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IMPLEMENTING PROJECT BANK ACCOUNTS IN CONSTRUCTION CONTRACTS

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(* Named Bodies under Scottish Government's Banking Services Framework but also applies in principle to other customers)

Purpose and Applicability

1. The purpose of this guidance is to enable the implementation of Project Bank Accounts (PBAs) in construction contracts. It applies to Scottish Government and relevant bodies in scope of the Scottish Public Finance Manual (SPFM)¹. Within this guidance they are referred to as “Scottish Government bodies”.
2. Other organisations outside SPFM that can also award public works contracts are referred to as “other public bodies”. Organisations providing delivery mechanisms for the construction of public buildings and infrastructure, that are neither Scottish Government bodies nor other public bodies, are referred to as “other bodies”. Organisations in both categories are asked to implement PBAs and integrate this guidance into their procedures.
3. For generic matters, the term “commissioning bodies” refers to organisations belonging to any of the types of bodies noted above. Likewise, “main contract” and “main contractor” refer to scenarios common to public works contracts/contractors and contracts let by other bodies for the construction of public buildings and infrastructure.
4. This guidance provides for a common approach with standard practices and resources for PBAs in Scotland, to enable local implementation with minimal resource input under a consistent national framework.

Structure of Guidance

5. This guidance has been set out to reflect the chronology and dependencies of actions necessary to enable payments to be made to businesses participating in a PBA, known as named beneficiaries. It is based on a collaborative multi-disciplinary approach to PBA administration.
6. Before a PBA can be cited as a condition of tender or be used to pass any contract payments, the commissioning body must first of all have set up the enabling infrastructure and selection framework. The first step is to appoint the bank and set up the processes that will enable a bank account to be opened and operated as a PBA. A “PBA Champion” role is proposed in order to marshal corporate PBA activity including both internal processes and external relationships.
7. Scottish Government’s Banking Services Framework Agreement with the Royal Bank of Scotland (RBS) provides engagement and implementation processes for the bodies named in the Agreement. Other commissioning bodies can engage PBA services separately with RBS, or with another provider by using the Minimum Standards and information in this guidance.
8. A PBA must be opened in the joint names of the commissioning body and the main contractor. Both parties must also sign the trust deed and instruct the bank to authorise payment from the PBA to named beneficiaries. The commissioning

¹ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro> (“Applicability” paragraph 7 et seq.)

body must decide on the ability of the account to accrue interest and who must pay any applicable banking charges.

9. The banking infrastructure must be supplemented by the contractual and legal basis for a PBA to operate effectively before it can be cited as a condition of tender. This guidance provides commissioning bodies with templates for a contract notice, contract terms and a trust deed which, together with the account opening forms, are collectively known as the PBA documents.
10. Only once the process for an integrated banking, contractual and legal framework exists can the selection criteria for projects and participants be considered. Separate monetary implementation thresholds have been set for building and civil engineering projects. This guidance also covers factors affecting the suitability of project delivery models and supply chain firms. The overall selection framework seeks to implement PBAs consistently on a national basis.
11. The enabling infrastructure and selection framework allow contract payments to be made to named beneficiaries of the trust. The guidance sets out how payment applications are elicited, evaluated and certified within a PBA project and how named beneficiaries receive payment from the PBA. A project-specific payment timeline is proposed as a collaborative approach to mapping out interconnected supply chain payment processes.
12. A series of standard metrics is proposed to help assess PBAs' performance on a consistent and comparable national basis and to help inform good practice, continuous improvement and policy development. This guidance also refers to a broader range of matters upon which commissioning bodies should obtain feedback from the supply chain, where possible. All types of feedback on PBA practice and performance should be sent to Scottish Government's PBA mailbox: ProjectBankAccount@gov.scot

Project Bank Accounts in Practice - Summary

13. The commissioning body must communicate that a PBA as set out in this guidance will be a condition of tender and include PBA provisions in the procurement documents where the estimated award value is at least in the following amounts:
 - £2,000,000 for building projects; and
 - £5,000,000 for civil engineering projects.
14. The successful bidder must include the PBA provisions in all invitations to tender for work subcontracted to tier 2 businesses.
15. Where potential exemptions do not apply to tier 2 businesses, they will engage with the PBA according to their subcontract award value, as follows:
 - if it is at least 1% of the main contract award value, they must join the PBA; or

- if it is less than 1% of the main contract award value, they can request to join the PBA. Joining will be subject to the agreement of the trustees and the main contractor.
16. All tier 2 businesses must include the PBA provisions in all invitations to tender for work they intend to sub-subcontract. Any sub-subcontractor (i.e. tier 3) to which potential exemptions do not apply can request to join the PBA irrespective of the value of their sub-subcontract award. Joining will be subject to the agreement of the trustees and their employer.
 17. The tier 1 and all tier 2 businesses, even where the latter is not a named beneficiary of the PBA, must show in their payment applications the separate amounts due to all the named beneficiaries they employ. A contractual right for one business to value the amount due to another is neither revoked nor negated by a PBA.
 18. The amount of the main contract interim certificate must be allocated among named beneficiaries by the main contractor in order to provide a mandate for the bank to pay the commensurate amount to each of them from the sum deposited into the PBA by the commissioning body.
 19. Operation of a PBA neither negates nor revokes the Construction Act's ban on conditional payment provisions. Any business whose payment from the PBA is insufficient for it to fully pay another business will need to pay the outstanding balance and this shall be done outside the PBA. The PBA must not be used as a repository for accumulating cash retention under the main contract or to hold money relating to a dispute between supply chain businesses.
 20. Each named beneficiary will receive payment of the amount noted on the mandate within five days of the commissioning body depositing the value of the main contract interim certificate into the PBA. Money allocated to named beneficiaries is ring-fenced from other businesses, including the main contractor. Supply chain businesses which are not named beneficiaries will be paid from their employer's bank account i.e. not the PBA. That money will not, unless suitable arrangements are made, be ring-fenced.

Background

21. The Review of Scottish Public Sector Procurement in Construction² noted that the construction sector suffers from endemic late and extended payment terms between businesses. It recommended that the Scottish Government should trial PBAs.
22. Scottish Government's Procurement and Property Directorate (SPPD, formerly Procurement and Commercial Directorate, SPCD) co-coordinated pilot projects and worked with the banking sector to develop PBA services, including Scottish Government's Banking Services Framework Agreement³.

² [Review of Scottish Public Sector Procurement in Construction](#)

³ [Scottish Government's Banking Services Framework contract.](#)

What is a PBA?

23. A PBA is a facility provided by a commercial bank to allow a commissioning body to pay the main contractor and supply chain firms which are named as beneficiaries of the trust deed. Payments come from the amount of the interim certificate issued under the main contract allocated among named beneficiaries, who are paid simultaneously from the total amount deposited into the PBA by the commissioning body. In this guidance a PBA is set up by the commissioning body and opened in joint names with the main contractor.
24. The total amount of the interim certificate is not paid into the main contractor's bank account. The main contractor's PBA payment only reflects the work that it has directly executed plus the total amount due to supply chain firms which have not joined the PBA i.e. non-beneficiaries. Supply chain payment cashflows and contractual relationships in PBA and non-PBA arrangements are illustrated at Annex A.
25. The prohibition of conditional payment in the Housing Grants, Construction and Regeneration Act 1996⁴ (as amended⁵) still applies to all firms in a PBA-enabled project where they are performing a construction contract within the meaning of the Act, irrespective of whether they are named beneficiaries or not.
26. A PBA operates as a legal trust. Once the amount of the interim certificate has been deposited into the PBA by a commissioning body, the constituent amounts due to named beneficiaries are excluded from assets deemed to belong to an insolvent main contractor. This is known as "ring fencing" and protects named beneficiaries by preventing money which has been certified under the main contract from then being held back or reduced by the main contractor.
27. Other bodies should set up and implement PBAs by reference to this guidance, their corporate governance procedures and the project-specific contract.

Extent and Limitations of PBAs

28. A PBA deals with **how**, **when** and **to whom** cash flows. The amount of payment is still determined by the valuation process under the main contract, in terms of **why** payments are in certain amounts and **what** work they relate to. PBAs cannot resolve disputes but they do allow named beneficiaries to be paid promptly for amounts arising from disputes once an agreement has been reached under the main contract.
29. PBAs do not change any of the following perspectives:
 - Commissioning body
 - still certifies payments to the main contractor.
 - no role in calculating, agreeing or certifying payments to subcontractors.
 - still pays for work in arrears.

⁴ <http://www.legislation.gov.uk/ukpga/1996/53/section/113>

⁵ <http://www.legislation.gov.uk/ukpga/2009/20/contents>

- Main contractor
 - still values and pays for work done by subcontractors.
 - still submits interim applications to the commissioning body.
 - still obliged to perform the entire main contract.
 - still can count the entire interim certificate for financial accounting purposes.
- Generally
 - statutory obligations for VAT and other relevant taxation and accounting etc, unchanged.

30. The implementation of this guidance can help contracting authorities towards meeting their obligations under section 15(5)(d) of the Procurement Reform (Scotland) Act 2014. To ensure full legislative compliance contracting authorities should, where reasonable and practicable, supplement PBAs with other means which allow non-beneficiaries to be paid no later than 30 days after the invoice or equivalent claim relating to the payment is presented.

Benefits of Prompt Payment

31. Prompt payment helps keep firms solvent and viable. It improves the overall return on investment in public assets by promoting the flow of cash along supply chains and out into the wider economy, enabling a range of subsequent investment and purchasing decisions beyond the delivery of a specific public asset. This benefits individuals, businesses and the broader Scottish economy.
32. Prompt payment also helps to avoid costs incurred by the consequences of late payment, particularly the insolvency of otherwise viable businesses, resultant redundancies and wider costs such as a greater draw on state benefits and loss of tax revenue. A diminishing supply base also reduces competition which can increase tender prices, stifle innovation, and undermine finished quality and overall value for money.

Essential Elements of a PBA

33. A Scottish Government body using a PBA shall set it up with the main contractor to operate as follows:
- the bank account must be in their joint names.
 - both must be named as trustees in the trust deed.
 - they must jointly instruct the bank to authorise payments from the PBA.
34. For Scottish Government and other public bodies, a trust is created by a trustor (public body) and trustees (public body and main contractor) signing a trust deed which complies with the law of Scotland and which names the beneficiaries to be paid from the PBA (main contractor and participating subcontractors). The following table outlines the various roles and actions involved in a PBA deployed by Scottish Government and other public bodies.

Entity	Role/Action						
	Truster	Trustee	Beneficiary	Opens PBA	Pays into PBA	Receives from PBA	Provides PBA
Public Body	✓	✓	x	✓	✓	x	x
Main Contractor	x	✓	✓	✓	x	✓	x
Subcontractors (beneficiaries)	x	x	✓	x	x	✓	x
Subcontractors (non-beneficiaries)	x	x	x	x	x	x	x
Bank	x	x	x	x	x	x	✓

35. Other bodies should seek appropriate advice to consider how the roles of truster, trustee and beneficiary relate to their operating arrangements for construction contracts.

Role of the PBA Champion

36. The range and diversity of commissioning bodies in Scotland, each with distinct corporate rules and practices, means that Scottish Government cannot set out a generic PBA operating system beyond the matters covered in this guidance. Commissioning bodies should nominate one or more persons to be responsible for co-ordinating corporate PBA activity, including engaging with the bank, integrating this guidance with local instructions, promoting continuous improvement and linking into Scottish Government's PBA activities.

37. Appointment of a "PBA Champion" is the first of a series of enabling activities required to ensure that an organisation can operate a PBA: see Annex B. The Champion role should be empowered with the backing of senior management to make PBA policy work in corporate practice.

38. The Champion will facilitate the alignment and maintenance of organisational PBA processes involving a range of disciplines. This guidance covers each interface and, consequently, PBA implementation may seem to be an onerous task. In fact, the necessary elements are already part of normal corporate governance and any adjustments will in themselves be minor and manageable for most organisations, where enabled by and implemented consistently with this guidance.

Opening and Setting up a PBA

Appointing the Bank

39. Commissioning bodies should appoint the bank that will provide PBA services, and establish core processes, before citing the PBA as a condition of tender in a specific project. Commissioning bodies should discuss the following matters (covered in more detail in the following paragraphs) with the bank **as early as possible** so that the PBA is available to process the initial project payment cycle:

- IT and system compatibilities;
- account set up, access rights and security;
- operational processes and dependencies; and
- training.

40. The bank is responsible to the commissioning body for the banking infrastructure within which the PBA sits; and to both the commissioning body and the main contractor for services governing the efficiency and effectiveness of a project-specific PBA.

Account Demarcation

41. Firms delivering the same project all join the same PBA. They may be involved in separate and concurrent PBAs if working on more than one project for the same commissioning body, or on projects with PBAs for other commissioning bodies.

Scottish Government Banking Services Framework

42. The scope of Scottish Government's framework agreement with the Royal Bank of Scotland (RBS) includes provision of PBA services incorporating internet banking ("Bankline"). The related charges' tariff is only available to the organisations named in the agreement. Commissioning bodies should contact SPPD's Banking Services' framework manager for guidance on how to call off a contract for PBA services with RBS⁶.

43. RBS is required to maintain service continuity for an existing PBA that overruns the framework expiry date (31 July 2022) where stated in the terms of the commissioning body's call-off contract. Alternatively, commissioning bodies can choose to migrate to RBS's successor if RBS is not awarded any subsequent framework.

44. Main contractors and their prospective subcontractors do not need to be existing customers of RBS in order to be invited to tender for a public contract containing a PBA provided by RBS. A firm's status in this regard is not a relevant evaluation criterion and has no bearing in a procurement process leading to the award of a public contract.

45. An account to be used for the purposes of a PBA under the framework must be opened in the joint names of the commissioning body and the main contractor. Both must agree the way which the account is to operate, including what they expect of each other and circumstances where action is needed to make payments.

46. The terms of the agreement will be specific to each project and should not be difficult to reach where the PBA is either called off from Scottish Government's Banking Services Framework or, alternatively, set up in accordance with this guidance. Either scenario implies a standard approach to the PBA, allowing both parties to consider how their specific corporate governance procedures will

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<https://www.gov.scot/Topics/Government/Procurement/directory/pscontractcentgovt/BankingServicesFramework2018>

function within the PBA. Instructions for opening a PBA with RBS under the framework are noted at Annex C.

47. RBS will not involve itself in matters concerning the main contract or subcontracts, or issues arising between the main contractor and the commissioning body. RBS will keep the account open for as long as the commissioning body and main contractor wish to operate it, during which time RBS has no legal or financial claim on money in the account. RBS is not a trustee so has no control over money in the PBA and cannot use the money to offset any debt owed to it by a named beneficiary.
48. The account holders will need to be initially set up on Bankline as PBA users, followed by setting up the specific project as a PBA on the system: see instructions at Annex D and E. RBS has protocols for these steps and can provide training for PBA account holders, including the main contractor. The account holders, as separate corporate entities with differing corporate governance rules, will need to consider for themselves how they administer the internet banking system, for example:
- Writing corporate PBA procedures.
 - Checking amounts of payments and recipients.
 - Inputting amounts of payments into the internet banking system.
 - Checking inputs.
 - Authorising money transfer to beneficiaries.
 - Auditing PBA procedures and transactions.
49. Bankline requires account holders to nominate a person to the role of “Administrator” to oversee the creation of new users, new user accounts, etc. Where resources permit, the “Administrator” role should be segregated from the payment inputter role (the “Preparer”): however it is possible to combine these roles. Bankline enforces segregation of duties between the “Preparer” and the payment “Authoriser”.

Other Banks

50. Scottish Government bodies not named in the framework agreement will need to make other PBA banking arrangements. The following banks provide defined PBA services:
- RBS, outside of Scottish Government’s framework agreement.
 - Barclays Bank plc.
 - Lloyds Banking Group
 - Danske Bank.
51. Other banks may also be able to provide PBA services commensurate with this guidance document. The Minimum Requirements at Annex F set out recommended operating parameters for a PBA in Scotland.

PBA Practice and Project Deadlines

52. Project deadlines should not be delayed to incorporate a PBA. However, the PBA should be incorporated into such deadlines **at the outset** so that a commissioning body's programme for its first PBA project includes time to set up the banking infrastructure and obtain documentation from the prospective main contractor. PBAs on subsequent projects should then be "business as usual".
53. Arrangements for processing PBA payments generally take less time than maximum durations allowed by corporate instructions and/or main contracts, and so should not be prolonged simply to match them.

Statutory Requirements

54. All banks are required by financial sector legislation to check the credentials of any entity seeking to open an account. These processes - referred to as Know Your Business and Know Your Customer ("KYB/KYC") - typically take at least 20 working days. All parties who are involved in setting up and operating the PBA should ensure that form-filling etc, is accurate, complete and uncontested **at the first time of asking** to avoid unnecessary delays.

Dependencies and Chronology

55. The PBA Champion should ensure that dependencies and chronology involved in the bank's PBA opening procedures are mapped, including establishing the following:
- minimum requirements needed to access and operate the electronic banking platform;
 - whether forms are to be completed electronically or in ink;
 - compatibility of corporate nomenclature with form requirements; and
 - verifying acceptability of proposed corporate signatories.

Business Continuity

56. The PBA Champion should initiate business continuity measures to ensure sufficient cover and contingency is in place to overcome unforeseen absences of staff allocated to executive internet banking roles. Corporate PBA procedures should be supported by up to date, complete and accessible local guidance.

IT and Related Technology Interfaces

57. As a general rule, any commissioning body already using an internet banking platform to access commercial banking services for corporate purposes should be able to operate a PBA as set out in this guidance. However, the Champion should engage early with relevant corporate specialists to ensure that PBA objectives are served, not limited or constrained, by matters including the following:
- network accessibility and security;
 - software compatibilities and upgrades' regime;
 - hardware operability; and (insofar as possible)
 - systems' interoperability between different businesses.

Setting up the Trust Deed

58. The need for parties to sign trust and related documents is a logistical as well as an administrative process. The PBA Champion shall ensure that the signatories know to be **in the right place at the right time** and also that carriage durations for original documents are included in the project execution programme to avoid unnecessary delays.

Operating the Internet Banking Platform

59. The commissioning body and the main contractor will each need to determine how to use the internet banking platform to manage project payments within their respective corporate rules. This is no different from deciding how any financial and/or accounting system is deployed safely, securely and efficiently. Factors include the following:

- login credentials and access permissions for staff;
- the functionalities available at different permission levels;
- the way in which data will be organised and segregated; and
- the overall cost implications of the associated bank charges.

Training and Testing

60. The PBA Champion shall clarify if the bank requires the PBA to be opened before it permits access to, and training on, the internet banking platform. The training regime itself should be based on clear and realistic objectives and take place in a fully-supported environment enabled with appropriate audio/visual capability including live access to relevant systems. If possible, corporate PBA processes should be tested on the relevant systems and people before making a “live” contractual payment. The first payment cycle in a commissioning body’s first PBA **should build-in extra time** to ensure that processes are followed and checked. RBS provides training on Bankline free of charge.

Charges

61. The party responsible for paying any bank charges associated with the PBA should ensure that payment arrangements have been fully understood and enabled including, where necessary:

- depositing an amount to cover the charges separately from other amounts deposited for interim certificate purposes; and
- monitoring to ensure charges are paid to, and collected promptly by, the bank.

62. Commissioning bodies named on Scottish Government’s Banking Services Framework Agreement shall pay charges levied by RBS. The related services’ tariff is made available to commissioning bodies when a contract is called off from the Agreement. The total chargeable amount per project under the framework will typically be less than £1,000. Other commissioning bodies electing to include PBA charges as a pricing point in the tender for a main contract should ensure that the procurement documents state as such.

Interest

63. RBS does not offer interest-bearing PBAs under Scottish Government’s Banking Services Framework. Other PBAs can be set up to be interest-bearing. Whether

or not this facility is activated and, if so, which of the account holders receives such accruals, is a policy matter for commissioning bodies to consider.

64. Scottish Government bodies not named on the Banking Services Framework should not normally set up a PBA to be interest bearing. This is because in most cases, the total amount accrued will be negated by the resource cost necessary to manage it, including procedures for returning it to the Scottish Consolidated Fund⁷. Exceptionally, however, when such a body commissions a very high value project it should calculate the costs and benefits of both alternatives and consider opening an interest-bearing account where this is available and estimated to produce overall value for money.
65. Other public bodies and other bodies should consult their specific corporate governance rules in terms of, initially, the feasibility of accruing interest in a PBA, then evaluate the benefits and costs of doing so.

Completing the PBA Set-Up

66. Commissioning bodies shall require all bidders to submit the following documents in a complete, accurate and uncontested manner with their tender:
- account-opening forms;
 - internet banking forms; and
 - trust documents, including subcontractor beneficiaries where known.
67. This will help ensure that the PBA can be set up and implemented as soon as possible, aiming to do so in time for the first payment cycle. Where bidders are unable to submit fully-completed documents, commissioning bodies should consider the reasons provided in mitigation. In any event, PBA documentation that cannot be fully submitted should be expedited prior to contract award in order to minimise delays post-award.

Completing the Trust Deed

Project-Specific Trust Deed

68. A trust deed must be agreed for each project that uses a PBA. Any arrangement for a trust deed to cover more than one main contract, from the commissioning body's perspective, is not recommended.

Scottish Government Template Trust Deed

69. Scottish Government bodies that would normally consult the Directorate for Legal Services can include the template provided at Annex G. Circumstances under which fundamental or substantial amendments to the template are considered necessary should be fully documented and made available to Scottish Government (for feedback purposes).

Role of the Bank

70. The commissioning body shall intimate the trust agreement to the bank and request a letter which acknowledges the following, to provide the commissioning

⁷ <http://www.gov.scot/Topics/Government/Finance/spfm/Intro>

body with additional comfort that the funds in the PBA are protected i.e. ring-fenced:

- the bank has received of a copy of the trust deed; and
- the bank confirms that it accepts that the funds in the PBA are trust property.

Operation and Limitation of Trust Status

71. The operation of a trust deed in a PBA does not of itself create any direct works contract between the commissioning body and any of the subcontractor beneficiaries. The commissioning body's only direct relationship with firms participating in the PBA is that of being a trustee in relation to the named beneficiaries (main contractor and subcontractors), which is governed by the trust deed, not the main contract.

Main Contractor Completion of Trust Documents

72. The commissioning body shall obtain full, accurate and uncontested completion of PBA documents from the main contractor. Trust documents should be signed in ink i.e. no typed or scanned signatures. Once the main contractor signs the main contract, he must also include the additional party agreement in tender documents sent to prospective subcontractors to enable them to also become beneficiaries.

PBA Value Thresholds in Main Contracts

Threshold for Application

73. Scottish Government bodies shall, in the call for competition, communicate that a PBA will be a condition of tender and include PBA documents⁸ in the procurement documents for public works contracts and framework agreements⁹ (and other longer term delivery models) with an estimated award value (before VAT is added, where applicable) at least in the following amounts:

- £2,000,000 for building projects and
- £5,000,000 for civil engineering projects.

74. The thresholds are intended to facilitate the national implementation of PBAs and to help commissioning bodies and main contractors integrate them into ordinary practice by balancing policy coverage with corporate capability and capacity. Accordingly, for consistency purposes, other public bodies and other bodies are asked to adopt these thresholds. The higher application threshold for civil engineering projects reflects higher average contract award values than building projects.

75. The value of the main contract at award will remain the benchmark for PBA application for the duration of the contract. This is the only time the project cost is fixed before the final account is agreed. Final cost estimates do not provide an

⁸ PBA contract terms, trust deed and bank account opening forms

⁹ Excludes contracts called off after 19 March 2019 from framework agreements already in place before that date.

unequivocally objective benchmark as they usually differ as between the commissioning body and main contractor.

76. The main contractor must include the PBA documents in all sub-contracts with firms it employs and ensure that such subcontractors do likewise with firms they employ. Subcontractors must join the PBA if the potential exemption factors do not apply to them and their subcontract award value is at least 1% of the main contract award value. Other subcontractors, and sub-subcontractors, should be allowed to join the PBA upon request if the potential exemption factors do not apply to them, and their employer and the trustees agree. Circumstances which prevent this should be fully documented and made available to the commissioning body and Scottish Government (for feedback purposes).

Marginal Estimates/Awards

77. A project estimated to exceed the PBA threshold but whose contract award value is less than it shall deploy the PBA. While such transitional scenarios are likely to be very rare, a below-threshold award value is unlikely to negate the underlying reasons for using a PBA.
78. A commissioning body whose pre-procurement project estimate is just below the PBA threshold should consider hedging against an above-threshold contract award by including PBA documents in the procurement documents and deploying them as a condition of the main contract.

Retrofitting

79. Commissioning bodies may explore the feasibility of retrofitting a PBA prior to main contract award with the prospective main contractor where PBA documents have not been issued with the procurement documents.
80. If the commissioning body intends to award the main contract without all of the PBA documentation in place, it should seek to obtain complete, accurate and uncontested PBA documents and implement the PBA as soon as practicable.

Including the PBA in the Tender and Contract

81. The PBA must be enabled by the terms of the public works contract, or equivalent contracts let by other bodies for the construction of public assets. The terms need to cover the following provisions:
- payments due under the construction contract are to be routed through the PBA;
 - explanation of how the PBA is to operate; and
 - explicit statement that payments into the PBA qualify as “discharge of payment” (up to the amount paid in).
82. Commissioning bodies should obtain legal advice on the compatibility of the intended form of main contract and overall PBA governance arrangements, particularly if considering implementing a PBA under a standard form of contract that has not been drafted from a Scots law perspective.

83. Examples of selection stage notices and contractual enabling clauses are noted at Annex H, for illustration and reference purposes. While they are considered suitable for use in most cases, commissioning bodies should ensure they are suitable for specific procurement exercises. Further guidance for actions related to the PBA which are required of the main contractor during the tender period is noted at Annex I, including a note of relevant information to be supplied by the commissioning body so that the main contractor can convey it to subcontractors: see Appendix I - 1.

Subcontracts

Enabling Provisions

84. Contracts between firms in the project supply chain must contain suitable PBA provisions, in respect of which the contract let by the commissioning body shall contain the following:

- PBA documents as set out in this guidance;
- a requirement for the main contractor to include PBA documents in tender documents for all subcontracts with prospective subcontractors;
- for the main contractor to also require subcontractors to do likewise for all sub-subcontracts with prospective sub-subcontractors; and
- a requirement that the PBA documents shall be replicated in contracts between supply chain firms amended only as necessary to give effect the operation of the PBA at that level.

Potential Exemption Factors

85. The following broad questions cover factors that could potentially preclude subcontractors and sub-subcontractors from becoming PBA beneficiaries. While this is principally a matter for the employing and employed parties within normal contract management, the commissioning body should ensure that it monitors the throughput both of named beneficiaries and payments in the PBA.

- Is the firm's delivery/invoicing regime compatible with a PBA? For example, are materials charged as an aggregated bulk across several sites?
- Can the firm's payment cycle be aligned for compatibility with the main contractor's cycle? For example, is it weekly or out of phase with the main contract?
- Is the firm's entire contract duration shorter than one payment cycle of the main contract?

Completion of PBA Documents by Subcontractors

86. The prospective main contractor should seek to obtain full, accurate and uncontested completion of PBA documents from known subcontractors for them to become named beneficiaries in time to sign the trust deed at main contract award. Subcontractors appointed after this can join the PBA by signing the additional party agreement, which is the part of the overall trust deed allowing new beneficiaries to join. All beneficiaries should sign in ink i.e. no typed or scanned signatures.

87. Both trustees and the subcontractor must all sign the additional party agreement to enable the subcontractor to be admitted to the trust as a named beneficiary. Each additional party agreement should only bear the name of one subcontractor i.e. multiple subcontractors should not be aggregated on one additional party agreement template. Subcontractors who are existing beneficiaries are not required to take any action in connection with new subcontractors joining the PBA.
88. Delivery may take place by sending an electronic copy of the original signed documents unless it has already been agreed between the parties that delivery will be in a different form. If there has been no such agreement, electronic delivery would be reasonable unless the parties agreed that particular circumstances made it unreasonable.

Integration with Internet Banking

89. Where the PBA is operated using RBS's Bankline system, subcontractors need only give their bank account details to the main contractor's nominated Bankline Preparer. Subcontractors do not have any direct engagement with RBS and do not have to undergo any KYB/KYC procedures.

Dealing with Non-Deployment

90. Where subcontractors decline to join the PBA, the commissioning body should, through the main contractor, seek where possible to obtain disclosure on the reasons for non-participation and where considered appropriate constructively challenge them. This process should be fully documented by the commissioning body and made available to Scottish Government (for feedback purposes).

Paying the Interim Certificate into/out of the PBA

Overview

91. The processes for making main contract payments in a PBA are virtually identical to non-PBA payment systems. The use of a PBA should have no bearing on the amount certified by the commissioning body. There is no reason that an amount certified in a PBA-enabled project should be any different to an amount which would have been certified under traditional payment processes. The commissioning body is responsible for certifying the amount due under the main contract to the main contractor and does not invite or evaluate applications from, or certify any payments to, anyone other than the main contractor.
92. A PBA does not affect how much a main contractor should pay for a subcontractor's work. Payment should only be triggered when the prescribed contractual output has been achieved. Nor does a PBA make a subcontractor's work any more or less compliant with the subcontract under which it is performed. The main contractor is still, under a PBA, able to deduct or contra charge payments etc, where provided for in the subcontractor's contract and notified to him in accordance with the Construction Act, before the commissioning body deposits payment into the PBA.
93. The following paragraphs cover processes which culminate in named beneficiaries being paid from the PBA: see also Annex J.

Compatibility with Valuation Methods

94. The main contract should define the overall payment regime and associated trigger point(s) determining when payments become due to the main contractor. A PBA can accommodate the following broad classifications of payment regimes used in construction contracts:

- time related - traditional “measure and value”.
- activity related - milestone payments for pre-defined stages’ completion.
- proportion related - stage payments based on percentage completion.

Payment Timeline

95. The main contractor and commissioning body shall collaborate on drawing up a project-specific payment timeline to be a shared template for named beneficiaries in order to promote mutual understanding of what needs to happen, by when and from whom in the supply chain, as follows:

- PBA certification/payment/authorisation processes to be set out as a series of activities and interdependencies.
- align these with the main contract payment timescale.
- map this onto Construction Act requirements to produce an overall compliant timeline.

Payment Applications

96. The commissioning body shall make clear that an invoice (or appropriate equivalent) submitted by a main contractor will only be regarded as valid if it shows the allocation of payments to each named beneficiary at every level of the supply chain (including the main contractor) as well as the total amount.

97. The main contractor’s allocation is the sum of all the payments due under subcontracts with non-beneficiary subcontractors plus any amount due to the main contractor directly. Likewise, a subcontractor should, in the payment application to the main contractor, show the separate amounts due to beneficiaries among sub-subcontractors he employs, alongside one figure to cover the sum of amounts due to himself plus his non-beneficiary sub-subcontractors. At all levels of the supply chain, the PBA does not affect an employer’s contractual right to evaluate the amount due to an employed party i.e. the former can still adjust a payment application submitted by the latter.

98. The main contractor shall ensure that its application complies with all relevant legislation, for example “Pay Less” notices issued to subcontractors under the Housing Grants, Construction and Regeneration Act 1996 as amended¹⁰ (“the Construction Act”). This also applies to subcontractors employing sub-subcontractors, irrespective of whether or not they are named beneficiaries. This is identical to processes and dependencies in non-PBA payment systems.

¹⁰ <http://www.legislation.gov.uk/ukpga/2009/20/contents> (Part 8 of the Local Democracy, Economic Development and Construction Act 2009 and associated Scheme for Construction Contracts (Scotland) Amendment Regulations 2011).

99. The commissioning body must also ensure that it complies with the Construction Act, in terms of Pay Less notices etc, if its evaluation of the amount due under the main contract differs from the main contractor's application. The main contractor must allocate the commissioning body's evaluation among all named beneficiaries. The commissioning body cannot do this as it is only in contract with the main contractor, not any subcontractors, and so is only responsible for certifying the total amount due to the main contractor for all work carried out under the main contract.

Uninitiated or Delayed Applications

100. In a PBA, the only money that flows into the main contractor's bank account is the allocation of the interim certificate for the main contractor's own contribution to performing the main contract, plus a sum for payments relating to subcontracts with non-beneficiary subcontractors. There may be occasions when the main contractor's allocation of an upcoming interim payment could be low. This could disincentivise the main contractor from initiating an interim application even though other named beneficiaries may be due payments.

101. Where the main contractor appears to be delaying initiating the interim application process in the PBA, the commissioning body should consider raising an interim certificate in order to maintain supply chain cashflow. The main contractor's assessment of the appropriate allocations relating to work done by named beneficiaries would still be needed to enable payment through the PBA.

Conditional Payments' Prohibition

102. A PBA does not supplant the Construction Act's prohibition on conditional payments¹¹. An interim certificate issued by the commissioning body which is less than the amount applied for and insufficient to cover all of the sums owed by the main contractor to subcontractors does not mean the main contractor is able to pay them only what it has received under the main contract. The main contractor must still pay what is owed to subcontractors under the terms of their respective subcontracts (see "[Top-Up Payments](#)").

Retention in the Main Contract

103. Retention, where it applies in the main contract, could be considered to contain components of retention owed by the main contractor to subcontractors at subcontract level. The commissioning body's duty in trust to subcontractor beneficiaries of the PBA could mean that it risks becoming liable to repay their retention if the main contractor reneges. Retention at main contract level shall be held outside the PBA.

Retention in Subcontracts

104. A PBA is a device of the main contract and so cannot be used to house retention money relating to subcontracts in the supply chain. Those contracts, not the main contract, contain the rules for accumulating and releasing cash retention held by one business from another.

¹¹ The amount and timing of a payment due from a main contractor to a subcontractor is not to be dependent on the amount and timing of payment received by the main contractor from the employer.

Disputed Amounts Between Businesses

105. The ability of a PBA to ring-fence deposits relates only to payments which have been certified under the main contract. It does not apply to money relating to a dispute between businesses in the supply chain, which cannot be held in a PBA. Businesses can however make separate arrangements if they wish, which must be outside the PBA, to hold such money until the dispute is resolved.

Making Payments

106. The commissioning body should deposit the amount of the interim certificate into the PBA as soon as it is known. This discharges the commissioning body's payment obligation for work carried out under the terms of the main contract. At this point the money becomes a trust asset and the commissioning body's legal interest in it transfers from its capacity as a party to the main contract to the separate role of trustee. The commissioning body and the main contractor are required, as trustees, to manage the trust assets for the good of the beneficiaries.

Fraud

107. PBAs do not prevent attempts at fraud (for example: identity theft; online malware; bogus firms etc) so accuracy, checking and vigilance are still as relevant and necessary as they are with other IT-enabled financial processes.

Authorising Payments via Internet Banking

108. The main contractor should accurately obtain and input all relevant information into the internet banking system to enable named beneficiaries to receive payment from the PBA into their bank accounts. Once input, the main contractor's Authoriser shall instruct the bank to authorise money transfer from the PBA to beneficiaries. Depending on the internet banking system, this may be immediately visible on-screen to the commissioning body's Authoriser. In any event, both Authorisers should be in direct mutual contact to verify actions undertaken on the internet banking system.

109. The bank will not act on this instruction until the commissioning body gives its equivalent instruction. The commissioning body should check the details of the instruction given by the main contractor's Authoriser to the bank with the allocation of payments previously noted by the main contractor during the interim certificate process. Any apparent discrepancies should be notified to the main contractor's Authoriser immediately and if necessary the authorisation process recommenced. This is a simple matter of good administrative practice within a collaborative environment and does not incur additional responsibility or liability for the commissioning body. Once parity is established the commissioning body's Authoriser should instruct the bank to authorise money transfer from the PBA to beneficiaries. At that point payments are transferred into named beneficiaries' bank accounts.

110. The authorisation process therefore requires consecutive, not concurrent, instructions: first the main contractor; then the commissioning body. The bank will not authorise any payment to named beneficiaries if instructed to do so only by the main contractor or the commissioning body: it needs them both to do so. The main contractor should decide how it will check that named beneficiaries have

received their payment e.g. by exception (i.e. only if payment appears absent or late) or by requirement (i.e. confirming receipt of payment).

111. If real-time monitoring via internet banking is not enabled (e.g. temporary system downtime), the commissioning body must as a minimum obtain a copy of the transaction details of money flowing out of the PBA and into each of the named beneficiaries' business accounts. This is also important in order to verify that the PBA is meeting prompt supply chain payment objectives and to determine the effectiveness and efficiency with which it is doing so.

"Top Up" Payments

112. The PBA must not be used by the main contractor to deposit "top up" payments where the value of the interim certificate is less than the cumulative value of payments owed by the main contractor to subcontractors. The commissioning body risks potential conflict in its role as a trustee instructing the bank to authorise payment with its other role as employer in the works contract. This would arise where the instruction related to payment agreed by the main contractor with a subcontractor for work performed under their sub-contract which the commissioning body had already decided against including in a payment certificate under the main contract. As the PBA is a device of the main contract, additional payments that the main contractor needs to make to meet sub-contractual obligations to a named subcontractor beneficiary must be made outside the PBA.

Charges

113. The commissioning body should ensure that its exposure to charges levied by the bank is minimised by appropriate timing and structuring of payments to named beneficiaries. For example, where charges for "next day" payment are considerably less expensive than "same day", this should be considered where the next day is still within a 5 day period.

Leaving the PBA and Account Closure

114. The main contractor's and subcontractors' interests as named beneficiaries of the PBA cease upon their respective final payments. There is no need for any formal exit process or documents. Commissioning bodies will need to judge, on a case by case basis, the value for money of continuing to pay bank charges for keeping the PBA open after the project is completed (i.e. defects liability period or maintenance period) when durations between payments are likely to increase considerably.
115. The joint account holders will need to agree when to close the account and follow the processes advised by the banking services' provider to effect this decision.

Non-Scottish Contractors

116. There are a number of factors that may require consideration when a firm which does not have a Scottish corporate presence wishes to join a PBA.

- Currency - Scottish public contracts and contracts let by other bodies for the construction of public assets in Scotland are valued in pounds sterling. The PBA should be able, in principle, to make payments to participants in any currency, as long as the amount(s) due are covered.
- Bank procedures - the bank operating the PBA may require more time to undertake additional checks and clearances for non-domiciled entities.
- Scottish trust law - firms in the PBA will have to agree to join a trust which complies with the law of Scotland.

PBA Performance Measurement

117. The principal information recommended to be collated for measuring and understanding PBA performance is as follows, see also Annex K:

- Date of the main contractor's submission of a payment application under the main contract to the commissioning body.
- Date when the commissioning body intimated the amount of the payment certificate to the main contractor.
- Date when the commissioning body deposited the amount of the payment certificate into the PBA.
- Date when named beneficiaries received payment.
- Ongoing cumulative amount of main contract sum paid to named beneficiaries through the PBA.
- Number of named beneficiaries paid through the PBA.
- Ongoing cumulative number of payments made from the PBA to named beneficiaries.
- Percentage of each named subcontractor beneficiary's contract value paid through the PBA.
- Number of payment cycles in which the PBA was operational/not operational - main contract and for each named beneficiary's contract below the main contract.
- Number of required¹² subcontractors joining/not joining the PBA.
- Reasons given for required subcontractors not joining.
- Number of requesting¹³ subcontractors asking to join the PBA - tiers 2 and 3.
- Number of requesting subcontractors declined - tiers 2 and 3.
- Reasons given for requesting subcontractors being declined - tiers 2 and 3.

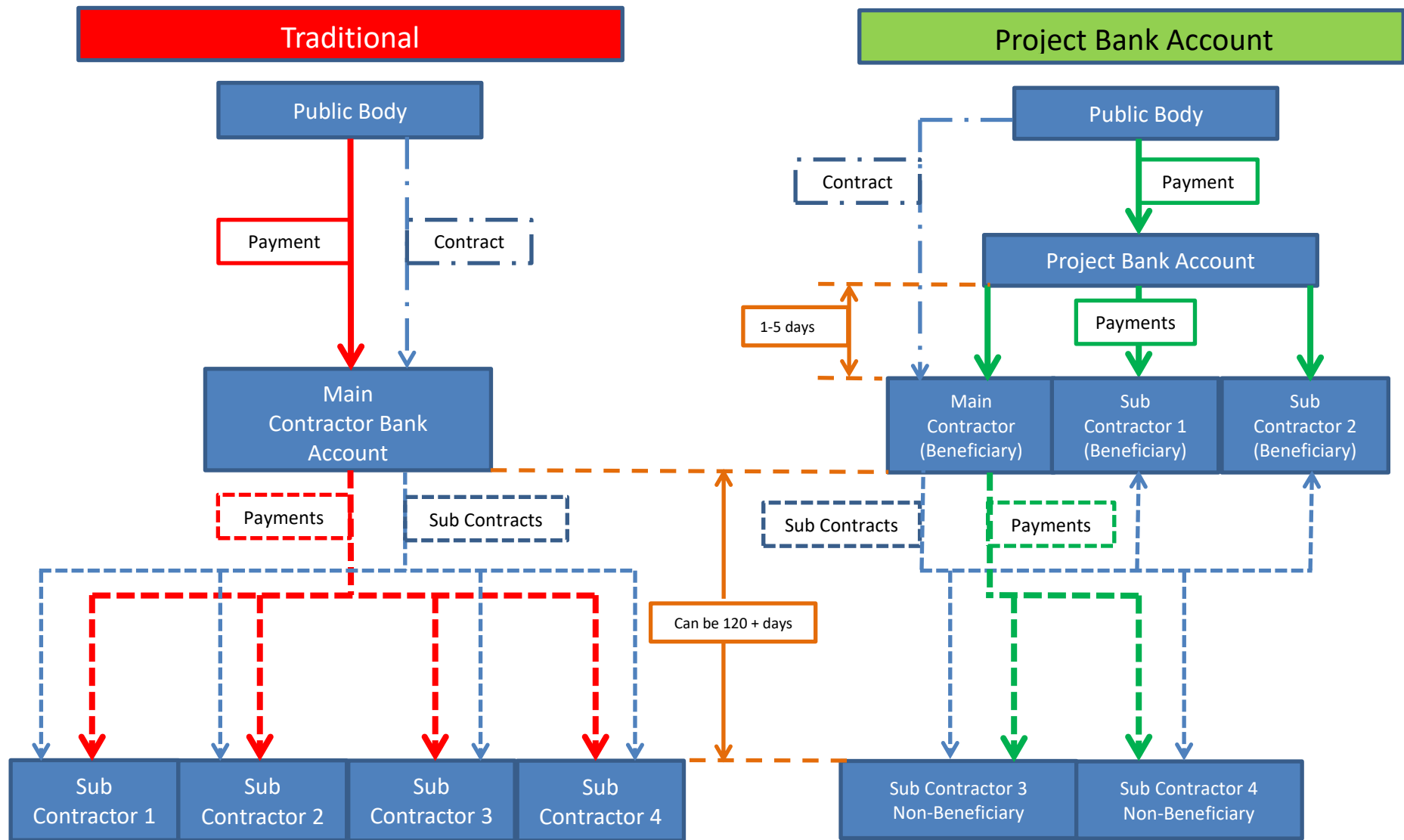
118. For reporting purposes, durations should be measured as calendar days, including weekends and all public and bank holidays. For operational purposes, durations should be programmed to exclude weekends and all public and bank holidays. PBA trustees should implement business continuity measures to ensure

¹² "Required subcontractors" are those who must join the PBA because their contract value is at least 1% of the main contract sum and are unaffected by potential exclusion factors.

¹³ "Requesting firms" are subcontractors whose contract value is less than 1% of the main contract sum or any sub-subcontractor irrespective of their contract value; who are unaffected by potential exclusion factors; and who ask to join the PBA.

as far as reasonably practicable that staff absences do not interrupt PBA activities.

Annex A - Construction Supply Chain - Contractual and Payment Illustration



Annex B - Activities for PBA Implementation

Activities (chronology indicative)		Stakeholders ¹				
		Commissioning Body	Bank	Main Contractor	Subcontractor Beneficiaries	Subcontractor Non-Beneficiaries
1	Appoint PBA Champion	✓		✓	✓ ²	
2	Identify bank to provide PBA services to comply with recommended Minimum Standards	✓				
3	Agree scope of service with bank and enter into PBA service agreement	✓	✓			
4	Complete account formalities and input corporate details	✓				
5	Set up internet banking	✓	✓	✓		
6	Devise overarching internal corporate governance principles for PBAs	✓		✓	✓ ²	
7	Devise standard corporate instructions/processes for consistent setting-up, implementation and operation of PBAs	✓		✓		
8	Integrate corporate functions to support PBA processes (e.g. IT, Finance, Construction, Procurement)	✓		✓		
9	Appoint nominees for corporate PBA internet banking duties (e.g. authoriser, auditor, deputies ³ etc)	✓		✓		
10	Implement PBA qualifying criteria in construction procurement process	✓				
11	Decide on policies for charging and interest	✓				
12	Include PBA notification in call for competition and PBA documents in procurement documents	✓		✓	✓	✓ ⁴
13	Obtain complete, accurate and uncontested agreement to PBA documents	✓		✓	✓	✓ ⁴
14	Arrange training on internet banking	✓	✓	✓		
15	Prime PBA with funds to meet bank charges	✓ ⁵		✓ ⁵		
16	Open project PBA in joint names	✓		✓		
17	Set up project up as PBA on internet banking	✓		✓		
18	Lodge trust deed with bank	✓				
19	Obtain letter of confirmation from bank	✓				
20	Devise project-specific payment timeline	✓		✓		
21	Sign up as many subcontractors as possible as named beneficiaries			✓	✓	✓ ⁴

22	Align named subcontractor beneficiaries' payment cycles with main contractor	✓		✓	✓	✓ ⁴
23	Agree, implement and monitor exemption factors	✓		✓	✓	✓ ⁴
24	Obtain reasons and justification for subcontractors declining - send to SG via commissioning body	✓		✓	✓	✓ ⁴
25	Initiate payment cycle under PBA			✓		
26	Participate in payment cycle	✓		✓	✓	✓ ⁴
27	Issue interim certificate for main contract and deposit amount due into PBA	✓				
28	Advise allocation to named beneficiaries of main contract's interim payment			✓		
29	Instruct bank to authorise payment to beneficiaries			✓		
30	Confirm main contractor's payment authorisation	✓				
31	Named beneficiaries receive payment			✓	✓	
32	Ensure named beneficiaries receive - via top up outside PBA - amount due under sub-contract not covered by interim certificate			✓	✓	✓
33	Non-beneficiaries receive payment					✓
34	Record payment process metrics and send to Scottish Government	✓		✓		
35	Participate in continuous improvement and send feedback to Scottish Government	✓		✓		

¹ Implementation of common stakeholder activities is not necessarily concurrent. *

² Only likely if subcontractor is to encounter PBAs regularly.

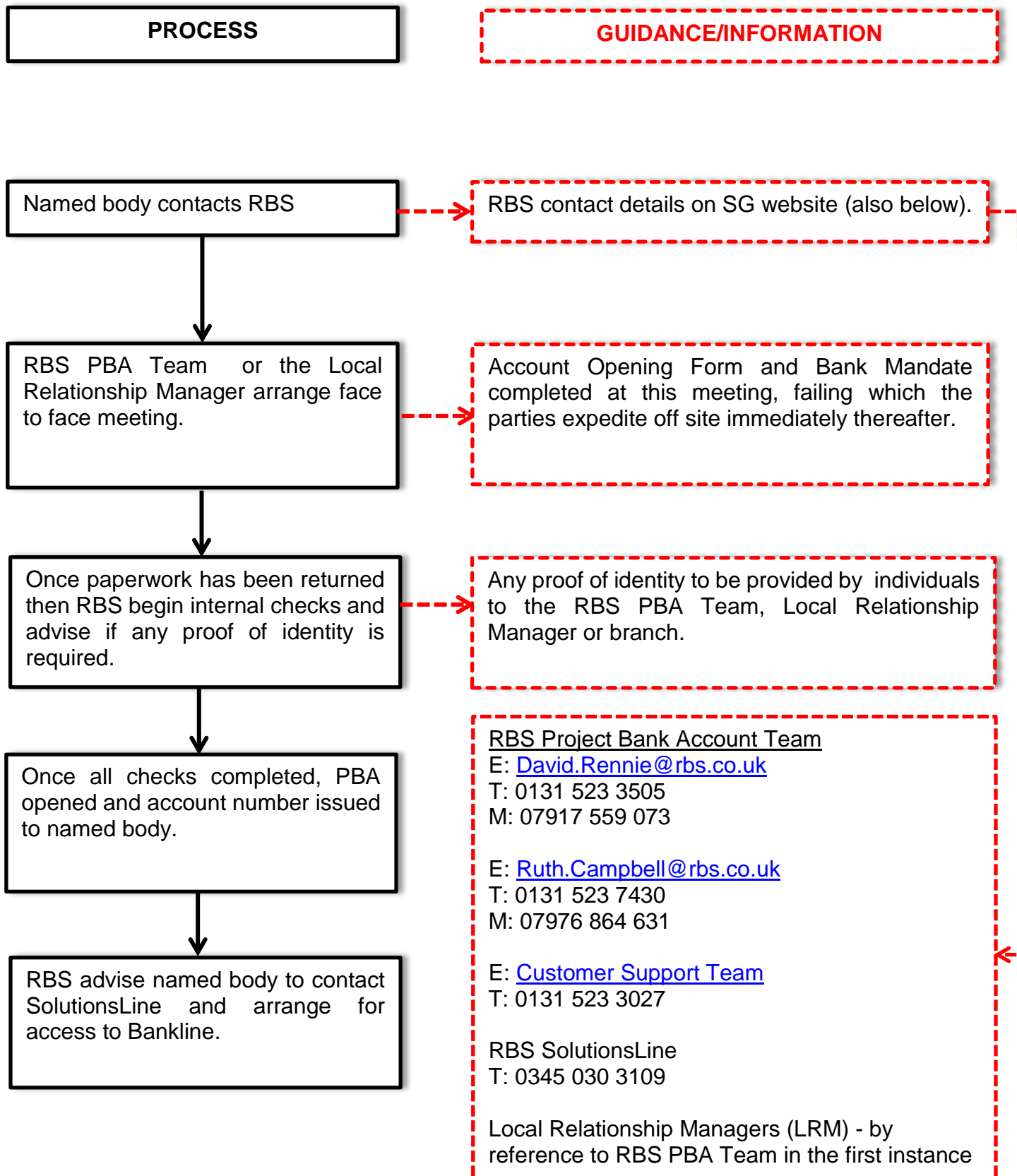
³ RBS terminology, which may differ for equivalent roles in other banks.

⁴ Non-beneficiaries may become involved in their subcontractors' PBA activities.

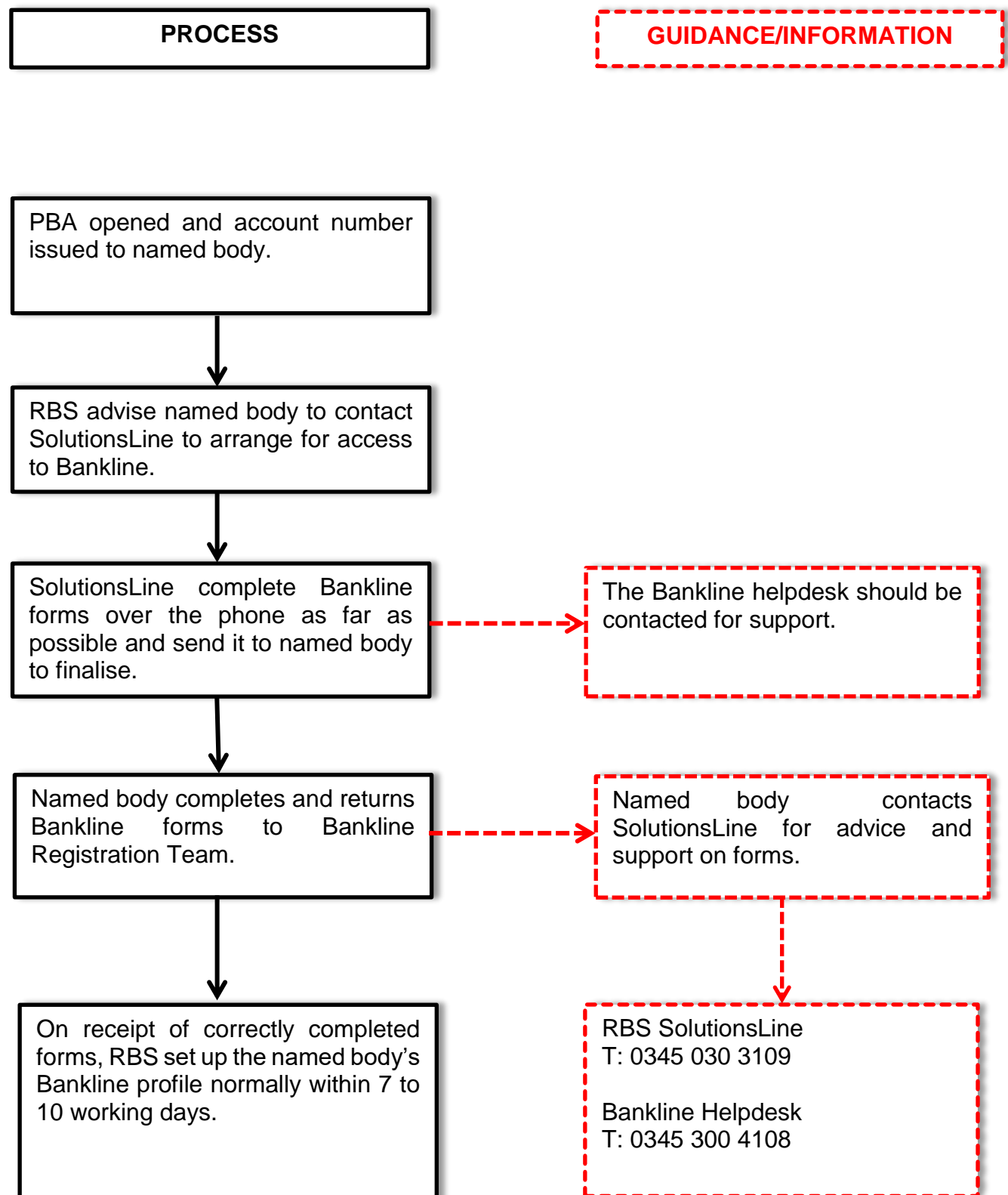
⁵ Requires decision.

* For example: indicative activity 6 ("Devise overarching internal corporate governance principles for PBAs") is not carried out by the Commissioning Body, Main Contractor, and Sub-contractor Beneficiaries concurrently. Each stakeholder will do so when appropriate to their introduction into the project and within their specific corporate requirements.

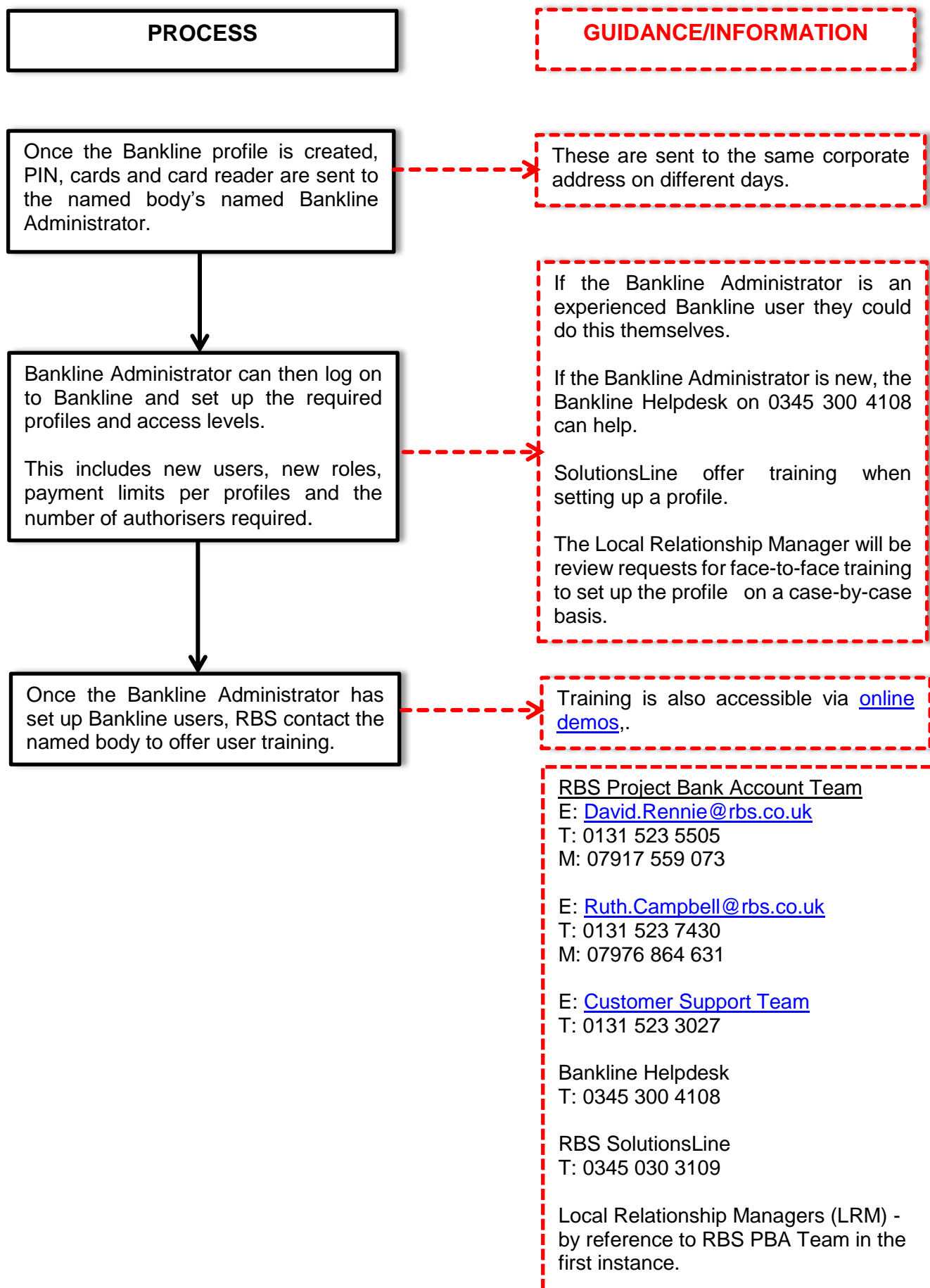
Annex C - Illustration for Named Bodies in Scottish Government's Banking Services Framework to open a RBS Project Bank Account
(also applies in principle to other customers)



Annex D - Illustration for Named Bodies in Scottish Government's Banking Services Framework to set up access to Bankline
(also applies in principle to other customers)



Annex E - Illustration for Named Bodies under Scottish Government's Banking Services Framework to set up a PBA Project on Bankline
(also applies in principle to other customers)



Annex F - Recommended Minimum Standards for PBAs¹⁴

1. The bank which is to provide PBA services is to be appointed by the commissioning body.
2. The account is to be opened and operated in the joint names and with the joint agreement of the commissioning body and the main contractor.
3. The account is to be linked to a trust deed which complies with the law of Scotland so that the money is ring-fenced.
4. Organisations wishing to be a beneficiary of the PBA must be named in the trust deed or join it as an additional party by means of an agreement which serves that purpose and complies with the law of Scotland.
5. The bank is to be informed and acknowledge that a trust deed exists and that operation of the payments will be covered by it.
6. Confirmation is to be obtained from the bank that monies are held in trust and that they cannot be used to offset any other liabilities arising from any of the named beneficiaries.
7. The banking service should not materially alter the operation of the trust deed or the PBA.
8. The main contractor is to notify the commissioning body of beneficiaries' payments to be made only in respect of and within the amount due to the main contractor under the main contract.
9. The commissioning body and the main contractor shall have mutual visibility of money deposited into the PBA and payments made out of it.
10. The commissioning body and main contractor shall expedite instructions necessary for the PBA to function efficiently and effectively.
11. All named beneficiaries of the PBA trust deed shall be paid at the same time as soon as possible after the amount certified under the main contract has been deposited into the PBA.
12. No cheque facility or overdraft facility is to be made available on the PBA.
13. The commissioning body shall have a clear policy for dealing with which of the parties to the joint account will be liable to pay bank charges.
14. The commissioning body shall have a clear policy on whether or not the account is to be interest-bearing and which of the parties will be the recipient.

A commercial bank account operated by a main contractor will not be suitable for the purposes of running a PBA. Public bodies should avoid entering into an agreement that such an account can be referred to and operated as if it was a PBA.

Delivery of a PBA through internet banking, while preferable, is not currently one of the Scottish Government's minimum requirements for a PBA. This is because there may be scope for prompt payment timescales achievable through internet banking to be delivered by other means in a PBA which still meet the minimum requirements, or for them to be implemented as a temporary measure to support payment processes if the underlying internet banking system is unavailable when payments are due to be made. However, the systematic operation of a PBA outwith an internet-enabled platform is likely to be more costly.

¹⁴ for public works contract, or contracts let by other bodies for the construction of public assets

Annex G - Scottish Government Template Trust Deed

PROJECT BANK ACCOUNT DEED OF TRUST

between

(1) [] ("the Employer");

(2) [] ("the Contractor")

WHEREAS

(FIRST) The Employer has entered into a contract with the Contractor dated [] ("the Contract") to carry out the following construction works [] ("the Project")

(SECOND) To assist in the development and performance of the Project, the Contractor has engaged the Sub-Contractors to carry out certain parts of the Project as set out in more detail in the Sub-Contracts.

(THIRD) The Parties wish to adopt a payment mechanism which will ensure that the Sub-Contractors receive payment at the same time as the Contractor. In order to achieve this objective, the Parties have agreed to establish and operate a Project Bank Account in accordance with the terms of this Agreement.

1 **Definitions and Interpretation**

1.1 Unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them below, and terms defined in the Contract and appearing in this Agreement shall have the same meaning in this Agreement as in the Contract.

"Additional Party Agreement" means the Additional Party Agreement set out at Part 2 of the Schedule;

"Agreement" means this Project Bank Account Deed of Trust including the Schedule and any additions, amendments and variations made under the Agreement from time to time;

"Bank" means the bank where the Project Bank Account will be held as set out in the Schedule to this Agreement;

“Bank Mandate” means the documentation regarding the opening and operation of the Project Bank Account as agreed between the Account Holders and the Bank and set out at Part 1 of the Schedule to this Agreement;

“Contract” means the contract between the Employer and the Contractor in respect of the Project as described in the First Recital;

“Party” and **“Parties”** means any or all (respectively) of the signatories to this Agreement;

“Project” means the project as described in the First Recital;

“Project Bank Account” means a bank account opened with the Bank in the joint names of the Account Holders which has no overdraft facility and into which all monies due under the Contract will be paid by the Employer in accordance with this Agreement;

“Schedule” means the schedule in two parts annexed to this Agreement;

“Sub-Contract” means an agreement between a Sub-Contractor and the Contractor in respect of the Project;

“Sub-Contractor” means a subcontractor who has entered into a Sub-Contract and has also signed an Additional Party Agreement”

“Term” means from the date of this Agreement until such time as all monies due to the Contractor and the Sub-Contractors under the Contract and/or the Sub-Contracts have been paid in full; and

“Trustees” means the Employer and the Contractor.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the headings are included for convenience only and shall not be taken into account in the interpretation of this Agreement

1.2.2 words importing the singular include the plural and vice versa

1.2.3 words importing the masculine include the feminine and vice versa

1.2.4 any reference to a “person” includes any individual, firm, partnership, company and any other body corporate.

2 Project Bank Account

- 2.1 The Trustees undertake to open a new deposit bank account with the Bank which shall operate as the Project Bank Account, such account to be opened and held in the joint names of the Trustees as joint account holders of the Project Bank Account.
- 2.2 Subject to clause 3.2, the Employer undertakes to pay all monies due to the Contractor and/or the Sub-Contractors under the Contract and the Sub-Contracts into the Project Bank Account as and when such monies become due for payment, all in accordance with the terms of the Contract. Any failure by the Employer to comply with the requirements of this Clause 2.2 shall be subject to the relevant provisions of the Contract regarding payment and non-payment of all monies due to the Contractor.
- 2.3 The Parties agree that any monies paid into the Project Bank Account shall, as from the date on which such monies are paid into the Project Bank Account, be kept separate and distinct and clearly identifiable and shall be held on trust by the Trustees for each of the Contractor and the Sub-Contractors as the beneficiaries of the trust in the amounts owing to them as set out in the Trustees instructions to the Bank for the payment of monies to the Contractor and the Sub-Contractors. Each of the Contractor and the Sub-Contractors acknowledges that it has no rights and/or interest in the monies held in the Project Bank Account other than as a beneficiary of the monies owing to it. The agreements and acknowledgements set out in this Clause 2.3 shall not be discharged or otherwise affected by any dispute between the Parties under the Contract or Sub-Contracts.
- 2.4 The Employer acknowledges and declares that, as and when monies are paid by it into the Project Bank Account in accordance with the Contract, such monies shall form part of the trust property and the Employer will irrevocably cease to have any further rights and/or interest in such monies, other than as co-Trustee alongside the Contractor.
- 2.5 The Trustees accept that, irrespective of any disputes, which may arise in respect of work performed by the Contractor and/or the Sub-Contractors, the Trustees may not withdraw any monies from the Project Bank Account other than in accordance with the Contract. For the avoidance of doubt, any monies deemed due which are not the subject of a dispute between the parties, shall be so released.

3 Operation of the Bank Account

- 3.1 The Trustees agree:

- 3.1.1 they shall sign the Bank Mandate as soon as reasonably practicable following execution of this Agreement and, in any event, within 14 days of the date of this Agreement;
- 3.1.2 they shall operate the Project Bank Account at all times in accordance with the Bank Mandate, this Agreement and the Contract. If there is any conflict between the Bank Mandate, this Agreement and/or the Contract, the documents shall take precedence in the following order:
- (i) this Agreement;
 - (ii) the Bank Mandate; and
 - (iii) the Contract.
- 3.1.3 the Project Bank Account shall not become overdrawn as there is no overdraft facility on the Project Bank Account. Should the Project Bank Account become overdrawn for any reason, any liability to the Bank attaching thereto shall rest with the Employer;
- 3.1.4 they shall keep accurate, complete and up to date books of account and records of all transactions relating to the Project Bank Account, including but not limited to details of all payments out of the Project Bank Account authorised by the Trustees and any bank charges payable;
- 3.1.5 if the Trustees have the ability to authorise transactions in respect of the Project Bank Account via an electronic facility operated by the Bank, each Trustee shall ensure that its access details for such facility are only made available to those of its employees and/or representatives who need to know such information and that such employees and/or representatives are aware of the confidential nature of the access details, the Project Bank Account details and the Project Bank Account transactions;
- 3.1.6 they are each responsible for the acts and/or omissions of their own employees and/or other representatives as if they were its own acts and/or omissions;
- 3.1.7 they are each liable for their own acts and/or omissions under this Agreement and have no liability for the acts and/or omissions of the other Trustee;

- 3.1.8 they hold all monies in the Project Bank Account on trust, in their capacity as Trustees, for the full and exclusive benefit of the Contractor and the Sub-Contractors as beneficiaries in accordance with clause 2.3 above.
- 3.2 As and when each due date for payment as set out in the Contract is reached the Trustees shall identify payments to be made under the Contract and the Sub-Contracts and:
- 3.2.1 the Employer shall pay the monies due under the Contract into the Project Bank Account in such time so as to provide cleared funds not later than the final date for payment; and
- 3.2.2 the Trustees shall promptly (and in any event in accordance with the timescale set out in the Contract) instruct the Bank in accordance with the provisions of the Bank Mandate to make any payments to the Sub-Contractors and/or the Contractor from the Project Bank Account in accordance with the Trustees' joint instructions issued to the Bank, as soon as the Employer's payment is cleared by the Bank.
- 3.3 For the avoidance of doubt, and for the purposes of this Agreement, monies due under the Contract which the Employer shall pay into the Project Bank Account shall mean such monies less any amounts withheld from payment following the issue of a valid and timely Pay Less Notice by the Employer.
- 3.4 The Contractor agrees to inform each of the Sub-Contractors, prior to or on the same day as the monies are paid into the Project Bank Account by the Employer, of the amounts which are to be paid to them from the Project Bank Account and the date on which the Sub-Contractor can expect to receive such payment which shall in any event be not later than the final date for payment as set out in the relevant Sub-contract .
- 3.5 All payments to the Contractor and the Sub-Contractors shall be made by bank transfer. The Contractor shall inform the Employer, and the Sub-Contractors shall inform the Trustees, of their relevant bank account details and shall keep them up to date at all times. The Sub-Contractors and the Contractor accept that failure to do so may result in monies not being paid to them and that the Trustees shall have no liability for any resulting failure.
- 3.6 Any bank charges, money transmission costs and other disbursements incurred in the establishment and operation of the Project Bank Account shall be borne by the

Employer, such charges not to be paid out of the Project Bank Account, but paid directly by the Employer to the Bank.

4 New Sub-Contractors

4.1 If the Contractor appoints a new sub-contractor in respect of the Contract after the date of this Agreement and agrees with that new sub-contractor that it shall be paid via the Project Bank Account, the Trustees shall arrange for the new sub-contractor to sign an Additional Party Agreement.

4.2 The Parties agree that, in signing the Additional Party Agreement, the Trustees are signing on behalf of themselves and as agent for each of the Sub-Contractors. Each Sub-Contractor agrees to be bound by the terms of any Additional Party Agreement validly executed by the Trustees on behalf of all the Parties.

5 Removal of Sub-Contractor

5.1 If prior to the expiry of the Term a Sub-Contractor ceases to be involved in the Project for whatever reason (including but not limited to the termination of its Sub-Contract), the Trustees shall arrange for the payment out of the Project Bank Account to the Sub-Contractor of any monies due to that Sub-Contractor in accordance with the Sub-Contract held on trust for the benefit of that Sub-Contractor.

5.2 On payment of all the monies due to it from the Project Bank Account in accordance with clause 5.1 above the Sub-Contractor shall cease to have any further rights and/or interests in the Project Bank Account.

6 Confidentiality

6.1 No party shall use and/or disclose any confidential information (other than in the usual course of that party's business), which is acquired by it about another party's business and/or given to it by another party to this Agreement except in the proper performance of this Agreement.

7 Assignment

- 7.1 No Party shall assign this Agreement or any rights or obligations hereunder, in whole or in part, without the prior written consent of the other Parties.

8 Termination

- 8.1 This Agreement shall continue in force for the Term, unless terminated earlier in accordance with the provisions of clause 8.2.

- 8.2 This Agreement shall immediately terminate if:

8.2.1 the Parties agree in writing that the Agreement should terminate; or

8.2.2 the Contract has been terminated in accordance with its terms, and all monies have been paid out from the Project Bank Account in accordance with the Contract.

- 8.3 On termination of this Agreement the Trustees undertake to ensure all monies held on trust for the benefit of the Contractor and/or the Sub-Contractors and held in the Project Bank Account are promptly paid to the relevant beneficiaries.

9 General

- 9.1 No waiver by any Party of any breach of this Agreement shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

- 9.2 The invalidity, illegality or unenforceability of any of the provisions of this Agreement shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

- 9.3 No Party shall be liable for any delay or failure in performing its obligations under this Agreement as a result of reasons beyond its reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, sub-contractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. Failure to make payment due to insufficient funds in the Project Bank Account is not a force majeure event.

- 9.4 The Sub-Contractors are only liable for their own acts and/or omissions under this Deed and not the acts and/or omissions of any of the other Sub-Contractors. The Sub-Contractors are not jointly and severally liable under this Deed.

9.5 Nothing in this Agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

9.6 This Agreement is governed by and construed in accordance with the law of Scotland and the parties agree to submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten upon this and the 7 preceding pages together with the Schedule are:

Signed for and on behalf of the **SCOTTISH MINISTERS AS TRUSTEE** by:

Name

Authorised signatory

at

on 20xx.

in the presence of:

Witness

Full Name:

Address:

.....

.....

Signed on behalf of [.....] **AS TRUSTEE** by

Name

Director/Authorised Signatory

at

on 20xx.

in the presence of:

Witness

Full Name:

Address:

.....

.....

SCHEDULE

Part 1

Bank Mandate

SCHEDULE

Part 2

ADDITIONAL PARTY AGREEMENT

SCHEDULE

Part 2

ADDITIONAL PARTY AGREEMENT

Between

- (1) [] (“the Employer”);
(2) [] (“the Contractor”)
(3) [] (“the Additional Party”)

WHEREAS

- (FIRST) The Employer and the Contractor have entered into the Agreement which governs the operation of a Project Bank Account into which all monies due under the Contract are paid.
- (SECOND) The Additional Party is a sub-contractor of the Contractor and it has been agreed by the Employer and the Contractor that the Additional Party shall be paid for its work using the Project Bank Account.
- (THIRD) This Additional Party Agreement sets out the terms on which the Additional Party agrees to be paid under its sub-contract with the Contractor and sets out the Additional Party’s rights and interests to and in the monies in the Project Bank Account.

DEFINITIONS

- 1.1 Unless the context otherwise requires, words and expressions defined in the Agreement shall have the same meaning in this Additional Party Agreement. The following words and expressions shall have the meanings assigned to them below:

“**Admission Date**” means []

“**Agreement**” means the Project Bank Account Agreement between the Parties dated [], a copy of which is set out at Annex 1 to this Additional Party Agreement

“**Parties**” means the Employer, the Contractor and the Sub-Contractors

ADMISSION

2.1 The Additional Party will be added as a party to the Agreement on the Admission date.

2.2 The Additional Party agrees to be bound by the terms of the Agreement in relation to the Parties as from the Admission Date as though it was an original party to the Agreement.

2.3 The Parties agree to be bound by the terms of the Agreement in relation to the Additional Party as from the Admission Date as though the Additional Party was an original party to the Agreement

APPLICABLE LAW

3.1 This Additional Party Agreement is governed by Scots law and the parties agree to submit to the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents typewritten upon this and the preceding page are:

Signed for and on behalf of the **SCOTTISH MINISTERS AS TRUSTEE** by:

Name

Authorised signatory

at

on 20xx.

in the presence of:

Witness

Full Name:

Address:

.....

.....

Signed on behalf of [.....] **AS TRUSTEE** by

Name

Director/Authorised Signatory

at

on 20xx.

in the presence of:

Witness

Full Name:

Address:

.....

.....

Signed for and on behalf of [insert *name of the Additional Party*] by:

Name

Authorised signatory

at

on 20xx.

in the presence of:

Witness

Full Name:

Address:

.....

.....

ANNEX 1

PROJECT BANK ACCOUNT AGREEMENT

Annex H - Selection Stage Notices and Contractual Enabling Clauses

Examples of selection stage notices and contractual enabling clauses, for illustration and reference purposes. While they are considered suitable for use in most cases, commissioning bodies should ensure they are suitable for specific procurement exercises.

Selection Stage Notices

Glossary

Project Bank Account (PBA) means a bank account open in joint names of the Employer and Contractor which shall be used for payment of the Contractor and his supply chain.

Financial Information

It is the intention the project will operate a mandatory Project Bank Account (PBA), a project specific account ring fenced with effective Trust status, for payment of the Contractor and his supply chain. The account shall be opened by the Employer with The Royal Bank of Scotland under the Banking Services Framework defined at

<https://www.gov.scot/Topics/Government/Procurement/directory/pscontractcentgovt/BankingServicesFramework2018>

and in addition it is intended that the PBA shall satisfy the minimum requirements for an effectively constituted Trust under Scots law.

OR (paragraph to cover non-RBS PBAs)

It is the intention the project will operate a mandatory Project Bank Account (PBA), a project specific account ring fenced with effective Trust status, for payment of the Contractor and his supply chain. The account shall satisfy the minimum requirements for a PBA defined at Annex F of “Implementing Project Bank Accounts in Construction Projects” and in addition it is intended that the PBA shall satisfy the minimum requirements for an effectively constituted Trust under Scots law.

PBA enabling clauses for Conditions of Contract

DEFINITIONS AND INTERPRETATION

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

“Additional Party Agreement” means the agreement to be signed by Named Subcontractors to enable them to be joined as parties to the Project Bank Account Trust Agreement;

“Authorisation” means the document to be signed by the Employer and the Contractor authorising the Project Bank to make payments to the Contractor and the Named Subcontractors from the Project Bank Account;

“Project Bank Account Trust Agreement” means the agreement to be entered into by the Employer, the Contractor and the Named Subcontractors in connection with the setting up and operation of the Project Bank Account;

“Project Bank Account” means the bank account used to receive payments from the Employer and make payments to the Contractor and the Named Subcontractors;

“Project Bank” means the bank which provides the Project Bank Account;

“Supply Chain Member” means a subcontractor of any tier for the Works or for the supply of goods and services in connection with this Contract other than a Contractor’s subcontractor;

PROJECT BANK ACCOUNT

- (1) The Parties shall enter into the Project Bank Account Trust Agreement within seven days of entering into the Contract.
- (2) If the Contractor sub-lets any part of the Works in accordance with [clause] or enters into any sub-contract for goods or services in connection with the Contract then the Contractor shall inform any such subcontractors of the arrangements under this Contract for the operation of a Project Bank Account and shall invite such subcontractors to participate.
- (3) The Contractor shall incorporate into sub-contracts with its subcontractors provisions in similar terms to those set out in clause 2 above (and shall use its best endeavours to ensure that all Supply Chain Member subcontracts contain similar provisions) subject only to modification to refer to the correct designation of the equivalent party as the sub-contractor or Supply Chain Member as the case may be. The Contractor shall also incorporate into sub-contracts with its subcontractors (and use its best endeavours to ensure that all Supply Chain Member subcontracts contain a similar provision) a provision in similar terms to those set out in clause 7 below which informs the

subcontractors and Supply Chain Members of the grounds on which they may not be permitted to participate in the Project Bank Account arrangements.

(4) In addition to the above, the Contractor shall:

- (a) incorporate into sub-contracts with its Named Subcontractors;
- (b) ensure that its subcontractors incorporate into sub-contracts with Named Subcontractors; and
- (c) use its best endeavours to ensure that Supply Chain Members incorporate into sub-contracts with their Named Subcontractors the arrangements as set out in this Contract for the operation of the Project Bank Account.

- (5) The Contractor shall ensure that the Named Subcontractors included in the Contractor's Final Tender shall execute the Project Bank Account Trust Agreement in accordance with clause 1. The Contractor shall inform the Employer if a subcontractor or Supply Chain Member is to be added to the Named Subcontractors. The Employer, the Contractor and the subcontractor or Supply Chain Member shall execute the Additional Party Agreement as soon as practicable following the appointment of any such additional subcontractors or Supply Chain Members.
- (6) If any subcontractor informs the Contractor that it (or any Supply Chain Member) does not wish to participate in the Project Bank Account arrangements then the Contractor shall require the subcontractor to provide in writing its, or the Supply Chain Member's, reasons for non-participation. The Contractor shall forthwith provide the Employer with a copy of the subcontractor's or Supply Chain Member's reasons for non-participation.
- (7) Subject to clause 8, the Contractor, acting reasonably, may decide that it is not appropriate or reasonable in all the circumstances for a subcontractor or Supply Chain Member to participate in the Project Bank Account arrangements. Such a decision shall be deemed to be reasonable if it falls within one or more of the following (non-exhaustive) grounds: the value of the sub-contract is below 1% of the contract award value (excluding VAT); the duration of the sub-contract is less than one calendar month; the payment provisions of the sub-contract are more frequent than those set out in this Contract, or cannot otherwise be aligned with the payment provisions of this Contract.
- (8) The Contractor shall ensure that subcontractors and supply chain members whose participation in the Project Bank Account is deemed not appropriate in accordance with clause 7 only insofar as the value of their subcontract being below 1% of the main contract award value but who wish to participate in the Project Bank Account are permitted to do so. The Employer, the Contractor and the subcontractor or Supply Chain Member shall execute the Additional Party Agreement as soon as practicable following the appointment of any such additional subcontractors or Supply Chain Members.

- (9) The Employer shall make each payment certified as due in accordance with clauses [x], as applicable, into the Project Bank Account no later than [seven] days before the final date for payment.
- (10) In respect of each payment due, the Contractor shall prepare and sign the Authorisation, setting out the sums due to the Named Subcontractors and the balance due to the Contractor (which for the avoidance of doubt shall not exceed the total amount certified as due by the Employer in accordance with clauses [x], as applicable) and shall submit the Authorisation to the Employer no later than seven days before the final date for payment. The Employer shall sign the Authorisation and submit it to the Project Bank no later than one day before the final payment date.
- (11) The Contractor and the Named Subcontractors shall receive payment of the sums set out in the Authorisation by the final date for payment.
- (12) The Contractor acknowledges that payment into the Project Bank Account shall discharge the Employer's obligation to make payment under this Contract, to the extent of that payment.
- (13) The Contractor shall ensure that any subcontractors and suppliers who shall be non-participants in the Project Bank Account, shall be entitled to prompt payment in accordance with [clauses].

Annex I - Tender/Award Period Actions for Main Contract Bidders

1. Bidders for the main contract must undertake the following actions in relation to documentation they send to prospective subcontractors:

- Include the trust deed and PBA enabling clauses to give the PBA effect between the bidder and a subcontractor. *
- Request subcontractors' own bank account details e.g. account number and sort code. *
- Require subcontractors whose subcontract award value is at least 1% of the main contract award; and who are not affected by potential exemption factors, to join the PBA and become named beneficiaries of the trust deed.
- Make provision for subcontractors whose subcontract value is less than 1% of the main contract sum; and who are not affected by potential exemption factors, to ask to join the PBA with a view to becoming named beneficiaries of the trust deed. *
- Require all subcontractors to give equivalent effect to the foregoing (*) in their invitations for sub-subcontractors to tender.

2. Upon receipt, check subcontractors' submissions of PBA-related papers for accuracy and completeness.

3. Bidders must submit to the commissioning body, as part of the main contract tender, PBA documents all fully and accurately completed.

- Trust deed and the PBA account opening form, both signed by a person(s) with the appropriate designation employed by the bidder e.g. Managing Director.
- Trust deed to contain beneficiaries known at tender submission.
- Advice that the bidder does/does not already have a RBS business account.
- Advice that the bidder's signatories already have/do not have an account with RBS (corporate or personal - this may speed up RBS due diligence).
- Advice that the bidder is already a Bankline user.

4. Upon award of the main contract the successful bidder must undertake the following actions:

- Review the commissioning body's signature of: the trust deed; the PBA account opening form; and the Bankline forms.
- Meet/contact the commissioning body as soon as possible to agree the account operating instructions i.e. the Mandate.

5. Undertake the following actions when inviting tenders for subcontracts:

- All as per item 1, except the additional party agreement shall apply.
- Take receipt of Appendix I - 1 completed by the commissioning body and convey it to prospective subcontractors for their attention and for their onward conveyance to their prospective sub-subcontractors.
- Upon receipt, check subcontractors' submissions of PBA-related papers for accuracy and completeness.
- Upload banking details onto Bankline of subcontractors who become named beneficiaries of the trust deed.

Appendix I - 1

Notice of PBA contact and joining details for subcontractors

Commissioning bodies

1. Commissioning bodies can both facilitate and expedite subcontractors' requests to join the PBA by ensuring that the Contractor receives and conveys a note of relevant information set out in this Appendix. The commissioning body should keep a note of the PBA status of every subcontractor and sub-subcontractor. This is facilitated by the Operational Review Template at Annex K. It allows circumstances in which any subcontractor or sub-subcontractor declined to join the PBA to be explained.
2. Where the main contractor does not provide written submissions or they are incomplete or otherwise inadequate, the commissioning body shall remind the main contractor of the relevant obligations in the conditions of contract.

Main contractors

3. The main contractor **must include** the PBA provisions in all invitations to tender for subcontracted work and require subcontractors to do likewise in all prospective sub-subcontracts. The main contractor will be able to evidence that it has met its obligation to use best endeavours in this regard by showing that it sent the notice of relevant information set out in this Appendix to all subcontractors employed on the project.
4. Scottish Government's model PBA terms of contract requires the main contractor to set out in writing to the commissioning body the reason(s) why it has decided that any subcontractor is not able to join the PBA. The main contractor is also obliged to obtain a written explanation from subcontractors declining to join the PBA; and to send a copy to commissioning body.

Subcontractors and sub-subcontractors

5. Where a commissioning body awards a contract which includes a PBA, subcontractors **must** join it where their subcontract value is at least 1% of the contract award value. While there are very limited potential exemptions, the presumption is that subcontractors will join the PBA, as follows:
 - the employer, contractor and subcontractor are named at the top of Part 2 of the Schedule under the heading "Additional Party Agreement" (APA); and
 - all three parties sign at the foot the APA.
6. Subcontractors can **request** to join the PBA if their subcontract value is less than 1% of the main contract award value. Any sub-subcontractor can also **request** to join the PBA irrespective of the value of their sub-subcontract award.

1. Project Bank Accounts (PBAs) are Scottish Government policy. They assure that subcontractors get paid promptly for work done and that those payments are ring-fenced if the main contractor ceases trading. This is a notice to firms concerning the PBA operating on the following construction project.*

2. Subcontractors employed by the main contractor **must join** the PBA where their subcontract value is at least 1% of the value of the contract awarded to the main contractor. There are very limited potential exemptions and it is generally presumed that subcontractors will join the PBA. The main contractor and main contract award value for this project are as follows:*

3. Subcontractors with lower value subcontracts and any firm on this project employed by a subcontractor can **ask to join** the PBA by contacting the Employer in the first instance. Firms who are advised against or denied their opportunity to contact the Employer should **immediately** contact the Employer, as follows:*

Employer Name _ _ _ _ _

E-mail Address _ _ _ _ _

Telephone Number _ _ _ _ _

4. A subcontractor or sub-subcontractor on this project **must sign** the additional party agreement in order to join the PBA. The additional party agreement must be provided by the main contractor to any subcontractor it wishes to employ; and by any subcontractor to any sub-subcontractor it wishes to employ. Where the additional party agreement is not provided please contact the Employer.
5. No fees or charges in connection with joining the PBA may be levied on this project.
6. A subcontractor's or sub-subcontractor's work in progress on site will be valued by the firm which contracted it to work on this project. Payment will be received directly from the PBA **a day or two after** the Employer deposits it. All participating firms, including the main contractor, will receive payment from the PBA **at the same time**.

* to be completed by the commissioning body before sending to the main contractor

Annex J - Interim Application Process

At the trigger for an interim payment the main contractor shall value the work done and proceed as follows:

1. Present the interim application to the commissioning body showing the following:
 - the separate amount due to each named beneficiary of the trust deed.
 - the amount due to the main contractor, which is made up of the amount due to all subcontractors employed by the main contractor which are not named beneficiaries plus what the main contractor considers is due to itself.
 - each subcontractor should show in their interim application to the main contractor the separate amount due to each named beneficiary in its employment plus the amount considered due to itself.
 - the PBA does not affect either the main contractor's or subcontractors' right to evaluate work done by firms they employ. The main contractor can still adjust a subcontractor's interim application regardless of whether or not they are named beneficiaries, as can subcontractors for sub-subcontractors' applications.
2. The commissioning body will evaluate only the sum total of the main contractor's interim application, not any of the individual amounts allocated to named beneficiaries.
3. If the commissioning body agrees with the amount of the interim valuation then it will produce the interim certificate and deposit the commensurate amount due under the main contract, excluding any retention, into the PBA.
 - the commissioning body only values work done under the main contract and does not value or certify any other work done under any subcontract, which remains the main contractor's responsibility.
 - cash retention deducted from the main contractor shall not be held in the PBA.
4. If the commissioning body disagrees with the amount of the interim valuation then it will follow the procedure for a Pay Less notice and intimate the amount to be paid to the main contractor.
 - the commissioning body will deposit its evaluation of the amount due under the main contract, excluding any retention, into the PBA.
 - the commissioning body will not assess or adjust any of the amounts allocated by the main contractor to named beneficiaries.
5. The main contractor shall allocate, from the sum shown on the commissioning body's interim certificate, an amount due to each named beneficiary, including itself.
 - this in effect becomes the mandate for the bank to authorise payment to each named beneficiary from the money deposited in the PBA by the commissioning body.
 - this is equivalent to the disaggregation among subcontractors of an interim certificate issued in a non-PBA project i.e. it is not an additional activity.
6. Where the main contractor has agreed the amount of a subcontractor's interim application but the amount certified by the commissioning body under the main

contract is not enough to cover it, the main contractor is still obliged to pay the sum agreed with the subcontractor.

- a PBA does not supersede the law in the Construction Act prohibiting conditional payments.
- “top up” payments cannot be made in the PBA as this would require the commissioning body to instruct the bank to authorise payment for work which was not included in the interim certificate and which has been evaluated under a subcontract to which the commissioning body is not a party.

7. The main contractor, acting as trustee, uploads the amounts allocated to named beneficiaries’ on to the internet banking platform e.g. Bankline, and instructs the bank to authorise payment to each named beneficiary’s bank account in those amounts.

8. The commissioning body, acting as trustee, follows with its equivalent bank instruction.

9. The bank will only release the funds from the PBA once both trustees have instructed it, the main contractor followed by the commissioning body.

10. Subcontractors and sub-subcontractors which are not named beneficiaries will not receive their payment through the PBA. Instead, they will be paid from their employer’s bank account in a different timescale and their money will not be ring-fenced from the effects of main contractor insolvency.

Annex K - Operational Review Template

Please complete and return to: ProjectBankAccount@gov.scot

The template can be submitted in two stages:

items 1, 2, 3 and 6 as soon as this information is available;

items 4 and 5 towards the end of the project.

Project Bank Accounts Operational Review Template



Scottish Government
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gov.scot

1 Main Contract				
1.1	Employer			
1.2	Main Contractor			
1.3	Official Project Name			
1.4	Brief Description of Works			
1.5	Contract Award	1.5.1	Value	
		1.5.2	Date	
1.6	Start on Site			
1.7	Contract Period			
1.8	Form of Contract			
1.9	PBA Enabling Terms	1.9.1	SG Template ¹	Yes/No
		1.9.2	Other	Yes (please state which)/No
		1.9.3	Was it amended?	Yes (please provide details)/No
2 Trust Agreement				
2.1	Basis	2.1.1	SG Template ²	Yes/No
		2.1.2	Other	Yes (please state which)/No

Project Bank Accounts Operational Review Template



Scottish Government
Riaghaltas na h-Alba
gov.scot

		2.1.3	Was it amended?	Yes (see also 5.2)/No
2.2	Date Signed	2.2.1	Employer	
		2.2.2	Main Contractor	
2.3	Letter of Comfort from Bank ³			Yes/No
3. Bank Account				
3.1	Name	3.1.1	Bank	
		3.1.2	Main Contact	
3.2	Date	3.2.1	PBA scope of service agreed	
		3.2.2	Account opened by Employer	
		3.2.3	Main Contractor joined	
3.3	Cost	3.3.1	Total ⁴	
		3.3.2	Payment	Deposited into PBA/Paid outside PBA
4. Performance Measurement ⁵				
4.1	Payment Dates			See Appendix A

Project Bank Accounts Operational Review Template



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4.2	Total ⁶	4.2.1	amount of main contract sum paid to beneficiaries through the PBA	
		4.2.2	number of payments made from the PBA to beneficiaries.	See Appendix B
		4.2.3	number of required and requesting PBA subcontractors	See Appendix C
5. Operational Feedback ⁷				
5.1	PBA Guidance, paragraph 36 - was a PBA Champion appointed?			Yes/No (if no, please explain why not)
5.2	PBA Guidance, paragraph 69 - details of any fundamental or substantial amendments made to the trust deed template			
5.3	PBA Guidance, paragraph 72 - did the main contractor include the additional party agreement form in invitations to tender for all subcontracts?			Yes/No (if no, please explain why not)
5.4	PBA Guidance, paragraphs 76 and 84 - details and reasons for main contractor omitting PBA documents from subcontracts			
5.5	PBA Guidance, paragraphs 76 and 85 - details and reasons for circumstances that prevented any tier 2 or 3 firm joining the PBA			

Project Bank Accounts Operational Review Template



Scottish Government
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5.6	PBA Guidance, paragraph 102 - details of and reasons for circumstances preventing any tier 2 or 3 firm joining the PBA; and any constructive challenge to subcontractors declining to join the PBA			
5.7	PBA Guidance, paragraph 95 - Payment Timeline	5.7.1	Created for the project?	Yes/No (if no, please explain why not)
		5.7.2	Shared with beneficiaries?	Yes/No/Not Applicable
		5.7.3	Effective?	Yes/No/Not Applicable
5.8	Would you consider submitting this project to Scottish Government Procurement and Commercial Directorate as a PBA case study?		Yes/No	
6. Employer Details				
6.1	Contact Name/direct telephone number/e-mail			
6.2	Date completed			

Project Bank Accounts Operational Review Template



Scottish Government
Riaghaltas na h-Alba
gov.scot

Appendix A - PBA Performance Measurement Criteria (see official PBA guidance paragraph 117)

Main Contract Payment Cycle		Date Main Contractor first submitted payment application to Employer	Date Employer intimated amount of payment certificate to Main Contractor	Date Employer deposited amount of payment certificate into PBA	Date named beneficiaries received payment into their bank account
No.	PBA Available? (Y/N)				
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12 ⁸					

Project Bank Accounts Operational Review Template

Appendix B - Beneficiaries of the PBA Trust Agreement

Name	Trade or Work Package	Date Joined PBA	Total number ⁹ of payments received from PBA	Number of payment cycles occurring during beneficiary's contract or subcontract in which the PBA		Percentage ¹⁰ of each subcontractor beneficiary's subcontract value paid through PBA
				was in operation	was not in operation	

Project Bank Accounts Operational Review Template

Appendix C - Subcontractors and the PBA Trust Agreement

[illegible]

Notes on Completion of Template

¹ See Annex H of official guidance ([here](#)) .

² See Annex G of official guidance ([here](#)).

³ See paragraph 70 of official guidance ([here](#)).

⁴ Amount of direct cost to the Employer of all charges related to the PBA levied by the bank.

⁵ Derived from paragraph 117 of official guidance ([here](#)).

⁶ Cumulative amount at date either of (1) completing this return or (2) other date as specified herewith by Employer.

⁷ Numbers refer to paragraphs in official guidance.

⁸ Insert more rows as appropriate for specific project.

⁹ NOT the amounts.

¹⁰ NOT the amounts.

¹¹ “Required subcontractors” are firms at Tier 2 who must join the PBA because their contract value is at least 1% of the main contract sum and are unaffected by potential exclusion factors.

¹² “Requesting firms” are subcontractors at Tier 2 whose contract value is less than 1% of the main contract sum or any sub-subcontractor at Tier 3 irrespective of their contract value; who are unaffected by potential exclusion factors; and who ask to join the PBA.