

Contract for the Provision of Board Effectiveness Review Services

Between

UK Export Finance

And

Independent Audit Ltd

Contract number: DN301559

19th January 2018

1. Interpretation

1.1 In these terms and conditions:

Term	Description
“Agreement”	means the contract between (i) the Customer acting as part of the Crown and (ii) the Contractor constituted by the Contractor’s acceptance of the Award Letter;
“Award Letter”	means the letter from the Customer to the Contractor printed above these terms and conditions;
“Central Government Body”	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>Government Department;</p> <p>Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>Non-Ministerial Department; or</p> <p>Executive Agency;</p>
“Charges”	means the charges for the Services as specified in the Award Letter;
“Confidential Information”	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
“Contractor”	means the person named as Contractor in the Award Letter;
“Customer”	means the person identified in the letterhead of the Award Letter;
“DPA”	means the Data Protection Act 1998;

“FOIA”	means the Freedom of Information Act 2000;
“Information”	has the meaning given under section 84 of the FOIA;
“Party”	the Contractor or the Customer (as appropriate) and “Parties” shall mean both of them;
“Purchase Order Number”	means the Customer’s unique number relating to the order for Goods to be supplied by the Contractor to the Customer in accordance with the terms of the Agreement;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Services”	Means the services to be supplied by the Contractor to the Customer under the Agreement;
“Specification”	means the specification for the Services to be supplied by the Contractor to the Customer as specified in the Award Letter;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where applicable, the Customer’s procedures for the vetting of personnel as provided to the Contractor from time to time;
“Term”	Means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.3 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.4 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.5 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.6 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.7 the word 'including' shall be understood as meaning 'including without limitation'.

2. Basis of Agreement

- 2.1 The Award Letter constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Customer of a copy of the Award Letter countersigned by the Contractor within seven (7) days of the date of the Award Letter.

3. Supply of Services

- 3.1 In consideration of the Customer's agreement to pay the Charges, the Contractor shall supply the Services to the Customer subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Contractor shall co-operate with the Customer in all matters relating to the supply of the Services and comply with all the Customer's instructions.
- 3.3 The Contractor shall supply the Services in accordance with the Specification.
- 3.4 The Contractor shall perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor's industry, profession or trade; use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement; and provide all equipment, tools and vehicles and other items as are required to provide the Services.

4. Term

- 4.1 The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Customer may extend the Agreement for a period of up to two (2) months by giving not less than ten (10) Working Days' notice in writing to the Contractor prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
- 5.3 The Contractor shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of the Services by the Contractor, the Customer shall pay the Contractor the invoiced amounts no later than thirty (30) days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 If the Customer fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.

- 5.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- 5.9 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
- 5.10 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
- 5.11 In this clause 5.8, “sub-contract” means a contract between two or more Contractors, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
- 5.12 If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Customer. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Premises and equipment

- 6.1 If necessary, the Customer shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer’s premises by the Contractor or the Staff shall be at the Contractor’s risk.
- 6.2 If the Contractor supplies all or any of the Services at or from the Customer’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Customer’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer’s premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Customer’s premises or any objects contained on the Customer’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 6.3 If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on

reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.

- 6.4 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Contractor shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 6.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 6.6 Without prejudice, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 6.7 The Contractor shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Customer is notified otherwise in writing within five (5) Working Days.

7. Staff and Key Personnel

- 7.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
 - a. refuse admission to the relevant person(s) to the Customer's premises;
 - b. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
 - c. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,
 - d. and the Contractor shall comply with any such notice.
- 7.2 The Contractor shall:
 - a. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;

- b. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
- c. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

7.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

7.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

8. Assignment and sub-contracting

8.1 The Contractor shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

8.2 Where the Customer has consented to the placing of sub-contracts, the Contractor shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.

8.3 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Agreement.

9. Intellectual Property Rights

9.1 All intellectual property rights in any materials provided by the Customer to the Contractor for the purposes of this Agreement shall remain the property of the Customer but the Customer hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement.

- 9.2 All intellectual property rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Customer by operation of law, the Customer hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 9.3 The Contractor hereby grants the Customer:
- a. a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
 - b. a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - i. any intellectual property rights vested in or licensed to the Contractor on the date of the Agreement; and
 - ii. any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such intellectual property rights, which the Customer reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 9.4 The Contractor shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

10. Governance and Records

- 10.1 The Contractor shall:
- a. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and

- b. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 10.2 The Contractor shall keep and maintain until six (6) years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Contractor shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

11. Confidentiality, Transparency and Publicity

- 11.1 Subject to clause b, each Party shall:
 - a. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - b. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
 - a. where disclosure is required by applicable law or by a court of competent jurisdiction;
 - b. to its auditors or for the purposes of regulatory requirements;
 - c. on a confidential basis, to its professional advisers;
 - d. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
 - e. where the receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor's obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause shall observe the Contractor's confidentiality obligations under the Agreement; and
- 11.3 where the receiving Party is the Customer:
 - a. on a confidential basis to the employees, agents, consultants and contractors of the Customer;

- b. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c. to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d. in accordance with clause 02.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 11.

- 11.4 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Contractor hereby gives its consent for the Customer to publish the Agreement in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.5 The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

12. Freedom of Information

- 12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:
 - 12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 12.1.2 transfer to the Customer all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Goods is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

13. Protection and Security of Data

13.1 The Contractor shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.

13.2 When handling Customer data, the Contractor shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Contractor from time to time.

14. Liability

14.1 Neither party shall be responsible for any injury, loss, damage, cost or expense suffered by the other party if and to the extent that it is caused by the negligence or wilful misconduct of such party or by breach by such party of its obligations under the Agreement.

14.2 Subject always to clauses 14.3 and 14.4:

14.2.1 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Contractor; and

14.2.2 the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory

duty or otherwise shall in no event exceed a sum equal to the Charges paid or payable to the Contractor; and except in the case of claims arising against the Contractor under clauses 9.4 and 18.3, in no event shall either party be liable to the other for any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

14.3.3 any other matter which, by law, may not be excluded or limited.

14.4 The Contractor's liability under the indemnity in clause 9.4 and 18.3 shall be unlimited

15. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16. Termination

16.1 The Customer may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month (or, if the Agreement is less than three (3) months in duration, at least ten (10) Working Days) later than the date of service of the relevant notice.

16.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:

16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;

16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.2.5 breaches any of the provisions of clauses 7.2, 11, 12, 13 and 17;

16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor's assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or

16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.

16.3 The Contractor shall notify the Customer as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.

16.4 The Contractor may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

16.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 12, 13, 14, 16.6, 17.4, 18.3, 19 and 20.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

16.6 Upon termination or expiry of the Agreement, the Contractor shall:

16.6.1 give all reasonable assistance to the Customer and any incoming Contractor of the Services; and

16.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

17. Compliance

17.1 Without The Contractor shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the

Contractor of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Contractor in the performance of its obligations under the Agreement.

17.2 The Contractor shall:

17.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and

17.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

17.3 The Contractor shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Contractor from time to time; and

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Contractor shall supply the Services in accordance with the Customer's environmental policy as provided to the Contractor from time to time.

17.5 The Contractor shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.6 the Official Secrets Acts 1911 to 1989; and

17.7 section 182 of the Finance Act 1989

18. Prevention of Fraud and Corruption

18.1 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

- 18.3 If the Contractor or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
- 18.3.1 terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
 - 18.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any breach of this clause.

19. Dispute Resolution

- 19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20. General

- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

- 20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

21. Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause.
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 21.3 Notices under clauses 15**Error! Reference source not found.** (Force Majeure) and 16 (Termination) may be served by email only if the original notice is then sent

to the recipient by personal delivery or recorded delivery in the manner set out in clause 21.1.

22. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Appendix 1: Specification of Requirement

About UK Export Finance

UK Export Finance (UKEF) is the UK's export credit agency and a Government Department that reports to the Secretary of State for International Trade, Dr Liam Fox. UKEF works alongside the Department for International Trade (DIT) as an integral part of its strategy and operations.

UKEF's mission is to ensure that no viable UK export fails for lack of finance or insurance, while operating at no net cost to the taxpayer.

In 2016/17, UKEF provided £3 billion of support to help 221 exporters sell to 63 countries. In the last five years, UKEF has provided a total of £14 billion worth of support for exports.

UKEF helps UK companies:

- Win export contracts by providing attractive financing terms to their buyers
- Fulfil contracts by supporting working capital loans and guaranteeing performance bonds
- Get paid by insuring against buyer default

UKEF can support exports for any size of company and across all sectors, from capital goods to services and intangibles such as intellectual property.

UKEF operates under its own Act of Parliament: The Export and Investment Guarantees Act 1991 (as amended). In performing its functions, UKEF operates with autonomy within the financial objectives and policies set out in a standing consent from HM Treasury.

UKEF works closely with partners within government, most notably DIT and UK Government Investments (UKGI).

DIT is a Government Department for the whole of the UK, that has overall responsibility for promoting UK trade across the world and attracting foreign investment to our shores, under the leadership of the Secretary of State, Dr. Liam Fox MP.

UKGI is the Government's centre of excellence in corporate finance and governance. In addition to managing sales by Government of significant assets, it also looks after a portfolio of over 20 publicly-owned assets, including UKEF, on behalf of the Secretaries of State who are their "shareholders". In this UKEF shareholder role, UKGI oversees UKEF's governance and financial performance on behalf of the DIT Secretary of State.

2. Background to the Requirement

Introduction

2.1 UKEF is the UK's export credit agency and a Government Department whose Secretary of State is also the Secretary of State for International Trade, Dr Liam Fox. UKEF works alongside the Department for International Trade (DIT) as an integral part of its strategy and operations.

- 2.2 As a government department UKEF has an advisory board. However, given UKEF's activities, it approaches its governance processes in a similar manner to that of a regulated financial services business.

Purpose

- 2.3 UKEF conducts annual board effectiveness reviews. Every third year UKEF commissions an external Contractor to conduct the review.
- 2.4 UKGI will be managing the Review as part of its role on overseeing the governance of UKEF.

3. The Requirement

The Requirement

- 3.1 Detailed requirements for Board Review Service for the operational components of the project are outlined below:
- 3.1.1 The Contractor will determine a sufficient number of board and committee papers as a sample to assess quality and whether appropriate weighting and priority is allotted
- 3.1.2 Attend at least one (1) board meeting, at least one (1) board audit committee and at least one (1) board risk committee in April 2018.
- 3.1.3 The Contractor will hold interviews with all board members (including non-executive directors), and an individual from each of UK Government Investments (UKGI), HM Treasury (HMT) and the Department for International Trade (DIT), promoted by a list of topics for discussion which is to be agreed with the Chair and UKGI.
- 3.1.4 Provide a written draft report on findings and areas for improvement by 18 May 2018, unless otherwise agreed with the Customer. Discuss the draft with the Chair and UKGI.
- 3.1.5 Provide a final version of the report by 3 June 2018 unless otherwise agreed with the Customer. Regular oral updates will be required to keep the Chair and UKGI advised as to progress in meeting this and other timescales. The timing of the Contractor's work is subject to being granted timely access to individuals and information by the Customer. Any unforeseen restrictions on access to individuals and documents or lack of co-operation on the part of the Customer will limit the Contractor's ability to undertake the work in an effective manner. It may result in the dates for delivery of draft and final reports being delayed.
- 3.1.6 The Contractor to present the draft report findings at the June board meeting. UKEF will share the report with UKGI and will retain the right to share the

report with other key stakeholders. Prior to releasing copies of the Contractor's reports to any third party, the Customer agrees to obtain their written confirmation that they accept that the Contractor's work has been performed for the sole benefit of UKEF and UKGI, that they will not disclose the report to any other person and that the Contractor extends no liability to any party other than UKEF and UKGI. Should UKEF or UKGI wish to refer to our report in their external communications, the Contractor will be given the opportunity to agree the wording and reporting context.

- 3.1.7 The Contractor to support the board by developing clear suggestions for how UKEF can improve board effectiveness and maintain areas of strength. The Contract will also discuss with the Customer approaches to the implementation of actions to address improvement areas they identify in the report.

Review Outcomes

- 3.2 The effectiveness review will focus on the following areas:

- 3.2.1 Board composition, roles and responsibilities (including individual and committee responsibilities) – is the required range of skills, competencies, experience and diversity represented? Is the succession planning effective to ensure a healthy board composition?
- 3.2.2 Board culture and dynamics – relationships between directors, between non-executive directors and executive directors, and between directors and the Chair, whether meetings are open and challenging, the clarity of, and leadership given to, the purpose, direction and values of the organisation.
- 3.2.3 Board and committee processes and allocation of responsibilities between them.
- 3.2.4 Overall board and committee efficiency, effectiveness and competency.
- 3.2.5 The board's and its supporting committees' understanding of the organisational risks UKEF faces (note this should be focussed on organisational risks rather than the risks which UKEF manages as per its course of business).
- 3.2.6 Stakeholder engagement – does UKEF understand its stakeholder requirements and meet these? Is there transparent and effective engagement and communication with key stakeholders such as UKGI, HMT and DIT?
- 3.2.7 The quality of information and other papers the UKEF executive provides to the board. Does the board (especially the NEDs) have access to the information and people required to discharge their role effectively?

- 3.2.8 The quality of UKEF papers and presentations to the board and of discussions of key board matters and use of time at board meetings (effectiveness of agenda etc.).
- 3.2.9 The implementation of recommendations resulting from UKEF's prior years' board effectiveness reviews.
- 3.2.10 The effectiveness of the secretariat support to the board, such as logistical aspects of board meetings and timeliness and quality of board papers
- 3.2.11 Evaluation of the effectiveness of UKEF's internal committees (Executive Committee, Senior Leadership Team and their sub-committees: The Credit Committee, Change Board and Security Committee)
- 3.2.12 Evaluation of the effectiveness of UKEF's internal sub-committees (Executive Committee, Senior Leadership Team and their sub-committees: The Credit Committee, Change Board and Security Committee).
- 3.2.13 Any other areas you consider appropriate when conducting a board effectiveness review of this nature.

4. Key Performance Framework

- 4.1 The following Performance Management Framework (PMF) will be used to monitor measure and control all aspects of Independent Audit Ltd performance of contract responsibilities. Its purpose is to set out the obligations on Independent Audit Ltd to outline how Independent Audit Ltd's performance will be evaluated and to detail the sanctions for performance failure.

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating		
Contract Management	KPI 1 – Reports and invoices	Invoices and associated milestones and reports should be clearly linked.	Invoices will quote the correct PO, contract number, the Authority Contact, and qualitative description of the work being done. Invoices must be clearly itemised. Associated reports should be clearly and explicitly linked to invoices to help financial tracking.	95% Reports and or invoices sent to the Authority which contains inaccuracies and/or greater than 5 (five) working days after the agreed deadline.	98% Reports and or invoices sent to the Authority which contains inaccuracies and/or greater than 2 (two) working days after the agreed deadline.	100% Meets expectations - All reports and invoices sent to the Authority on time and accurately reflect agreed work
Delivery/Quality	KPI 2 – Timely submission of work	Work must be completed and submitted within agreed timelines	Work is delivered in accordance with timelines agreed in each project meeting	95% Work submitted later than five (5) working days of the agreed deadline.	98% Work submitted within five (5) working days of the agreed deadline.	100% Work submitted on or before the agreed deadline.
Cost	KPI 3 – Delivery within agreed charges	Requirement is delivered within agreed charge at the outset	Reports clearly detailing spend	90% Reports show cost of requirement delivery is running more than 5% greater than the agreed price requiring major adjustments to the service.	95% Reports show cost of requirement delivery is running up to 5% greater than the agreed price requiring minor adjustments to the service.	100% Reports show cost of requirement delivery is equal to or below the agreed price and all unnecessary costs are avoided.

Metric	KPI	What is required to make this measurable	KPI Measurement	KPI Rating		
Quality	KPI 4 – Technical quality	<p>The production of all draft and final reports are submitted as defined in the requirements.</p> <p>Individual feedback provided to Directors as defined in the requirements.</p> <p>Feedback session conducted with the board and next steps agreed.</p>	Work is delivered in accordance with timelines agreed in each project meeting	90% Major concerns raised by the Authority over process. Major dissatisfaction in Feedback. Not fully addressed in final submission	95% Minor concerns raised by the Authority over process. Minor dissatisfaction in Feedback. Not fully addressed in final submission	100% Complete satisfaction of delegates and Authority

5. Governance and Contract Management

Performance Management

- 5.1 This section deals with how the Contractor will be managed and performance measured under the contract.
- 5.2 The Contractor is to demonstrate the following requirements in the delivery of Services:
- To have in place clear, robust and fully accountable governance arrangements for the delivery of the Services;
 - To have in place, or have access to, necessary support services including IT, personnel, administration and finance;
 - To have clear and robust internal processes and procedures and staff that are fully accountable delivering and managing the Services to protect UAEF's reputation.

Contract Management

- 5.3 An initial meeting between UKGI, UAEF and the Contractor will take place within two (2) weeks of the signed contracts being received. This will determine which board and committee meetings will be attended and finalise the overall project plan.
- 5.4 The Contractor will produce a draft report no later than four (4) weeks from attending the board and committee meetings, this will be shared with UKGI and the Chair of UAEF.
- 5.5 The Contractor will provide a completed report approximately eight (8) weeks from first attending the board and committee meetings. The outcomes of the review will be presented by the Contractor to the UAEF board at the board meeting nearest this deadline.

Appendix 2 – Payment

Two payments will be made following the production of the monthly activity reports, upon continued satisfactory performance of the service and the holding of each review meeting or by agreement of the UKEF Contract Manager.

Requirement	Total Charges (£)
<p>Two payments will be made to the Contractor.</p> <p>The first payment of Twenty Five Thousand (£25,000) will be made to the Contractor within thirty (30) working days of submission of an invoice.</p> <p>The second payment of Twenty Five Thousand pounds (£25,000) will be made within thirty (30) days of presenting the final UKEF Board Effectiveness Review Report at a UKEF board meeting.</p>	<p>£50,000</p>

Appendix 3 – International Audit Ltd Proposal



IAL Response to
RFQ.pdf