

## **EXTRACT OF INFORMATION FROM THE BUYERS GUIDE SPECIFICATION FOR THE FRAMEWORK FOR THE PROVISION OF COMMERCIAL ADVISORS**

### **1. Framework documentation**

- 1.1. A copy of the all framework contractual documentation can be provided by the Framework Manager, including:
- Schedule 1 (Framework Specification) (see Annex E)
  - Schedule 2 (Pricing) (see Annex C)
  - Schedule 3 (Ordering Procedures/Call Off Order Form) (see Annex A)
  - Schedule 4 (Management Information)
  - Schedule 5 (Call Off Terms)
  - Schedule 6 (Parent Company Guarantee (McKinsey and FRP only))
  - Schedule 7 (Contractor Sensitive Information – by individual Framework Contractor)
  - Schedule 8 (Exit Management)
  - Schedule 9 (Data Protection)
  - Schedule 10 (approved sub-contractors) – by individual Framework Contractor)
  - Schedule 11 (Cyber Response) – by individual Framework Contractor)
- 1.2. **Colleagues are reminded that Schedule 2 (Pricing) contains commercially sensitive information which must not be disclosed to any party out with Scottish Government without prior approval from Scottish Government Procurement Team - [ScottishGovernmentProcurementTeam@gov.scot](mailto:ScottishGovernmentProcurementTeam@gov.scot)**

### **2. Framework Service Providers**

There are 6 contractors that will form part of the rotational Call Off Award Structure. Contractors listed in rotational sequence are as follows:

- **Teneo Restructuring Ltd,**
- **FRP Advisory Trading Ltd,**
- **Ernst Young,**
- **Interpath,**
- **PricewaterhouseCoopers,**
- **McKinsey.**

All commissions are by Direct Award on a Rotational basis.

### **3. Call Off / Award Procedures**

- 3.1. All call offs from the Framework will be by Direct Award. The Framework Managers detailed at section 2, will advise as to the rotational contractor with which to commence the call off process detailed at section 8.4.
- 3.2. Within the stipulated 24hour period, if the first contractor on the rotation responds as being unable to fulfil the Call off Contract commission, the next contractor(s) in turn on rotation (section 7) is to be approached until the call off order is accepted.
- 3.3. Scottish Government staff utilising the framework agreement must adhere to the following procedures when calling off.

- A call-off contract / commission can be for a “single order” for a defined scope of work, or for phases of work over a “duration” i.e. a period of time to cover one or more phases of work.
- A call-off contract must be awarded prior to the expiry of the framework.
- The period of a call-off contract may continue notwithstanding that the framework agreement has expired or terminated.
- Inclusion as a Contractor on the Framework does not guarantee any purchase of services from the Contractor

#### 3.4. Call Off Order Process Steps

- Step 1 – Buyer is to contact the Framework Manager listed in section 2, to be advised of the framework contractor first on the rotation for the proposed call off contract.
- Step 2 – The Framework Manager confirms to the buyer that there is the required approval in place for any applicable consultancy spend anticipated via the call off (guidance available at: [Buying consultancy services](#))
- Step 3 – On confirmation of consultancy approval, as advised by the Framework Manager, the Buyer shall make initial contact with the Contractor next on rotation via telephone, using the contact details in Section 7.

**All conversations should be caveated ‘Subject to Contract’ and limited only to confirm contractor capacity in principle to undertake the work within the timescale required.**

**A full record of telephone conversations should be documented and retained in the Buyers ERDM file as a corporate record, in line with Template at Annex F.**

- Step 4 - Should the Framework Contractor decline to participate in the call off, the Buyer must approach the next Framework Contractor on rotation set out in section 7. If they decline to bid, the next ranked Framework Contractor should be approached, and so on.
- Step 5 - When contractor availability is confirmed, the Buyer shall follow-up the telephone process with an e-mail including a populated Cover Letter and Call Off Order Form, (using Annex A).

The email should be caveated ‘Subject to Contract’ and the framework contractor advised that ‘no work should commence’ until the point of agreement and acceptance of an associated Contract Award letter for the Call Off Contract (using Annex B)

- Step 6 - The Framework Contractor will be given 24 hours to formally accept or decline the commission. .
- Step 8 – The Framework Contractor will be required to provide a formal response using the Order Form provided, including demonstrating any savings against Framework Rates (detailed in Annex C).

- Step 9 – the Buyer will award the contract through issue of a populated Contract Award letter (using Annex B). The Buyer should provide the Framework Contractor with:
  - Award Letter
  - Call Off Contract Terms
  - Order Form (Part A)
  - Order Form, including Price (Part B)

8.6 Immediately on award of the contract, the Buyer must advise the Framework Manager of the eventual successful Contractor, the anticipated contract term and value.

8.7 Buyers will be responsible for ensuring that a Contract Award Notice is published in line with the Public Contracts (Scotland) Regulations 2015 within 30 days of Contract Award.

8.7 Delegated Purchasing Officers and Contract Managers are also reminded of their obligations for reporting to meet the requirements of the guidance on the use of Consultancy where applicable, available at: [Buying consultancy services](#).

8.8 Should none of the Framework Contractors take up any offer, Buyers will have to procure out with the framework via Scottish Government Procurement Team - [Buying and contract management](#)

8.9 Buyers entering into a Call Off Contract are not authorised to modify the Call Off Terms and Conditions governing the provision of the Service. Should contractor(s) propose the amendment of Framework Call Off Terms, **DPO buyers are obliged to contact [delegatedpurchasing@gov.scot](mailto:delegatedpurchasing@gov.scot) for further guidance.**

## 9. Framework Sustainable Benefits

9.1 The sustainable benefits to be achieved at framework level, and will be monitored by the Framework Contract Manager listed in Section 2.1 are:

### Fair Work First

As part of the technical evaluation process, each tenderer was asked to demonstrate their commitment to progressing towards adopting Fair Work First criteria and how they intend to continue embedding the five Fair First Work criteria. Contractors responded positively, proposing a number of different measures:

- Channels for staff feedback
- Promotion of Diversity in the Workforce
- Trade Unions
- Careers Development Opportunities
- Commitments to actively tackle Gender Pay Gaps
- All six Framework Contractors have committed to paying the Living Wage to all those involved in delivering the services under the Framework.

### Community Benefits

Tenderers were asked to provide details of their proposals to support Scottish Procurement to meet the Scottish Government's overall community benefits policy through the delivery of the framework agreements. Tenderers responded positively, proposing a number of different benefits as a direct consequence of the Framework, including:

***Teneo Financial Restructuring Ltd***

<b>Community Benefit Initiative</b>	<b>Impact of Framework</b>
Partner with a local school	We will develop a partnership with a local school (from a disadvantaged area in the central belt of Scotland), with a view to providing opportunities for business learning, mentoring, enhancing opportunities and investing in the community.
Business case study day	As part of our school partnership we will run an annual business case study day for 15 students which will seek to provide a snapshot of our industry and the type of work we carry out on a daily basis, in addition to structured learning modules covering areas such as business analysis, communication and stakeholder management.
Mentor programme	We will offer one on one business and career mentoring, covering a wide range of areas dependent on the needs and interests of each individual student (this could include anything from help preparing a CV to advice on possible career routes).

***FRP Advisory Ltd***

<b>Community Benefit Initiative</b>	<b>Impact of Framework</b>
Entrepreneur Programme	Partner with Barclay's to jointly deliver school programme LifeSkills to year 10 students.
Expanding Support and Opportunities to ex-service personnel and people who suffer from adversities	<ul style="list-style-type: none"> <li>▪ providing more apprenticeships and expanding vocational courses in schools, e.g. partnering with LifeSkills;</li> <li>▪ piloting a work experience scheme for young disabled people to help remove barriers to finding jobs;</li> <li>▪ providing CV preparation guidance/career discussions through virtual meetings and discussion groups;</li> <li>▪ facilitating mock interviews to help develop interview skills;</li> <li>▪ mentoring community groups which fit the above criteria around learning and career development;</li> </ul>

	<ul style="list-style-type: none"> <li>▪ paid internships, offering opportunities to undertake paid work experience, enhancing career prospects; and</li> <li>▪ providing online IT training on the use of Microsoft Office products.</li> </ul>
Volunteering by colleagues on two paid day per year	Partner with a charity, such as Mental Health UK, utilising core skills and resources to help improve education, employability and enterprise
School engagement	Community Champions to be set up across locations to engage directly with schools and colleges to provide support, e.g. mentoring, work placements or developing application and interview skills.
Mentoring	Social mobility programme to be developed in 2022, offering students from low-income households financial guidance for the future whilst developing their employability skills.
Recruitment of Disadvantaged and Minority Groups	Includes the #10000BlackInterns programme and commitment to recruiting females into senior positions and ex- service personnel.
Targeted recruitment and training for “disadvantaged” persons unemployed for over 6 months	<p>Recruitment will be solely based on the applicant's abilities and individual merit as measured against the requirements for the role.</p> <p>Training opportunities to be provided by:</p> <ul style="list-style-type: none"> <li>-facilitating CV writing and networking workshops, both virtually and in-person;</li> <li>-mentoring groups of individuals which meet the criteria, around learning and development, and career opportunities; and</li> <li>-facilitating mock interviews for the group to provide interview experience and enhance employment prospects.</li> </ul>

### **Ernst & Young LLP**

<b>Community Benefit Theme</b>	<b>Programme</b>	<b>Summary</b>	<b>Impact of Framework</b>
Work Placements	Graduate/ Apprentice	Training contract on graduate or apprenticeship programme leading to professional Accounting qualification	2 people employed with the opportunity to work directly on the Framework
Support and development opportunities	Smart Futures	A 10 month social mobility initiative for 5 <sup>th</sup> year students consisting of paid work experience,	2 participants from Smart Futures with the opportunity to work with

delivered to young people		skills and employability workshops followed by 10 months of mentoring.	staff working on the Framework
Community	Team Event	The Framework delivery team will organise an event that will either raise funds for a community project or provide practice input	Funds raised by team will be matched by EY to a limit of £1,000.

### ***Interpath Ltd***

<b>Community Benefit Theme</b>	<b>Impact of Framework</b>
Targeted recruitment for disadvantaged persons unemployed for over 6 months	Provide disadvantaged persons with a Mentor Offer free advice and support to those seeking future employment (utilising relationship in PACE) Seek to broaden individual changes of recruitment through utilisation of business community contact base.
Work placements for 14-16 year olds	Provide work experience for school students School mentor programmes.
Graduate placements	Graduate placement programme.

Given the importance of the Community Benefits section of the overall contract, we would also consider partnering with other advisors that form the RRU panel. We believe a cohesive approach would accelerate the adoption of community benefit proposals and would also help provide additional individuals for focused sessions. Specifically, we would seek to agree an RRU Partnership model with the SG team and other advisors to ensure we are all working towards the same common community benefits goals. We would be delighted to discuss our Community Benefits initiatives with you and welcome the opportunity to agree a plan for the above themes.

### ***pricewaterhouseCoopers***

<b>Community Benefit Theme</b>	<b>Impact of Framework</b>
<b>Shadowing opportunities for junior staff in Scotland</b>	Shadowing opportunities to new graduates/junior staff members including any work placement students from across PwC. This would allow them to understand the challenging environment of these projects for advisors and officials. This is of course subject to them obtaining appropriate clearance, target approval and Scottish Government approval for their involvement.
<b>Hosting and facilitation of a roundtable discussion for wider audience</b>	We propose to host a number of roundtable discussions on relevant topics for Scottish Government, and in conjunction with the Scottish Government, will open the invitations to a wider audience including school leavers and undergraduates students so that our expertise and experience can be shared across a broader spectrum of the community. We propose hosting 3 such events across the course of the contract.
<b>Nominating a Regional Charity for PwC Scotland.</b>	Staff from the PwC Scotland region are able to nominate charities that they would like to support in a

	<p>given year. Once all the nominations have been received there is a vote to decide which charity will be supported. In 2020 we raised over £21k in support of Children's Hospices Across Scotland (CHAS). Our current nominated charity, Scottish Association for Mental Health has supported 9,141 people across a range of mental health services including helping people into work, training or education. We welcome suggestions from the Scottish Government on charities that benefit training and development for "disadvantaged" unemployed persons which could be nominated as a Regional Charity for Scotland. If chosen, the charity would benefit from funding and both internal and external representation from PwC in Scotland through various activities.</p>
<p><b>Access to PwC Volunteering days</b></p>	<p>All PwC staff are allocated 6 days per year for volunteering in projects that promote community benefits. This time can be based on using subject matter experience and/or time available to assist. We propose a consultation with key stakeholders, including the Scottish Government, to identify where any of this time could be utilised to align with the Scottish Ministers core purpose. PwC would then promote key initiatives with all staff in our Scottish Offices (Aberdeen, Edinburgh and Glasgow) where they can use their time.</p>

**McKinsey**

<b>Community Benefit Theme</b>	<b>Impact of Framework</b>
<p><b>Graduate placements and targeted training for 'disadvantaged' persons</b></p>	<p>Our team commit to holding an annual taster session for students on the brink of university applications, to introduce the consulting industry and the opportunities it could present to them, and how best to pursue a career in consulting. We would specifically seek to run these sessions at schools that the Scottish Government identifies as having a proportion of pupils who are 'disadvantaged' persons at risk of unemployment.</p> <p>We will hold an annual CV surgery and interview coaching day at a school, college or university of the Scottish Government's choosing. Again, these should be institutions that have a high proportion of pupils who are 'disadvantaged' persons at risk of unemployment.</p>
<p><b>Targeted training for 'disadvantage' persons and work placements for 14-16 year olds</b></p>	<p>Together with the Scottish Government and the RRU team, we will help to create opportunities for your target population on this contract. For example, if an assessed company has Modern Apprentices, a work scheme to provide training and work placements for</p>

	<p>'disadvantaged persons' or 14-16 year olds, we will find opportunities for individuals to work in the delivery of our RRU contract in a role suited to their skillsets. We will couple this with mentorship and coaching; day-to-day apprenticeship in business skills; and on-the-job training in basic analysis techniques. We commit to sustain these relationships and our support beyond the life of the framework agreement.</p> <p>McKinsey's Black Leadership Academy helps to build the capabilities of diverse future leaders to improve racial equality at senior levels. We will offer places to suitable candidates from within the Scottish Government and assessed companies.</p>
<p><b>Targeted recruitment and training for 'disadvantage' persons</b></p>	<p>We can incorporate community impact, and particularly impacts on employment prospects for 'disadvantage' persons, into our assessment approach. This will help to prevent negative community impact, and a reduction of employment opportunities for 'disadvantaged persons' as a result of decisions made by the RRU. For example, the Corporate Restructuring screening that we run currently factors in 11 metrics that contribute to an assessment of whether or not a company is distressed. By building in a community impact metric – such as a measurement to factor in jobs and livelihoods supported by the company, or its impact on the environment – we can ensure that this is a key factor in the decision of the Scottish Government on whether or not to support the company.</p> <p>McKinsey runs an annual Day of Service, where we our employees volunteer with charitable organisations. We would be delighted to consider Scottish charities be included in the programme of events, so that our staff can contribute their hours towards activities that will benefit the people of Scotland. We would put particular weighting on including charities that work on recruitment and training for 'disadvantaged' persons unemployed for over 6 months.</p>

## Climate Emergency

Tenderers were asked to provide demonstrate how they would support the Scottish Minister's sustainability objectives. Tenderers responded with multiple proposals, including:

- Use public transport when travel is required
- Recycling of obsolete devices
- Clear targets to reduce emissions



Customers may therefore wish, on a proportionate basis, to take this into consideration as part of their service delivery call-off, where appropriate.

A link to the [Scottish Procurement Policy Note](#) is provided to assist you in considering the relevance of this criteria to your requirement.

## 10. Cyber Security

10.1 Tenderers were asked to demonstrate their Organisation's approach to information security and the controls that are in place. **All successful tenderer's demonstrated that they were certified to the Cyber Essentials Plus and/or ISO 27001 standards.**

### ANNEX D - STANDARD TERMS OF SUPPLY

These Conditions may only be varied with the written agreement of the Authority. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Authority.

#### 1. DEFINITIONS In these Conditions:

"Contract" means the contract between the Authority and the Contractor consisting of the Purchase Order/Call Off Order Form, these Conditions and any other documents (or parts thereof) specified in the Purchase Order/Call Off Order Form;

"Authority" means the Scottish Ministers;

"Contractor" means the person, firm or company to whom the Contract is issued;

"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request" have the meanings given in the Data Protection Laws;

"Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR; 'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Contractor under the same or similar circumstances.

"Information Commissioner" means the Commissioner as set out in Part 5 of the Data Protection Act 2018.

"Intellectual Property Rights" means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto) which are created, produced or developed in connection with this Contract by or on behalf of the Contractor;

"Personal Data" has the meaning given in the Data Protection Laws;

"Premises" means the location where the Project is to be performed, as specified in the Purchase Order/Specification of Requirements;

"Processing" has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

"Project" means the services to be provided as specified in the Purchase Order/Call Off Order Form;

“Purchase Order/Call Order Form” means the document setting out the Authority’s requirements for the Contract;

“Schedule” means a schedule annexed to and forming part of these conditions; and

“**Third country**” means a country or territory outside the United Kingdom.

“**UK GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

## 2. THE PROJECT

2.1 The Contractor shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.

2.2 The Contractor shall provide the Authority with such reports of his work on the Project at such intervals in such form as the Authority may from time to time require.

2.3 The Authority reserves the right by notice to the Contractor to modify the Authority’s requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 21 (Dispute Resolution).

## 3. CONTRACTOR’S PERSONNEL

3.1 The Contractor shall make available for the purposes of the Project any individuals named on the Purchase Order/Call Off Order Form as key personnel (members of the Team). The Contractor shall provide the Authority with a list of the names and addresses of all others regarded by the Contractor as members of the Team and, if and when instructed by the Authority, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Authority may reasonably require. The Authority may at any time by notice to the Contractor designate any person concerned with the Project or any part of it as a member of the Team. The Contractor shall not without the prior written approval of the Authority make any changes to members of the Team referred to in this paragraph.

3.2 The Contractor shall take the steps reasonably required by the Authority, to prevent unauthorised persons being admitted to the Premises. If the Authority gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project, the Contractor shall take all reasonable steps to comply with such notice.

3.3 The decision of the Authority shall be final and conclusive as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the Project or as to the designation or approval of members of the Team and as to whether the Contractor has furnished the information or taken the steps required of the Contractor by this Condition.

3.4 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this Condition.

## 4. SECURITY AND ACCESS TO THE AUTHORITY’S PREMISES

4.1 Any access to, or occupation of, the Authority’s premises which the Authority may grant the Contractor from time to time is on a non-exclusive licence basis free of charge. The Contractor must use the Authority’s premises solely for the purpose of performing its

obligations under the Contract and must limit access to the Authority's premises to such individuals as are necessary for that purpose.

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

4.3 The Contractor must notify the Authority of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.

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

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

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

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

4.8 The Authority must provide advice and assistance acting reasonably to the Contractor to facilitate the Contractor's compliance with this Condition.

4.9 All decisions of the Authority under this Condition are final and conclusive.

4.10 Breach of this Condition 4 by the Contractor is a material breach for the purposes of Condition 14.2 (Termination).

4.11 If cyber security requirements apply to this Contract:

4.11.1 then these are set out in a Schedule Part 2 (Cyber Security Requirements) to this Contract; and

4.11.2 in that case the Contractor shall comply with the provisions of Schedule Part 2 (Cyber Security Requirements)

4.11.3 and this Condition 4.11 shall not apply where the Contract does not include a Schedule Part 2 (Cyber Security Requirements).

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

"Contractor Representatives" means all persons engaged by the Contractor in the performance of its obligations under the Contract including:

- its employees and workers (including persons employed by a third party but working for and under the control of the Contractor);
- its agents, Contractors and carriers; and
- any sub-contractors of the Contractor (whether approved under Condition 17 (Assignment and sub-contracting) or otherwise).

## 5. CHANGE TO CONTRACT REQUIREMENTS

5.1 The Authority may order any variation to any part of the Contract that for any other reason shall in the Authority's opinion be desirable. Any such variation may include (but

shall not be restricted to) additions, omissions, alterations, substitutions to the Project and changes in quality, form, character, kind, timing, method or sequence of the Project.

5.2 Save as otherwise provided herein, no variation of the Project as provided for in Condition 5.1 hereof shall be valid unless given or confirmed in the form of an order given by the Authority. All such orders shall be given in writing provided that if for any reason the Authority shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Authority within 2 working days of the giving of such oral order by the Authority, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

5.3 Where any such variation of the Project made in accordance with Conditions 5.1 and 5.2 has affected or may affect the costs incurred by the Contractor in providing the Project services, the Contractor will notify the Authority in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Authority, who shall take all of the facts into account (including such information as may be provided by the Contractor in respect of the effect which such variation has had or may have on the costs incurred by the Contractor in providing the service) and may authorise such alteration to the sums to be paid to the Contractor in accordance with the provisions of the Contract as are, in the Authority's opinion, appropriate and reasonable in the circumstances.

## FEES AND EXPENSES

6.1 The Authority shall pay to the Contractor fees and expenses at the rate specified in the Purchase Order/Call Off Order Form.

6.2 The Contractor shall be entitled to be reimbursed by the Authority only for expenses reasonably and properly incurred by the Contractor in the performance of the duties hereunder, subject to production of such evidence thereof as the Authority may reasonably require.

6.3.1 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

6.3.2 In this Condition 6, 'invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

6.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

6.5 Notwithstanding Condition 17 (Assignment and sub-contracting) of this Contract the Contractor may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Contractor under this Contract subject to (i) deduction of sums in respect of which the Authority exercises its right of recovery under Condition 16 (Recovery of sums due) of this Contract and (ii) all the related rights of the Authority under this Contract in relation to the recovery of sums due but unpaid. The Contractor shall notify or procure that any assignee notifies the Authority of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Authority to redirect payments or invoices accordingly. In the absence of such notification the Authority shall be under no obligation to vary the Authority's arrangements for payment of the fees or expenses or for handling invoices.

## 7. AUDIT

The Contractor shall keep and maintain until 5 years after the Contract has been completed records to the satisfaction of the Authority of all expenditures which are

reimbursable by the Authority and of the hours worked and costs incurred by the Contractor or in connection with any employees of the Contractor paid for by the Authority on a time charge basis. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Contract.

## 8. CORRUPT GIFTS OR PAYMENTS

The Contractor shall not offer or give or agree to give, to any member, employee or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with the Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Contractor is drawn to the criminal offences created by the Bribery Act 2010.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract are hereby assigned to and shall vest in the Crown absolutely.

9.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.

9.3 The Contractor must not infringe any Intellectual Property Rights of any third party in carrying out the Project or otherwise performing its obligations under the Contract. The Contractor shall indemnify the Authority against all actions, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Condition 9.3. 9.4 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

## 10. INDEMNITIES AND INSURANCE

10.1 The Contractor shall indemnify and keep indemnified the Authority, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Authority or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Contractor, or the Contractor's servants or agents.

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

- (a) acts on the Authority's specific written instructions but fails to notify the Authority in accordance with Condition 24.11(c) (Data Protection) of this Contract;
- (b) fails to comply with any other obligation under the Contract.

10.3 The Contractor (if an individual) represents that the Contractor is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Authority against any tax, national insurance contributions

or similar impost for which the Authority may be liable in respect of the Contractor by reason of this Contract.

10.4 The Contractor shall effect with an insurance company or companies acceptable to the Authority a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in this Contract in the sum of £5 million at least in respect of any one incident and unlimited in total, unless otherwise agreed by the Authority in writing.

10.5 If requested, by the Authority the Contractor shall produce to the Authority the relevant policy or policies or evidence of such together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

## 11. DISCRIMINATION

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

## 12. BLACKLISTING

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

## 13. OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

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

13.2 The Contractor shall keep secret and not disclose and shall procure that the Contractor's employees keep secret and do not disclose any information of a confidential nature obtained by the Contractor by reason of this Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

13.3 All information related to the Contract with the Contractor will be treated as commercial in confidence by the parties except that:

(a) The Contractor may disclose any information as required by law or regulation or judicial order to be disclosed.

(b) The Authority may disclose any information as required by law or judicial order to be disclosed. Further, the Authority may disclose all information obtained by the Authority by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents, when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament. It is recognised and agreed by both parties that the Authority shall, if the Authority sees fit, disclose such information but is unable to impose any restrictions upon the information that the Authority provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.

13.4 The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

13.5 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Contractor hereby gives its consent for the Authority to publish the Contract in its entirety to the general public (but with any Information that is

exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

#### 14. TERMINATION

14.1 The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:

(a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage the Contractor's affairs; or

(b) where the Contractor is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

(c) where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

14.2 On the occurrence of any of the events described in Condition 14.1, or if the Contractor shall have committed a material breach of this contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Authority in writing to do so, or, where the Contractor is an individual, if the Contractor shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Authority shall be entitled to terminate this Contract by notice to the Contractor with immediate effect.

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

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

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

14.4 The Authority may also terminate the Contract in the event of a failure by the Contractor to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.

14.5 The Authority shall be entitled to terminate this Contract by giving to the Contractor not less than 7 days' notice to that effect. In the event of such termination, the Contractor shall, if required to do so by the Authority, prepare and submit to the Authority a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

14.6 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of Conditions 7 (Audit), 9 (Intellectual Property Rights) 13 (Official Secrets Acts, etc.) and 24 (Data Protection).

#### 15. RETURN OF DOCUMENTS

15.1 The Contractor will return to the Authority promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Authority or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.

15.2 If the Contract has been terminated pursuant to Condition 14.5, the Contractor may retain any documents papers, materials or information which shall be required by the Contractor to prepare any report required under that paragraph. Promptly upon submission of the report to the Authority, the Contractor will return any documents, papers, materials or information which the Contractor may have retained in terms of this paragraph.

## 16. RECOVERY OF SUMS DUE

Wherever under this Contract any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due or which at any later time may become due, to the Contractor under this Contract or under any other agreement or contract with the Authority or with any department, agency or authority of the Crown.

## 17. ASSIGNATION AND SUB-CONTRACTING

17.1 The Contractor shall not assign or sub-contract any portion of the Contract without the prior written consent of the Authority. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions.

17.2 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority immediately it is issued.

17.3 Where the Contractor enters into a sub-contract must ensure that a provision is included which:

17.3.1 requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Authority has made payment to the Authority in respect of the Project and the subcontractor's invoice relates to such Project then, to that extent, the invoice must be treated as valid and, provided the Contractor is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Contractor, payment must be made to the sub-contractor without deduction;

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

17.3.3 in the same terms as that set out in this Condition 17.3 (including for the avoidance of doubt this Condition 17.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Contractor and sub-contractor as the case may be.

17.4 The Contractor shall also include in every sub-contract:

17.4.1 a right for the Contractor to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events (involving substantial modification of the Contract or contract award despite the existence of exclusion grounds) specified in Condition 14.3 occur; and

17.4.2 a requirement that the sub-contractor includes a provision having the same effect as 17.4.1 in any sub-contract which it awards. In this Condition 17.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Authority



in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## 18. NOTICES

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order/Call Off Order Form, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## 19. STATUS OF CONTRACT

Nothing in the Contract shall have the effect of making the Contractor the servant of the Authority or the Crown.

## 20. COMPLIANCE WITH THE LAW ETC.

In carrying out the Project and otherwise when performing the Contract, the Contractor must comply in all respects with:

20.1 all applicable law;

20.2 any applicable requirements of regulatory bodies; and

20.3 Good Industry Practice.

The Contractor shall confirm to the Authority in the Call Off Order form that there have been no undisclosed additional entries in respect of the Contractor in the Violation Tracker UK, the tool for researching corporate regulatory infringements in the UK produced by the Corporate Research Project of Good Jobs First and currently accessible via <https://violationtrackeruk.goodjobsfirst.org/> or will provide the Authority with such further information as the Authority may reasonably require in respect of the matter giving rise to any additional entry.

## 21. DISPUTE RESOLUTION

21.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

21.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

21.3 Any arbitration under 21.2 is subject to the Arbitration (Scotland) Act 2010.

## 22. HEADINGS

The headings to Conditions shall not affect their interpretation.

## 23. GOVERNING LAW

These Conditions are governed by and interpreted in accordance with Scots Law and, subject to Clause 21 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the Scottish courts.

## 24. DATA PROTECTION

24.1 The Contractor acknowledges that any Personal Data described in the scope of Schedule Part 1 (Data Protection) will be Processed in connection with the Project under this Contract. For the purposes of any such Processing, Parties agree that the terms of this Condition 24 will apply where the Contractor acts as the Data Processor and the Authority acts as the Data Controller.

24.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under the Data Protection Laws. The provisions of this Condition 24 are without prejudice to any obligations and duties imposed directly on the Contractor under the Data Protection Laws and the Contractor hereby agrees to comply with those obligations and duties.

24.3 The Contractor will, in conjunction with the Authority and in its own right and in respect of the Project, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.

24.4 The Contractor will provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

24.5 The Contractor must:

24.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Authority (which may be specific or of a general nature), including with regard to transfers of Personal Data to a third country other than within the European Economic Area unless required to do so by European Union or domestic law or Regulatory Body to which the Contractor is subject; in which case the Contractor must, unless prohibited by that law, inform the Authority of that legal requirement before processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Contractor's obligations under this Contract or as is required by the law;

24.5.2 subject to Condition 24.5.1 only process or otherwise transfer any Personal Data in or to any third country other than within the European Economic Area with the Authority's prior written consent;

24.5.3 take all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that the Contractor Personnel:

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

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

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

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

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

28.9 The Contractor must notify the Authority if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;

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

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

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

24.11 At the end of the Contract in relation to any processing carried out by the Contractor in respect of the Project, the Contractor must, on written instruction of the Authority, delete or return to the Authority all Personal Data and delete existing copies unless European Union or domestic law requires storage of the Personal Data.

24.12 The Contractor must:

- (a) provide such information as is necessary to enable the Authority to satisfy itself of the Contractor's compliance with this Condition 24;
- (b) allow the Authority, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures,

measures and records referred to in this Condition 24 and contribute as is reasonable to those audits and inspections;

(c) inform the Authority if, in its opinion, an instruction from the Authority infringes any obligation under the Data Protection Laws.

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

24.14 If requested, the Contractor must make such records referred to Condition 24.12 available to the Information Commissioner on request and co-operate with the Information Commissioner in the performance of its tasks.

24.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition

24.13 with minimum disruption to the Contractor's day to day business.

**SUPPLEMENTARY NOTICE LATE PAYMENT OF INVOICES** Contractors to the Scottish Government are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Procurement, Area 3A South, Victoria Quay, Edinburgh EH6 6QQ. Telephone 0131-244-3878. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Contractors' legal rights. **THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT.**

**This is the Schedule referred to in the foregoing Conditions of Contract between the Scottish Government and Insert Contractor Name**

**SCHEDULE  
PART 1  
DATA PROTECTION**

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

This Schedule Part 1 includes certain details of the Processing of Personal Data in connection with the supply of Services under this Contract:

**1.1.1** *Subject matter and duration of the Processing of Personal Data*

**1.1.2** The subject matter and duration of the Processing of Personal Data are  
[to be inserted]

**1.1.3** *The nature and purpose of the Processing of Personal Data*

[to be inserted]

**1.1.4** *The type of Personal Data to be Processed (to be determined at Call Off)*  
[to be inserted]

**1.1.5** *The categories of Data Subject to whom Personal Data relates*  
[to be inserted]

**1.1.6** *The obligations and rights of the Authority*

The obligations and rights of the Authority as the Data Controller are set out in Condition 24 of the Contract.

All data collected and processed in relation to delivery of this contract is to be transferred to the Scottish Government following contract completion.

The Contractor will be required to make a clear statement that all data has been transferred.

## **ANNEX E – FRAMEWORK SPECIFICATION OF REQUIREMENTS**

### **CASE 565709 FRAMEWORK FOR THE PROVISION OF COMMERCIAL ADVISORS**

The Rapid Response Unit (RRU) has been created to tackle a wide range of economic challenges as a result of Covid-19 and Brexit to enhance The Scottish Governments (SG) support for business resilience. Specifically, the unit will:

- Collectively consider strategically important businesses to Scotland that are in crisis and require assistance; and
- Convene the officials and Ministers necessary to ensure a coherent and proportionate response and take decisions at pace.

Furthermore, the RRU will ensure access to economic analysis, company information and sector specific inputs capable of obtaining risks and offering help and support. Accordingly, to assist a business in crisis, the RRU will:

- Scale up and enhance analytical capacity to provide for evidence-based decisions on business support reinforced by a number of new systems and tools; and
- Scale up and enhance existing capacity to deal with actions emerging from special cases, where interventions involve repurposing or some other form of longer term support for transition before handing back to policy teams for business as usual activities.

Pace is critical when responding to companies at risk. The aim is to establish a timely, efficient and effective mechanism to conduct a range of due diligence on companies in difficulty to inform decision making. Accordingly, the confirmation of availability and capacity for a commercial advisor to undertake the assignment must be received within 24 hours, however, in extremely urgent cases a shorter turnaround may be required.

Due diligence assignments will encompass a wide range of activities including financial analysis, market information and risk assessment to inform the viability of companies facing challenges and assess the likelihood of successful outcome. It is uncertain as to the number of instances of referral of businesses in crisis that the RRU will take on as cases, however, it there is potential that due to the concurrent impacts of Covid-19 and EU Exit there could be a high number of significant businesses that will require the assistance of the RRU. As each case will be unique, it is difficult to determine as to the duration of the due diligence that would be undertaken by commercial advisors. For example, a case may require several weeks of due diligence work or even several months. It is likely that the commercial advice and inputs required may vary considerably due to differing contexts and business considerations.

It is anticipated that a maximum of six suppliers will be appointed to the framework. It is envisaged that the appointed suppliers will be multi-disciplinary agencies or consortia offering a range of integrated professional services including but not limited to: accountancy/financial management, and tax advice, commercial advisory services, restructuring and turnaround specialisms, specialist technical expertise such as economic and market analysis and other considerations including impacts of Subsidy Control (formerly State Aid).



### Call off/Commissioning Process

Inclusion as a Contractor on the Framework does not guarantee any purchase of services from the Contractor.

Each call off will be by Direct Award.

The process for commissioning / calling off pieces of work will be through contacting the first placed ranked Contractor by telephone initially to confirm in principle availability to undertake the work within the timescale required. If availability is confirmed, a follow-up e-mail will be sent including the topic brief, the anticipated number of days and the required timescale, captured in the Call Off Order Form. The Contractor will be given 24 hours to accept or decline the commission. If the commission is not accepted, the second placed Contractor will be offered the opportunity and given 24 hours to respond formally and so on through the rank.

After the first commission, the next will be offered on a Rotational basis, i.e. offered to the Contractor listed next in the rank order. For example, if the first commission off the Framework was ultimately placed with the third ranked supplier, the second commission off the Framework will be offered initially to the fourth ranked supplier.

The Contract will be formed on signing the call off order form in Schedule 3 and acceptance of SGTC3.

Recognising that the full scope of the required advice may not be clear at the commencement of the Call Off/Commission, each Commission may be the subject of one or more orders as required to fulfil the requirements.

A Call Off / Commission may exceed the length of the Framework.

The Scottish Government shall provide the Contractors with the contact details of the designated SG Framework Manager, on contract award. He will be the primary contact for all suppliers and will monitor the progress/performance of the contract and each commissioned piece of work.

The SG Framework Manager will maintain a Contracting Register and will be able to advise of the Contractor next on the Rotation at any given time.

There will be a contract initiation meeting between the Framework Manager and each of the Contractors prior to their first commission.

### Scope of Requirements

Due diligence assignments may include the following:

Activity	Description of Activity
Financial reviews for companies in difficulty	<p data-bbox="534 1301 1348 1464">Activity could range from a verification of understanding through to making recommendations on the strength of a proposal/sustainability of a business with the challenges and opportunities documented. This will typically include the following:</p> <ul data-bbox="582 1503 1348 2031" style="list-style-type: none"><li data-bbox="582 1503 1348 1765">▪ Analysis of the current financial position as revealed by management accounts and forecasts, including analysis of current trading performance, a breakdown of turnover, gross profit, overheads and profit before interest and tax, commenting on any unusual items or trends together with details of any unusual or non-recurring items which are material to the interpretation of the trading results for the period under review.</li><li data-bbox="582 1805 1348 1933">▪ Analysis and commentary on all significant inter-company or related party arrangements including dividends, particularly where these arrangements are not at arm's length.</li><li data-bbox="582 1973 1348 2031">▪ Commentary on the underlying performance of the company's trading operations and its ability to finance</li></ul>

borrowings and its business strategy from operating cash flows.

- Assessment of the company Business/Turnaround Plan to demonstrate that the Plan submitted is robust, comprehensive and clearly articulates the actions that are/ will be taken to deliver its goals.
- Commentary on the underlying commercial assumptions and the market dynamics that would support the deliverability of the Plan.
- Commentary on what commercial success has been achieved by the company and assess how this relates to the Plan going forward
- Comment on management ability/capacity to implement the Plan
- Review financial forecasts and assess their credibility, based on credible assumptions around P&L, Balance Sheet with particular focus around Debtors/Creditors/WIP.
- Commentary on the robustness/completeness of internal controls/systems/reporting.
- External diligence should cover specialist areas around Finance, Balance Sheet items, and Management systems and the extent to which these indicate that the Business/Turnaround Plan and forecasts are achievable and that there is an underlying viable business that could be considered for support.
- Financial models to be sensitised to include turnover slippage, and interest costs.
- An integrated financial model is required to identify (and test) the sufficiency of the peak funding requirement and demonstrate viability around debt servicing with details of a structured repayment plan.
- Identify available security to cover the quantum of any proposed SG financial intervention.
- Commentary on timescales and likelihood of financial return and risk factors of any intervention
- Prepare sensitivity analysis around any loan repayment plan. Identify potential interest rates to reflect the level of security available.
- Comment upon the current position with regard to HMCE & HMRC, including details of any agreed payment plans.
- Comment on the current position with regard to lenders' covenant compliance, including details of any



	<p>covenants that are currently (or will be) in breach, or subject to a Reservation of Rights acknowledgment from the Lender(s), and any covenants that have been waived by the Lender(s) in the last 12 months.</p> <ul style="list-style-type: none"> <li>▪ Identify any key commercial risks and issues arising from SG providing financial intervention to the company to support its Plan.</li> <li>▪ Consider the terms of any SG financial intervention to mitigate risk and ensure compliance with Subsidy Control requirements.</li> <li>▪ Preparation of scenarios for potential intervention and risk analysis of options, including assessment of potential exit strategies</li> <li>▪ Preparation of and/or commentary on proposed exit strategies from existing or proposed intervention options</li> </ul> <p>Typical information requirements of businesses under consideration will include:</p> <ul style="list-style-type: none"> <li>▪ Business/Turnaround Plan (if available).</li> <li>▪ Two years' full annual accounts.</li> <li>▪ CVs of Senior Management Team and Key Board Directors.</li> <li>▪ P&amp;L, balance sheet and cash flow forecasts for 3 years.</li> <li>▪ Most recent management accounts including aged creditor/ debtor list.</li> <li>▪ Copy bank statements for the previous 6 months.</li> <li>▪ Details of any outstanding debt, how much and to whom – including any security that has been granted over assets.</li> <li>▪ Details of any other funders who will be making funds available in the short (12 months) and medium term (24 months)</li> <li>▪ Lenders' Facility Letters</li> <li>▪ Any other supporting information that the Company considers of relevance in support of their application.</li> </ul>
<p>Market Economy Investor (or Operator) Principle</p>	<p>Under the UK's incoming Subsidy Control regime, SG will need to develop a pre-financing business case, supported by a suitable independent report, demonstrating that the finance overall is in line with normal market conditions and so satisfies the Market Economy Operator (MEOP) test. Currently, the legal requirements for MEOP are to be outlined in the incoming UK regime, however, The EU-UK Trade and Co-operation Agreement states that "<i>commercial considerations</i>" means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry" meaning MEOP will be included in any regime going forward.</p>

	<p>In particular, the business case may have to include benchmarking against comparable financing instruments and an independently-verified profitability assessment with suitable sensitivity analysis. The supplier will support SG's development of this business case and provide an independent report accordingly in consultation with SG's legal advisers.</p> <p>MEOP assessment will typically include:</p> <ul style="list-style-type: none"> <li>▪ Comparable examples of third party, private sector, loan funding being made available to companies with a similar risk profile</li> <li>▪ An opinion on the viability of the business and the commerciality of providing the proposed loan funding to the Company in order to satisfy the Market Economy Operator Principle.</li> <li>▪ An opinion on the pricing and other terms of any proposed loan funding by SG to the Company. These should be generally acceptable to a commercial lender under the Market Economy Operator Principle. The Terms of the support should take into account the anticipated returns (weighed against the risks associated with the investment) and nature of available security.</li> <li>▪ Advice on deal structuring that may make the loan possible and compliant with Subsidy Control/State Aid rules and the Market Economy Operator Principle.</li> </ul>
Strategic Business Reviews	<p>Activity is likely to include a robust review of a business, its plans and aspirations. This will often be in response to a significant challenge or opportunity and will involve:</p> <ul style="list-style-type: none"> <li>▪ gaining an understanding of current and potential future market opportunities, the financial performance of the business,</li> <li>▪ gaining an understanding of future projections and the ability of the business to raise additional financial capital from both the private and public sectors and non-financial resources it might need i.e. additional people with particular skill sets</li> <li>▪ options and recommendations for the way forward.</li> </ul>
Business/Turnaround planning	<p>Review business/turnaround planning proposals. Assignments may include supporting business planning or turnaround proposal development.</p>
Assessing investor proposals	<p>Assessing proposals to test the type of investment presented and establish if the model works for SG so that investment options provide SG with value for money and can be approved within the requirements of the Scottish Public Finance Manual.</p>
Distress/Closure situations	<p>The support may include understanding the options a business may be considering or what support we are able to provide. This may include dealing with Administration or</p>

	similar distress paths which need a quick resolution, outlining an options appraisal and key recommendations.
Complex 'Undertaking in Difficulty' assessments	A range of complex factors requires to be taken into account, often due to a complex business structure or activities. Suggested outcomes may be a range of actions that could be taken to mitigate support.
Complex financial standing assessments	Support for this activity may require specialist accounting knowledge as complex group structures and a range of activities can require expertise to understand.
Legal & delivery structures	Advice on delivery vehicles and corporate structures which would best meet defined objectives including identification of options and risks will be required for this activity.
Management capacity and project governance	This is likely to focus on a review of skills within a business, the structure of the management team/board, if it is fit for purpose, with a clear vision and identify any alternatives and recommendations for SG to act on. It could also provide support to identify roles and responsibilities for a project, ensuing appropriate monitoring arrangements. It may include assessment of a business's ability to project manage and deliver on complex, high costs or high risk projects on which future income or forecasts are predicated.
Feasibility	Studies to support SG's strategic thinking on an opportunity. This may focus on the size of opportunity, ability to provide an attractive solution and how to access the market.
Market Assessment	Likely to include a robust review of a business or sector approach to take advantage of market potential or to test assumptions about future market conditions upon which forecasts are based. This may include a review of projections and opinion on whether or not expectations are realistic including assessment of any risks to them being achieved.
Options Appraisal	Reviewing options being considered by SG or proposals from clients, identifying any other options defining assumptions, obtaining supporting information, undertaking sensitivity analysis and making recommendations. It could also include risk assessments and mitigation support for complex projects.
Benefits Realisation	This support may be required for larger projects where the project benefits are either not obvious or need to be developed and tracked to ensure delivery. Assignments may also include development of benefits realisation plans for a variety of SG interventions.
Economic Impact Assessments	<p>Independent assessment may be required to assess the current and potential future economic impact of a company at a local, regional and national level, including an analysis of the supply chain.</p> <p>This analysis should seek to place the financial and other information relating to the specific business within the context of the wider sector, and the importance of that sector to the local, regional and national (Scotland) economy. This also links to the market assessment described above. This could include (but should not be limited to):</p> <ul style="list-style-type: none"> <li>• Analysis of sectoral trends including: <ul style="list-style-type: none"> <li>○ Turnover</li> <li>○ GVA and productivity</li> <li>○ Employment</li> <li>○ Imports/exports</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Investment and R&amp;D spend</li> <li>● Analysis of labour market and local economy: <ul style="list-style-type: none"> <li>○ Trends in employment, unemployment, claimant count in areas relevant to the business in question</li> <li>○ Significance of employment in the business in the context of the local labour market</li> <li>○ Demographics of those working in the business and those working in the sector as a whole</li> <li>○ Structure of business base - dominance/significance of large employers in the local labour market</li> <li>○ Earnings of those working in the sector</li> <li>○ Qualifications</li> <li>○ Transferability of employee skills</li> <li>○ Commuter flows and travel to work areas relevant to the business</li> <li>○ Business performance in local area (e.g. business start-up rates)</li> <li>○ Level of deprivation in local area</li> </ul> </li> <li>● Analysis of sector outlook in Scotland and more widely: <ul style="list-style-type: none"> <li>○ Analysis of available market intel</li> <li>○ Demand forecasts</li> <li>○ Ongoing pandemic impact</li> <li>○ EU exit impact</li> <li>○ Barriers for entry into the sector, and barriers for expansion</li> </ul> </li> </ul> <p>This analysis will support the appraisal process for interventions seeking financial assistance from the public sector. Displacement analysis and/or market assessments may also be undertaken where necessary.</p>
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## Resourcing

Suppliers will be required to demonstrate the ability to identify suitable resource to undertake commissions. As some commissions may be of a specialist nature, this could be delivered through the use of subcontractor networks rather than the core delivery team. As such, the approach suppliers would use is an important aspect of their submission.

## Data Protection

Suppliers should have in place, for the commencement of the Framework, the appropriate licenses to access all relevant datasets and, where relevant, have appropriate software for gathering and analysing data. In addition, some commissions will require access to confidential or sensitive data. Suppliers should be able to demonstrate their ability to ensure such data will be protected in line with relevant legislation, and Data Protection registration will need to be evidenced. Copyright for any reports produced will be held by SG and any IPR resulting from work under this Framework will be owned by SG.

## Communication

It is currently anticipated that most of the commission communication will be via telephone and/or electronic means. The methodology for activity will be determined on a commission-by-commission basis with different supplier approaches welcomed where it provides SG with a better outcome.

Face to face meetings may be required to undertake some commissions only if health and safety and Covid-19 lockdown measures will allow this.

## **Innovation**

Successful suppliers should be aware they may be expected to adopt new processes and solutions throughout the time of the contract as required.

In order to ensure the Framework helps capacity building and knowledge sharing within SG, cognisance needs to be given in all commissions to opportunities for:

- Offering best practice policy guidance within reports commissioned;
- Sharing lessons learned with SG staff to build internal capacity and ensure learning is built into working practices and/or future commissions; and
- Encouraging feedback from suppliers and SG staff on commission arrangements, project scopes and outputs, to ensure continuous improvement throughout the duration of the framework contract.

Specific regard to [HMT Green Book](#) principles is required to support SG's due diligence processes and resultant decision making. Suppliers must be fully acquainted and experienced with the principles of appraisal as set out in HM Treasury Green Book and this should be evidenced in the tender response.

## **Performance Management**

The successful bidders may also be expected to attend regular meetings in Glasgow or Edinburgh, including an initial inception meeting following award of the Framework contract. Please note, the expectation to attend regular meeting in Glasgow or Edinburgh is subject to health and safety and the Covid-19 lockdown restrictions. They will also be expected to provide financial and management information and proactive and reactive support to SG as required. Participation in annual supplier meetings to discuss framework participation and management will be mandatory. For the avoidance of doubt these activities will not be chargeable and should be considered and accounted for in any prices/rates submitted.

## **Community Benefits**

The Scottish Government is committed to contributing to the social, economic & environmental well-being of the people of Scotland, in order to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Accordingly, while the following community benefit objectives will not be evaluated as part of the tender process, the successful service provider will be expected to present a community benefit proposal with their tender detailing how, in the event that they should be successful in winning the contract, they will address Community Benefits.

The Community Benefit proposed for this contract should be provided specifically if successful in this tender process and should not be a Community Benefit which is already being undertaken by the organisation. Examples of Community Benefits include:

- Graduate, Apprentice, work placements and/or trainee placements
- Supplier engagement with schools, colleges and/or universities
- Holding educational and raising awareness events for the community
- Professional advice, mentoring and support provided to the community

- Providing funding for new community facilities
- Support and development opportunities delivered to young people
- Opening up sub-contracting opportunities to SME's and third sector organisations
- Monetary value of contributions to community activities

For any Community Benefits being offered please provide full details i.e. number of apprentices, specific community facilities and funding made available etc. Further information can be found at the links below:

<http://www.publiccontractsscotland.gov.uk/info/InfoCentre.aspx?ID=2361>

### **Resource Efficiency**

Resource Efficiency plays an important role in Scottish Government's carbon reduction targets and a shift towards a circular economy. The Resource Efficiency Pledge is a nationwide scheme backed by Scottish Government to help Scottish businesses use energy, water and raw materials more efficiently throughout their operations. Since its launch in 2014, nearly 200 organisations across Scotland have taken steps to save money and strengthen their businesses through the Pledge. A 2015 audit of 600 Scottish businesses receiving one-to-one support from the Resource Efficient Scotland programme has resulted in implemented savings of nearly £12 million.













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Response Unit <RRU@gov.scot>

**Subject:** Ministerial Update - Framework for the Provision of Commercial Advisors Award

Minister for Business, Trade, Tourism and Enterprise

Please find attached an update on the upcoming procurement Framework for the Provision of Commercial Advisors award.

The timing of the matter is urgent as we attend to notify the commercial advisors on the outcome of their tenders on 01 April 2022. Accordingly, we would like to take this opportunity to offer a meeting with officials to discuss the matter further.

Please get in touch if there are any questions.

Many thanks

[REDACTED]

[REDACTED]  
[REDACTED] Commercial Interventions Division  
COVID-19 Business Resilience and Support Directorate |  
Scottish Government | T: 0141 [REDACTED] | M: [REDACTED]



[REDACTED]

Good afternoon [REDACTED]

Mr McKee is content with the Framework as per your call with the minister.

Best,

[REDACTED]

[REDACTED]

Assistant Private Secretary  
Minister for Business, Trade, Tourism & Enterprise  
The Scottish Government  
Edinburgh  
Email: MinisterBTTE@gov.scot

All e-mails and attachments sent by a Ministerial Private Office to any other official on behalf of a Minister relating to a decision, request or comment made by a Minister, or a note of a Ministerial meeting, must be filed appropriately by the recipient. Private Offices do not keep official records of such e-mails or attachments.

Scottish Ministers, Special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

A39635240

[REDACTED]

Ms Forbes has noted.

Many thanks,

[REDACTED]

[REDACTED]

Private Secretary to Cabinet Secretary for Finance and the Economy – Kate Forbes

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Please refer to Ms. Forbes Ministerial preferences which will be of assistance to you when preparing a speech, briefing, PQ, submission or correspondence.

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