of the Investment Grade Proposal) for the portfolio of premises outlined in the ITMC and shall specify (with sufficient clarity) the cost of providing the Investment Grade Proposals across the whole of the relevant portfolio.

2.7. The Contractor's costs in putting together its ITMC Proposal shall be for the Contractor's own account.

2.8. A Framework Public Body shall have the right to decide not to select a Framework Contractor to provide the services set out in its ITMC and to discontinue a mini-competition at any stage. If it decides to do so, the Framework Public Body will notify all Framework Contractors invited to submit a response of that fact and the mini-competition shall be discontinued.

2.9. A Framework Public Body will evaluate ITMC Proposals in accordance with paragraphs 1.4 to 1.8 above.

2.10. A Framework Public Body will notify all Framework Contractors that submitted an ITMC Proposal of the outcome of its evaluation under paragraph 2.9.

2.11 Provided it has set out its intention to do so in its ITMC, a Framework Public Body shall have the option pursuant to its evaluation of ITMC Proposals of:

(i) proceeding to enter into a Development Contract (Schedule 5(a) of this Framework Agreement) in terms of paragraph 2.12 below with a single Framework Contractor, in which case it may also identify a reserve bidder with whom it may enter into a Development Contract in the event that it ultimately decides not to proceed with the first Framework Contractor in terms of paragraph 2.15 below; or

(ii) proceeding to enter into a Development Contract in terms of 2.12 below with more than one Framework Contractor.

- 2.12 A Framework Public Body can then proceed to enter into (a) Development Contract(s) with the successful Framework Contractor(s) who shall comply with the provisions of this Framework Agreement and requirements specified in the Development Agreement.
- 2.13 A Framework Contractor shall then complete the Investment Grade Proposal in line with the Development Agreement and submit its Investment Grade Proposal to the Framework Public Body in accordance with the Development Agreement.
- 2.14 In the event that more than one Framework Contractor has completed Investment Grade Proposals under a Development Contract, the Framework Public Body shall undertake the evaluation process set out in its ITMC in order to select the Framework Contractor with which it intends to enter into an EnPC-D&B or EnPC-DBFM Contract (Schedules 5(a) or 5(b) of this Framework Agreement).
- 2.15 A Framework Public Body shall have discretion, following the completion of the Development Contract stage, not to proceed to enter into an EnPC-D&B or EnPC-DBFM Contract with a Framework Contractor.
- 2.16 The terms of the Development Agreement and/or any relevant stipulations in the ITMC shall apply relevant to costs incurred by Framework Contractors at the Development Contract stage.
- 2.17 Subject to paragraph 2.15 above, the successful Framework Contractor can then proceed to enter into an EnPC-D&B or EnPC-DBFM Contract with the Framework Public Body and perform the services in compliance with that contract and its obligations under this Framework Agreement.

This and the following 6 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Roles & Responsibilities

1.1 The summary obligations of Contractors and the Framework Authority, as further developed below, are as follows:

1.1.1. The Contractor will:

- a) assist with the development of a Framework management strategy;
- b) provide Key Personnel details
- c) provide a nominated Contract Manager who will communicate with the Framework Authority;
- d) assist the Framework Authority in launching the Framework Agreement to Framework Public Bodies;
- e) meet, monitor and report on Framework Public Body spend;
- f) meet and continually improve monitoring and reporting on Contactor performance under the Framework;
- g) work with each Framework Public Body to develop and agree specific requirements and format for tailored management information reports and further developing these reports where required;
- h) maintain, prepare and submit additional management information reports to each Framework Public Body tailored to meet their needs. The format of the required information shall be agreed between the Framework Public Body and the Contractor;
- i) attend Framework management meetings as required;
- j) resolve issues and complaints;
- k) support and enable the Framework Authority and / or the Framework Public Body to carry out reviews of the Framework;
- l) support and enable the transition and closure of the Framework as appropriate e.g. TUPE information;
- m) provide feedback and input to enable continuous improvement; and
- n) work with the Framework Public Bodies and Framework Authority as required to provide timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence.

1.1.2. The Authority will:

- a) prepare the Framework management strategy;
- b) prepare Framework points of contact;

- c) prepare and communicate Framework information to Framework Public Bodies and the Contractor;
- d) launch the Framework to the Framework Public Bodies with the Framework Contractors;
- e) receive, review and manage continuous development;
- f) monitor performance of all Framework Contracts under the Framework;
- g) chair Framework management meetings as required;
- h) support resolution of issues and complaints;
- i) manage the transition and closure of the Framework;
- j) collate lessons learnt from Framework Public Bodies and the Framework Contractors and feed this into future procurements to enable continuous improvement; and
- k) work with the Framework Public Bodies and Framework Contractors as required to provide timely information relevant to freedom of information requests, parliamentary questions or ministerial correspondence

1.2 The Contractor recognises the importance of complying with Management Arrangements, including to facilitate monitoring of outputs under the Framework Agreement in order to maximise the outcomes sought under this Framework Agreement. The Contractor, in addition to complying with the following arrangements, shall comply with any relevant proposals contained in its tender leading to appointment to the Framework that go beyond the requirements set out in this Schedule and shall work with the Framework Authority to develop a strategic relationship immediately following framework award.

2. Framework Agreement Management Information Report

2.1 The Contractor recognises the importance of the Framework Authority being in a position to monitor the Framework Agreement's outputs (consisting in the main of outputs under Call-off Contracts). Accordingly, the Contractor shall maintain, at its own cost, appropriate management information systems and shall provide a Framework Agreement Management Information Report that consolidates information for the Framework Authority

2.2 The Contractor will provide a Framework Agreement Management Information Report that consolidates information for the Framework Authority on a quarterly basis. This Framework Agreement Management Information Report should be submitted to the appropriate individual within 15 calendar days of the end of each quarter.

2.3 The Framework Agreement Management Information Report will include, as a minimum, the following details (on a cumulative basis and also for the quarterly period):

- a) the number of mini-competitions that the Contractor has bid on;
- b) the number of mini-competitions that the Contractor has been successful on;
- c) the number of Development Contracts (Schedule 5(a)) the Contractor is currently performing;
- d) the number of: (i) EnPC-D&B (Schedule 5(b)); and/or (ii) EnPC-DBFM (Schedule 5(c)) contracts that the Contractor is currently performing
- e) a summary of the Contractor's activity under the Framework Agreement in the last 3 months;

- f) the level of spend with the Contractor of each Framework Public Body under Call-off Contracts pursuant to the Framework;
 - g) financial savings achieved as a result of added value opportunities offered to Framework Public Bodies under Call-off Contracts;
 - h) the community benefits achieved with Framework Public Bodies under Call-off Contracts;
 - i) any relevant community benefits achieved relevant to the Contractor's participation in the Framework (not relating to a specific Call-off Contract);
 - j) any relevant sustainability benefits achieved relevant to the Contractor's participation in the Framework (not relating to a specific Call-off Contract);
 - k) the level of actual and target performance for the following key parameters to date with the Contractor of each Framework Public Body under Call-off Contracts pursuant to the Framework, updated quarterly:
 - a. Guaranteed Energy Cost Performance (GECP) expressed in pounds sterling
 - b. Total carbon emission reduction;
 - c. Low and zero carbon (LZC) technology heat generation (kWh)
 - d. Low and zero carbon (LZC) technology power generation (kWh)
 - l) the number of complaints by Framework Public Bodies surrounding performance of a Call-off Contract by the Contractor;
 - m) the number of complaints by Framework Public Bodies surrounding performance of a Call-off Contract that were not acknowledged within the prescribed time-limits by the Contractor; and
 - n) An overview of any and all outstanding disputes between the Contractor and any Framework Public Bodies and their anticipated resolution time.
- 2.4 The Contractor will agree the exact content, format and style for the Framework Agreement Management Information Report with the Framework Authority during the mobilisation phase of this Framework Agreement.
- 2.5 The Contractor will adjust content, format and style for the Framework Agreement Management Information Report as required and on request by the Framework Authority throughout the duration of this Framework Agreement.
- 2.6 Unless otherwise agreed by the Framework Authority, the Contractor will continue to submit Framework Agreement Management Information Reports to the Framework Authority until its Call-Off Contracts have terminated.

General Matters relevant to Contractor Reporting obligations

- 2.7 The Contractor shall note the following (relative to units of measurement and conversion factors) when preparing Framework Agreement Management Information Reports:-
- a) All cost values are to be reported in sterling
 - b) Reporting of carbon, energy, floor area and all other physical parameters is to be in Système Internationale (SI) units;
 - c) Fuel calorific values will be consistent with Framework Public Bodies' invoiced values, as applicable to the reporting period;

- d) Reporting conventions for carbon dioxide, and carbon dioxide equivalence of greenhouse gases will be consistent with the World Resources Institute's / World Business Council for Sustainable Development's Greenhouse Gas Protocols (for Corporate and Project Accounting) and as applied by the Climate Change (Scotland) Act 2009 and Climate Change (Reporting on Climate Change Duties) (Scotland) Order, in particular.
- e) In the absence of any specific reporting standard or calculation methodology in the Project Brief, the Contractor shall ensure that:
 - i any calculation of CO₂e follows the principles set out in the WRI/WBCSD GHG Protocol (<http://www.ghgprotocol.org/standards/corporate-standard>);
 - ii all figures are provided in tCO₂e and all emissions are calculated using the UK national emissions factors, which are available in DEFRA's Corporate Reporting Guidelines;
 - iii. conversions of non-CO₂ greenhouse gases to CO₂e are done using the Global Warming Potential (GWP) figures for the relevant gas published in the IPCC Second Assessment Report or national (Government-produced) publication; and
 - iv. calculations of CO₂e savings from renewable energy and combined heat and power follow the Carbon Trust's Standard Rules.
- f) If, after the date of this Agreement, the Framework Public Body issues a reporting standard or calculation methodology for CO₂e ("**Substitute Standard**"), this Clause shall be read and construed as if the calculation of CO₂e savings delivered shall be prepared in accordance with the Substitute Standard.
- g) Emission factors for carbon dioxide equivalent global warming potential of energy use will be taken from the latest available published emission factors; i.e. in 2015 the Department for Environment, Food & Rural Affairs (DEFRA's) emission factors published online at: <http://www.ukconversionfactorscarbonsmart.co.uk/> for the appropriate reporting period

3. Call-off Contract Reporting Obligations

- 3.1 The Contractor recognises the importance of Framework Public Bodies being in a position to monitor outputs under Call-off Contracts and shall maintain appropriate management information systems to enable it to provide detailed reporting to any Framework Public Body with which it enters into a Call-off Contract.
- 3.2 The Contractor will agree the exact content, format and style of reporting with each Framework Public Body.

4. Complaints

- 4.1. Complaints of any nature surrounding a Contractor's performance under this Framework must be acknowledged by the Contractor within 2 working days.
- 4.2 The Contractor shall operate a clear written protocol, as approved by the Framework Authority, for handling complaints timeously and effectively.
- 4.3. The Contractor shall maintain written details of any complaints received and how they are handled and make these available to the relevant specific Framework Public Body and to the Framework Authority as requested or required.
- 4.4. Where a complaint is made directly to the Framework Authority in relation to the Framework or in relation to the Contractor's performance of a Call-Off Contract under the Framework, the

Framework Authority will pass this information to the Contractor and Framework Public Body and if deemed necessary assist the Contractor and Framework Public Body in the complaint investigation.

5. Supplier Relationship Management

- 5.1 Supplier relationship management is a two-way process to continually improve the performance of both the buying organisation and the supply organisation and to be mutually beneficial. It is not the same as, or intended to replace contract management. Supplier relationship management meetings will be held as is considered necessary by the Framework Authority. It is envisaged that this will be on an annual basis and the Contractor shall require to attend.
- 5.2 The Contractor and Framework Authority will agree a number of Key Roles and Key Personnel and the Contractor must ensure the continuity of Key Personnel throughout the Period of the Framework Agreement.
- 5.2 The Framework Authority will chair an introductory supplier relationship management meeting shortly after this Framework Agreement. This meeting will introduce the Contractor to the Framework Authority's vision and a "Supplier Relationship Management Strategy" will be agreed. Further supplier relationship management meetings will be chaired by the Framework Authority. The Framework Authority may choose to invite Framework Public Bodies to these meetings.
- 5.3 The Framework Authority will gather the outputs from these management arrangements to review under the five Supplier Relationship Management areas detailed in the table below.

Ref	Area	Description
1	Relationship Management	Developing and managing relationships to support the delivery Supplier relationship management
2	Performance & Risk Management	Developing, supporting and managing performance and risk of key supplier/s and the supply chain for continuous improvements
3	Strategic Value Management	Communication, alignment and delivery of objectives that are strategic to the Framework Authority and Framework Public Bodies
4	Capability & Efficiencies Management	Understanding the Contractor capability and seeking internal and external efficiencies through the streamlining of people, processes and/or systems
5	Financial Value & Demand Management	Pricing data analysis, and cost segmentation (e.g. open book costing) and ensuring specifications represent what is "needed" rather than what is "wished for"

- 5.4 Outputs from supplier relationship management will include minutes of discussion points and actions for the way forward to deliver continuous improvement.

6. Service Levels and Framework/Performance Management

- 6.1 The Contractor will appoint a suitable representative to liaise with nominated individuals within the Framework Authority and will provide details of an alternative contact to cover absence from the workplace for any reason.

- 6.2 In addition to attending meetings held by the Framework Authority under paragraphs 5.1 and 5.2 above, the Contractor is expected to develop relationships with nominated individuals within each Framework Public Body to ensure that the level of service provided under any Call-Off Contract is satisfactory. Where specific problems are identified relevant to a Call-off Contract, the Contractor will attempt to resolve such problems with the nominated individual within the Framework Public Body.
- 6.3 As required the Framework Authority may organise regular meetings with the Contractor's representative to review performance under the Framework.
- 6.4 Performance Management consists of the monitoring, managing and communicating of the performance of the Framework / Call-off Contract. Performance Management includes the following performance measures:
- Delivery
 - Service
 - Quality
 - Cost
 - Sustainability
 - Community Benefits
- 6.5 Performance measures and indicators will be agreed with the Contractor during the mobilisation of the Framework Agreement.
- 6.6 During the term of the Framework Agreement the Framework Authority shall have the right to assess and monitor overall satisfaction levels relevant to the Contractor's performance under this Framework Agreement and/or the satisfaction levels of any Framework Public Body relevant to any Call-off Contract entered into pursuant to this Framework Agreement and the Contractor shall use reasonable endeavours to assist the Framework Authority in carrying out such monitoring activity, including by providing the Framework Authority with the relevant information regarding the Framework Agreement, Call-off Contract and/or any other documentation referred to therein as and when requested to do so by the Framework Authority.
- 6.7 Throughout the term of the Framework Agreement, the Framework Authority will liaise regularly with the Framework Public Bodies and where common problems are identified, it will be the responsibility of the Contractor to liaise with the Framework Authority to agree a satisfactory course of action.
7. Contractor Management Information System
- 7.1 The Contractor shall create and/or maintain a database with up to date and accurate information at all times in order to provide the Framework Authority and/or the Framework Public Body with management information as requested.
- 7.2 The Contractor must be in a position to provide a strategic view of the utilisation of the Framework Agreement and high level information on the Framework Public Bodies buying under the Framework, including for the purpose of meeting reporting obligations set out in paragraph 2.
- 8. Continuous Improvement**
- 8.1 The Contractor will deliver continuous improvement in the services provided under this Agreement, throughout the full duration of the Framework Agreement.
- 8.2 The Contractor recognises continuous improvement as on-going quantitative improvements delivered for:

- a) Reduction in whole life costs to the Framework Authority and Framework Public Bodies;
- b) Service quality enhancements including:
 - Reliability
 - Delivery method
 - Quality assurance
 - User satisfaction
 - Sustainability measures in performance
 - Community benefits measures in performance

8.3 Continuous improvement will be monitored by the Framework Authority as part of the processes set out above.

This and the following 1 pages comprise Schedule 6 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 6 –NOT USED

This and the following 1 pages comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 7 – CONTRACTOR SENSITIVE INFORMATION

Part 1- Transparency Reports

The Framework Authority will routinely publish information in relation to the Framework Agreement, 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 Framework 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>			

Type of information specified as Contractor Sensitive Information	Reason why information is sensitive	Duration of sensitivity

This and the following 1 pages comprise Schedule 8 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 8 – Exit Strategy

1. Assistance with termination

- 2.1 If requested, an Exit Plan shall be produced and delivered by the Contractor to the Framework Authority in accordance with the steps defined in clause 44.2.
- 2.2 The Exit Plan which shall include the contents listed in clause 44.3 and the Contractor shall execute its Exit Plan at the expiry or early termination of the Framework Agreement. .

2. Post termination

In accordance with clause 50 (Consequences of termination), following the termination of the Framework Agreement the Contractor shall return to the Framework Authority all Framework Authority Property and Framework Authority Protected Information in the Contractor's possession and destroy or delete any copies of Framework 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 12 pages comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 9 – MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

Model Contract This and the following [] pages comprise Schedule 9 to the Framework Agreement between the Scottish Ministers and Contractor name»

SCHEDULE 9 – MODEL CONTRACT REGARDING DATA PROTECTION DIRECTIVE 95/46/EC

STANDARD FORM CONTRACT TO ASSIST COMPLIANCE WITH OBLIGATIONS IMPOSED BY ARTICLE 17 OF THE DATA PROTECTION DIRECTIVE 95/46/EC

(FOR USE BY DATA CONTROLLERS AND DATA PROCESSORS LOCATED WITHIN THE EUROPEAN ECONOMIC AREA WHERE THE PARTIES HAVE ENTERED INTO A SEPARATE DATA PROCESSING AGREEMENT)

THIS AGREEMENT is made on.....and20[].

BETWEEN:

(1) THE SCOTTISH MINISTERS (the “Controller”); and

(2) [*drafting note: insert name*] (incorporated in, or existing and established under the laws of, [COUNTRY WITHIN THE EEA] [*if the Processor is a company the registered number whose registered office is at [registered office address]*] (the “Processor”).

BACKGROUND

(A) The Controller processes Personal Data in connection with its business activities;

(B) The Processor processes Personal Data on behalf of other businesses and organisations;

(C) The Controller wishes to engage the services of the Processor to process personal data on its behalf in relation to [*drafting note: insert scheme name*];

(D) Article 17(2) of the Data Protection Directive 95/46/EC (as hereinafter defined) provides that, where processing of personal data is carried out by a processor on behalf of a data controller the controller must choose a processor providing sufficient guarantees in respect of the technical security measures and organisational measures governing the processing to be carried out, and must ensure compliance with those measures;

(E) Articles 17(3) and 17(4) of the Data Protection Directive require that where processing is carried out by a processor on behalf of a controller such processing shall be governed by a contract or legal act binding the processor to the controller stipulating, in particular, that the processor shall act only on instructions from the controller and shall comply with the technical and organisational measures required under the appropriate national law to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against all other unlawful forms of processing;

(F) In compliance with the above-mentioned provisions of Article 17 of the Data Protection Directive the Controller and Processor wish to enter into this processing security Agreement.

THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases shall have the following meanings, unless inconsistent with the context or as otherwise specified:

“**Data Protection Directive**” shall mean Directive 95/46/EC of the European Parliament and Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“**national law**” shall mean the law of the Member State in which the Processor is established;

“**personal data**” shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic cultural or social identity;

“**processing of personal data**” shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alternation, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

“**sub-contract**” and “**sub-contracting**” shall mean the process by which either party arranges for a third party to carry out its obligations under this Agreement and “**Sub Contractor**” shall mean the party to whom the obligations are subcontracted; and

“**Technical and organisational security measures**” shall mean measures to protect personal data against accidental or unlawful destruction or accidental loss, alternation, unauthorised disclosure or access and against all other unlawful forms of processing.

2. CONSIDERATION

2.1 In consideration of the Controller engaging the services of the processor to process personal data on its behalf the Processor shall comply with the security, confidentiality and other obligations imposed on it under this Agreement.

3. SECURITY OBLIGATIONS OF THE PROCESSOR

3.1 The Processor shall only carry out those actions in respect of the personal data processed on behalf of the Controller as are expressly authorised by the Controller.

3.2 The Processor shall take such Technical and Organisational Security Measures as are required under its own national law to protect personal data processed by the Processor on behalf of the Controller against unlawful forms of processing. Such Technical and Organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements set out in Appendix 1 of this Agreement.

4. CONFIDENTIALITY

4.1 The Processor agrees that it shall maintain the personal data processed by the Processor on behalf of the Controller in confidence. In particular, the Processor agrees that, save with the prior written consent of the Controller, it shall not disclose any personal data supplied to the Processor by, for, or on behalf of, the Controller to any third party.

4.2 The Processor shall not make any use of any personal data supplied to it by the Controller otherwise

than in connection with the provision of services to the Controller.

4.3 The obligations in clauses 4.1 and 4.2 above shall continue for a period of five years after the cessation of the provision of services by the Processor to the Controller.

4.4 Nothing in this agreement shall prevent either party from complying with any legal obligation imposed by a regulator or court. Both parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

5. SUB-CONTRACTING

5.1 The Processor shall not sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Controller.

5.2 Where the Processor, with the consent of the Controller, sub-contracts its obligations under this agreement it shall do so only by way of a written agreement with the Sub-Contractor which imposes the same obligations in relation to the security of the processing on the Sub-Contractor as are imposed on the Processor under this Agreement.

5.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub-processing agreement, the Processor shall remain fully liable to the Controller for the fulfilment of its obligations under this Agreement

6. TERM AND TERMINATION

6.1 This Agreement shall continue in full force and effect for so long as the Processor is processing personal data on behalf of the Controller.

6.2 Within [*drafting note: insert number of days agreed by the parties*] days following termination of this Agreement the Processor shall, at the direction of the Controller, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the Processor by the Controller for processing, or (c) on receipt of instructions from the Controller, destroy all such data unless prohibited from doing so by any applicable law.

7. GOVERNING LAW

7.1 This Agreement shall be governed by and construed in accordance with the national law of the Member state in which the Controller is established.

AS WITNESS this Agreement has been signed on behalf of each of the parties by its duly authorised representative on the day and year first above written.

SIGNED on behalf of [CONTROLLER]

(Authorised signatory)

(Print name and title)

SIGNED on behalf of [PROCESSOR]

(Authorised signatory)

(Print name and title)

APPENDIX 11

1. Legal requirements

1.1 The Processor shall, in respect of the processing of personal data on behalf of the Controller, identify and comply with any specific security provisions imposed by its national law.

2. Practical security measures

2.1 In compliance with its obligations under clause 3.2 with regard to the processing of personal data on behalf of the Controller, the Processor, as a minimum requirement, shall give due consideration to the following types of security measures:

2.1.1 Information Security Management Systems;

2.1.2 Physical Security;

2.1.3 Access Control;

2.1.4 Security and Privacy Enhancing Technologies;

2.1.5 Awareness, training and security checks in relation to personnel;

2.1.6 Incident/Response Management/Business Continuity; and

2.1.7 Audit Controls/Due Diligence;

1 The Practical Security Measures outlined in Schedule 1 are taken from the OECD Working Party on Information Security and Privacy's draft paper of 30-31 March 2004 entitled "Information Security Issues and Resources for Small and Entrepreneurial Companies – A business companion to the 2002 OECD Guidelines for the Security of Networks and Information systems: Towards a Culture of Security"

Annex A (normative):

Article 17 Security Contract - Implementation Guide

AA.1 Scope

The Article 17 Security Contract has been prepared to assist businesses wishing to use the services of another company to process personal data on their behalf. The Article 17 Security Contract is appropriate for use where the company which is to provide the data processing service is located either in the same Member State as the business wishing to use its services or, is located another Member State of the European Union.

Article 17 of the Directive sets out the security requirements in relation to the processing of personal data where a party that controls the content and use of personal data (the Data Controller) wishes to use the services of a third party (the Data Processor) for the processing of such data. Article 17 addresses processing arrangements where both the Data Controller and the Data Processor are established within one of the member states of the European Economic Area.

Where the Data Processor is located outside the European Economic Area consideration will need to be given to the provisions of Articles 25 and 26 of the Directive (Transfer of Personal Data to Third Countries) and the possible use of the Standard Contractual Clauses for the transfer of personal data to third countries under the Directive approved by the European Commission.

The Article 17 Security Contract has been prepared with the needs of Small and Medium-sized Enterprises in mind, however, it may in addition provide a useful starting point for larger organisations wishing to ensure that they are satisfying their obligations as to security of processing where they sub-contract data processing to another company.

The Article 17 Security Contract has been drafted to satisfy the requirements of Article 17 and is unlikely to require amendment in the absence of any changes to that Article. The contractual provisions set out in the Security Contract ensure the basic minimum level of protection for personal data and do not preclude the inclusion of more detailed provisions in the light of the legal and factual circumstances of each particular case.

However, the practical security measures suggested in this Implementation Guide are likely to require amendment in the light of physical and technological security developments and the adoption of enhanced

management functions in relation to information security. This Implementation Guide, therefore, sets out the current practical security measures identified at the time of drafting, taking into account the most common technical security measures currently available, but may subsequently require updating to incorporate future developments.

The Article 17 Security Contract is designed to accompany a service agreement detailing the non-security related processing arrangements between the Data Controller and the Data Processor. The Contract may be used in its entirety or the operative clauses may be extracted and incorporated into the processing service agreement.

Before entering in an Article 17 Security Contract, or the data processing services agreement into which the operative of the Security Contract have been incorporated, the parties should obtain the assistance of professional legal advisers (in-house or external lawyers) for advice on the requirements of the national law (including any sector specific regulatory arrangements) to which the contract and the associated processing will be subject.

This guide provides assistance with regard to the use of the Article 17 Security Contract between Data Controller and Data Processor.

AA.2 Background

The Initiative for Privacy Standardisation in Europe (IPSE) was launched to analyse the current status of privacy protection arrangements and to determine whether standardisation of actions could assist business in implementing the European Data Protection Directive 95/46/EC (the Directive). The report, approved by the IPSE steering group, concluded that specific standardisation initiatives would aid implementation of the Directive. Seven standardisation initiatives were proposed, one of which was the development of a generic set of contract clauses and terms for use within the EEA to assist business in complying with Article 17 of the Directive.

The work on the standardisation initiatives identified by IPSE was taken on by the CEN/ISSS Work Shop on Data Protection and Privacy (CEN/ISSS WS-DPP) which has produced the Article 17 Security Contract between Data Controller and Data Processor.

AA.3 Applicable Laws

Clause 6 of the Security Contract provides that the Agreement is to be governed by the national law of the Member State in which the Data Controller is located.

Where the Data Processor is located in a different Member State from the Data Controller the Controller should note that the security of the processing may be governed by the laws of a different Member State. This situation arises as (in accordance with the provisions of Article 17) the security of the processing must be conducted in accordance with the national law of the Member State in which the Data Processor is located.

Where the Data Processor is located in a Member State other than that of the Data Controller, prior to

entering into contractual relations with the Data Processor, the Data Controller may need to obtain legal advice as to the specific foreign law data protection obligations imposed on the Data Processor under Clause 3 of the Model Contract. Where the Data Controller fails to obtain foreign legal advice the Data Controller may struggle to assess the Data Processor's compliance with its Clause 3 obligations. While the obligations of the Data Processor, in each Member State, derive from Article 17 of the Directive, Member States have each implemented these obligations slightly differently. For example, in many Member States (such as Austria, Belgium, Ireland, Italy, Luxembourg and Spain) the security provisions under the national law are more detailed than in the Data Protection Directive. The Data Processor will, therefore, need ensure that it complies with the provisions under the applicable national law.

In certain Member States there are regulations detailing mandatory security measures which identify three differing levels of security determined by the nature of the data being processed.

High level security measures required in Spain include, amongst other requirements, strict obligations regarding the encryption of personal data in specified circumstances as well as the maintenance of an exhaustive access registry. The Spanish access register requires a Controller to specify the data accessed by any user and the date and time of such access so as to enable the reconstruction of an audit trail in relation to access to sensitive personal data.

In Belgium, national data protection legislation stipulates and number of issues that must be covered in any sub-contracting agreement between Data Controller and Data Processor. Such issues include a requirement that the agreement shall explicitly include details of the processors liability under the agreement. The Belgium law also provides that a Royal Decree may be enacted to establish standards for information security for specified categories of data processing.

In Greece the national data protection law requires the Data Controller to check the professional credentials, qualifications and personal ethics with regard to confidentiality of persons entrusted with data processing duties or functions.

In addition to these specific national legal requirements some national data protection authorities (for example Greece and Denmark) have established rules, instructions and guidelines translating into more practical terms some of the requirements of Article 17.
AA.4 Clause by clause explanatory notes/analysis of the Article 17 Security Contract

As with any arrangement having binding legal effect, users of the Article 17 Security Contract are advised to seek professional legal advice with regard to their rights and obligations under the Security Contract and its inter-relationship with any associated data processing service agreement.

Professional legal input is particularly important where the Data Controller is uncertain of the obligations imposed on the Data Processor under the Processor's national law.

The following notes are intended as basic guidance on the nature and purpose of the individual clauses of the Security Contract and are intended to inform business managers understanding of the Security Contract prior to obtaining detailed legal advice.

Contract Clauses

Date of Agreement

The date of the agreement will be the date on which the last party executes the document. This date should not be inserted until the last party has signed and dated the Contract.

Identification of Parties

The full name of the legal entities entering into the agreement should be inserted together with any national company registration number, details of the country in which each legal entity is established and details of the registered office of each entity. It is important to note that address must be the registered office address of each business. Trading addresses, or local office addresses should not be used.

Background

The six paragraphs listed under this heading set out the reasons why the agreement is required. They identify the activities of the parties, the processing of personal data, the parties who wish to enter into contractual relations with one another, and the requirements of Article 17 of the Directive.

Mutual Agreement

The Contract then states that the parties agree to comply the provisions of the Contract.

Clause 1 – Definitions and Interpretation

This clause explains the meaning of those terms used in the agreement which have meaning over and above, or different from, the meaning which may normally be understood by the use of the term. For example, the words “personal data” are to have the specific meaning ascribed to them by the Directive.

Clause 2 – Consideration

Broadly speaking this clause is required to set out the reasons why each party is prepared to enter into the agreement. The Contract arrangement needs to be of benefit to (or, in legal terms, provide valid consideration) each party.

Clause 3 – Security Obligations of the Processor

As the title of this clause would suggest, it sets out the security obligations of the Data Processor with regard to the processing of personal data on behalf of the Data Controller.

Important points to note are:

- the Processor may only process personal data in accordance with instructions from the Data Controller. It may not process the data for its own purposes;*
- the Processor is required to take “such Technical and Organisation Security Measures as are required under **its own National Law** to protect personal data processed on behalf of the Data Controller against unlawful forms of processing”. As mentioned above, legal advice should be obtained as to the detailed requirements of the relevant national law; and*
- Appendix 1 of the Contract sets out the minimum requirements for compliance with these obligations. Appendix 1 is discussed further below.*

Clause 4 – Confidentiality

This clause ensures that the Processor must treat all personal data processed on behalf of the Data

Controller as confidential and provides that the obligation of confidentiality is continue for 5 years after the date on which the Processor ceases processing personal data for the Controller. This time limit is without prejudice to any longer time-limits that may be provided by national law or sector specific regulation. The parties may wish to amend this provision to reflect such additional obligations.

Clause 5 – Sub-contracting

This clause prevents the Processor from instructing a third party to carry out the processing it has agreed to carry out for the Controller unless the Controller gives its prior written consent.

Where the Controller consents to the sub-contracting, the sub-contractor must be contractually bound to observe the same security requirements as are imposed on the Processor under the Security Contract.

This clause ensures that the security arrangements are not watered-down by any transfer of obligations. The clause also provides that the Processor remains liable to the Controller for any breach of the Security Contract whether caused by any fault of its own or by the fault of its sub-contractor.

Clause 6 – Term and termination

This clause provides that the Security Contract will continue for as long as the Processor continues to process personal data on behalf of the Controller. The Security Contract cannot terminate before the data processing service agreement as any subsequent processing would not comply with Article 17.

Where the Security Contract and the data processing agreement are terminated, clause 5.2 provides that the Processor shall return or destroy all personal data received from the Controller as instructed by the Controller. It is for the parties to agree the appropriate number of days to insert in the clause.

This arrangement is fallback position to specify arrangements for the handling of the personal data on termination where there are no other arrangements in place. It is highly likely that the termination arrangements will be addressed in the data processing service agreement but clause 5.2 is available as backup if such arrangements have been overlooked in the drafting of the service agreement.

Clause 7 – Governing law

The Security Contract provides that the contract is to be governed by the National Law of the Data Controller.

Care must be taken when considering the choice of governing law in circumstances where the data processing service agreement specifies a law other than that of the Member State of the Controller as its governing law. In such circumstances professional legal advice may be required.

The Security Contract does not address dispute resolution. It is advisable, before the Contract is signed, for the parties to agree an appropriate forum to hear any disputes that may arise between them under the Contract. Many parties may favour mediation with recourse to specified national courts if matters cannot be resolved. Others may wish to specify arbitration as the preferred dispute resolution process. Where mediation or arbitration are to be used it is advisable to identify the chosen mediator (or mediation body) or

arbitration procedure in writing so as to avoid a dispute about the Contract becoming a dispute about the resolution procedure.

As the Security Contract is to be used in association with a data processing service agreement it may be appropriate to deal with dispute resolution arrangements in relation to security obligations under the service agreement or to mirror the dispute resolution arrangements under the service agreement in the Security Contract.

Where mediation or arbitration is not specified, as a minimum, the parties should agree to submit to the exclusive jurisdiction of specified national courts to avoid any further discussion as to where disputes should be heard. It is usual for parties to agree to submit to the exclusive jurisdiction of the courts appropriate to the governing law of the contract.

Signature

Both parties should ensure that the Contract is executed on their behalf by a 'duly authorised representative'. That is to say the parties should ensure that the signatories have the power to bind the organisation they represent. In many jurisdictions, in the absence of any other arrangements being made, the only individuals authorised to bind a company will be the directors and company secretary. These individuals may of course give written Framework Authority to other employees to bind the company for specified purposes. The identity and the Framework Authority of the proposed signatory should always be confirmed before attempting to enter into contractual relations.

Appendix 1

This appendix sets out the minimum technical and organisational measures to be observed by the Processor in accordance with clause 3. The appendix is divided into Legal Requirements and Practical Security Measures.

The Legal Requirements

These relate to the need for the Data Processor to identify and observe any specific security measures in relation to personal data required under its national law. The requirement is not a one-off requirement to be observed at the start of the processing service, but is an on-going obligation to ensure that the security arrangements are in compliance with national law as it may be amended or supplemented from time to time throughout the duration of the processing service.

Practical Security Measures

While the Contract imposes the obligation on the Processor to take "such Technical and Organisation Security Measures as are required under its own National Law to protect personal data processed on behalf of the Data Controller against unlawful forms of processing" many businesses may find it difficult to ascertain what this obligation means in practice.

The obligation is a broad one and businesses will need to break this down into the classes of security measures identified in the appendix. These classes will require further practical consideration. Many international IT groups and standards bodies have looked at the area of information security and guidance of general application is available from many of the bodies referred to below (see Sources).

An example of appropriate basic information security measures are set out in Annex 1 of this Implementation Guide.

AA.5 Extra Clauses

The Security Contract (whether used as an separate agreement or with extracted clauses used to supplement a data processing agreement) is intended to satisfy the requirements of Article 17.

From a business perspective, however, where such matters have not been otherwise covered in the data processing agreement or related contract, parties may wish to include additional clauses regarding, for example:

- Arbitration or mediation arrangements (as discussed above);
- Selection of jurisdiction (as discussed above);
- Limitations of liability.

Where more detailed arrangements have not been dealt with in other agreements, parties may wish to include more detailed provisions in relation to some of the matters addressed in the Security Contract, for example:

- Arrangements for the treatment of personal data on termination of the processing arrangements.

AA.6 Sources

The following bodies provide helpful guidance and information on information security, privacy enhancing technologies and data protection and privacy considerations which may serve as useful additional reading material for organisations seeking to use the Article 17 Security Contract for the first time:

- OECD/EU
- National Bodies
- BCS, ITIL
- ICC (International Chamber of Commerce)
- ISO 17799
- Common Criteria
- PETTEP

IMPLEMENTATION GUIDE

ANNEX 1 - BASIC INFORMATION SECURITY MEASURES

Basic information security measures (here extracted from work of the OECD) will include consideration of the following:

2.1 Information Security Management System/Privacy and Data Protection Management System

- Policy
- Governance
- Process/procedures
- Roles/responsibilities
- Assurance process
- Risk Assessment
- Improvement plan.

2.2 Physical Security

- Fit appropriate locks or other physical controls to the doors and windows of rooms where computers are kept.
- Physically secure unattended lap tops (for example, by locking them in a secure drawer or

cupboard).

- Ensure you control and secure all removable media, such as removable hard-drives, CDs, floppy disks and USB drives, attached to business-critical assets.
- Destroy or remove all business-critical information from media such as CDs, and floppy disks before disposing of them.
- Ensure that all business-critical information is removed from the hard drives of any used computers before disposing of them.
- Store back-ups of business-critical information either off-site or in a fire and water-proof container.

2.3 Access Controls

- Use unique passwords, that are not obvious (*Note: not birth dates or easily found or guessed information*) and change them regularly (*Note: preferably at least every three months*).
- Use passwords that contain letters in both upper and lower cases, numbers and special keys, and are six or more characters in length. (*Note: Passwords remembered as a memorable sentence, rather than a single word, are helpful. For example, the sentence: "at forty-two I'm a star!" can translate into this eight-character password : @42Ima*!*)
- Ensure that employees don't write down or share passwords. (*Note: If an employee finds that they need, on occasion, to share a password they must be required to change it as soon as possible – no matter how well they trust the person they shared it with!*)

2.4 Security and Privacy Technologies

- Ensure that all computers used have anti-virus software installed, and the virus definitions must be updated at least once a week (*Note: many providers have a one-click update*). All incoming and outgoing traffic must be scanned for viruses, as should any disk or CD that is used, even if it is from a 'trusted' source. At least once a month, computers must be scanned for viruses.
- Where computers are connected to the Internet (especially if you use a broadband connection) deploy a software firewall. (*Note: This helps to prevent malicious code from entering computers and potentially compromising the confidentiality, integrity and availability of a network. It also helps to stop a system being used to attack other systems without the system owner's knowledge. Software firewalls for use by non-professionals are readily available at a reasonable cost. Operating system virus control software or ISPs may also offer firewalls. Consumer and popular trade magazines compare firewall functions and features of well-known products, and are a good source of information. Free shareware firewalls are available, but these usually require expert knowledge for correct use*).
- Where a business has a small network that is connected to the Internet, it should consider deploying an 'all-in-one' hardware box that contains a firewall, anti-virus program and an intrusion detection system. (*Note: This will greatly simplify the use and maintenance of essential Internet security technology*).

2.5 Awareness, training and security checks in relation to personnel

- Perform integrity checks on all new employees to ensure that they have not lied about their background, experience or qualifications.
- Give all new employees a simple introduction to information security, and ensure that they read and understand your information security policy. Ensure employees know where to find details of the information security standards and procedures relevant to their role and responsibilities.
- Ensure that employees have access only to the information assets they need to do their jobs. If employees change jobs, you must ensure that they do not retain access to the assets they needed for their old job. When dismissing employees, ensure that they do not take with them any business-critical information.
- Ensure that no ex-employees have access rights to your systems.
- Ensure employees know about the common methods that can be used to compromise your

system. (Note: These include e-mail messages that contain viruses and 'social engineering' ploys used by hackers to exploit employees' helpfulness to gain information that will give them access to a system. Examples of 'social engineering' include a hacker using the telephone to pose as a systems maintenance engineer or pretending to be a new employee).

2.6 Incident/Response Management/Business Continuity

Ensure that employees understand what is meant by a Security Incident. A security incident is any event that can damage or compromise the confidentiality, integrity or availability of your business—critical information or systems.

Ensure that employees are trained to recognise the signs of Security Incidents. (Note: These could include:

strange phone requests, especially for information

unusual visitors

strange patterns of computer activity

unusual appearance of computer screens

computers taking longer than usual to perform routine tasks)

Ensure that employees receive training on the need to notify anything which may be a sign of a Security Incident and are kept informed as to the identity of the person to whom such notifications should be made.

Ensure that if a Security Incident occurs, employees know who to contact and how.

Have in place a plan to assure business continuity in the event of a serious Security Incident (a "Business Recovery Plan"). The plan should specify:

Designated people involved in the response;

External contacts, including law enforcement, fire and possibly technical experts;

Contingency plans for foreseeable incidents such as:

o Power loss;

o Natural disasters and serious accidents;

o Data compromise;

o No access to premises;

o Loss of essential employees;

o Equipment failure;

Ensure that your Business Recovery Plan is issued to all employees and is tested at least once a year, regardless of whether there has been a Security Incident.

After every incident when the plan is used, and after every test, re-examine and update the Business Recovery Plan as necessary using the lessons learned.

2.7 Audit Controls/Due Diligence

Ensure that you have in place appropriate security audit arrangements including:

Auditing of who has access to its system (in general and in relation to particular types of information) (Note: *The ability to audit and evaluate information security compliance is essential – you can't manage what you don't measure!*);

Logging of such access to the system; and

Auditing of compliance with security procedures. (Note: *A record should be maintained for each security procedure. For example, if a procedure requires that you test your system's back-up generator once a week, an employee should be identified to sign a record to show that this has been done. Keeping good records is essential to audit control.*)

Some audit controls may be necessary for legal or regulatory purposes. Good record keeping will clearly demonstrate compliance with obligations.

An audit should ensure that the procedures in place are effective and relevant. A security audit is a trigger to re-assess and re-evaluate the effectiveness of information security standards and procedures.

Audits are only effective if action is taken to address their findings and identify and implement the steps that need to be taken. A good audit trail is not just a paper exercise. If something goes wrong, the trail should identify what happened and why. This will help to keep improving the security of the business systems.

This and the following 24 pages comprise Schedule 10 to the Framework Agreement between the Scottish Ministers and Ameresco Limited - REDACTED

SCHEDULE 10 – Contractor Specific Framework Proposals

This 1 page comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and Ameresco Limited

SCHEDULE 11 – PROCESSING DETAILS

This Schedule 11 includes certain details of the Processing as required by Article 28(3) GDPR and clause 14 (Data Protection) of this Framework Agreement.

1. Subject matter and duration of the Processing of Personal Data

1.1. [Include description here].

2. The nature and purpose of the Processing of Personal Data

2.1. [Include description here]

3. The types of Personal Data to be Processed

3.1. [Include list of Personal Data types here]

4. The categories of Data Subject to whom Personal Data relates

4.1. [Include categories of Data Subjects here]

5. The obligations and rights of the Framework Authority

5.1. The obligations and rights of the Framework Authority as the Controller are set out in this Framework Agreement.