

v. 27 February 2020

FRAMEWORK REFERENCE NUMBER TS/LCED/SER/2019/01

FRAMEWORK AGREEMENT

-between-

**(1) THE SCOTTISH MINISTERS ACTING THROUGH TRANSPORT SCOTLAND (THE
“AUTHORITY”)**

-and-

(2) SWARCO UK Limited (THE “SUPPLIER”)

-relating to the supply of-

CHARGEPLACE SCOTLAND CHARGE POINT NETWORK OPERATOR SERVICES

-for the benefit of-

THE SCOTTISH MINISTERS

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PREAMBLE:

- ONE The Authority requires the supply of Services to the Authority;
- TWO On 28 February 2020 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number OJEU 100575-2020;
- THREE On 27 March 2020 the Supplier completed its ESPD;
- FOUR On 14 October 2020 the Authority issued its ITT to potential Suppliers (including the Supplier) in respect of the supply of Services;
- FIVE On 24 November 2020 the Supplier submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Supplier to supply the Services under this Framework Agreement;
- SEVEN In accordance with the Public Contracts (Scotland) Regulations 2015, this Framework Agreement establishes Standard Terms of Supply under which Call-off Contracts may be entered into for the supply of Services;
- EIGHT This Framework Agreement also includes:
- a Specification setting out the Services that the Supplier has undertaken to provide, including Service Levels setting out particular levels of service that the Supplier 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 Authority and the Supplier.

SECTION A

1. Definitions and Interpretation

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

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

“Authority” means the Scottish Ministers acting through Transport Scotland.

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

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

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

“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 Supplier entered into in accordance with the Award Procedures and based on the Standard Terms of Supply.

“Charge Point” means the upstand or wall unit to which an electric vehicle is connected, encompassing one or more sockets or tethered plugs, the user interface access control, energy metering, and circuit protection.

“Charge Point Network Operator (CPNO)” means the Supplier responsible for running a Charge Point Management System (CPMS) and providing Hosts and/or Users with help on access and faults with the Charge Points on their network.

“Charge Point Management System (CPMS)” means the Back Office functions that control, and control access to, Charge Points. A CPMS is usually hosted on a secure server and typically holds data on locations of, and sends/receives commands to/from, Charge Points on the network. A Charge Point is typically connected to the CPMS via a secure mobile telephone network connection and usually sends/receives commands using a protocol called Open Charge Point Protocol (OCPP). The CPMS also holds information on authorised Users (i.e. their RFID card or membership details) in order to enable charging access to the EV User when the system is requested by the Charge Point. A typical add-on feature to a CPMS may include Pay As You Go billing where the authorised User is billed for access to the Charge Point. The CPMS also monitors the health of, and can perform some firmware/software upgrades to, Charge Points connected to it.

“ChargePlace Scotland” means the network of electric vehicle Charge Points sponsored by Transport Scotland on behalf of Scottish Ministers.

“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;

“Supplier” [Redacted]

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

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

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

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

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

“Day Rate” has the meaning given to it in Schedule 2 of this Agreement.

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

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

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

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

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

“ESPD” means the European Single Procurement Document completed by the Supplier and sent to the Authority on 27 March 2020.

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

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

“Exit Management Date” means each of the following:

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

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

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

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

“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.

“Hourly Rate” has the meaning given to it in Schedule 2 of this Agreement.

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

“ITT” means the Authority’s invitation to tender dated 14 October 2020.

“Key Individuals” means the Supplier’s staff including the Framework Director and Call-off Contract Manager(s) directly employed in the performance of the Services or part of the Services, which shall include those personnel identified in Schedule 1, and in each case shall be consented to in writing by the Authority, pursuant to any other provision of this Agreement.

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

(b) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

(c) any applicable guidance, direction, determination or regulations with which the Authority and/or the Supplier 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 Authority and the Supplier, including arrangements for monitoring of the Supplier’s compliance with the Specification, the Service Levels, the Award Procedures and the terms of this Framework Agreement, set out in Schedule 4.

“Operator” means the selected Supplier in this Agreement to which a Call-off Contract for the provision of Services has been awarded by the Authority.

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

“Proposed Services Submission” means a proposal submitted by the Supplier as required by the Authority in accordance with Schedule 3 of this Agreement.

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

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

“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 Supplier to the Authority as set out in the Specification.

“Services Brief” has the meaning given to it in Schedule 3 of this Agreement.

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

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

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

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

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

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

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

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

“Tender” means the tender submitted by the Supplier to the Authority in response to the ITT dated 24 November 2020.

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

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

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

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

“Variation Instruction” means any instruction which makes any alteration or addition to or omissions from the Services, or any changes in quality, form, character, kind, timing, method or sequence of the Services.

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

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

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

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

2. Condition Precedent: Requirement for Parent Company Guarantee

It shall be a condition of this Framework Agreement that, if required by the Authority, the Supplier shall deliver a validly executed parent company guarantee in the form set out in Schedule 6 to this Framework Agreement. The rights and obligations of the Parties shall have no force or effect unless the parent company guarantee has been properly executed and delivered to the Authority. The parties acknowledge that if this condition has not been fulfilled any performance of this Framework Agreement by the Supplier shall be at the risk of the Supplier and the Authority shall not be liable for and the Supplier irrevocably waives any entitlement to payment of any fees, expenses or other payments in relation to such performance. Where the Supplier has failed to fulfil this condition within 14 days of the date of last subscription of the Framework Agreement the Authority shall have the right to terminate the Framework Agreement by notice in writing to the Supplier.

3. Nature of this Agreement

- 3.1. This Agreement is a framework agreement within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015. Call-off Contracts are public contracts within the meaning of that regulation.
- 3.2. This Agreement is a single-supplier framework agreement and the supplier that is party to it is the Supplier. No other contractors are party to the Framework Agreement.
- 3.3. This Agreement is a single-user framework agreement and the public body that is party to it is the Authority. No other public bodies are party to the Framework Agreement.
- 3.4. Save to the extent specifically provided for in this Agreement, the Supplier acknowledges that it is not the exclusive supplier of the Services to the Authority and as such no guarantee of work or volume of work has been granted by the Authority.

4. Period

- 4.1. The period of this Framework Agreement is from and including 16 February 2021 (the "Commencement Date") to and including 16 February 2023 unless it is terminated earlier or extended under Clause 4.2.
- 4.2. The Authority may, by giving notice to the Supplier, extend the period of the Framework Agreement to a date falling no later than four years from the Commencement Date. Subject to that constraint, the Authority may extend the period of the Framework Agreement on more than one occasion.
- 4.3. The period of Call-off Contracts is addressed in the Standard Terms of Supply. The period of a Call-off Contract may continue notwithstanding that the Framework Agreement has expired or terminated.

5. Break

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

6. Specification and Service Levels and Cyber Security Requirements

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

6.2 The Supplier shall comply with Schedule 11 (Cyber Security Requirements).

7. Price

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

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

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

8. Award Procedures

8.1. The Award Procedures may be invoked by the Authority 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 Supplier if:

8.2.1. the period of the Framework Agreement has expired;

8.2.2. the Framework Agreement has been terminated; or

8.2.3. the Supplier's appointment to provide Services to the Authority has been suspended in accordance with clause 9.2 (Management Arrangements).

8.3. The the Authority and the Supplier must comply with the Award Procedures and must establish each Call-off Contract without amendment to the Standard Terms of Supply.

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

9. Management Arrangements

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

9.2. The Authority may by notice to the Supplier suspend the Supplier's appointment to provide Services to the Authority for a notified period of time:

- 9.2.1. if the Authority becomes entitled to terminate this Framework Agreement under clause 42 (Termination Rights) or 43 (Termination on Insolvency or Change of Control); or
- 9.2.2. in any other circumstance provided for in the Management Arrangements.
- 9.3. Suspension under clause 9.2 shall terminate upon cessation of all of any circumstances referred to in subclauses 9.2.1 and 9.2.2.
- 9.4. The Supplier must continue to perform existing Call-off Contracts during any period of suspension under clause 9.2.

10. Official Secrets Acts

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

SECTION B

11. Supplier's Status

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

12. Notices

- 12.1. Any notice or other communication which is to be given by a Party to the other under this Framework Agreement must be:
 - 12.1.1. given in writing;
 - 12.1.2. addressed in accordance with clause 12.3; and
 - 12.1.3. sent by letter (delivered by hand, first class post or by recorded delivery or special delivery), fax or e-mail.
- 12.2. Provided the relevant communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
 - 12.2.1. 2 Working Days after the day on which the letter was posted; or
 - 12.2.2. 4 Working Hours, in the case of fax or e-mail.
- 12.3. For the purposes of this clause, the address of each Party is:
 - 12.3.1. For the Authority:
[Redacted]
 - 12.3.2. For the Supplier:
[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 Supplier to the Authority, the Authority may deduct that sum from any sum due to the Supplier whether under a Call-off Contract or otherwise.

14. Data Protection

- 14.1. The Supplier will, in conjunction with the Authority and in its own right and in respect of the Services, ensure it will be compliant with the Data Protection Laws.
- 14.2. Both Parties agree to negotiate in good faith any such amendments to this Framework Agreement that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Parties under Data Protection Laws and the Parties agree to comply with those obligations and duties.
- 14.3. The Parties acknowledge that the Supplier may Process Personal Data in delivery of Services under a Call-off Contract under this Framework Agreement. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Authority acts as the Data Controller.
- 14.4. The Supplier will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5. To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Supplier 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 Supplier acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Supplier shall:
 - (a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that the Supplier receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Supplier's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 15.2 If the Request for Information appears to be directed to information held by the Authority, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.

- 15.3 If the Authority receives a Request for Information concerning the Framework Agreement, the Authority is responsible for determining at its absolute discretion whether the information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Supplier acknowledges that the Authority may, acting in accordance with the Authority's Code of Practice on the Discharge of Functions of Public Authorities issued under section 60(5) of FOISA (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Supplier or the Framework Agreement:
- 15.4.1 in certain circumstances without consulting the Supplier, or
 - 15.4.2 following consultation with the Supplier and having taken its views into account.
- 15.5 Where 15.4.1 applies the Authority must take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.
- 15.6 The Supplier acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Supplier Sensitive Information. However, if the Authority believes that publication of any element of the Transparency Information should be treated as Supplier Sensitive Information the Authority may, in its discretion exclude such information from publication.
- 15.7 Notwithstanding any other provision of this Agreement, the Supplier hereby gives consent for the Authority to publish to the general public, the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Supplier 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.
- 15.8 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.9 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 15.10 The Supplier agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information, (subject to clause 17.3.3) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 16. Authority Protected Information**
- 16.1. The Supplier must:

- 16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
 - 16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Framework Agreement;
 - 16.1.3. only disclose the Authority Protected Information to such Supplier Representatives that are directly involved in the performance of the Framework Agreement and need to know the information; and
 - 16.1.4. not disclose any Authority Protected Information without the prior written consent of the Authority.
- 16.2. The Supplier must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Supplier must fully co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.
- 16.3. Clause 16.1 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 Supplier without restriction as to its disclosure prior to its disclosure by the Authority;
 - 16.3.3. information is obtained from a third party (who lawfully acquired it) without restriction as to its disclosure;
 - 16.3.4. information is already in the public domain at the time of disclosure otherwise than by a breach of the Framework Agreement; or
 - 16.3.5. information is independently developed without access to the Authority Protected Information.
- 16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Supplier is a material breach for the purposes of clause 42 (Termination Rights).

17. Supplier Sensitive Information

- 17.1. The Authority must:
- 17.1.1. treat all Supplier Sensitive Information as confidential and safeguard it accordingly; and
 - 17.1.2. not disclose any Supplier Sensitive Information to any other person without the prior written consent of the Supplier.
- 17.2. Clause 17.1 does not apply to the extent that:
- 17.2.1. disclosure is required by law or by order of any competent court or tribunal;
 - 17.2.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Supplier;
 - 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 Supplier Sensitive Information.
- 17.3. Nothing in this Framework Agreement prevents the Authority from disclosing any Supplier Sensitive Information or any other information concerning the Supplier or the Framework Agreement:
 - 17.3.1. pursuant to a Request for Information concerning the information (see clause 15 (Transparency and Freedom of Information));
 - 17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;
 - 17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;
 - 17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, contractor or other person engaged by the Authority, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a Member of the United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Framework Agreement; or
 - 17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4. The Supplier consents to the publication of the Framework Agreement by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Supplier to inform its decisions concerning redaction (for example to exclude any Supplier Sensitive Information) but any decisions taken by the Authority are final and conclusive.
- 18. Audit**
 - 18.1. The Supplier must retain and maintain until 5 years after the end of the Framework Agreement period full and accurate records of the Framework Agreement including the Orders placed, the Services provided and payments made and reimbursed under it.
 - 18.2. The Supplier must on request, and without any charge to the Authority, afford the Authority, or the Authority's representatives, such access to those records as may reasonably be requested by the Authority in connection with the Framework Agreement.

19. Publicity

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

SECTION C

20. Key Individuals

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

21. Offers of Employment

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

22. Staff transfer at commencement

- 22.1. The Parties agree that the commencement of the provision of the Services by the Supplier may constitute a Relevant Transfer in respect of the Incoming Employees.
- 22.2. The Supplier is responsible for all emoluments and outgoings in respect of the Incoming Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period from the date of the Relevant Transfer, including bonuses or commission which are payable on or before the

date of the Relevant Transfer but attributable in whole or in part to the period from the date of the Relevant Transfer.

- 22.3. The Supplier indemnifies the transferor (as defined in TUPE) against all Employee Liabilities which the transferor may incur in respect of the emoluments and outgoings referred to in clause 22.2.

23. Information about employees

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

24. Staff transfer on expiry or termination

- 24.1. The Parties agree that the ceasing of the provision of the Services by the Supplier may constitute a Relevant Transfer in respect of the Outgoing Employees.
- 24.2. The Supplier shall comply and shall procure that each Affiliate of the Supplier and each sub-contractor shall comply with all of its obligations under TUPE and shall perform and discharge and procure that each Affiliate of the Supplier and each sub-contractor shall perform and discharge all its obligations in respect of all the Outgoing Employees arising in respect of the period up to (and including) the date of the Relevant Transfer.
- 24.3. The Supplier indemnifies the Authority and any Replacement Supplier against any and all Employee Liabilities which the Authority or any Replacement Supplier may suffer as a result of or in connection with:
- 24.3.1. the provision of information pursuant to clause 23;
- 24.3.2. any claim or demand by any Outgoing Employee (whether in contract, delict, under statute or otherwise) and whether made before, on or after the date of the Relevant Transfer arising directly or indirectly from any act, fault or omission of the Supplier or any Affiliate of the Supplier or any sub-contractor in respect of any Outgoing Employee on or before the date of the Relevant Transfer;
- 24.3.3. any failure by the Supplier or any Affiliate of the Supplier or any sub-contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from

the failure of the Authority or any replacement Supplier to comply with its obligations under regulation 13 of TUPE;

- 24.3.4. 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 Supplier or any Affiliate of the Supplier or any sub-contractor to comply with any legal obligation to such trade union, body or person;
 - 24.3.5. any act or omission of the Supplier or any Affiliate of the Supplier or any sub-contractor whether occurring before, on or after the date of the Relevant Transfer or any other matter, event or circumstance occurring or having its origin on or before the date of the Relevant Transfer;
 - 24.3.6. the breach or non-observance by the Supplier or any Affiliate of the Supplier or any sub-contractor occurring on or before the date of the Relevant Transfer of any collective agreement applicable to the Outgoing Employees or any custom or practice in respect of any Outgoing Employees that a Replacement Supplier is contractually obliged to honour;
 - 24.3.7. any claim made by or in respect of any person employed by the Supplier or any Affiliate of the Supplier or any sub-contractor other than an Outgoing Employee for whom it is alleged the Authority or a Replacement Supplier may be liable by virtue of this Framework Agreement or TUPE.
- 24.4. The Supplier is responsible for all emoluments and outgoings in respect of the Outgoing Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, pay as you earn and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of the Relevant Transfer (including bonuses or commission which are payable after the date of the Relevant Transfer but attributable in whole or in part to the period on or before the date of the Relevant Transfer).
- 24.5. The Supplier indemnifies the Authority and any Replacement Supplier against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities which the Authority or replacement Supplier may incur in respect of the emoluments and outgoings referred to in clause 24.5.
- 24.6. The Supplier shall and shall procure that each Affiliate of the Supplier and each sub-contractor shall promptly provide to the Authority and any Replacement Supplier in writing such information as is necessary to enable the Authority and/or the Replacement Supplier to carry out their respective duties under regulation 13 of TUPE as the case may be.
- 24.7. The Supplier shall provide and shall procure that each Affiliate of the Supplier and each sub-contractor shall provide all reasonable co-operation and assistance to the Authority and any Replacement Supplier to ensure the smooth transfer of the Outgoing Employees including without prejudice to the foregoing generality providing sufficient information in advance of the date of the Relevant Transfer to ensure that all necessary payroll arrangements can be made to enable the Outgoing Employees to be paid as appropriate.
- 24.8. The Supplier warrants to the Authority that during the period of 6 months immediately prior to the expiry of the Framework Agreement it will not (and will ensure that any Affiliate of the Supplier and any sub-contractor will not) without the prior consent of the Authority:
- increase the total employment costs of the Assigned Employees in any material way;
 - amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt pay) of any

Assigned Employee other than where such amendment or variation has previously been agreed in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services;

- terminate or give notice to terminate the employment or engagement of any Assigned Employee other than in circumstances in which the termination is for reasons of misconduct or lack of capability;
- transfer away, remove, reduce or vary the involvement of any of the Assigned Employees from or in the provision of the Services other than where such transfer or removal:
 - was planned as part of the individual's career development;
 - takes place in the normal course of business; and
 - will not have any adverse impact upon the delivery of the Services by the Supplier provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services.
- recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services 6 months prior to the expiry of the Framework Agreement.

25. Security

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

SECTION D

26. Parties' pre-existing Intellectual Property Rights

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

27. Specially Created Intellectual Property Rights

- 27.1. All Intellectual Property Rights and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under the Framework Agreement belong to the Authority.
- 27.2. The Supplier assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier must execute all documentation necessary to effect this assignment.

28. Licences of Intellectual Property Rights

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

29. Claims relating to Intellectual Property Rights

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

30. Assignment and Change of Control

- 30.1. The Supplier may not assign its interest in the Framework Agreement without the prior written consent of the Authority.
- 30.2. The Supplier must notify the Authority:
 - 30.2.1. whenever it proposes to undergo a change of Control, or a change of control is likely to occur;
 - 30.2.2. immediately following a change of Control that has occurred; and
 - 30.2.3. where it proposes to make any change to its sub-contractor named by the Supplier in its tender.
- 30.3. Subject to clause 30.5, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to:

- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Framework Agreement.
- 30.4. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 30.5, affect the validity of the Framework Agreement. In such circumstances, the Framework Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 30.5. If the rights and obligations under the Framework Agreement are assigned, novated or otherwise disposed of pursuant to clause 30.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of the Authority in clauses 42 (Termination Rights) and 43 (Termination on Insolvency and Change of Control) shall be available to the Supplier 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 Supplier.
- 30.6. The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Framework Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Framework Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 31. Sub-Contracting**
- 31.1. The Authority approves the appointment of the sub-contractors specified in Schedule 10 (Approved Sub-contractors) in respect of the obligations specified in that Schedule.
- 31.2. The Supplier may not sub-contract its obligations under the Framework Agreement to other sub-contractors without the prior written consent of the Authority. Sub-contracting of any part of the Framework Agreement shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Framework Agreement. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 31.3. Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included which:
- 31.3.1. requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Supplier in respect of Services and the sub-contractor's invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention

or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;

31.3.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;

31.3.3. requires that all contracts with subcontractors and suppliers which the subcontractor intends to procure, and which the subcontractor has not before the date of this Framework Agreement, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the contract; and

31.3.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

31.4. The Supplier shall include in every sub-contract:

31.4.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 42.4 occur; and

31.4.2 a requirement that the sub-contractor includes a provision having the same effect as 31.4.1 in any sub-contract which it awards.

In this Clause 31.4, 'sub-contract' means any contract between two or more contractors, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Framework Agreement.

31.5. Where requested by the Authority, copies of any sub-contract must be sent by the Supplier to the Authority as soon as reasonably practicable.

31.6. Where the Supplier proposes to enter into a sub-contract it must:

31.6.1 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

31A. Supply Chain Transparency and Protections

Knowledge of the supply chain

31A.1. In performing its role as a reseller, the Supplier will use its reasonable endeavours to ensure that the suppliers operating in its supply chain (the "Supplier's Suppliers") prepare and maintain a written supplier code of conduct or supplier policy that addresses the following.

- child labour,
- forced labour,

- working hours,
- wages,
- discrimination,
- health and safety,
- freedom of association,
- collective bargaining,
- disciplinary practices,
- humane treatment of workers,
- training,
- engagement with NGOs, and
- worker grievance procedures .

The Supplier will provide the Authority with a copy of the Supplier's Suppliers codes of conduct or supplier policies on request.

31A.2. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers prepare and maintain appropriate policies and procedures to identify, manage and mitigate labour and human rights risks in their supply chains relevant to this Framework Agreement (the "Supplier Supply Chain").

31A.3. The Supplier will, within 20 Working Days of the Framework Commencement Date, provide the Authority with the names, locations and details of the roles of suppliers (including details of the factories used by suppliers and specific components produced in each factory) within the Supplier Supply Chain. The Supplier will notify the Authority of any changes as soon as reasonably practicable.

31A.4. The Authority will have the right to share with participating framework public bodies all information provided by the Supplier in relation to these Supply Chain Protection provisions.

Supply chain working conditions

31A.5. The Supplier will submit an annual written report to the Authority outlining the Supplier's objectives, targets and specific actions for monitoring and improving labour standards and working conditions within the Supplier Supply Chain.

31A.6. The Supplier will take all reasonable steps to ensure that all Goods supplied under this Contract are produced in accordance with all International Labour Organisation (ILO) conventions that have been ratified by the country of their origin.

31A.7. In respect of the Supplier Supply Chain and the Supplier's Suppliers, the Supplier must ensure the following:

31A.7.1. forced, bonded (including debt bonded) or indentured labour, involuntary or exploitative prison labour, slavery or trafficking of persons is not permitted;

31A.7.2. child labour is not used in any stage of manufacturing or in the provision of services or supplies;

31A.7.3. workers do not undertake excessive working hours. For the purposes of this Framework Agreement, working hours must not exceed the maximum set by local law; a working week must not be more than 60 hours per week, including overtime, except in emergency or unusual situations and workers shall be allowed at least one day off every seven days;

31A.7.4. compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits; in compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates; that

deductions from wages as a disciplinary measure shall not be permitted; that for each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed; and that all use of temporary, dispatch and outsourced labour will comply with local laws;

31A.7.5. all workers must have the right to form and join trade unions, of their own choosing, to bargain collectively and to engage in peaceful assembly and the right of workers to refrain from such activities must be respected;

31A.7.6. workers must not be subject to any harsh or inhumane treatment, including any sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be the threat of any such treatment;

31A.7.7. workers must not be subject to harassment or unlawful discrimination; and

31A.7.8. workers must be provided with safe and healthy working conditions.

31A.8. In respect of the Supplier Supply Chain and the Supplier's Suppliers, the Supplier will use its reasonable endeavours to ensure the following:

31A.8.1. compliance with all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;

31A.8.2. implementation of an appropriate (e.g. anonymous) whistleblowing policy which encourages openness and ensures support and protection from detrimental treatment for workers which raise genuine concerns.

Managing risks in the supply

31A.9. The Supplier will use its reasonable endeavours to require the Supplier's Suppliers to audit, evaluate and report in writing to the Supplier not less than once every twelve (12) months on performance against the Supplier's Suppliers' codes of conduct and or supplier policies and their policies on labour and human rights impacts in respect of the Supplier Supply Chain. The Supplier shall provide the Authority on request with a copy of any such reports in so far as they relate to the Supplier Supply Chain.

31A.10. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers undertake a defined program of supply-chain audits. Audits must be undertaken by third party accredited certification bodies and independently verified. These audits must either include or be supplemented by external consultation and engagement with local labour unions or civil society organisations/NGOs, and off-site worker interviews to gain a more accurate understanding of working conditions. The Supplier shall provide the Authority on request with a copy of any such audits, and supplementary evidence where relevant, in its possession or control in so far as they relate to the Supplier Supply Chain.

Corrective and preventive measures to ensure social responsibility in the supply chain

31A.11. The Supplier will use its reasonable endeavours to ensure the outcomes of the Supplier's Suppliers supply-chain audits are subject to corrective actions by the Supplier's Suppliers in a timely manner. The Supplier shall provide the Authority on request with details in its possession or control of any actions taken or proposed to be taken in so far as they relate to the Supplier Supply Chain .

31A.12. The Supplier will use its reasonable endeavours to actively engage with the Supplier Supply Chain to ensure continuous improvement in labour and human

rights standards and supplier compliance with such standards .

31A.13. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers communicate and publicly report progress in addressing labour and human rights issues within the Supplier Supply Chain not less than once every twelve (12) months .

Measures to control the supply chain

31A.14. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers' sourcing policies address labour and human rights impacts during the extraction phase of production and include the use of conflict free smelters in accordance with the [Responsible Minerals Initiative](#). The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers provide and maintain a written list of tantalum, tin, tungsten, and gold smelters/refiners reported by the Supplier Supply Chain and provide the Authority on request with details.

31A.15. The Supplier will use its reasonable endeavours to ensure that the Supplier's Suppliers implement and adhere to the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (as the same may be updated from time to time) and produce a publicly viewable annual summary of their due diligence and risk management measures consistent with this guidance.

31A.16. The Supplier will use its reasonable endeavours to provide the Authority on request with evidence of direct and ongoing collaboration by the Supplier's Suppliers with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts on the Supplier Supply Chain.

Supply chain contract termination

31A.17. The Supplier will use its reasonable endeavours to ensure that all contracts in the Supplier Supply Chain give the Authority a right to terminate the sub-contract if the supplier fails to comply with legal obligations in the fields of environmental, social, labour or human rights law.

32. **Amendment**

32.1. The Framework Agreement may be amended only by the written agreement of both Parties. Accordingly, the Supplier may not unilaterally amend the Framework Agreement

32.2. Clause 7 (Price) makes special provision for the variation of the Pricing Schedule.

SECTION E

33. Warranties and Representations

The Supplier warrants and represents that:

33.1.1. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Framework Agreement and that the Framework Agreement is executed by a duly authorised representative of the Supplier;

33.1.2. in entering the Framework Agreement it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;

- 33.1.3. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or committed any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities;
- 33.1.4. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Framework Agreement;
- 33.1.5. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.6. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Framework Agreement;
- 33.1.7. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier 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 Supplier's assets or revenue; and
- 33.1.8. as at the Commencement Date, all insurances that must be effected under the Standard Terms of Supply have been effected.

34. Indemnity

34.1 Without prejudice to any rights or remedies of the Authority, the Supplier will indemnify the Authority against any and all claims, proceedings, actions, damages, costs, expenses and any other loss and liabilities which may arise out of, or in consequence of, any Default of the Supplier, 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 Supplier for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Supplier.
- 35.3. The liability of either Party under the Framework Agreement for Defaults is limited to £5 million.
- 35.4. But neither Party excludes or limits liability to the other Party for:
 - 35.4.1. death or personal injury caused by its negligence;
 - 35.4.2. misrepresentation;
 - 35.4.3. any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or sections 2 or 11B of the Supply of Goods and Services Act 1982.

36. Insurance

- 36.1. The Supplier must effect and maintain with a reputable insurance company:
 - 36.1.1. public liability insurance in the sum of not less than £5,000,000;
 - 36.1.2. professional indemnity insurance in the sum of not less than £5,000,000; and
 - 36.1.3. employer's liability insurance in the sum of not less than £5,000,000.
- 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 Supplier must give the 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 90 days, either Party may terminate the Framework Agreement with immediate effect by notice.
- 40.2. Any delay or other failure by the Supplier in performing its obligations under the Framework Agreement which results from any failure or delay by a Supplier Representative is only to be regarded as due to Force Majeure if that Supplier Representative is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 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 Supplier shall take reasonable care to ensure that in the performance of its obligations under the Framework Agreement it does not disrupt the operations of the Authority, its employees or any other Supplier employed by the Authority.
- 41.2. The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Framework Agreement.
- 41.3. In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Framework Agreement.
- 41.4. If the Supplier's proposals referred to in clause 41.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority may by notice terminate the Framework Agreement with immediate effect.

42. Termination Rights

- 42.1. The Authority may terminate the Framework Agreement by notice to the Supplier with immediate effect if the Supplier commits a Default and if:
 - 42.1.1. the Supplier has not remedied the Default to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
 - 42.1.2. the Default is not in the opinion of the Authority, capable of remedy; or
 - 42.1.3. the Default is a material breach of the Framework Agreement.
- 42.2. The Authority may also terminate the Framework Agreement:
 - 42.2.1. in accordance with any provision of the Schedules;

- 42.2.2. in accordance with any provisions of the Standard Terms of Supply relating to the following activities:
 - 42.2.2.1. entering, attending or occupying the Authority's premises;
 - 42.2.2.2. making use of the Authority's property or information technology systems, or giving the Authority the use of the Supplier's property or information technology systems;
 - 42.2.2.3. having dealings with the Authority's employees, suppliers or contractors;
 - 42.2.2.4. soliciting the Authority's employees;
 - 42.2.2.5. making representations or giving professional advice to the Authority;
 - 42.2.2.6. generating information for or giving information to the Authority;
 - 42.2.2.7. receiving information from or holding information on behalf of the Authority; and
 - 42.2.2.8. carrying out publicity or marketing activities;
 - 42.2.3. where a Call-off Contract with the Supplier under this Framework Agreement has been terminated prior to the termination date of that Call-off Contract.
 - 42.2.4. where, at any time before the term of the Framework Agreement, the Supplier or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits or is convicted of an offence referred to in paragraph (1) of that regulation.
 - 42.3 The Authority may terminate the Framework Agreement if a Call-off Contract is terminated because of a Default by the Supplier.
 - 42.4 The Authority may terminate the Contract in the event that:
 - (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
 - (b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
 - (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.
- 42.5 The Authority may also terminate the Framework Agreement in the event of a failure by the Supplier to comply in the performance of its obligations under the Framework Agreement with legal obligations in the fields of environmental, social or employment law.

43. Termination on Insolvency and Change of Control

- 43.1. The Authority may terminate the Framework Agreement with immediate effect by notice where in respect of the Supplier:
- 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 assignation for the benefit of, its creditors;
 - 43.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 43.1.3. a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 43.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 43.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 43.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 43.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 to the Insolvency Act 1986;
 - 43.1.8. a debt relief order is entered into; or
 - 43.1.9. any event similar to those listed above occurs under the law of any other jurisdiction.
- 43.2. The Authority may terminate the Framework Agreement by notice with immediate effect within 6 months of:
- 43.2.1. being notified that a change of Control has occurred in accordance with clause 30 (Assignment and Change of Control); or
 - 43.2.2. where no such notification has been given, the date that the Authority becomes aware of the change of control.
- 43.3. But the Authority may not terminate the Framework Agreement under clause 43.2 where approval of the change of control has been granted by notice by the Authority.

44. Exit Management

The Supplier 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 Supplier agrees that if it breaches (or attempts or threatens to breach) its obligation to provide Exit Management, the Authority and their respective customers and stakeholders shall be irreparably harmed. In such circumstance, the Supplier agrees that the Authority

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

45. Compliance with the Law and Changes in the Law

- 45.1 The Supplier shall, in complying with all obligations incumbent upon it in terms of the Framework Agreement or any other contract with the Authority, comply in all respects with, and shall ensure that the Supplier'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 Supplier must not unlawfully discriminate against any person in terms of the Equality Act 2010 in its activities relating to the Framework Agreement or any other contract with the Authority.
- 45.3 The Supplier 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 Supplier 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 Supplier.

46. Offences

- 46.1. The Supplier 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).

46A. Compliance With Anti-Slavery And Human Trafficking Laws

46A.1. In performing its obligations under this Framework Agreement, the Supplier shall:

- 46A.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
- 46A.1.2. not engage in any activity, practice or conduct that would constitute an offence under the Human Trafficking and Exploitation (Scotland) Act 2015 if such activity, practice or conduct were carried out in the UK;
- 46A.1.3. include in contracts with its direct subcontractors and contractors provisions which are at least as onerous as those set out in this clause;
- 46A.1.4. notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
- 46A.1.5. maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Authority; and

46A.1.6. provide the Authority and its third party representatives access to such records.

46A.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

46A.3. The Supplier shall prepare and deliver to the Customer, each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

46A.4. The Authority may terminate this Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of this clause.

47. Tax Arrangements

47.1 Where the Supplier 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 Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this Framework Agreement, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

47.3 The Authority may, at any time during the term of this Framework Agreement, request the Supplier to provide information which demonstrates how the Supplier 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 Supplier must provide and the period within which that information must be provided.

47.5 The Authority may supply any information which it receives under clause 47 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

47.6 The Supplier 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 Supplier enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Supplier 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 Supplier.

48. Blacklisting

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

49. Conflicts of interest

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

50. Consequences of Expiry or Termination

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

- 50.4.17. clause 33 (Warranties and Representations);
 - 50.4.18. clause 34 (Indemnity);
 - 50.4.19. clause 37 (Dispute Resolution Procedure);
 - 50.4.20. clause 39 (Waiver and Cumulative Remedies);
 - 50.4.21. clause 47 (Tax arrangements);
 - 50.4.22. this clause 50 (Consequences of Termination);
 - 50.4.23. clause 52 (Governing Law and Jurisdiction); and
 - 50.4.24. schedule 11, part 11, paragraph 1 (Supplier's Warranty).
- 50.5. Immediately upon termination of the Framework Agreement for any reason whatsoever the Supplier shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a Replacement Supplier of the Services previously performed by the Supplier under the Framework Agreement.
- 50.6. On expiry or termination of the Framework Agreement the Supplier must:
- 51.6.1 immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
 - 51.6.2 destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession.

51. Entire Agreement

- 51.1 This Framework Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with herein. This Framework Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause does not exclude liability in respect of any misrepresentation (whether in the ESPD or Tender or otherwise).
- 51.2 In the event of, and only to the extent of, any conflict between the clauses of this Framework Agreement, the Schedules and any document referred to in this Framework Agreement, the following order of precedence applies:
- 51.2.1 the clauses of this Framework Agreement;
 - 51.2.2 the Standard Terms of Supply;
 - 51.2.3 the other Schedules; and
 - 51.2.4 any other document referred to in the clauses of this Framework Agreement.

52. **Governing Law and Jurisdiction**

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

IN WITNESS WHEREOF these presents typewritten on this and the «F40: 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 SWARCO UK Limited

[Redacted]

[Redacted]

In the presence of

In the presence of

[Redacted]

[Redacted]

This and the following 55 pages comprise Schedule 1 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 1 – SPECIFICATION AND SERVICE LEVELS

1.1 THE PRINCIPAL SERVICE – Operation of the ChargePlace Scotland network

1.1.1 The ChargePlace Scotland network has been in development since 2012, initially as part of the UK Government's Plugged in Places scheme. Following the end of the scheme in March 2015, Scottish Ministers continued to invest in the rollout of charging infrastructure across Scotland. The CPNO will provide the following services:

- i. Provision and quality assured operation of a robust and reliable charge point management system, Open Charge point Protocol (OCPP) compatible with all types of charge point currently installed on the ChargePlace Scotland network;
- ii. Delivering a service capable of managing multi-tariff collection for over 250 charge point owners, a number expected to grow during the lifetime of the contract;
- iii. provision of an active fault management system including fault reporting and liaison with both charge point owners and maintenance contractors;
- iv. provision and operation of a fully staffed 24/7 customer service facility with capabilities of customer contact via various modes including social media;
- v. provision and operation of a publically accessible mobile website, providing an interactive, real time status mapping system of the ChargePlace Scotland network;
- vi. operation and maintenance of a mobile app (apple and android) providing at minimum the same information for users as the website, with the software to be updated regularly in line with operating systems, and be expanded to enhance its usability. This expansion should include at minimum the ability for users to find available chargers, and develop a system to book chargers in line with the Additional Work Package task order 2, report faults, begin and end charges, and make secure payments;
- vii. ability to develop and provide interoperability and eMobility services in line with sections 2.8.2.1 and 2.9.1 of this document;
- viii. provision of a system to allow charge point owners easy, real time access to information relating to their charge points including but not limited to: the usage in the form of kWh and number of charges per charge point over various time periods as well as overall figures for all the owners charge points and availability of charge points at any time;
- ix. provision of a reliable and efficient communications strategy to inform users of the status of the network, and to promote the benefits of the network and electro-mobility to the general public.

1.1.2 It is intended the framework agreement shall be for a period of 2 years with two additional 1-year extension options (potential total of 4 years), during which the Scottish Ministers shall be entitled to call-off services from the framework agreement.

1.2 Typical Work Packages

1.2.1 A Call Off Contract may include any one of or a combination of the following typical Work Packages.

- 1.2.2 These Work Packages are for the purpose of identifying the various items of work that may currently be envisaged in the performance of Services under a Call Off Contract.
- 1.2.3 However, the scope of these particular Work Packages may be varied in a Call Off Contract.
- 1.2.4 These typical Work Packages shall not be considered as definitive of the scope of any particular Call Off Contract or be considered by the Supplier to be an exhaustive list for the performance of the Services and any other alternative or additional Services may also be required by the Authority as part of a Call Off Contract.
- 1.2.5 The following Work Packages are split between Principal Work Packages and Additional Work Packages. It is envisaged that all Principal Work Packages shall form the basis of Services to be called off at set times under one or more Call Off Contracts for the duration of the Framework Agreement.
- 1.2.6 It is envisaged that the Additional Work Packages may form the basis of Services to be called off under one or more Call Off Contracts at a time set by the Authority during the Framework Agreement.

1.3 Principal Work Packages

1.3.1 Principal Work Package 1: Mobilisation

- 1.3.1.1 This work package includes the following services for a typical Call Off Contract:
 - i. To design and implement a detailed mobilisation strategy, to be implemented no later than prior to the official commencement of operations on 1 April 2021.
 - ii. The strategy shall include, but not be limited to, a detailed project plan outlining the transition of all ChargePlace Scotland charge points and associated data and services including but not limited to RFID cards and social media from the incumbent's CPMS to the Supplier's CPMS.
 - iii. The strategy shall also include a detailed communications plan, addressing any impact that may be felt on users, charge point owners and suppliers, and the steps required, if any, for users to transition from the Incumbent's CPMS to the Supplier's CPMS. This will include detailed information on the transition of existing RFID cards, the subscription process for new Users, and the allocation of new RFID cards to existing Users, if required. For new Users registering with ChargePlace Scotland on or after 1 April 2021, a £10 joining fee shall be applied. No annual subscription charge should thereafter apply to any new or existing customers. Customers may be charged £10 for replacement RFID cards where these are lost or damaged as a result of the customers actions.
 - iv. The strategy shall ensure that customer services levels will remain at high levels during transition in order to provide a seamless service.
 - v. The communications plan shall also outline how the ChargePlace Scotland brand, and associated services, shall be communicated to Users.
 - vi. The mobilisation strategy shall also include a detailed risk assessment, with identified mitigations agreed in advance with the Authority, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if applicable.
 - vii. To design, implement, and maintain appropriate terms and conditions for ChargePlace Scotland Users, ensuring General Data Protection Regulation (GDPR) legislation is adhered to.

- viii. To provide weekly progress meetings and progress reports detailing progress of the mobilisation plan to date and anticipated next stages to the Authority on all activities and issues relating to this work package.
- ix. Establish a reporting strategy to be implemented during the operation of the contract to include standard reporting templates for monthly, quarterly and annual reports and standard agendas for monthly, bi-annual and annual meetings.
- x. Novation of existing SIM cards from the incumbent operator to the new operator. Additional information is provided in Table 6.1 of the Information Document
- xi. Identify how environmental benefits can be delivered through the operation of the contract and the back office.
- xii. Any other related services.

1.3.2 Principal Work Package 2: Operation of Charge point Management System for the ChargePlace Scotland network

1.3.2.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To lead on the operation and coordination of the physical infrastructure through the provision of a Charge point Management System (CPMS) and dedicated resources to deliver the following services:
 - Provision of a 24/7 customer support service
 - Remote initiation and termination of charging sessions
 - Secure method of tariff collection and reimbursement to charge point owners on a monthly basis
 - Ability to set and manage multiple tariffs and overstay fees for individual charge point owners
 - Ability to accommodate separate multiple tariffs and overstay fees for corporate groups and other fleet users with the ability for central payment
 - Provision of contactless payment services where the hardware is already in place or is installed by the owner during the contract (including for new and upgraded existing charge points).
 - Easy integration of new charge points onto CPS
 - Free compatibility testing of equipment for new suppliers
 - Liaison with installers during the installation and commissioning process
 - A system capable of permitting access by third party suppliers for the purposes of eMobility
- ii. The CPMS must be compatible, or be able to become compatible with, the existing infrastructure on the ChargePlace Scotland network, and must operate using the Open Charge point Protocol (OCPP), Version 1.6 or above and continuously update as new versions are released, and incorporate the latest industry standard. The CPMS must also be capable of providing a Pay As You Go (PAYG) facility, should Charge point owners wish to apply a tariff and the ability to provide access to third parties for eMobility access.

- iii. To provide monthly reports to the Authority on Charge point reliability, and usage data and progress on all other issues and actions relating to this work package.
- iv. The provision of a robust and resilient Disaster Management System with back-up systems to allow CPS users seamless continuity in light of a failure in back office systems or parts thereof.
- v. Any other related services.

1.3.3 Principal Work Package 2a: Fault Management System

1.3.3.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To design, implement, and maintain a dedicated fault management system, capable of logging and tracking faults from notification through to repair, with strict response times applied to Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if required, to ensure faults are repaired within 48 hours for all charge points under warranty. The response times for all other Charge points should be monitored and reported. To continue engagement with charge point owner et al until fault is resolved. This system should be accessible to all hosts and manufacturers.
- ii. To ensure 100% notification of faults to both charge point owner and supplier within 30 minutes of the fault being reported.
- iii. To ensure prompt response and enforcement of the key performance indicators imposed on charge point owner/supplier regarding fault management of their charge points, i.e.
 - 100% response – an acknowledgment of, and action taken on, each ticket raised;
 - 90% adherence to 48 hour timeline – where a fault is unable to be fixed remotely, an engineer will be on-site within 48 hours;
 - 80% resolution on initial visit, the initial visit being either on site or remote access as appropriate.
 - All tickets open for over 48 hours to be flagged for escalation to owners and reported to Transport Scotland for resolution.
- iv. To ensure the bespoke communications strategy for the ChargePlace Scotland network includes the necessary components to collect information from and inform customers immediately throughout a fault process, including, but not limited to, website alerts, Twitter and Facebook alerts, and SMS text message alerts.
- v. To provide advice where required to charge point owners regarding on-going maintenance and warranty agreements, in conjunction with Manufacturers, Suppliers, and any other individuals or organisations, if required.
- vi. To provide monthly reports to the Authority on all fault management activity and issues, and progress on all other actions relating to this work package.
- vii. The provision of a platform to enable hosts to have full visibility of the fault management system, to include the status of a fault and highlighting where responsibility for action lies
- viii. Any other related services to be agreed with Transport Scotland.

1.3.4 Principal Work Package 2b: Provision of bespoke CPS customer interface

1.3.4.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. The Supplier will provide a dedicated ChargePlace Scotland customer service interface including the provision of easily accessible up to date information to all customers. This will include a website with a live map of the network, with real-time status data provided on all publicly available charge points. The website must also provide public, charge point owner and user access to information on availability, usage, tariffs and faults. The website shall be maintained and updated throughout the duration of the framework agreement to reflect current website technologies. The website shall, on a monthly basis, provide details of:
 - network performance
 - fault statistics
 - availability
 - total number of charge points
 - new units added this month
 - faults reported
 - faults repaired
- ii. A dedicated ChargePlace Scotland customer service helpdesk will also be provided, available 24 hours a day, 7 days a week, 365 days a year. The Supplier will provide access to this helpdesk through provision of a dedicated Freephone telephone number [**redacted**], dedicated email address, and dedicated social media including, but not limited to, Facebook and Twitter. The Supplier shall be required to ensure that all contact information shall be held in such a manner that allows transition to future ChargePlace Scotland operators, as stated in Principal Work Package 3.
- iii. The Supplier will ensure 95% of helpdesk calls are answered within 30 seconds
- iv. The Supplier will ensure that customers are directed to the next available charge point if the faults cannot be resolved in a satisfactory manner.
- v. Design, implement, and maintain a bespoke Communications Strategy for the ChargePlace Scotland network. This strategy will include details of pro-active management of news articles and removal of out of date content.
- vi. To assist in any other communications as directed by the Director
- vii. On completion of Additional Work Package 3, the Supplier will ensure that free access to live CPS data continues to be provided to other EV charge point platforms by means of an Application Programme Interface (API).
- viii. The Supplier will provide push notifications to drivers via SMS, email or other method of communication to alert them to the end of charge sessions.
- ix. The Supplier will provide webinars or other online training guides to explain the CPNO role and fault reporting mechanism for charge point owners.
- x. To provide monthly reports to the Authority on all customer interface activity and issues and progress on all other actions relating to this work package.

- ix. Any other related services to be agreed with Transport Scotland.

1.3.5 Principal Work Package 2c: Charge point Database and Audit

1.3.5.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To design and implement a quarterly audit programme of a subset of the CPS estate to ensure the details held on the CPS asset register, labels, tariff details, signage and photographs of the charge point and parking area are correct. Audit report to be circulated to Transport Scotland and the relevant Charge point owners, Manufacturers, Suppliers and any other individuals or organisation as required, each quarter. All CPS charge points to be visited by the CPNO during the lifetime of the original framework agreement including all new charge points installed during the framework agreement.
- ii. Each charge point to include name of charge point owner in addition to CPS contact details, type of charger, Charge point ID, and tariff.
- iii. On receipt of commissioning certificates from installers, to add all newly commissioned Charge points to the ChargePlace Scotland network within 48 hours, working in conjunction with all relevant Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, where required.
- iv. On receipt of commissioning certificates from installers, to update the National Charge point Registry (<https://www.national-charge-point-registry.uk/>) within two weeks with details of new public ChargePlace Scotland charge points.
- v. To provide monthly reports to the Authority on all database and auditing activity and issues including details of newly commissioned charge points and progress on all other actions relating to this work package.
- vi. To carry out an audit of the NCPR to ensure that all existing CPS charge points are listed correctly and alter or add as necessary.
- vii. Any other related services to be agreed with Transport Scotland.

1.3.6 Principal Work Package 2d: Customer Membership Scheme

1.3.6.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To provide a secure customer database for existing and future Users and Charge point owners.
- ii. To provide a membership system for various levels of User including private individuals, local authorities and corporate organisations. The secure customer system must be capable of hosting all relevant User data and capable of providing a secure Pay As You Go facility for Users including flexibility on tariff models and billing options.
- iii. To provide details of a proposed approach for an access method for non-members, including non-UK residents should also be facilitated at an appropriate tariff.
- iv. The Supplier will be expected to operate under the terms of GDPR to allow for transition to future CPS CPNOs.
- v. To provide monthly reports to the Authority on all customer membership activities and issues and progress on all other actions relating to this work package.

- vi. Any other related services as instructed by the Director.

1.3.7 Principle Work Package 2e: A Pay to Use network

1.3.7.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To provide a detailed delivery plan for a CPS transition to PAYG on all existing public charge points with appropriate PAYG hardware, and integration of new public charge points with PAYG as they are brought forward. This should include a project plan detailing the method and expected timescale for transition, a preferred tariff model, and a detailed communications strategy to inform Charge point owners and Users regarding the proposed transition. A risk assessment with appropriate mitigations shall also be provided. The plan shall be agreed in conjunction with the Authority and key Charge point owners prior to commencement of transition.
- ii. Any CPNO administration fee to be implemented in accordance with the response to question 2(d) in section 6.5.4 subject to discussion and agreement with Transport Scotland.
- iii. All costs of use shall be charged to the nearest 0.1kWh, with no rounding up or down of kWh, unless previously agreed with the charge point owner and clearly stated on the charge point itself, CPS website and other social media sites.
- iv. At present there are 15 charge points that accept contactless payment as detailed in Table 5.4 of the Information Document. These existing charge points must be integrated into the back office. It is anticipated that the number of contactless charge points will increase up to the contract start point and during the contract period and all new contactless charge points will require to be integrated into the back office.
- v. Any other related services to be agreed with Transport Scotland.

1.3.8 Principal Work Package 3: Exit Management

1.3.8.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To design and implement a detailed exit management strategy to allow for transition to a future operator. The strategy shall include detailed information on the transition of all Charge points from the Supplier's CPMS to a future operators CPMS.
- ii. The strategy shall detail the transition of secure data (including all User accounts), RFID access, customer service contact details, and fault management arrangements.
- iii. The strategy shall provide a detailed communications plan, outlining the steps to convey critical information to Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations if required.
- iv. The strategy shall provide a detailed risk assessment with associated mitigations agreed with the Authority, Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations if required.
- v. The strategy shall be reviewed with the Authority on an annual basis until six months prior to the end of the Framework Agreement, when a final exit management strategy shall be agreed and implemented at the Authority's discretion.

- vi. To provide monthly reports to the Authority on all exit management activities and issues and progress on all other actions relating to this work package.
- vii. Any other related services to be agreed with Transport Scotland.

1.4 ADDITIONAL WORK PACKAGES

1.4.1 Additional Work Package 1: Wider Interoperability Solutions

1.4.1.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To provide a detailed options paper and/or technical advice on the opportunities for introducing wider interoperability and/or eMobility solutions for Users associated with the ChargePlace Scotland CPMS, considering issues including, but not limited to, a critical review of current interoperability solutions available to charge point and CPMS infrastructure, the necessary steps to introducing interoperable solutions and/or access to other EV charge point networks, and a review of strategic locations on the network that may particularly benefit from offering interoperable access. The views and/or concerns of Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if required, shall also be provided.
- ii. To provide a detailed delivery plan for the introduction of interoperable solutions and/or access, including a project plan detailing expected timescales, the preferred interoperable solutions to be introduced, a trial or testing period in a suitable location, and a detailed communications strategy to inform Charge point owners and Users regarding the proposed introduction. A risk assessment with appropriate mitigations shall also be provided. The plan shall be agreed in conjunction with Transport Scotland prior to commencement.
- iii. To provide monthly reports to the Authority on all interoperability activity and issues, and progress on all other actions relating to this work package.
- iv. Any other related services to be agreed with Transport Scotland.

1.4.2 Additional Work Package 2: Innovation

1.4.2.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To host an annual innovation meeting with the Authority. At the meeting to provide an agenda and associated papers for discussion, approval and potential to convert to future additional work packages if deemed appropriate by the Authority. The contractor is expected to bring their own knowledge and experience as well as reviewing the state of the worldwide market to bring forward ideas and concepts which may benefit ChargePlace Scotland.
- ii. The views and/or concerns of Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if required, shall also be provided at the meeting.
- iii. Minutes to be taken and circulated to the Authority for comment and approval no later than 5 working days after the meeting.
- iv. To provide monthly reports to the Authority on all innovation activity and issues, and progress on all other actions relating to this work package.
- v. To develop an app in line with section 2.6.1.6 that will allow users full functionality to find available charge points, book charge points in line with Additional Work Package 2b as that is brought forward, report faults make payments in line with additional work package 2a as that is brought forward and provide users with the

same information that is available on the CPS website and other features that the Director may wish to have included.

- vi. Any other related services to be agreed with Transport Scotland.

1.4.3 Additional Work Package 2a: Innovation – Payment Methods

1.4.3.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To provide a detailed options paper and/or technical advice on the opportunities for additional payment methods for Users within the ChargePlace Scotland CPMS, considering issues including, but not limited to, a critical review of current payments methods available to EV charge point networks, the necessary steps to introducing new payment methods, and a review of strategic locations on the network that may particularly benefit from offering improved payment methods. The views and/or concerns of Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if required, shall also be provided.
- ii. To provide a detailed delivery plan for the introduction of a new payment methods, including a project plan detailing expected timescales, the preferred payment models to be introduced, and a detailed communications strategy to inform Charge point owners and Users regarding the proposed transition. A risk assessment with appropriate mitigations shall also be provided. The plan shall be agreed in conjunction with The Authority prior to commencement.
- iii. To provide monthly reports to the Authority on all payment activity and issues, and progress on all other actions relating to this work package.
- iv. Any other related services to be agreed with Transport Scotland.

1.4.4 Additional Work Package 2b: Innovation – Booking Systems

1.4.4.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. To provide a detailed options paper and/or technical advice on the integration of a booking system within the ChargePlace Scotland CPMS, considering issues including, but not limited to, a critical review of current booking system technology, the necessary steps to launching a successful booking system (including measures to avoid bay blocking), how Users will access the system, and a review of strategic locations on the network that may particularly benefit from the introduction of a booking system. The views and/or concerns of Users, Charge point owners, Manufacturers, Suppliers, and any other individuals or organisations, if required, shall also be provided.
- ii. To provide a detailed delivery plan for the introduction of a booking system, including a project plan detailing expected timescales, a preferred booking system model, and a detailed communications strategy to inform Charge point owners and Users regarding the proposed transition. A risk assessment with appropriate mitigations shall also be provided. The plan shall be agreed in conjunction with Transport Scotland prior to commencement, including the option to pilot such a service as required.
- iii. To provide monthly reports to the Authority on all booking system activity and issues, and progress on all other actions relating to this work package.
- iv. Any other related services to be agreed with Transport Scotland.

1.4.5 Additional Work Package 3: Provision of API integration to the Traffic Scotland website and other EV charge point platforms

1.4.5.1 This Work Package includes the following Services for a typical Call Off Contract:

- i. The Supplier will be expected to implement an Application Programming Interface (API) to ensure key information regarding the ChargePlace Scotland network is available through the Traffic Scotland website. Information for Users will include, but not be limited to:
 - Available charge point locations
 - Charge point connector types
 - Charge point booking details (if applicable)
 - Tariffs (if applicable)
 - Parking and other restrictions, including disabled spaces (if applicable)
- ii. To provide monthly reports to the Authority on all API integration activity and issues, and progress on all other actions relating to this work package.
- iii. Any other related services to be agreed with Transport Scotland.

1.5 Additional Skills Required by the Supplier

1.5.1 Notwithstanding any other provision of this Agreement the Supplier shall be required to provide, within an integrated team, expertise sufficient to carry out the Services and this may include the provision of personnel experienced in the following areas:

- i. contractual and commercial
- ii. project management
- iii. Information technology and database management
- iv. data analysis
- v. financial management
- vi. customer service provision
- vii. media and communications
- viii. electricity networks
- ix. stakeholder engagement
- x. interoperability/ e-mobility.

1.5.2 The Supplier's staffing structure and actual number of Key Personnel employed on any Call Off Contract shall be subject to change at any time, at the sole discretion and with the prior written approval of the Authority.

1.5.3 Similarly, the Scottish Ministers, by means of a specific Call Off Contract or by way of a Variation Instruction, may require the Supplier to provide other CPNO services, whether on an individual basis or as part of a multidisciplinary team, and any other related services considered necessary by the Scottish Ministers.

1.6 Operator's Performance Monitoring

- 1.6.1 The overall requirements for the Agreement will likely include but not be limited to the following obligations on the Supplier to:
- i. nominate named specialists / sub-Operators to cover the required areas of expertise;
 - ii. ensure that specialist advice is provided by appropriately qualified staff;
 - iii. provide a proactive, innovative and responsive service;
 - iv. work within tight and/or accelerated programmes; and
 - v. provide value for money.
- 1.6.2 It is the Authority's policy to measure the performance of the Supplier on a regular basis.
- 1.6.3 In the event that the Supplier's performance falls below a satisfactory level, the Supplier will be invited to attend a meeting at the Authority's offices to discuss performance issues and to determine a means of rectifying the situation.
- 1.6.4 The Supplier's performance markings shall not in any way whatsoever impact on the various rights and obligations contained within this Agreement.
- 1.6.5 The Authority shall be entitled to publish the results of such performance monitoring within the public domain and use such information in discussion or in writing between the Authority and third parties.
- 1.6.6 The Supplier performance will be monitored on a quarterly basis using the key performance indicators (KPIs) shown in the tables below. The assessment methodology and arrangements shall be consented to by Authority's Project Manager following consultation with the Framework Director.

KPI - Overall					
Title	Description	Reporting Period	Target	Data	Formula
Overall Performance Indicator	The arithmetical average of all the KPI's listed which have a target of 100% and are reported monthly	Monthly	100%	Other KPIs	Average of other KPI scores

KPI - Overall					
Title	Description	Reporting Period	Target	Data	Formula
Overall Performance Indicator	The arithmetical average of all the KPI's listed which have a target of 100% and are reported bi-annually	Bi-Annually	100%	Other KPIs	Average of other KPI scores
Overall Performance Indicator	The arithmetical average of all the KPI's listed which have a target of 100% and are reported annually	Annually	100%	Other KPIs	Average of other KPI scores

KPI - Management					
Title	Description	Reporting Period	Target	Data	Formula
Task Order out turn cost	Success in delivering Task Order at estimated value	Monthly	100%	A=task order value estimate B=task order value at completion	$(B/A) \times 100$
Closure of non - conformances	Percentage of non-conformances closed out within the required timescales	Monthly	100%	A=no. of non-conformances B=no. of non-conformances closed out	$(B/A) \times 100$

KPI - Management					
Title	Description	Reporting Period	Target	Data	Formula
Submission of reports and minutes of meetings	Percentage of all reports and submissions (including minutes of meetings) submitted on time	Monthly	100%	A=no. of submissions B=no. of submissions reported on time	$(B/A) \times 100$

KPI - Commissioning					
Title	Description	Reporting Period	Target	Data	Formula
Issuing RFID cards	No more than 14 calendar days from the request being made to issue the RFID card	Monthly	100%	A=Date of Request B=Date of Issue	B-A = no. of days taken
Issuing CPID stickers	No more than 14 calendar days from the request being made to issue the CPID card	Monthly	100%	A=Date of Request B=Date of Issue	B-A = no. of days taken

KPI - Commissioning					
Title	Description	Reporting Period	Target	Data	Formula
Commissioning a CP to the back office	No more than 7 calendar days taken from receiving request to be added	Monthly	100%	A=no of requests added B=no. of requests added within 7 days	$(B/A) \times 100$
Listing a newly commissioned Charge point	On receipt of commissioning certificates from installers, to add all newly commissioned Charge points to the back office within 7 days	Monthly	100%	A=no. of newly commissioned charge points B=no. added to the ChargePlace Scotland network within 7 days	$(B/A) \times 100$

KPI - Commissioning					
Title	Description	Reporting Period	Target	Data	Formula
Listing a newly commissioned Charge point	On receipt of commissioning certificates from installers, to add all newly commissioned Charge points to the ChargePlace Scotland website within 48 hours, advising from when they will be available for use	Monthly	100%	A=no. of newly commissioned charge points B=no. added to the ChargePlace Scotland network within 48 hours	$(B/A) \times 100$
Listing a newly commissioned Charge point	Update the National Charge point Registry within two weeks with details of new Charge Place Scotland Charge points	Monthly	100%	A=no. of new Charge points B=no. of new Charge points updated on the National Charge point Registry within 2 weeks	$(B/A) \times 100$

KPI - Commissioning					
Title	Description	Reporting Period	Target	Data	Formula
CP Notifications	To notify (via email, twitter, facebook etc.) owners and drivers when the network changes (e.g. new Charge point, Charge point removed) within 24 hours of the change	Monthly	100%	A=no. of changes B=no. of notifications within 24 hours	$(B/A) \times 100$
Testing of new supplier equipment	Free integration/ compatibility testing of all new supplier equipment that is OCPP 1.6 (or the current version being operated by CPS) compliant to be completed within 10 working days of request	Monthly	100%	A = no. of tests completed within 10 days B = no. of requests received	$(A/B) * 100$

KPI – Charge point Owner Service					
Title	Description	Reporting Period	Target	Data	Formula
Payment	Reimbursement of tariffs to Charge point owners on a monthly basis within seven days of the start of the new month	Monthly	100%	<p>A=no. of tariffs that should be paid</p> <p>B=no. of tariffs paid within 7 days of the start of the month</p>	$(B/A) \times 100$

KPI – Customer Service					
Title	Description	Reporting Period	Target	Data	Formula
Enquiries/ complaints response handling	To ensure the requester receives a response within 30 minutes when the request is logged and when enquiry is complete	Monthly	95%	<p>A=no. of complaints/ requests received</p> <p>B=no. of responses within 30 minutes</p>	$(B/A) \times 100$
Answering helpdesk calls	To ensure that calls are answered within 30 seconds and actioned	Monthly	95%	<p>A=no. of calls</p> <p>B=no. answered within 30 seconds</p>	$(B/A) \times 100$

KPI – Customer Service					
Title	Description	Reporting Period	Target	Data	Formula
Operational Communications Response	Communications (emails, facebook messages, tweets etc.) to be acknowledged or replied by the Contractor within 2 hours	Monthly	95%	A=no. of communications B=no. answered within 2 hours	$(B/A) \times 100$
Availability	Telephone help line available 24 hours day, 7 days a week, including for text and social media responses	Monthly	100%	A=no. of hours in the month B=no. of hours call centre available in the month	$(B/A) \times 100$

KPI – Fault Management					
Title	Description	Reporting Period	Target	Data	Formula
Timeliness of fault reporting to owner/ maintainer	To ensure the owner/ maintainer and public map is notified of CP fault by the most appropriate form of communication within 30 minutes of fault being reported	Monthly	95%	A=no. of faults reported B=no. of notifications in 30 minutes	$(B/A) \times 100$

KPI – Fault Management					
Title	Description	Reporting Period	Target	Data	Formula
Timeliness of incident verification	Incident details verified on fault management system within 30 minutes of incident being identified or notified	Monthly	95%	A=no. of incidents reported B=no. of incidents verified within 30 minutes	$(B/A) \times 100$
Timeliness of incident verification	To ensure that the CPS web site (and app should this be appropriate) is updated within 30 minutes from initial identification or notification of the Unplanned Incident or change to Unplanned Incident or Emergency Incident	Quarterly	95%	A=no. of incidents reported B=no. of incidents reported within 30 minutes	$(B/A) \times 100$
Timeliness of incident updating	To provide an update on repair progress to the fault management system and the public at minimum every 24 hours after the initial 48 hour period during a fault	Monthly	100%	A=no. of incidents reported B=no. of incidents updated every 12 hours	$(B/A) \times 100$

KPI – Fault Management					
Title	Description	Reporting Period	Target	Data	Formula
Timeliness of incident updating	All tickets open for 48 hours to be flagged for escalation to owners and reported to Transport Scotland	Monthly	100%	<p>A=no of incidents lasting longer than 48 hours</p> <p>B=no. of incidents lasting longer than 48 hours reported to Transport Scotland</p>	$(B/A) \times 100$

KPI – Tariffs					
Title	Description	Reporting Period	Target	Data	Formula
Implementation of tariffs	Implement owner/ host tariff as requested	Monthly	Implemented within 2 weeks of request	<p>A=no. of tariff requests</p> <p>B=no. of requests implemented within 2 weeks</p>	$(B/A) \times 100$

KPI – Tariffs					
Title	Description	Reporting Period	Target	Data	Formula
Amendment of tariffs	Change of owner/ host tariff as requested	Monthly	Implemented within 2 days of request	A=no. of change requests B=no. of requests implemented within 2 weeks	$(B/A) \times 100$

KPI – Database Management					
Title	Description	Reporting Period	Target	Data	Formula
Uptime of servers running the back office	To have guaranteed uptime of 100%	Monthly	100%	A=no. of minutes servers operational B=no. of minutes	$(A/B) \times 100$
Disaster Recovery	To restore full service within 6 hours following server loss	Monthly	100%	A=no. of hours to restore service	$(A/24) \times 100$
Server Capacity	Stress test to determine if the servers can accommodate demand	Bi-annually	100%	Result	N/A

Additional KPIs will be agreed and set during the Mobilisation stage relating to the Environmental benefits.

v. 27 February 2020

PART 2 - Supplier's Proposals (Excluding Staffing Proposals)

[Redacted]

PART 3 - Supplier's Staffing Proposals (Key Individuals)

[Redacted]

This and the following 13 pages comprise Schedule 2 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 2 - PRICING SCHEDULE

PART 1 - FEES

1 Supplier's Fixed Charges and Day Rates and Hourly Rates

- 1.1 The Schedule of Supplier's Fixed Charges contained within Table A1 – Fixed Charges of this Schedule 2 shall apply in respect of determining the remuneration to the Supplier for the provision and performance of the Services required under Principal Work Packages 1, 2 and 3.
- 1.2 The Schedule of Supplier's Day Rates and Hourly Rates contained within Table A2 – DHR of this Schedule 2 shall apply in respect of determining the remuneration to the Supplier for the provision and performance of the Services where such Services have been instructed by an Authority Instruction.
- 1.3 Payment to the Supplier for additional work that may be instructed in writing by the Authority in relation to a Variation Instruction, or as otherwise required, shall be based on either (at the Authority's sole discretion):
 - (a) the relevant Day Rates and Hourly Rates: or
 - (b) a fixed price lump sum quotation submitted by the Supplier within 14 days of any Variation Instruction or the additional work being instructed in writing by the Authority, as applicable.
- 1.4
 - (a) Day Rates and Hourly Rates identified in Table A2 – MDHR shall be all-inclusive rates and shall include for all costs whatsoever (without prejudice to the generality), other than that such rates are exclusive of Value Added Tax. For the avoidance of doubt, the Supplier shall not be entitled to any additional costs and expenses over and above the Day Rates and Hourly Rates, except as expressly set out in the Agreement.
 - (b) The following is an indicative list, of the types of costs which will form part of the Day Rates:-
 - (c) Day Rates and Hourly Rates shall include the following costs:
 - (i) basic time, (a minimum of 7.5 hours per calendar day inclusive of any overtime worked);
 - (ii) productive and non-productive overtime payments;
 - (iii) bonuses and incentive payments;
 - (iv) national insurance;
 - (v) holidays with pay;
 - (vi) sickness benefits;
 - (vii) pension and life insurance benefits;
 - (viii) travel and subsistence;
 - (ix) cars, other vehicles, and car and other vehicle allowances;
 - (x) running and maintenance costs of cars and other vehicles;

- (xi) (a) administration (including managerial, clerical and administrative staff);
(b) Such staff should include all necessary Director (including Director input by any sub-suppliers or sub-contractors) input by the Supplier other than the Framework Director employed in the provision and performance of the Services by the Supplier or a Director of a specialist sub-contractor employed by the Supplier as a member of the Key Individuals);
- (xii) provision of running and maintenance of all office accommodation, office equipment, supplies, relevant documents, sundry equipment and all other accessories; other than such running and maintenance costs for staff located in the offices of the Authority;
- (xiii) provision of ICT facilities including computers, information and communication technology systems and other associated equipment and supplies including all necessary hardware and software programmes, associated licences, support, maintenance, upgrades, replacements and the like together with all necessary specialist support maintenance and help staff; other than computers provided by the Authority for staff located in the offices of the Authority;
- (xiv) all taxes, charges, levies, imposts or payments of any kind which the Supplier shall be obliged to pay by law or by any other provisions of this Agreement to make on behalf of persons employed by it including all mobilisation and demobilisation requirements and costs in relation to any written instruction from the Authority;
- (xv) all external specialised computing services including computerised accounts work;
- (xvi) all production, printing and reproduction of all documents, drawings, maps, records including provision of all materials, equipment and resources to so produce, print and reproduce;
- (xvii) all obligations of the Supplier whether specific, inferred and or implied from any other provision of the Services;
- (xviii) all costs of whatsoever nature associated with staff of the Supplier being located in any offices of the Authority both in Glasgow and Edinburgh areas and site offices of any contractor or sub-contractor.
- (xix) all costs of whatsoever nature in the procurement of and employment of sub-suppliers and sub-contractors to be employed by the Supplier in providing and performing the Services;
- (xx) all head office and subsidiary offices and the like costs and charges including liaison and co-ordination and attendance at meetings with the

- Authority and any other parties during the provision and performance of the Services;
- (xxi) mobilisation and exit management;
 - (xxii) all costs associated with the provision and hosting of Charge Points on the Supplier's Charge Point Management System;
 - (xxiii) all other Supplier's costs of whatsoever nature necessary for the provision and performance of the Services; and
 - (xxiv) profit.
- (d) Hourly Rates shall include the following costs:
- (i) basic time, including any overtime worked; and
 - (ii) all costs identified for all costs identified for Day rates in paragraphs 1.3 (b) (i) to (xxiii)).
- 1.5 Staff employed in the provision and performance of the Services shall as a minimum meet the various levels of qualification and experience identified for each such category of staff classification in Part 2 to Schedule 2 of this Agreement.
- 1.6
- (a) The Day Rates and Hourly Rates contained in this Schedule of Supplier's Day Rates and Hourly Rates, shall apply from the Commencement Date for an initial period of not less than 2 years.
 - (b) Subject to any other provision of this Agreement, the Schedule of Supplier's Day Rates and Hourly Rates will be adjusted, after the initial 2 year period, annually in accordance with the figures stated in the Weekly Pay – Gross for Civil Engineers – median annual percentage in Table 14. 1a of the ANNUAL SURVEY OF HOURS AND EARNINGS (ASHE) published by the Office for National Statistics.
 - (c) Any such adjustment shall apply only to the rates and prices entered in this Schedule of Day Rates and Hourly Rates unless otherwise consented to in writing by the Authority.
 - (d) Each such rate so adjusted shall for the purposes of this Agreement be deemed to and shall replace the rates contained previously in the Schedule of Day Rates and Hourly Rates, prior to any such agreed adjustment.
- 1.7
- (a)
 - (i) The Authority shall annually, from the second anniversary of the Commencement Date, adjust the rates and prices contained in the Schedule of Supplier's Day Rates and Hourly Rates in accordance with the provisions of paragraph 1.6 above and notify the Supplier of such adjustment.
 - (ii) No payment to the Supplier shall be made at the adjusted Day Rates and Hourly Rates until the Authority has provided such notification in writing. The notification will be provided within 10 working days of the relevant anniversary of the Commencement Date.
- 1.8
- (a) The Supplier shall be paid all reasonable travelling costs incurred in travelling from within Scotland to a work location out-with Scotland in order to attend meetings outside Scotland with third parties as part of the provision and performance of the Services subject to the Authority's prior approval in writing.
- 1.9 The Supplier shall be paid the Supplier's relevant Day Rate that shall be due for the provision and performance of the Services or part of the Services during any calendar day regardless of the number of hours actually worked, if the hours actually worked by a person for such calendar day shall be equal to or greater than 7.5 hours.

- 1.10 The Supplier shall be paid the relevant Hourly Rate, that shall be due for the provision and performance of the Services or part of the Services during any calendar day for all hours actually worked by a person where the total of hours worked for such calendar day shall be less than 7.5 hours.
- 1.11
 - (a) In the Schedule of Supplier's Day Rates and Hourly Rates, the Hourly Rates shall be equal to the Day Rates divided by 7.5 for each staff classification.
 - (b) Such rates shall be rounded to the nearest one pence.
- 1.12
 - (a) All hours claimed for payment by the Supplier shall be on the basis of complete 15-minute periods (in all cases rounded down).
 - (b) All incomplete 15-minute periods shall be rounded down. For example where the Supplier's staff performing a part of the Services works for 1 hour and 14 minutes the number of Supplier's Hourlys entitled to be claimed and paid is 1 hour.

Financial Model

Table A1 – Operator’s Fixed Charges

[Commercially Sensitive Information Redacted]

Reference	Fixed charge item description	Unit	Charge (£ Sterling)

Table A2 – MDHR

Schedule of Supplier’s Day Rates and Hourly Rates

[Commercially Sensitive Information Redacted]

Reference	Staff Classification	Day Rate £ Sterling	Hourly Rate £ Sterling

PART 2 – JOB DESCRIPTIONS OF STAFF CLASSIFICATIONS OF KEY INDIVIDUALS

Preamble

- (a) The general requirements for the various Staff Classification for the Key Individuals as listed in Schedule 1 Part 3 are identified in this Schedule 2 Part 2.
- (b) Minimum qualifications have been identified for each Staff Classification.
- (c) However the projects that may fall within the scope of this Agreement shall vary in value and complexity and the requirements in terms of qualifications may vary correspondingly.
- (d) The qualifications identified in this Schedule should therefore be viewed as a minimum with the clear expectation that more complex projects may demand more extensive experience.
- (e) Where a required professional qualification shall not be held, the Authority may accept an individual where it can be demonstrated to the satisfaction of the Authority that the individual possesses extensive and relevant experience for the specific post. Any such acceptance of an individual who does not hold the relevant professional qualifications may be granted to the individual at the sole discretion of the Authority.
- (f) A fundamental requirement of all Staff Classifications for Key Individuals is that such personnel should be able to demonstrate computer literacy to a standard that is acceptable to the Authority.

A1 Framework Director

- Role:**
- (a) Overall responsibility for the provision of the necessary resources to ensure delivery of the Services to time, financial and quality targets.
 - (b) Interfacing with the Authority Project Director/Project Manager, Call-off Contract Manager and Key Individuals, the post holder shall be accountable to the Authority for strategic decision making and overall performance of the Services.
- Qualifications:** Recruited from the top management of the Supplier's organisation, the appointee shall have considerable experience at a senior level of managing delivery teams relevant to the provision and performance of the Services.

Key Tasks:

- (i) to ensure the delivery and overall performance of the Services including the provision of sufficient resources;
- (ii) to manage and liaise with the Call-off Contract Manager and other Key Individuals on a regular basis to ensure that the Supplier and the Supplier shall perform their key tasks in order to meet the provisions of any Call-off Contract and any provisions of the Agreement;.
- (iii) to liaise with the Project Director/Project Manager as relevant and other senior management within the Authority's organisation; and
- (iv) to take instructions from and liaise with the Project Director/Project Manager as relevant and other staff of as necessary in the performance of the Services.

Specific tasks/areas of knowledge/experience required:

Specific Tasks/areas of knowledge/experience required shall include the following:

- (i) to direct and manage the relationship between the Supplier and the Authority, and to ensure that the Authority's requirements are satisfied;
- (ii) to ensure that the Call-off Contract Manager(s) and other Key Individuals fulfil their responsibilities with the required degree of diligence, skill and care and to ensure that the necessary Key Individuals and any other resources are properly deployed to meet the requirements of the Authority and any Call-off Contracts and this Agreement;
- (iii) to ensure that the Supplier seeks continuous improvement in its processes and effectiveness;

- (iv) to direct the provision and performance of the Services and this Agreement in accordance with the Supplier's Quality Management System including the Quality Plan;
- (v) to seek and utilise the Authority's feedback on the assessment of performance of the Call-off Contract Managers and other Key Individuals and the performance of the Services;
- (vi) to ensure that liaison is maintained between the respective senior management of the Authority, the Supplier and the sub-contractors employed by both the Supplier and the Authority in connection with the performance of the Services;
- (vii) to monitor and report to the Authority on the performance of the Services against time, budget and quality targets of any Call-off Contract and this Agreement;
- (viii) to ensure that the project team(s), including any specialist organisations that may be employed by either the Authority or the Supplier, are conversant with and understand the relevant Service required under the Call-off Contract;
- (ix) to assist as appropriate the Project Director/Project Manager as relevant with presenting any project proposals at value for money workshops and presentations to Senior Management of Transport Scotland and other government agencies and departments together with presentations to third parties as required by the Project Director/Project Manager as relevant;
- (x) to be expected when considered necessary by the Project Director to assist in explaining such project proposals to the general public and other interested/affected parties at public exhibitions and during the course of public consultations during any such proposal presentation; and
- (xi) to have a high standard of presentational and communication skills.

A2 Call-off Contract Manager

- Role:**
- (a) Overall management and direction of the Key Individuals and other resources with responsibility to the Authority for the provision of the necessary resources to ensure provision and performance of the Services under a Call-off Contract to time, financial, quality and safety targets.
 - (b) Accountable to the Authority through the Framework Director for strategic decision making and project delivery in relation to the overall provision and performance of the Services for a Call-off Contract.
 - (c) To provide expert analysis, advice, support and recommendations on any electric vehicle and/or infrastructure related matters associated with the Services.
 - (d) To provide expert advice, support and recommendations on any matters associated with electric vehicle and/or infrastructure project management, standards and policies including revising any to reflect latest Authority policies.
 - (e) To provide expert advice, support and recommendations on any matters relating to electric vehicle and/or infrastructure procurement and contractors claims.
 - (f) Direct and provide technical expertise and support to the Supplier technical team in the performance and delivery of the Services.
- Qualifications:** Considerable experience in a senior position of managing network operation and delivery teams relevant to the provision and performance of the Services.

Key Tasks:

- (i) to ensure the delivery and overall performance of the Services shall be achieved including the provision of sufficient resources;
- (ii) to manage the relationships between the Key Individuals, the project teams and the Authority to ensure that the Authority's requirements are fully achieved;
- (iii) to ensure that the Key Individuals and other resources fulfil their responsibilities with the required degree of diligence, skill and care and to ensure that the necessary Key Individuals and other resources are properly deployed to meet the requirements of the Authority, the Call-off Contract and this Agreement;

- (iv) to ensure that the Supplier seeks continuous improvement in its processes and effectiveness;
- (v) to manage the Call-off Contract in accordance with the Supplier's Quality Management System including the Quality Plan;
- (vi) to seek and use the Authority's feedback from any assessment of performance of the Key Individuals and other resources;
- (vii) to ensure that liaison is maintained between the respective senior management of the Authority, the Supplier and other project Suppliers;
- (viii) to monitor and report to the Authority the performance of the Services against the time, budget, safety and quality targets of this Agreement;
- (ix) to undertake sufficient checks on the quality of surveys and analysis and the like in the performance of the Services;
- (x) to develop and manage any necessary studies;
- (xi) to prepare Call-off Contract deliverables;
- (xii) to ensure that Key Individuals and other resources are conversant with, understand and are capable of delivering the relevant Service required under the Call-off Contract;
- (xiii) to liaise with the project team together with any other relevant parties and specialist organisations who may be employed by the Supplier or Authority for the project on issues arising from any aspect of the Call-off Contract; and
- (xiv) to liaise with the Key Individuals together with any other project Suppliers and specialist organisations who may be employed by the Supplier or Authority for the project to ensure issues arising from the Call-off Contract shall be fully understood.
- (xv) To prepare programmes and budgets for all aspects of project deliverables in sufficient detail that the Authority can monitor the performance of the Supplier together with any other Suppliers including any specialist organisations who may be employed by the Supplier or Authority for a project.
- (xvi) To maintain a risk register / data base of risks or potential risks that shall have been used in the compilation of a project budget in a format that shall be acceptable to the Authority.

B1 Network Manager

Role:

Day to day management and direction of the ChargePlace Scotland network, coordinating with Key Individuals together with any other who may be employed by the Supplier for the Services under a Call-off Contract, with responsibility to the Call-off Contract Manager for their activities and deliverables.

Qualifications:

Substantial experience relevant to the essential criteria to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Duties and responsibilities:

- (i) To assist the Call-off Contract Manager in the performance of his/her duties under the Call-off Contract.
- (ii) To oversee the day to day management and coordination of the network, identifying and resolving faults in conjunction with other Key Individuals, and working closely with Hosts, Manufacturers, Suppliers, Installers, Users, and any other relevant parties.
- (iii) Responsible for the design, implementation, and coordination of a fault management and reporting system.
- (iv) To provide technical advice to the Authority and Hosts on all issues relating to electric vehicle charging and the procurement, installation, and performance of charge point infrastructure.
- (v) To ensure that all work is carried out to the relevant standards as identified in this Agreement and the Call-off Contract.

Essential criteria:

- (i) Sufficient experience and knowledge in charge point network operations to ensure the reliable operation of the ChargePlace Scotland network

- (ii) Excellent technical experience and knowledge to quickly understand faults and other relevant issues affecting the operation of the network, with proven ability to deliver quick solutions whilst managing or working with other Key Individuals or other relevant parties
- (iii) Excellent technical experience and knowledge to consult or advise the Authority, Hosts, Manufacturers, Suppliers, Installers, Users, and any other individuals or organisations involved in or affected by electric vehicle and/or infrastructure projects and the like.
- (iv) Overall responsibility for the design, implementation, and monitoring of a fault management system, relevant to the scope of services
- (v) Experience of financial control, programme, and risk management of electric vehicle and/or infrastructure schemes.
- (vi) Knowledge of the relevant environmental Legislation and the impact which its requirements shall have on the activities and programming of schemes.
- (vii) Knowledge of local planning, electrical, and any other relevant regulations involved in the process of Charge Point installations
- (viii) Excellent communication skills to engage effectively with a broad range of stakeholders, both technical and non-technical.

C1 Customer Service Manager

Role: Day to day management and direction of the ChargePlace Scotland customer interface, coordinating with Key Individuals together with any other who may be employed by the Supplier for the Services under a Call-off Contract, with responsibility to the Call-off Contract Manager for their activities and deliverables.

Qualifications: Substantial experience relevant to the essential criteria to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Duties and responsibilities:

- (i) To assist the Call-off Contract Manager in the performance of his/her duties under the Call-off Contract.
- (ii) To oversee the day to day management of the customer service interface, including the management of the C2 Customer Service Adviser role.
- (iii) To ensure the ChargePlace Scotland customer service facility is available to Users, Hosts, and any other relevant individuals or organisations at all times.
- (iv) Responsibility for the design, implementation, and coordination of the ChargePlace Scotland communications strategy.
- (v) Responsibility for the management and coordination of the provision of RFID media to Hosts, Users, and any other relevant parties.
- (vi) To work closely with the B1 Network Manager role to provide relevant input into the design, implementation, and coordination of both fault and asset management systems.

Essential criteria:

- (i) Substantial customer service experience to ensure successful delivery of the ChargePlace Scotland customer service interface, relevant to Schedule 1 of the Agreement.
- (ii) Experience of line management to ensure the successful management and direction of the C2 Customer Service Adviser role.
- (iii) Media and communications experience to ensure overall responsibility for the design, implementation, and coordination of a bespoke ChargePlace Scotland communications strategy, as set out in Schedule 1 of the Agreement.

C2 Customer Service Adviser

Role: Day to day delivery of the ChargePlace Scotland customer service facility, under the direction of the Key Individuals together with any other who may be employed by the Supplier for the Services under a Call-off Contract, with responsibility to the Customer Service Manager for their activities and deliverables.

Qualifications: Substantial experience relevant to the essential criteria to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Duties and responsibilities:

- (i) To assist the C1 Customer Service Manager in the performance of his/her duties under the Call-off Contract.
- (ii) To provide advice and technical assistance to Users, Charge point owners, and any other relevant individual or organisation regarding the ChargePlace Scotland network across various communication platforms; and
- (iii) To provide basic technical assistance to Users regarding charge point faults and the like, with reporting of faults and the like as per the processes of the fault management system.

Essential criteria:

- (i) Experience in customer service provision
- (ii) Excellent communication skills
- (iii) Knowledge of electro-mobility industry and working processes of a charge point management system to provide basic technical assistance to Users, Hosts, and any other relevant individual or organisation.
- (iv) Substantial experience of working with computers, telephones, and social media.
- (v) To provide assistance to Users and potential Users regarding membership of the ChargePlace Scotland network, including registration and provision of RFID media

D1 Technical Manager

Role: Day to day management and operation of the ChargePlace Scotland charge point management system, coordinating with Key Individuals together with any other who may be employed by the Supplier for the Services under a Call-off Contract, with responsibility to the Call-off Contract Manager for their activities and deliverables.

Qualifications: Substantial experience relevant to the essential criteria to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Duties and responsibilities:

- (i) To assist the Call-off Contract Manager in the performance of his/her duties under the Call-off Contract.
- (ii) Responsibility for the day to day operation and maintenance of the ChargePlace Scotland Charge Point Management System
- (iii) Responsibility for the design, implementation, and maintenance of all relevant secure databases,
- (iv) Responsibility for the design, implementation, and maintenance of the ChargePlace Scotland customer website.
- (v) Responsibility for the design, implementation, management, and performance of the process of commissioning new charge point installations to the ChargePlace Scotland network.
- (vi) To provide technical advice and/or assistance to Key Individuals, the Authority, Users, Hosts, and any other relevant individual or organisation where required.

Essential criteria:

- (i) Substantial experience in IT systems and programming, with particular emphasis on the operation and maintenance of Charge Point Management Systems
- (ii) Substantial experience in the management and maintenance of secure IT databases.
- (iii) Experience of line management to ensure the successful management and direction of the D2 Technical Administrator role.
- (iv) Excellent communication skills to ensure technical issues and/or requirements can be quickly and effectively communicated to Key Individuals, the Authority, and any other relevant individual or organisation.

D2 Technical Administrator

Role: Day to day delivery of the ChargePlace Scotland charge point management system, under the direction of the Key Individuals together with any other who may be employed by the Supplier for the Services under a Call-off Contract, with responsibility to the Technical Manager for their activities and deliverables.

Qualifications: Substantial experience relevant to the essential criteria to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Duties and responsibilities:

- (i) To assist the D1 Technical Manager in the performance of his/her duties under the Call-off Contract.
- (ii) To provide day to day operation and maintenance of the ChargePlace Scotland charge point management system, including but not limited to the management of the customer database, ChargePlace Scotland website, and charge point commissioning processes.
- (iii) To assist with the design, implementation, and maintenance of the ChargePlace Scotland customer website.
- (iv) To assist with the design, implementation, management, and performance of the process of commissioning new charge point installations to the ChargePlace Scotland network.
- (v) To provide technical assistance to Key Individuals, the Authority, Users, Hosts, and any other relevant individual or organisation where required.

Essential criteria:

- (i) Experience in IT systems and programming, with particular emphasis on the operation and maintenance of charge point management systems
- (ii) Experience in the management and maintenance of secure IT databases.
- (iii) Excellent communication skills to ensure technical issues and/or requirements can be quickly and effectively communicated to Key Individuals, the Authority, and any other relevant individual or organisation.

E1 Communications Manager

Role: Day to day management and direction of the ChargePlace Scotland communications strategy, coordinating with Key Personnel together with any others who may be employed by the Supplier for the Services under a Call Off Contract, with responsibility to the Call Off Contract Manager for their activities and deliverables

Qualifications: Substantial experience relevant to the specific tasks to enable the performance of duties and responsibilities in delivery of the Services under the Agreement.

Key Tasks:

- (i) To assist the Call Off Contract Manager and Network Manager in the performance of his/her duties under the Call Off Contract
- (ii) Responsibility for the design, implementation and coordination of the ChargePlace Scotland communications strategy

Specific tasks/areas of knowledge/experience required shall include the following:

- (i) Substantial customer service experience to ensure successful delivery of the ChargePlace Scotland customer service interface

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- (ii) Media and communications experience to ensure overall responsibility for the design, implementation, and coordination of a bespoke ChargePlace Scotland communications strategy.

This and the following [] pages comprise Schedule 3 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 3 – AWARD PROCEDURES

1 CALL FOR SERVICES UNDER A PROPOSED CALL-OFF CONTRACT

1.1 When Services are required to be called-off under a proposed Call-off Contract, the Authority shall be entitled at any time to issue any Services Brief to the Supplier and to award a Call-off Contract to the Supplier.

1.1.1 The Services Brief that shall be issued to the Supplier shall include:

- (i) a description of the project;
- (ii) a description of the Services for the project/ Call-off Contract, including where appropriate relevant principal elements of work;
- (iii) the required programme, including any specific milestones for the principal elements of work;
- (iv) a schedule of relevant documentation;
- (v) various appendices to be completed.

1.1.2 The Proposed Services Submission shall comprise the following:

Volume One:

- (i) a completed Non-Conflict of Interest Certificate. *

* Certifying no conflict of interest is a pre-requisite for the award of any Call-off Contract.

Volume Two:

- (ii) (a) Key Personnel proposed and estimated hours/days and associated costs;
- (b) qualifications and experience of proposed Key Personnel for the performance of the Services contained in the Services Brief; and
- (c) specific proposals for the performance of the Services identified in the Services Brief;

1.1.3 A Call-off Contract shall include the following:

- (i) a Call-off Contract reference number;
- (ii) the names of the Project Director and the Project Manager;
- (iii) a description of the project;
- (iv) an estimated works contract value, broken down into estimated hours/days for Key Personnel for each milestone;
- (v) a description of the Services for the project, including relevant principal elements of work;
- (vi) the required programme where applicable, including any specific milestones for the principal elements of work;
- (vii) a schedule of relevant documentation;
- (viii) qualifications and experience of proposed Key Personnel for the performance of the Services identified in the Services Brief;
- (ix) specific proposals for the performance of the Services identified in the Services Brief; and
- (x) the completed Non-Conflict of Interest Certificate.

- 1.2 (a) Following the issue of any Services Brief, the Supplier shall provide a written proposal to the Authority identifying in sufficient detail as considered necessary and/or identified by the Authority in the Services Brief how the Supplier proposes to provide such Services.
- (b) This shall include details of the proposed Key Personnel that the Supplier would allocate to perform those Services identified in the Services Brief.
- (c) This proposal (**the Proposed Services Submission**) shall be consistent with any commitments made by the Supplier in its Tender and shall be submitted by it no

later than 14 calendar days after the issue of the Services Brief or such later date as may be directed in writing by the Authority.

2. The Proposed Services Submission Acceptance Process

- 2.1 (a) Each Proposed Services Submission will be reviewed to identify if the Supplier has:
- (i) confirmed in writing to the Authority that it is willing to accept the Call-off Contract; and
 - (ii) provided an acceptable Proposed Services Submission.
- (b) The Authority shall not be bound to award a Call-off Contract resulting from any Proposed Services Submission.
- (c) The acceptability or not of the Proposed Services Submission rests entirely at the absolute discretion of the Authority.
- (d) No changes to the Man-day Rates or the Man-hour Rates shall be permitted as part of any Proposed Services Submission.
- 2.2 (a) The Authority shall treat any incomplete or ambiguous Proposed Services Submission (or errors in any such Proposed Services Submission) in such manner as the Authority shall determine at the absolute discretion of the Authority.
- (b) The Supplier shall note that the submission of an incomplete or non-compliant Proposed Services Submission may result in the rejection by the Authority of any such submission at the absolute discretion of the Authority.

3. Call-off Contract Award

- 3.1 Any award of a Call-off Contract shall be subject to:
- (a) having the requisite capability to perform the specific Call-off Contract;
 - (b) having adequate resources to perform the Call-off Contract;
 - (c) having confirmed in writing to the Authority that it is willing to accept the Call-off Contract in accordance with Schedule 3; and
 - (d) having provided an acceptable Proposed Services Submission in accordance with Schedule 3.

Although, where the Supplier:

- (a) shall be unable to fulfil the requirements of the Services Brief for any particular proposed Call-off Contract; and/or
- (b) where it shall have been deemed by the Authority that in the performance of the Services for any particular proposed Call-off Contract that the said Supplier has a conflict of interest or potential conflict of interest, subject to the Supplier being unable to provide a method of resolving the conflict satisfactorily, which is acceptable to the Authority, the Authority will not award the particular proposed Call-off Contract to the Supplier.

Notwithstanding any other provision of this Agreement, the Authority shall be under no obligation to award to the Supplier any such Call-off Contract and the Authority shall not be responsible for paying any costs incurred of whatsoever nature by the Supplier in the event that the number of Call-off Contracts awarded to the Supplier falls short of the expectations of the Supplier.

The Authority reserves the right to place contracts/agreements for similar or identical Services to that identified or implied in this Agreement with other organisations at any time during the Agreement period, notwithstanding any other provision of this Agreement.

4. Clarifications

- 4.1 (a) The Authority shall be entitled to seek clarifications from the Supplier in relation to any Proposed Services Submission.
- (b) The Authority shall be entitled at any time to invite the Supplier to clarification meetings to clarify any aspect of any Proposed Services Submission.
- (c) The Authority shall be entitled to take account of any subsequent information provided as clarification in a Supplier's response to:
- (i) written queries from the Authority; and
 - (ii) queries from the Authority at clarification meetings.

5. Call-off Contract Award

- 5.1 Subject to any other provision of this Agreement, should the Authority decide to proceed with the award of a Call-off Contract following the provision of an acceptable Proposed Services Submission, such Call-off Contract will be awarded to the Supplier.

This and the following 4 pages comprise Schedule 4 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 4 – MANAGEMENT ARRANGEMENTS

1. Framework Agreement Management

1.1. Quality Management System

1.1.1 Notwithstanding any other provision of this Agreement, within **30 calendar days** of the conclusion of this Agreement, the Supplier shall provide to the Authority for written consent, the following:

- a Quality Management System (including a Quality Plan);
- an Environmental Management System; and
- a Health and Safety Management System.

which the Supplier shall operate and maintain during the period of this Agreement.

1.1.2 The Quality, Environmental and Health and Safety Management Systems (including the Quality Plan) shall demonstrate and ensure that all aspects of the Services and all other matters for which the Supplier shall be responsible under any provision of this Agreement shall be executed in accordance with the provisions of this Agreement.

1.2. Staffing

1.2.1 The Supplier shall appoint a Framework Director.

1.2.2 The Framework Director shall be the person identified in this Schedule 4, or an alternative Framework Director who has received the prior written consent of the Authority.

1.2.3 The Supplier shall ensure that the Framework Director, the Call-off Contract Manager or any other member of the Key Individuals shall:

- (i) have the level of skill, experience and authority appropriate to: the tasks to which such staff are allocated, and the standards to be achieved pursuant to the Call-off Contract; and
- (ii) receive such training and supervision as is necessary to ensure the proper performance of the Call-off Contract and compliance with all regulatory requirements appropriate to and required for the execution of the Services in accordance with the Call-off Contract.

1.2.4 Key Individuals shall be appropriately qualified, skilled, experienced in their respective professions, further details of which are contained in Part 2 to Schedule 2, under staff classification.

1.2.5 Neither the Framework Director, the Call-off Contract Manager nor any other member of the Key Individuals for any Call-off Contract shall be changed without the prior written consent of the Authority. Any such consent shall not be unreasonably withheld.

1.2.6 (a) If a change to:

- (i) the Framework Director;
- (ii) the Call-off Contract Manager; or
- (iii) the other members of the Supplier's project team for any Call-off Contract is required by the Supplier then the Supplier shall submit the names and professional details of any proposed substitute individual and shall allow the Authority, if required, the opportunity, if the Authority so wishes, to interview such substitute to determine their suitability as a replacement.

(b) In the event that the Authority so objects to the person proposed by the Supplier in accordance with any provision of this paragraph 4.3.6 the Supplier shall be bound to propose another individual for consideration by the Authority.

1.3 Reporting

1.3.1 Regular, concise and targeted reporting will be a key deliverable for the Supplier. This will consist primarily of meetings and reporting on a regular basis as set out below.

- i. Monthly, quarterly and annual written reports;
- ii. Monthly, bi-annual and annual meetings;

In addition ad hoc reports on relevant topics relating to the provision of the Services as, and when, required by the Director.

1.4 Meetings

1.4.1 In respect to all meetings the Supplier shall:

- i. prepare draft minutes detailing the discussions held at the monthly, bi-annual and annual meetings,
- ii. issue these draft minutes for the Director's consent no later than five Working Days after each meeting,
- iii. amend the draft minutes to reflect any comments relating to the minutes made in writing by the Director, and
- iv. issue the final minutes to the Director within five Working Days of receipt of any comments made by the Director.

1.4.2 Monthly Meetings

1.4.2.1 The Supplier shall attend a meeting every month with the Authority or his representative(s) at the Authority's office, or at such other location (including virtually) as the Authority may require, to review the monthly reports and submissions for that month. These meetings shall not occur in months where bi-annual and annual meetings occur; the monthly report will still be required as below.

The purpose of this meeting is primarily to discuss contract management issues and any performance issues in relation to the Key Performance Indicators and Monitoring Indicators for that month.

The date for such meetings shall be notified to the Supplier no later than 30 days prior to the Commencement of Service Date by the Authority in writing.

1.4.3 Bi-Annual Meetings

1.4.3.1 The Supplier shall attend a bi-annual meeting with the Authority at the Authority 's office, or at such other location as the Authority may require (including virtually), on a date to be notified in writing by the Authority. The bi-annual meeting shall be held no later than 30 days after the end of the preceding bi-annual period.

1.4.3.2 The purpose of these meetings is primarily to discuss the contract management issues and any performance issues in relation to the Key Performance Indicators and Monitoring Indicators over the previous 6 months, allowing for consideration of longer term trends in performance.

1.4.3.3 The date for such meetings shall be notified to the Supplier no later than 30 days prior to the Commencement of Service Date by the Authority in writing.

1.4.4 Annual Meetings

1.4.4.1 The Supplier shall attend an annual meeting with the Authority at the Authority 's office, or at such other location as the Authority may require (including virtually), on a date to be notified in writing by the Authority. The annual meeting shall be held no later than 30 days after the end of the preceding annual period.

1.4.4.2 The purpose of these meetings is primarily to discuss the contract management issues and any performance issues in relation to the Key Performance Indicators and Monitoring Indicators over the previous 12 months, allowing for consideration of longer term trends in performance.

1.4.4.3 The date for such meetings shall be notified to the Supplier no later than 30 days prior to the Commencement of Service Date by the Authority in writing.

1.5 Reports

1.5.1 In respect to all reports the Supplier shall:

- i. Submit its proposals for the format of the monthly, quarterly and bi-annual reports no later than six weeks from the start of the mobilisation period to accord with the requirements for such as set out below;
- ii. The Authority shall either accept the Supplier's proposals for the format of the monthly report within 10 working days of receipt or he will notify the Supplier, in writing, detailing the aspects of the proposals that are not acceptable.
- iii. If the Authority neither accepts nor advises the Supplier that the proposals are unacceptable within 10 working days of the date of submission the Supplier may adopt the proposed format after notifying the Authority accordingly
- iv. The respective reports shall be used to inform the respective meetings between the Supplier and the Authority.

1.5.2 Monthly Reporting Requirements

The Supplier will produce a monthly report describing the performance of the Supplier in the previous month. This report is to be submitted to the Authority no less than five working days before the monthly meeting. The monthly report shall be a summary of the performance of the Supplier and shall:

- i. quantify actual performance against the performance indicators and monitoring indicators
- ii. detail the payment per work package
- iii. comment on the performance trends throughout the quarter including areas of strength and weakness.
- iv. Detail any notices of non-conformances, corrective actions or rectification notices placed upon the contract

1.5.3 Quarterly Report Requirements

The Supplier shall produce a quarterly report that provides information in respect to the requirements and expectations of hosts and owners, and how these are being met. It is anticipated that this report will feature a considerable set of data. The nature and content of this report is to be agreed at Mobilisation.

1.5.4 Annual Report Requirements

The Supplier shall produce an annual report describing the overall performance of the Supplier during the previous six month. The annual report is to be submitted to the Authority not less than ten working days before the annual meeting.

The annual report shall be a summary of the performance of the Supplier and shall:

- i. quantify actual performance against the Performance Indicators and Monitoring Indicators.
- ii. detail the Payment Adjustment Factors applied
- iii. comment on performance trends throughout the Annual Period including areas of strength and weakness
- iv. Detail any notices of non-conformances, corrective actions or rectification notices placed upon the contract and
- v. Detail how environmental benefits have been delivered through the administration of the contract, for example reductions in the Supplier's carbon emissions.

1.6. Authority Framework Agreement Management

1.6.1 Nominated Project Directors shall manage the Framework Agreement on behalf of Transport Scotland.

1.6.2 Such Project Directors will generally be officers from Transport Scotland.

1.6.3 Each Project Director will be supported by Project Managers.

1.6.4 Authority staff currently nominated for the post of Project Director are:

[Redacted]

Any additional nomination or change of nomination of Project Director, or identification or change of Project Manager, will be notified in writing to the Framework Director as required by the Authority.

1.7 Fee and Budgetary Control

- 1.7.1 Subject to any other provision of this Agreement, detailed cost and expenses reports shall be provided in writing on a quarterly basis to the relevant Project Manager within 14 calendar days from the end of each quarter of each year for each Call-off Contract.

1.8 Supplier's Performance Monitoring

- 1.8.1 The overall requirements for the Agreement will likely include but not be limited to the following obligations on the Supplier to:

- (i) nominate named specialists / sub-contractors to cover the required areas of expertise;
- (ii) ensure that specialist advice is provided by appropriately qualified staff;
- (iii) provide a proactive, innovative and responsive service;
- (iv) work within tight and/or accelerated programmes; and
- (v) provide value for money.

- 1.8.2 It is the Authority's policy to measure the performance of each Supplier on a regular basis.

- 1.8.3 In the event that the Supplier's performance falls below a satisfactory level, the Supplier will be invited to attend a meeting at the Authority's offices to discuss performance issues and to determine a means of rectifying the situation.

- 1.8.4 The Supplier's performance markings shall not in any way whatsoever impact on the various rights and obligations contained within this Agreement.

- 1.8.5 The Authority shall be entitled to publish the results of such performance monitoring within the public domain and use such information in discussion or in writing between the Authority and third parties.

- 1.8.6 The Supplier performance will be monitored on a 6 monthly basis using the key performance indicators (KPIs) shown in Schedule 1 to this Agreement. The assessment methodology and arrangements shall be consented to by Authority's Project Manager following consultation with the Framework Director.

v. 27 February 2020

This and the following 42 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 5 – STANDARD TERMS OF SUPPLY

This and the following 42 pages comprise Schedule 5 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

CALL-OFF CONTRACT REFERENCE NUMBER:

SERVICES CONTRACT

-between-

**(1) THE SCOTTISH MINISTERS ACTING THROUGH TRANSPORT SCOTLAND (THE
“AUTHORITY”)**

-and-

(2) (THE “SUPPLIER” – SWARCO UK Limited

-relating to the supply of-

CHARGEPLACE SCOTLAND CHARGE POINT NETWORK OPERATOR SERVICES

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PREAMBLE:

- ONE The Authority requires the provision of services;
- TWO On 28 February 2020 the Authority's contract notice relating to the Services was published in the Official Journal of the European Union with reference number OJEU 100575-2020;
- THREE On 27 March 2020 the Supplier completed its ESPD;
- FOUR On 14 October 2020 the Authority issued its ITT to potential Suppliers (including the Supplier) in respect of the provision of services;
- FIVE On 24 November 2020 the Supplier submitted its Tender;
- SIX On the basis of the Tender, the Authority has selected the Supplier to supply the Services under the Contract;
- SEVEN The Contract establishes standard terms of supply for the provision of services;
- EIGHT The Contract also includes:
- a Specification setting out the Services that the Supplier has undertaken to provide;
 - a Pricing Schedule setting out details of the pricing of the Services;
 - details of Key Individuals involved in the provision of the Services;
 - Management Arrangements for the strategic management of the relationship between the Parties.

SUBSTANTIVE PROVISIONS:

SECTION A: INTRODUCTORY PROVISIONS

1. Definitions and Interpretation

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

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

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

“Charge Point” means the upstand or wall unit to which an electric vehicle is connected, encompassing one or more sockets or tethered plugs, the user interface access control, energy metering, and circuit protection.

“Charge Point Network Operator (CPNO)” means the Supplier responsible for running a Charge Point Management System (CPMS) and providing Hosts and/or Users with help on access and faults with the Charge Points on their network.

“Charge Point Management System (CPMS)” means the Back Office functions that control, and control access to, Charge Points. A CPMS is usually hosted on a secure server and typically holds data on locations of, and sends/receives commands to/from, Charge Points on the network. A Charge Point is typically connected to the CPMS via a secure mobile telephone network connection and usually sends/receives commands using a protocol called Open Charge Point Protocol (OCPP). The CPMS also holds information on authorised Users (i.e. their RFID card or membership details) in order to enable charging access to the EV User when the system is requested by the Charge Point. A typical add-on feature to a CPMS may include Pay As You Go billing where the authorised User is billed for access to the Charge Point. The CPMS also monitors the health of, and can perform some firmware/software upgrades to, Charge Points connected to it.

“ChargePlace Scotland” means the network of electric vehicle Charge Points sponsored by Transport Scotland on behalf of Scottish Ministers.

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

“Contract” or **“Call Off Contract”** means this Contract between the Parties consisting of clauses and 7 Schedules.

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

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

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

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

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

“Deliverable” means any thing to be delivered by the Supplier to the Authority.

“Environmental Information Regulations” means the Environmental Information (Scotland) Regulations 2004 (and any subordinate regulations made under them from time to time or any superseding or amending regulations) together with any guidance and/or codes or practice issued by the Information Commissioner, the Scottish Information Commissioner and/or any relevant government department in relation to such regulations.

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

“ESPD” means the European Single Procurement Document completed by the Supplier and sent to the Authority on 27 March 2020.

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

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

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

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

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

“ITT” means the Authority’s invitation to tender dated 14 October 2020.

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

“Key Individuals” means the Supplier Representatives identified as being key individuals for the provision of the Services as set out in Schedule 4.

“Management Arrangements” means the arrangements for the strategic management of the relationship between the Parties, including arrangements for monitoring of the Supplier’s compliance with the Specification and the terms of the Contract, set out in Schedule 3.

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

“Order” means an order for particular Services.

“Party” means either of the Authority or the Supplier.

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

“Pricing Schedule” means the details of the pricing of the Services set out in Schedule 2.

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

“Authority” means the Scottish Ministers acting through Transport Scotland.

“Authority Property” means any corporeal moveable property issued or made available to the Supplier by the Authority in connection with the Contract.

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

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

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

“Replacement Supplier” means any third party Supplier appointed to perform the Services by the Authority from time to time.

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

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

“Supplier” means SWARCO UK Limited, [Redacted].

“Supplier Representatives” means all persons engaged by the Supplier in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Supplier);
- its agents, Suppliers and carriers; and
- any sub-contractor of the Supplier (whether approved under clause 31 (Sub-contracting) or otherwise).

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

- is exempt information pursuant to sections 33(1) or 36, 38 or 39 of FOISA (having regard for that purpose to the public interest there might be in disclosing such information as referred to in section 2(1)(b) of FOISA).

“Services” means the Services as are to be supplied by the Supplier to the Authority as set out in the Specification.

“Specification” means the Authority’s general requirements for the provision of services set out in Schedule 1.

“Tender” means the tender submitted by the Supplier to the Authority in response to the ITT dated 24 November 2020.

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

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

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

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

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

1.2. The interpretation and construction of the Contract is subject to the following provisions:

1.2.1.words importing the singular meaning include, where the context so admits, the plural and vice versa;

1.2.2.words importing the masculine include the feminine and neuter;

1.2.3.reference to a clause is a reference to the whole of that clause unless stated otherwise;

1.2.4.references to any statute, enactment, order, regulation or other similar instrument are construed as a reference to the instrument as amended by any subsequent instrument or re-enacted;

1.2.5.references to any person include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

1.2.6.reference to “expiry or termination” of the Contract includes the making of a Judicial Order;

1.2.7.the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and

1.2.8.headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract.

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

In accordance with Framework Agreement reference TS/LCED/SER/2019/01.

3. Nature of the Contract

- 3.1. The Contract is a public services contract within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015.
- 3.2. Save to the extent specifically provided for in this Contract, the Supplier acknowledges that it is not the exclusive Supplier of the Services to the Authority and as such no guarantee of work or volume of work has been granted by the Authority.

4. Period

- 4.1. The period of the Contract is from and including 27 July 2021 (the “Commencement Date”) to and including 26 July 2023

5. Break

The Authority may terminate the Contract at any time by giving not less than 3 months' notice to the Supplier.

6. Specification

The Supplier must comply with the Specification.

7. Pricing Schedule

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

8. Management Arrangements

- 8.1. The Supplier must maintain the capacity to supply the Services throughout the period of the Contract.
- 8.2. The Parties must comply with the Management Arrangements.

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

9. Supplier's Status

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

10. Notices

10.1. Any notice or other communication which is to be given by a Party to the other under the Contract must be:

10.1.1. given in writing;

10.1.2. addressed in accordance with clause 12.3; and

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

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

10.2.1. 2 Working Days after the day on which the letter was posted; or

10.2.2. 4 Working Hours after the communication was sent, in the case of fax or email.

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

10.3.1. For the Authority:
Transport Scotland

[Redacted]

10.3.2. For the Supplier:
SWARCO UK Limited

[Redacted]

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

10.5. Notices under clause 43.1 (Termination on Insolvency or Change of Control) may be sent to the Authority's trustee, receiver, liquidator or administrator, as appropriate.

11. Price

11.1. In consideration of the Supplier's performance of its obligations relating to an Order, the Authority must pay:

11.1.1. the price due in accordance with the Pricing Schedule; and

11.1.2. a sum equal to the value added tax chargeable at the prevailing rate.

11.2. The Supplier may not suspend the provision of services if it considers that the Authority has failed to pay the price due.

12. Payment and Invoicing

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

13. Recovery of Sums Due

- 13.1. Wherever under the Contract any sum of money is recoverable from or payable by the Supplier to the Authority, the Authority may deduct that sum from any sum due to the Supplier whether under the Contract or otherwise.
- 13.2. The Supplier must make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

14. Data Protection

- 14.1 The Supplier acknowledges that Personal Data described in the scope of Schedule 5 (Data Protection) may be Processed in connection with the Services under this Contract. For the purposes of any such Processing, Parties agree that the Supplier acts as the Data Processor and the Authority acts as the Data Controller.
- 14.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this clause 14 are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 14.3 The Supplier will, in conjunction with the Authority and in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with Data Protection Laws.
- 14.4 The Supplier will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 14.5 The Supplier must:

14.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Supplier is subject; in which case the Supplier must, unless prohibited by that law, inform the 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 Supplier's obligations under this Contract or as is required by the Law;

14.5.2 subject to clause 14.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Authority's prior written consent;

14.5.3 take all reasonable steps to ensure the reliability and integrity of any Supplier Representatives who have access to the Personal Data and ensure that the Supplier Representatives:

- (a) are aware of and comply with the Supplier's duties under this clause;
- (b) are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection and handling of Personal Data.

14.5.4 implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.

14.6 The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Services without prior specific or general written authorisation from the Authority. In the case of general written authorisation, the Supplier must inform the Authority of any intended changes concerning the addition or replacement of any other sub-contractor and give the Authority an opportunity to object to such changes.

14.7 If the Supplier engages a sub-contractor for carrying out Processing activities on behalf of the Authority, the Supplier must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to the Authority for the performance of the sub-contractor's performance of the obligations.

14.8 The Supplier must provide to the Authority reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.

14.9 The Supplier must notify the Authority if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Authority from time to time.

14.10 Taking into account the nature of the Processing and the information available, the Supplier must assist the Authority in complying with the Authority's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events.
- (b) notifying a Personal Data breach to the Authority without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Authority with communication of a personal data breach to a Data Subject;
- (d) supporting the Authority with preparation of a data protection impact assessment;
- (e) supporting the Authority with regard to prior consultation of the Supervisory Authority.

14.11 At the end of the provision of Services relating to processing the Supplier must, on written instruction of the Authority, delete or return to the Authority all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

14.12 The Supplier must:

- (a) provide such information as is necessary to enable the Authority to satisfy itself of the Supplier's compliance with this clause 14;
- (b) allow the 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;
- (c) inform the Authority, if in its opinion, an instruction from the Authority infringes any obligation under Data Protection Laws.

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

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

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

14.16 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Authority publishes an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Supplier 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 Supplier acknowledges that the Authority is subject to the requirements of FOISA and the Environmental Information Regulations. The Supplier shall:

(a) provide all necessary assistance and cooperation as the Authority may reasonably request to enable the Authority to comply with its obligations under FOISA and Environmental Information Regulations;

(b) transfer to the Authority all Requests for Information relating to this Agreement that the Supplier receives as soon as practicable and in any event within 2 Working Days of receipt;

(c) provide the Authority with a copy of all information held on behalf of the Authority which is requested in a Request For Information and which is in the Supplier's possession or control. The information must be provided within 5 Working Days (or such other period as the Authority may reasonably specify) in the form that the Authority requires.

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

15.2 If the Request for Information appears to be directed to information held by the Authority, the Supplier must promptly inform the applicant in writing that the Request for Information can be directed to the Authority.

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

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

15.4.1 in certain circumstances without consulting the Supplier, or

15.4.2 following consultation with the Supplier and having taken its views into account.

15.5 Where 15.4.1 applies the Authority must take reasonable steps, if practicable, to give the Supplier advance notice of the fact of disclosure or, failing that, draw the fact of

disclosure to the attention of the Supplier after such disclosure to the extent that it is permissible and reasonably practical for it to do.

- 15.6 Where a Request for Information concerns Supplier Sensitive Information (having regard to the justifications and durations set out there), the Authority must take reasonable steps, where practicable, to consult with the Supplier before disclosing it pursuant to a Request for Information.
- 15.7 The Supplier acknowledges that Transparency Reports and the content of this Agreement including any Amendments, agreed from time to time, (together the "Transparency Information") are not Supplier Sensitive Information. However, if the Authority believes that publication of any element of the Transparency Information should be treated as Supplier Sensitive Information the Authority may, in its discretion exclude such information from publication.
- 15.8 Notwithstanding any other provision of this Agreement, the Supplier hereby gives consent for the Authority to publish to the general public, the Transparency Information in its entirety. The Authority shall, prior to publication, consult with the Supplier 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 Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information including the preparation of Transparency Reports.
- 15.10 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 15.11 The Supplier agrees that any further Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority upon request, unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of FOISA. The Authority may disclose such information under FOISA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 17.3.3) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

16. Authority Protected Information

- 16.1. The Supplier must:
 - 16.1.1. treat all Authority Protected Information as confidential and safeguard it accordingly, implementing appropriate technical and organisational measures to protect Authority Protected Information against disclosure;
 - 16.1.2. only use the Authority Protected Information for the purposes of performing its obligations under the Contract;
 - 16.1.3. only disclose the Authority Protected Information to such Supplier Representatives that are directly involved in the performance of the Contract and need to know the information; and
 - 16.1.4. not disclose any Authority Protected Information without the prior written consent of the Authority.
- 16.2. The Supplier must immediately notify the Authority of any breach of security concerning the Authority Protected Information. The Supplier must fully co-operate with the Authority

in any investigation that the Authority considers necessary to undertake as a result of any such breach of security.

16.3. Clause 16.1 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 Supplier without restriction as to its disclosure prior to its disclosure by the Authority;

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

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

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

16.4. Breach of this clause or the Official Secrets Acts 1911 to 1989 by the Supplier is a material breach for the purposes of clause 56.1.3 (Termination Rights).

17. Supplier Sensitive Information

17.1. The Authority must:

17.1.1. treat all Supplier Sensitive Information as confidential and safeguard it accordingly; and

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

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

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

17.2.2. information is in the possession of the Authority without restriction as to its disclosure prior to its disclosure by the Supplier;

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

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

17.2.5. information is independently developed without access to the Supplier Sensitive Information.

17.3. Nothing in this Contract prevents the Authority from disclosing any Supplier Sensitive Information or any other information concerning the Supplier or the Contract:

17.3.1. pursuant to a Request for Information concerning the information (see clause 15 - Freedom of Information);

17.3.2. in accordance with the Authority's publication scheme (within the meaning of section 23 of FOISA) as reviewed from time to time;

17.3.3. in accordance with the requirements of Part 3 of the Public Services Reform (Scotland) Act 2010;

- 17.3.4. in accordance with any future policies of the Authority concerning the routine disclosure of government information in the interests of transparency;
 - 17.3.5. to any consultant, Supplier or other person engaged by the Authority, for example to conduct a gateway review;
 - 17.3.6. in response to a Parliamentary Question from a Member of the Scottish Parliament, a member of the United Kingdom Parliament, or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, and when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Authority shall if the Authority sees fit disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament or Members of the United Kingdom Parliament;
 - 17.3.7. in response to any inquiry of the European Commission concerning the Contract; or
 - 17.3.8. for the purpose of any examination by any auditors of the Authority (including Audit Scotland, the Auditor General for Scotland and the Scottish Parliament) of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 17.4. The Supplier consents to the publication of the Contract by the Authority, subject to such redactions as the Authority may decide to make. The Authority may consult with the Supplier to inform its decisions concerning redaction (for example to exclude any Supplier Sensitive Information) but any decisions taken by the Authority are final and conclusive.

18. Audit

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

19. Publicity

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

SECTION C: PROVISION OF SERVICES

20. Provision of the Services

- 20.1. The Supplier must provide the Services:
 - 20.1.1. in accordance with the Specification;
 - 20.1.2. in accordance with the particular requirements of each Order; and
 - 20.1.3. to the satisfaction of the Authority acting reasonably.
- 20.2. The Supplier acknowledges that the Authority relies on the skill, care, diligence and judgment of the Supplier in the supply of the Services and the performance of its obligations under the Contract.

- 20.3. For each Order for the provision of services the provisions of this Section C apply.
- 20.4. The period for any Order may be brought to an earlier end upon 3 months' notice by the Authority.

21. Deliverables and Milestones

- 21.1. The Supplier must provide the Services, including any Deliverables:
 - 21.1.1. at the date(s), time(s) and location(s) required by the Authority; and
 - 21.1.2. in good time to meet any Milestones required by the Authority.
- 21.2. When the Supplier believes acting reasonably that it has provided any Deliverable or completed any Milestone in accordance with the Contract it must notify the Authority.
- 21.3. The Authority may thereafter by notice to the Supplier:
 - 21.3.1. accept the provision of the Deliverable or the completion of the Milestone (as appropriate); or
 - 21.3.2. providing reasons, reject the provision of the Deliverable or the completion of the Milestone.
- 21.4. Where the Authority rejects the completion of a Milestone or provision of a Service or Deliverable in accordance with clause 21.3.2, the Supplier must at its expense immediately rectify or remedy any defects and/or delays.
- 21.5. Risk and ownership in any Deliverables that are corporeal moveables and in any physical media in which any Deliverables are delivered vests in the Authority upon acceptance in accordance with this clause.
- 21.6. Whether the defect or delay is due to the Authority or not, the Supplier shall deploy all additional resources to address the consequences of the default or delay. Where such default or delay is solely due to the Authority, any additional costs in respect of the said additional resources shall be agreed between the parties both acting reasonably.

SECTION D: STAFF INVOLVED IN THE PROVISION OF SERVICES

22. Key Individuals

- 22.1. The Supplier acknowledges that the Key Individuals are essential to the proper provision of the Services to the Authority.
- 22.2. The Key Individuals must not be released from providing the Services without the approval of the Authority, except by reason of long-term sickness, maternity, paternity, adoption or parental leave, termination of employment or equivalent extenuating circumstances. Where such extenuating circumstances arise or are foreseeable, the Supplier must immediately give notice of that fact to the Authority.
- 22.3. The Supplier may propose a replacement to a Key Individual (and must do so when a Key Individual is to be released from providing the Services), in which case:
 - 22.3.1. appropriate arrangements must be made to minimise any adverse impact on the Contract which could be caused by the change in Key Individuals (including, wherever possible, a transfer period of sufficient duration to allow for the transfer of know-how and skills); and

22.3.2. the replacement must be of at least equal status and of equivalent qualifications, experience, training and skills to the Key Individual being replaced and must be fully competent to carry out the responsibilities of that person in relation to the Services.

22.4. Any proposed replacement to a Key Individual is subject to the approval of the Authority. Subject to the Supplier's compliance with this clause, the Authority must not unreasonably withhold such approval.

23. Offers of Employment

23.1. For the duration of the Contract and for a period of 12 months thereafter the Supplier must not employ or offer employment to any of the Authority's employees who have been associated with the Contract and/or the contract management of the Contract without the Authority's prior approval.

23.2. This clause does not prevent the Supplier from employing or offering employment to any person who has applied for employment in response to an advertisement placed in the normal course of business and not placed with the objective of soliciting the Authority's employees.

24. Staff transfer at commencement

24.1. The Parties agree that the commencement of the provision of the Services by the Supplier does not involve a Relevant Transfer.

25. Information about Supplier Employees

25.1. The Authority may by notice require the Supplier to disclose such information as the Authority may require relating to those of the Supplier's employees carrying out activities under or connected with the Contract.

25.2. The Supplier must disclose by notice all such information as is required by the Authority under clause 25.1, within such reasonable period specified by the Authority. The Supplier acknowledges that the Data Protection Laws do not prevent the disclosure of anonymised data that is not personal data within the meaning of that Act.

25.3. The Supplier consents to the disclosure by the Authority of all information provided by the Supplier under this clause to other Suppliers that the Authority may invite to tender or appoint for services to be provided in substitution for the Services.

26. Staff transfer on expiry or termination

26.1. The Parties agree that the ceasing of the provision of the Services by the Supplier does not involve a Relevant Transfer.

27. Security

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

SECTION E: PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND GOVERNANCE

28. Parties' pre-existing Intellectual Property Rights

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

29. Specially Created Intellectual Property Rights

- 29.1 All Intellectual Property Rights in Deliverables and any reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under the Contract belong to the Authority.
- 29.2 The Supplier assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the materials referred to in clause 27.1. This assignment takes effect on the Commencement Date or as an assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier must execute all documentation necessary to effect this assignment.

30. Licences of Intellectual Property Rights

- 30.1 The Supplier grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to enjoy the benefit of the Services.
- 30.2 The Supplier must ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a royalty-free, irrevocable and non-exclusive licence or, if itself a licensee of those rights, grants to the Authority an authorised and equivalently wide sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights. Such licence or sub-licence must be non-exclusive, perpetual, royalty free and irrevocable.

31. Claims relating to Intellectual Property Rights

- 31.1 The Supplier must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract and must ensure that the provision of the Services and the use or possession of the Deliverables does not infringe such Intellectual Property Rights.
- 31.2 The Supplier must promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right which may affect the use or possession of the Deliverables or which may affect the provision of the Services.

31.3. Where a claim to which this clause applies is made, the Supplier must, at its expense, use its best endeavours to:

31.3.1. modify the Services or Deliverables or substitute alternative Services or Deliverables (in any case without reducing performance or functionality) so as to avoid the infringement or alleged infringement of the Intellectual Property Rights; or

31.3.2. procure the grant of a licence or licences from the pursuer, claimant or complainer, on terms acceptable to the Authority, so as to avoid the infringement or alleged infringement of the Intellectual Property Rights of the pursuer, claimant or complainer.

31.4. The Supplier must not without the consent of the Authority make any admissions which may be prejudicial to the defence or settlement of any claim to which this clause applies.

32. Assignment

32.1. The Supplier may not assign its interest in the Contract or any part of it without the prior written consent of the Authority.

32.2. Notwithstanding clause 32.1, the Supplier may assign to another person (an "**Assignee**") the right to receive the price due to the Supplier under the Contract subject to:

32.2.1. deduction of sums in respect of which the Authority exercises its right of recovery under clause 13 (Recovery of Sums Due); and

32.2.2. all the related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid.

32.3. The Supplier must notify or ensure that any Assignee notifies the Authority of any variations to the arrangements for making payments or for handling invoices, in each case in good time to enable the Authority to redirect payments or invoices accordingly. In the absence of such notification the Authority is under no obligation to vary its arrangements for making payments or for handling invoices.

32.4. Subject to clause 32.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

(a) any Contracting Authority; or

(b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or

(c) any private sector body which substantially performs the functions of the Authority,

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

32.5. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 32.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

32.6. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 32.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the

“Transferee”):

- (a) the rights of termination of the Authority in clauses 56 (Termination Rights) and 57 (Termination on Insolvency and Change of Control) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Supplier.
- 32.7 The Authority may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Supplier’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

33. Change of Control

The Supplier must notify the Authority:

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

34. Sub-Contracting

- 34.1. The Supplier may not sub-contract its obligations under the Contract without the prior written consent of the Authority. Sub-contracting of any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 34.2. Where the Supplier enters into a sub-contract the Supplier must ensure that a provision is included which:
 - 34.2.1. requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Supplier in respect of Services and the sub-contractor’s invoice relates to such Services then, to that extent, the invoice must be treated as valid and, provided the Supplier is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Supplier, payment must be made to the sub-contractor without deduction;
 - 34.2.2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Authority and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Authority;
 - 34.2.3. requires that all contracts with sub-contractors and suppliers which the sub-contractor intends to procure, and which the sub-contractor has not before the date of this Contract, already planned to award to a particular supplier are advertised through the Public Contracts Scotland procurement portal (www.publiccontractsscotland.gov.uk) and awarded following a fair, open,

transparent and competitive process proportionate to the nature and value of the contract; and

34.2.4. is in the same terms as that set out in this clause 31.3 (including for the avoidance of doubt this clause 31.3.4) subject only to modification to refer to the correct designation of the equivalent party as the Supplier and sub-contractor as the case may be.

34.3 The Supplier shall also include in every sub-contract:

34.3.1 a right for the Supplier to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in clause 56.3 occur; and

34.3.2 a requirement that the sub-contractor includes a provision having the same effect as 34.3.1 in any sub-contract which it awards.

In this clause 34.3, 'sub-contract' means a contract between two or more Suppliers, 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 Contract.

34.4. Where requested by the Authority, copies of any sub-contract must be sent by the Supplier to the Authority as soon as reasonably practicable.

34.5. Where the Supplier proposes to enter into a sub-contract that has not been pre-approved by the Authority, it must:

34.5.1 advertise its intention to do so in the Public Contracts Scotland Portal, unless prior written approval has been given by the Authority to do otherwise; and

34.5.2 follow a procedure leading to the selection of the sub-contractor which ensures reasonable competition following principles of equal treatment, non-discrimination and transparency and which ensures that such procedure is accessible by small and medium enterprises.

35. Amendment

35.1 The Contract may be amended only by the written agreement of both Parties. Accordingly, the Supplier may not unilaterally amend the Contract.

SECTION F SUPPLIER CONDUCT REQUIREMENTS

36. Compliance with the Law etc.

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

36.4. all applicable law;

36.5. any applicable requirements of regulatory bodies; and

36.6. Good Industry Practice.

37. Official Secrets Acts

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

38. Supplier's responsibility for staff etc.

38.4. The Supplier is responsible for the acts and omissions of all Supplier Representatives relating to the Contract as though such acts and omissions are the Supplier's own.

38.5. The Supplier must ensure that all Supplier Representatives:

38.5.1. are appropriately experienced, skilled, qualified and trained;

38.5.2. carry out their activities connected with the Contract faithfully and diligently and with all with due skill, care and diligence; and

38.5.3. obey all lawful and reasonable directions of the Authority when carrying out activities under the Contract.

39. Access to the Authority's premises

39.4. Any access to, or occupation of, the Authority's premises which the Authority may grant the Supplier from time to time is on a non-exclusive licence basis free of charge. The Supplier must use the Authority's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Authority's premises to such individuals as are necessary for that purpose.

39.5. The Supplier must comply with the Authority's policies concerning Baseline Personnel Security Standard clearance and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.

39.6. At the Authority's written request, the Supplier must provide a list of the names and addresses of all persons who may require admission to the Authority's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

39.7. The Supplier must ensure that any individual Supplier Representative entering the Authority's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Supplier acknowledges that the Authority has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.

39.8. In accordance with the Authority's policies concerning visitor access, entry to the Authority's premises may be granted to individual Supplier Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.

39.9. The Authority may, by notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority's premises any Supplier Representative whose admission or continued presence would, in the opinion of the Authority acting reasonably, be undesirable.

39.10. The Authority must provide advice and assistance acting reasonably to the Supplier to facilitate the Supplier's compliance with this clause.

39.11. All decisions of the Authority under this clause are final and conclusive.

40. Supplier's Equipment

- 40.4. The Supplier must provide all Equipment necessary to perform any required activities on the Authority's premises or otherwise necessary for the provision of Services.
- 40.5. But the Supplier must not, without the Authority's approval:
- 40.5.1. bring Equipment onto the Authority's premises; or
 - 40.5.2. leave Equipment on the premises.
- 40.6. Any Equipment brought onto the Authority's premises:
- 40.6.1. remains the property of the Supplier; and
 - 40.6.2. is at the Supplier's own risk and the Authority has no liability for any loss of or damage to the Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default.
- 40.7. The Supplier must keep all Equipment brought onto the Authority's premises in a safe, serviceable and clean condition. The Authority may at any time require the Supplier to remove from the Authority's premises any Equipment which in the opinion of the Authority acting reasonably is either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable Equipment at the Supplier's expense as soon as reasonably practicable.
- 40.8. On completion of any required activities on the Authority's premises or at the end of a Working Day (as appropriate), the Supplier must at its own expense:
- 40.8.1. remove all Equipment; and
 - 40.8.2. leave the premises in a clean, safe and tidy condition, clearing away all rubbish arising out of the Supplier's activities.
- 40.9. The Supplier is solely responsible for making good any damage to the Authority's premises or any objects contained therein, other than wear and tear, which is caused by the Supplier.

41. Authority Property

- 41.4. Where the Authority issues Authority Property to the Supplier, the Authority Property remains at all times the property of the Authority.
- 41.5. The Supplier undertakes the safe custody of the Authority Property and to that end must:
- 41.5.1. keep the Authority Property in good order and condition (excluding wear and tear);
 - 41.5.2. comply with any particular security requirements communicated to the Authority in relation to the Authority Property;
 - 41.5.3. use any Authority Property solely in connection with the Contract and for no other purpose; and
 - 41.5.4. store the Authority Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 41.6. The Authority Property is deemed for the purposes of clause 41.5.1 to be in good order and condition when received by the Supplier unless the Supplier notifies the Authority otherwise within 5 Working Days of receipt.

41.7. The Supplier must not:

- 41.7.1. modify or replace the Authority Property;
- 41.7.2. use the Authority Property as security for a loan or other obligation;
- 41.7.3. sell, or attempt to sell or part with possession of the Authority Property; or
- 41.7.4. allow anyone to obtain a lien over, or right to retain, the Authority Property.

41.8. The Supplier licences the Authority to enter any premises of the Supplier during Working Hours on reasonable notice to recover any Authority Property.

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

42. Health and Safety etc.

42.4. While on the Authority's premises, the Supplier must comply with the Authority's policies concerning health and safety and fire and such modifications to those policies or replacement policies as are notified to the Supplier from time to time.

42.5. The Supplier must immediately inform the Authority in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury. The Supplier must then promptly notify the Authority of that fact.

42.6. The Authority must promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Supplier in the performance of its obligations under the Contract.

42.7. The Supplier must promptly make available its statutory health and safety policy statement to the Authority on request.

43. Offences

43.4. The Supplier must not commit or attempt to commit any offence:

- 43.4.1. under the Bribery Act 2010;
- 43.4.2. of fraud, uttering, or embezzlement at common law; or
- 43.4.3. of any other kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015.

43.5. Breach of clause 43.1 is a material breach for the purposes of clause 56.1.3 (Termination Rights).

44. Tax Arrangements

44.1 Where the Supplier is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

- 44.2 Where the Supplier is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 44.3 The Authority may, at any time during the term of this contract, request the Service Provider to provide information which demonstrates how the Supplier complies with sub-clauses 44.1 and 44.2 above or why those clauses do not apply to it.
- 44.4 A request under sub-clause 44.3 above may specify the information which the Service Provider must provide and the period within which that information must be provided.
- 44.5 The Authority may supply any information which it receives under clause 44 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 44.6 The Supplier shall take all reasonable steps to ensure the observance of the provisions of this clause 44 by all of their servants, employees, agents, consultants and sub-contractors.
- 44.7 Where the Supplier enters into any sub-contract with any of its servants, employees, agents, consultants and/or sub-contractors, the Supplier must ensure that a provision is included which is in the same terms as this clause 44 subject only to modification to refer to the correct designation of the equivalent party as the Supplier.

45. Discrimination

The Supplier must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Authority.

46. Blacklisting

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

47. Conflicts of interest

- 47.4. The Supplier must take appropriate steps to ensure that the Authority is not placed in a position where, in the reasonable opinion of the Authority, there is an actual or potential conflict between the interests of the Supplier and the duties owed to the Authority under the Contract.
- 47.5. The Supplier must disclose by notice to the Authority full particulars of any actual or potential conflict of interest which may arise and must take such steps as are necessary to avoid or remove the conflict of interest.
- 47.6. Breach of this clause by the Supplier is a material breach for the purposes of clause 56.1.3 (Termination Rights).

SECTION G FINAL PROVISIONS

48. Warranties and Representations

The Supplier warrants and represents that:

- 48.4. it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised individual;
- 48.5. in entering the Contract it has not committed any offence under the Bribery Act 2010 or of fraud or uttering at common law or any other kind referred to in the Public Contracts (Scotland) Regulations 2015;
- 48.6. it has not committed any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or 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;
- 48.7. as at the Commencement Date, all information contained in the ESPD and Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 48.8. no claim is being asserted and no litigation, alternative dispute resolution procedure or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 48.9. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 48.10. 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 Supplier 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 Supplier's assets or revenue;
- 48.11. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 48.12. in the 3 years prior to the Commencement Date:
 - 48.12.1. it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - 48.12.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 48.13. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 48.14. it has made appropriate inquiries (for example as regards the Authority's premises) so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract;
- 48.15. it is familiar with the Authority's policies concerning Baseline Personnel Security Standard clearance and health and safety and fire as they apply at the Commencement Date;
- 48.16. it has in place appropriate technical and organisational measures to safeguard any Authority Protected Information provided by the Authority;

48.17. there are no actual or potential conflicts between the interests of the Supplier and the duties owed to the Authority under the Contract, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; and

48.18. it is deemed to have inspected any premises at which the services are to be performed as set out in the Specification (the 'Premises') before tendering so as to have understood the nature and extent of the Services to be carried out and is deemed to be satisfied in relation to all matters connected with the Services and the Premises.

49. Indemnity

49.1 The Supplier shall indemnify the Authority against all claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities which may arise out of, or in consequence of, any Default of the Supplier.

49.2 In the event of any claims, proceedings, actions, damages, costs, charges, expenses and any other liabilities arising out of, or in consequence of, a breach of the Data Protection Laws, the Party responsible for the event giving rise to the breach shall indemnify the non-breaching Party.

50. Limitation of Liability

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

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

50.1.2. indirect or consequential loss or damage.

50.2. But clause 35.1 does not exclude any liability of the Supplier for additional operational, administrative costs or expenses or wasted expenditure resulting from the Default of the Supplier.

50.3. The liability of either Party under the Contract for Defaults is limited to £5 million.

50.4. But neither Party excludes or limits liability to the other Party for:

50.4.1. death or personal injury caused by its negligence;

50.4.2. misrepresentation;

50.4.3. 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.

51. Insurances

51.1. The Supplier must effect and maintain with a reputable insurance company:

51.1.1. public liability insurance in the sum of not less than £5 million;

51.1.2. professional indemnity insurance in the sum of not less than £5 million; and

51.1.3. employer's liability insurance in the sum of not less than £5 million.

51.2. Such insurance must be maintained for the duration of the Contract and for a minimum of 5 years following the expiry or termination of the Contract.

- 51.3. The Supplier must give the 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.

52. Force Majeure

- 52.1. Neither Party is liable to the other Party for any delay in performing, or other failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Nonetheless, each Party must use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 90 days, either Party may terminate the Contract with immediate effect by notice.
- 52.2. Any delay or other failure by the Supplier in performing its obligations under the Contract which results from any failure or delay by a Supplier Representative is only to be regarded as due to Force Majeure if that Supplier Representative is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 52.3. 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.
- 52.4. The only events that afford relief from liability for failure or delay under the Contract are Force Majeure events.

53. Dispute Resolution

- 53.1. The Parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract in accordance with the Management Arrangements.
- 53.2. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, which cannot be resolved in accordance with the Management Arrangements, shall be determined by the appointment of a single arbitrator to be agreed between the Parties, and failing agreement within 14 days after either Party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either Party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.
- 53.3. Any arbitration under clause 53.2 is subject to the Arbitration (Scotland) Act 2010.

54. Severability

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

55. Waiver and Cumulative Remedies

- 55.1. Any failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy and does not cause a diminution of the obligations established by the Contract.

55.2. Accordingly, no waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 10 (notices).

55.3. A waiver of any Default is not a waiver of any subsequent Default.

55.4. The rights and remedies provided by the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy is not to be deemed an election of such remedy to the exclusion of other remedies.

56. Termination Rights

56.1. The Authority may terminate the Contract by notice to the Supplier with immediate effect if the Supplier commits a Default and:

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

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

56.1.3. the Default is a material breach of the Contract.

56.2. The Authority may terminate the Contract in the event that:

(a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;

(b) the Supplier has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or

(c) the Contract should not have been awarded to the Supplier 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.

56.3. The Authority may also terminate the Contract in the event of a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or employment law.

56.4. The Authority may also terminate the Contract where, at any time before the term of the Contract, the Supplier or any person falling within the description set out in paragraph (2) of regulation 58 of The Public Contracts (Scotland) Regulations 2015 commits an offence referred to in paragraph (1) of that regulation.

57. Termination on Insolvency and Change of Control

57.1. The Supplier shall notify in writing immediately, and the Authority may terminate the Contract with immediate effect by notice, where in respect of the Supplier:

57.1.1. 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;

57.1.2. 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);

57.1.3. 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;

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

57.1.5. 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;

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

57.1.7. 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;

57.1.8. a debt relief order is entered into; or

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

57.2. The Authority may terminate the Contract by notice with immediate effect within 6 months of:

57.2.1. being notified that a change of Control has occurred in accordance with clause 33.2 (Change of Control); or

57.2.2. where no such notification has been given, the date that the Authority becomes aware of the change of control.

57.3. But the Authority may not terminate the Contract under clause 57.2 where approval of the change of control has been granted by notice by the Authority.

58. Consequences of Expiry or Termination

58.1. Where the Authority terminates the Contract under clause 40 (Termination Rights) and makes other arrangements for the provision of services, the Supplier indemnifies the Authority against all costs incurred in making those arrangements.

58.2. Where the Authority terminates the Contract under clause 5 (Break), the Authority indemnifies the Supplier against any unavoidable losses directly resulting from the termination of the Contract (excluding loss of profit).

- 58.3. Any indemnity given by the Authority under clause 58.2 is subject to the Supplier:
- 58.3.1. taking all reasonable steps to mitigate its loss;
 - 58.3.2. taking all reasonable steps to recover its losses under any insurance policies held by it; and
 - 58.3.3. submitting a fully itemised and costed list of losses which it seeks to recover from the Authority together with supporting evidence.
- 58.4. Except as provided for in clauses 34 (General Indemnity), 50.1 and 58.2, no indemnity is given or special payment is to be made by either Party to the other Party on expiry or termination of the Contract.
- 58.5. On expiry or termination of the Contract the Supplier must:
- 58.5.1. immediately return to the Authority all Authority Property and Authority Protected Information in its possession; and
 - 58.5.2. destroy or delete any copies of Authority Protected Information (whether physical or electronic) in its possession.
- 58.6. The following provisions survive the expiry or termination of the Contract:
- 58.6.1. clause 1 (Definitions and Interpretation);
 - 58.6.2. clause 13 (Recovery of Sums Due);
 - 58.6.3. clause 14 (Data Protection);
 - 58.6.4. clause 15 (Freedom of Information);
 - 58.6.5. clause 16 (Authority Protected Information);
 - 58.6.6. clause 17 (Supplier Sensitive Information);
 - 58.6.7. clause 18 (Audit);
 - 58.6.8. clause 19 (Publicity);
 - 58.6.9. clause 23 (Offers of Employment);
 - 58.6.10. clause 25 (Information about Supplier Employees);
 - 58.6.11. clause 26 (Staff transfer on expiry or termination);
 - 58.6.12. clause 28 (Parties' pre-existing Intellectual Property Rights);
 - 58.6.13. clause 29 (Specially Created Intellectual Property Rights);
 - 58.6.14. clause 30 (Licences of Intellectual Property Rights);
 - 58.6.15. clause 29 (Claims relating to Intellectual Property Rights);
 - 58.6.16. clause 37 (Official Secrets Acts);
 - 58.6.17. clause 40 (Supplier's Equipment);
 - 58.6.18. clause 41 (Authority Property);
 - 58.6.19. clause 44 (Tax arrangements);
 - 58.6.20. clause 48 (Warranties and Representations);
 - 58.6.21. clause 49 (Indemnity);
 - 58.6.22. clause 50 (Limitation of Liability);
 - 58.6.23. clause 51 (Insurances);
 - 58.6.24. clause 53 (Dispute Resolution);
 - 58.6.25. clause 55 (Waiver and Cumulative Remedies);
 - 58.6.26. this clause 58; and
 - 58.6.27. clause 0 (Governing Law and Jurisdiction).
- 58.7. Immediately upon termination of the Contract for any reason whatsoever the Supplier shall render such reasonable assistance to the Authority or third party nominated by the Authority, if requested, as may be necessary to effect an orderly assumption by a Replacement Supplier of the Services previously performed by the Supplier under the Contract.

59. Entire Agreement

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

60. Governing Law and Jurisdiction

The Contract 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 33 preceding pages together with the 7 Schedules annexed are executed as follows:

SIGNED for and on behalf of the Scottish Ministers **SIGNED** for and on behalf of SWARCO UK Limited

[Redacted]

[Redacted]

In the presence of

In the presence of

[Redacted]

[Redacted]

v. 27 February 2020

This and the following [] pages comprise Schedule 1 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 1 – SPECIFICATION

Services Brief

v. 27 February 2020

This page comprises Schedule 2 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 2 - PRICING SCHEDULE

This Call-off Contract has been raised in accordance with the Schedules of Framework Agreement TS/LCED/SER/2019/01. The prices and rates of this Call-off Contract are in accordance with the terms detailed in Schedule 2 of Framework Agreement TS/LCED/SER/2019/01.

v. 27 February 2020

This page comprises Schedule 3 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 3 – MANAGEMENT ARRANGEMENTS

This Call-off Contract has been raised in accordance with the Schedules of Framework Agreement TS/LCED/SER/2019/01. The Management Arrangements of this Call-off Contract are in accordance with the terms detailed in Schedule 4 of Framework Agreement TS/LCED/SER/2019/01.

v. 27 February 2020

This page comprises Schedule 4 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 4 – KEY INDIVIDUALS

This Call-off Contract has been raised in accordance with the Schedules of Framework Agreement TS/LCED/SER/2019/01. The Key Individuals of this Call-off Contract are in accordance with the terms detailed in Schedule 1 Part 3 of Framework Agreement TS/LCED/SER/2019/01.

This page comprises Schedule 5 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

Guidance notes: This schedule is only required in the event that data is processed in connection with the call-off contract. Otherwise, Not Used

SCHEDULE 5 – DATA PROTECTION

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

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

Subject matter and duration of the Processing of Personal Data

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

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Authority

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

This page comprises Schedule 6 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 6 – EXIT MANAGEMENT

This Call-off Contract has been raised in accordance with the Schedules of Framework Agreement TS/LCED/SER/2019/01. The Exit Management of this Call-off Contract are in accordance with the terms detailed in Schedule 8 of Framework Agreement TS/LCED/SER/2019/01.

v. 27 February 2020

This page comprises Schedule 7 to the foregoing Contract between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 7 – CYBER SECURITY ARRANGEMENTS

This Call-off Contract has been raised in accordance with the Schedules of Framework Agreement TS/LCED/SER/2019/01. The Cyber Security Arrangements of this Call-off Contract are in accordance with the terms detailed in Schedule 11 of Framework Agreement TS/LCED/SER/2019/01.

v. 27 February 2020

This page comprises Schedule 6 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 6 – PARENT COMPANY GUARANTEE

NOT USED

v. 27 February 2020

This and the following [] pages comprise Schedule 7 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 7 – TRANSPARENCY REPORTS AND SUPPLIER SENSITIVE INFORMATION

NOT USED

This page comprises Schedule 8 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 8 – Exit Strategy

1. Contract re-tender and re-negotiation

The Supplier shall carry out services necessary to allow Authority to undertake the competitive re-bid of a framework agreement, or to take over the provision of the Services itself. These services are detailed in Principal Work Package 3.

2. Assistance with termination

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

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

3. Post termination

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

This page comprises Schedule 9 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 9 – DATA PROTECTION

Guidance notes: This schedule is only required in the event that data is processed in connection with the framework. Otherwise, Not Used.

v. 27 February 2020

This page comprises Schedule 10 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 10 – APPROVED SUB-CONTRACTORS

NOT USED

This and the following [] pages comprise Schedule 11 to the Framework Agreement between the Scottish Ministers and SWARCO UK Limited

SCHEDULE 11 CYBER SECURITY REQUIREMENTS

Definitions

The defined terms used in this Schedule 11 shall have the following meanings:

“Cyber Implementation Plan” means the cyber implementation plan set out in Section B (*Cyber Implementation Plan*) of the Annex to this Schedule 11;

“Cyber Security Incident” means any thing, event, act or omission which gives, or may give, rise to:

- (i) unauthorised access to any information system, data or electronic communications network (including breach of an applicable security policy);
- (ii) reduced integrity of an information system, data or electronic communications network;
- (iii) unauthorised use of any information system or electronic communications network for the processing (including storing) of data;
- (iv) disruption or change of the operation (including takeover of control, malicious disruption and/or denial of service) of an information system or electronic communications network;
- (v) unauthorised changes to firmware, software or hardware;
- (vi) unauthorised destruction, damage, deletion or alteration of data residing in an information system or electronic communications network;
- (vii) removal or limiting the availability of, or possibility to use, data residing in an information system or electronic communications network;
- (viii) the appropriation, publication, dissemination or any other use of data by persons unauthorised to do so; or
- (ix) a breach of the Computer Misuse Act 1990, the Network and Information Systems Regulations 2018, the GDPR or the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Communications Act 2003, the Official Secrets Act 1911 to 1989, or any other applicable legal requirements in connection with cybersecurity and/or privacy

in connection with the Services and/or the Framework Agreement;

“Cyber Security Requirements” means the Authority's requirements in connection with cyber security as set out in Section A (*Cyber Security Requirements*) and Section B (*Cyber Implementation Plan*), of the Annex to this Schedule 11.

“Good Industry Practice” in relation to any undertaking and any circumstances, means the exercise of skill, diligence, prudence, foresight and judgment and the making of any expenditure that would reasonably be expected from a skilled person in the same type of undertaking under the same or similar circumstances.

1. SUPPLIER'S WARRANTY

- 1.1. The Supplier warrants and undertakes that it shall meet and comply with the Cyber Security Requirements in connection with the provision of the Services and the Framework Agreement (including in respect of any certification or accreditation).

2. SUPPLIER'S OBLIGATIONS

- 2.1. The Supplier shall implement and maintain all security measures:
- (a) as may be required under applicable laws (including the Network and Information Systems Regulations 2018);
 - (b) to enable it to discharge its obligations under this Schedule 11; and
 - (c) to ensure there are no Cyber Security Incidents
- in all cases to the Authority's reasonable satisfaction and in accordance with Good Industry Practice.
- 2.2. The Supplier shall notify the Authority promptly of any changes in its ability to meet the Cyber Security Requirements, including any changes to certifications and accreditations.
- 2.3. The Supplier shall assist the Authority to comply with any applicable cyber security requirements, codes, policies and practices in connection with the Services and/or the Framework Agreement.

3. CYBER SECURITY INCIDENTS

- 3.1. The Supplier shall notify the Authority immediately as soon as it knows or believes that a Cyber Security Incident has or may have taken place and shall provide full details of the incident and any mitigation measures already taken and intended to be taken by it and (where applicable) any mitigation measures recommended by it to be taken by the Authority. Where such initial notification is not in writing, then the Supplier shall provide the Authority with a written notification setting out the details required under this paragraph 3.1 promptly and in any case within twelve (12) hours from the initial notification.
- 3.2. Following a Cyber Security Incident, the Supplier shall:
- (a) use its best endeavours to mitigate the impact of the Cyber Security Incident;
 - (b) investigate the Cyber Security Incident completely and promptly, and shall keep the Authority fully informed of the progress and findings of its investigation;
 - (c) where required to do so, inform any applicable regulator of the Cyber Security Incident; and
 - (d) take any action deemed necessary by the Authority in the circumstances, including complying with any additional security measures deemed appropriate by the Authority.
- 3.3. The Supplier shall perform its obligations under this paragraph 3 at no additional charge to the Authority, unless it can show that the Cyber Security Incident was caused solely by an act or omission of the Authority.

4. INFORMATION AND AUDIT

- 4.1. Promptly upon request, the Supplier shall provide to the Authority such information and records in connection with the Supplier's obligations under this Schedule 11 as the Authority may request.
- 4.2. The Supplier agrees (and procures that its sub-contractors agree) that the Authority, its agents and its representatives may conduct such audits as are considered necessary by the Authority acting reasonably, including for the following purposes:
- (a) to ascertain the impact of any Cyber Security Incident;

- (b) to review and verify the integrity, confidentiality and security of any data relating to the Framework Agreement; or
 - (c) to review the Supplier's and/or any sub-contractor's compliance with its obligations under this Schedule 11.
- 4.3. The Supplier shall (and shall ensure that any sub-contractor shall) provide the Authority, its agents and representatives with all reasonable co-operation and assistance in relation to audits, including:
 - (a) all data and/or records requested by the Authority;
 - (b) access to any relevant premises and to any equipment owned/controlled by the Supplier, any associated or group company and any sub-contractor and, where such premises and/or equipment are outwith the control of the Supplier, shall secure sufficient rights of access for the Authority, its agents and representatives as are necessary to allow audits to take place; and
 - (c) access to any relevant individuals.
- 4.4. The Authority shall use its reasonable endeavours to:
 - (a) provide at least 10 days' notice of its intention to conduct an audit (but is not obliged to do so); and
 - (b) ensure that the conduct of each audit does not unreasonably disrupt the Supplier and/or sub-contractor or delay the performance of the Framework Agreement.
- 4.5. The parties shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 4 [unless an audit identifies a breach of the terms of this Schedule 11 by the Supplier and/or sub-contractor, in which case the Supplier shall reimburse the Authority on demand for all the Authority's reasonable costs and expenses incurred in conducting the audit.]

5. BREACH OF CYBER SECURITY REQUIREMENTS

- 5.1. A breach of this Schedule 11 by the Supplier is a material breach for the purposes of clause 42 (Termination Rights).
- 5.2. If the Supplier fails to comply with the provisions of this Schedule 11, the Authority may take any action it considers appropriate or necessary (and the Supplier shall comply with the Authority's requests in this respect), including:
 - (a) suspending the whole or any part of the Supplier's obligations under the Framework Agreement;
 - (b) requiring that specific sub-contractors connected with such breach be removed from their involvement with the Services and this Agreement and cease to have any access to the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement;
 - (c) requesting the Supplier return and/or arrange the evidenced secure and permanent destruction of the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement; and
 - (d) implementing additional or alternative measures, both technical and organisational, to protect and secure the Purchaser's Protected Information and any Personal Data Processed in connection with the Services under the Framework Agreement.

ANNEX CYBER SECURITY REQUIREMENTS

The cyber security requirements applicable to the Framework Agreement are set out in this Annex. Section A (*Cyber Security Requirements*) includes the Authority's requirements in connection with cyber security and Section B (*Cyber Implementation Plan*) sets out further details on how the Supplier will meet such requirements.

Section A: Cyber Security Requirements

Overview of requirements:

Cyber risk profile	<ul style="list-style-type: none">Moderate
Certification requested for assurance purposes	<ul style="list-style-type: none">Cyber Essentials Plus or equivalent
Authority's risk management approach	<ul style="list-style-type: none">Cyber Implementation Plans accepted

The Supplier shall meet the following requirements:

[Redacted]

Section B: Cyber Implementation Plan

The Supplier shall follow the agreed Cyber Implementation Plan to meet the requirements of Section A by no later than the date(s) set out in the Cyber Implementation Plan. The parties shall review the Supplier's progress on the Cyber Implementation Plan regularly every [4 weeks]. If the Supplier fails to meet the commitments set out in the Cyber Implementation Plan, this shall be considered to be a material breach of this Agreement for the purposes of paragraph 5.1 (Breach of Cyber Security Requirements) of this Schedule 11.

CYBER IMPLEMENTATION PLAN

FRAMEWORK AGREEMENT DETAILS

1. Framework Agreement title	COMPETITION FOR THE SINGLE SUPPLIER FRAMEWORK AGREEMENT FOR CHARGEPLACE SCOTLAND CPNO SERVICES
2. Framework Agreement number	TS/LCED/SER/2019/01
3. Unique SCAS Cyber Risk Assessment Reference number	SAQ-RWQA6M2C
4. SCAS Cyber Risk Profile	Moderate
5. Name of supplier, and details of authorised officer completing this CIP	Organisation SWARCO UK Authorised officer name, position and contact details [Redacted]

PROPOSED APPROACH TO AREAS WHERE MINIMUM BENCHMARK REQUIREMENTS ARE NOT CURRENTLY MET

6. Using the feedback from the SCAS SAQ Report, please provide:

(i) details of areas where your organisation does not currently meet the benchmark minimum requirements for this contract; and

(ii) for each such area identified, details of the actions you intend to take to achieve the minimum benchmark requirements, OR the alternative mitigations or controls you have in place, OR your reasoning as to why compliance with the minimum benchmark requirements is not necessary for this contract.

Details of minimum benchmark requirements not currently met	Supplier's alternative mitigations (effective from contract commencement)	Supplier's reasoning as to why compliance is unnecessary for this contract.	Supplier's proposed further action (to be implemented during the contract)	By which date(s) do you undertake to have implemented such further action?
<i>Please refer to the feedback in your SCAS SAQ Report in order to complete this section.</i>				

v. 27 February 2020

[Redacted]	[Redacted]	N/A	[Redacted]	[Redacted]

v. 27 February 2020