

UK EXPORT FINANCE
AND
BERRY PALMER & LYLE LIMITED

POLITICAL AND CREDIT RISK INSURANCE
FRAMEWORK AGREEMENT
REFERENCE NUMBER CR1211

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THIS AGREEMENT is made on the date of the last signature

below **BETWEEN**:

- (1) **THE SECRETARY OF STATE ACTING THROUGH THE EXPORT CREDITS GUARANTEE DEPARTMENT** operating as **UK EXPORT FINANCE** (the "**Authority**") whose offices are located at 1 Horse Guards Road, London SW1A 2HQ; and
- (2) **BERRY PALMER & LYLE LIMITED** which is a company registered in in England and Wales under company number 01661686 and whose registered office is at 52 Lime Street, London, England, EC3M 7AF (the "**Supplier**").

RECITALS

- (A) The Authority placed a contract notice in the UK Find a Tender Service dated 6 May 2022 (reference number: ITT 331) (the "**Notice**") and issued an invitation to tender (the "**Invitation to Tender**") to suppliers of insurance and insurance brokerage services interested in entering into a framework for the supply of such services to the Authority.
- (B) The Notice consisted of two separate lots as follows:
 - insurance brokerage ("**Lot 1**"); and
 - insurance panel ("**Lot 2**").
- (C) In response to the Invitation to Tender, the Supplier submitted a tender in respect of Lot 1 to the Authority (set out in Framework Schedule 13 (*Tender*)) (the "**Tender**") through which it represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements as set out in the Invitation to Tender and, in particular, the Supplier made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost effective manner.
- (D) On the basis of the Tender, the Authority selected the Supplier to enter into a framework agreement to provide the Lot 1 Services from time to time.
- (E) Furthermore, pursuant to a letter from the Authority to the Supplier dated 10 November 2022, the Authority appointed the Supplier as the Reserve Broker (as defined below).
- (F) This Framework Agreement sets out the award and ordering procedure, the main terms and conditions for any Call Off Contract the Authority may conclude and the obligations of the Supplier and Authority during and after the Framework Period.
- (G) The Supplier acknowledges that there will be no obligation for the Authority to place any contracts under this Framework Agreement during the Term.

PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this Framework Agreement, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Clause 1 (*Definitions and Interpretation*) or the relevant Framework Schedule in which that capitalised expression appears.

1.1.2 If a capitalised expression does not have an interpretation in this Clause 1 (*Definitions and Interpretation*) or the relevant Framework Schedule, it shall have the meaning given to it in this Framework Agreement. If no meaning is given to it in this Framework Agreement, it shall in the first instance be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.

"**Affiliates**" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time and "**Affiliate**" shall be construed accordingly;

"**Approval**" means the prior written consent of the Authority and "**Approve**" and "**Approved**" shall be construed accordingly;

"**Audit**" means an audit carried out pursuant to Clause 12 (*Records, Audit Access and Reporting*);

"**Auditor**" means the Authority, and/or the National Audit Office, and/or any auditor appointed by the Audit Commission and/or the representatives of any of them;

"**Authority**" means the Secretary of State acting through the Export Credits Guarantee Department whose office is at 1 Horse Guards Road, London, SW1A 2HQ and which operates as UK Export Finance;

"**Authority Cause**" means any breach of the obligations of the Authority (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Authority in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Authority is liable to the Supplier;

"**Authority Confidential Information**" means all Authority Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers, customers and clients of the Authority, including the existence or content of any Contract of Insurance, all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Authority Personal Data" means any Personal Data supplied for the purposes of, or in connection with, this Framework Agreement by the Authority to the Supplier;

"Authority Representative" means the representative appointed by the Authority from time to time in relation to this Framework Agreement;

"Broker" means a supplier that has entered into a call off contract with the Authority to provide Lot 1 insurance brokerage services pursuant to the Framework;

"Broker Call Off Contract" means a contract for the provision of insurance brokerage services by a supplier to the Authority under Lot 1 of the Framework comprising the terms set out in:

- (a) Template Broker Call Off Letter of Appointment;
- (b) Template Broker Call Off Terms;
- (c) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (d) Joint Schedule 2 (*Processing Data*),

and entered into pursuant to the Framework Agreement and in accordance with the Call Off Procedure;

"Brokerage Cap" has the meaning given to it in Annex 1 of Framework Schedule 1 (*Framework Prices*);

"Brokerage Percentage" has the meaning given to it in Annex 1 of Framework Schedule 1 (*Framework Prices*);

"Call Off Contract" means a Broker Call Off Contract concluded between the Authority and the Supplier pursuant to the Framework Agreement and in accordance with the Call Off Procedure;

"Call Off Procedure" means the process for awarding any call off contract under the Framework (including Call Off Contract(s)) pursuant to Clause 5 (*Call Off Procedure*) and Framework Schedule 3 (*Call Off Procedure*);

"Central Government Body" means a body listed in one of the following subcategories 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:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Change in Law" means any change in Law which comes into force after the Framework Commencement Date and impacts on the supply of the Services and performance of the Template Broker Call Off Letter of Appointment and/or Template Broker Call Off Terms;

"Change of Control" means a change of control within the meaning of section 450 of the Corporation Tax Act 2010;

"Commercially Sensitive Information" means the information listed in Framework Schedule 6 (*Commercially Sensitive Information*) which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"Confidential Information" means the Authority Confidential Information and/or the Supplier Confidential Information as the context requires;

"Contract of Insurance" means the contract of insurance or reinsurance awarded by the Authority to the Insurer under the Framework comprising the terms set out in:

- (a) the Template Contract of Insurance Letter of Award;
- (b) the Template Contract of Insurance;
- (c) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (d) Joint Schedule 2 (*Data Processing*),

and entered into pursuant to the Framework Agreement and in accordance with the Call Off Procedure;

"Contracting Authority" shall have the meaning given to it in regulation 2 of the Public Contract Regulations 2015;

"Control" means control as defined in sections 1124 and 450 of the Corporation Tax Act 2010 and **"Controlled"** shall be construed accordingly;

"Controller" has the meaning given to that term in Joint Schedule 2 (*Data Processing*);

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Crown Body" means any department, office or executive agency of the Crown;

"CRTPA" means the Contracts (Rights of Third Parties) Act 1999;

"Cyber Essentials Data" means information as referred to in the Cyber Essentials Scheme;

"Cyber Essentials Plus Certificate" means the certification awarded on the basis of an assessment by an independent certification body, under the Cyber Essentials Scheme, and is the highest level of cyber security assurance;

"Cyber Essentials Scheme" means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials scheme can be found here: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Framework Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Framework Agreement, including any Personal Data Breach;

"Data Protection Legislation" means

- (a) the UK GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time; and
- (b) all applicable Law about the processing of personal data and privacy;

"Data Subject" has the meaning given in the Data Protection Legislation;

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default" means any breach of the obligations of the Supplier (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Supplier or the Supplier Personnel in connection with or in relation to this Framework Agreement or the subject matter of this Framework Agreement and in respect of which the Supplier is liable to the Authority;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Framework Agreement including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 13.1 (*Variation Procedure*) or any matter where this Framework Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Notice" means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Framework Schedule 7 (*Dispute Resolution Procedure*);

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary

legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;

"EIRs" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

"FCA" means the Financial Conduct Authority, an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title;

"FOIA" means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Framework" means the framework arrangements established by the Authority for the provision of insurance and insurance brokerage services by suppliers (including the Supplier or Insurers) pursuant to the Notice;

"Framework Agreement" means the Clauses of this Framework Agreement together with the Framework Schedules, the Joint Schedules and any appendices and annexes to the same;

"Framework Commencement Date" means 16 January 2023 ;

"Framework Lot 1 Supplier" means a supplier appointed to Lot 1 pursuant to the Notice;

"Framework Lot 2 Supplier" means a supplier appointed to Lot 2 pursuant to the Notice;

"Framework Period" means the period from the Framework Commencement Date until the expiry or earlier termination of this Framework Agreement;

"Framework Prices" means the prices set out in Framework Schedule 1 (*Framework Prices*);

"Framework Schedule(s)" means the Schedule(s) to this Framework Agreement;

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Crown;

"Further Competition Award Criteria" means the award criteria set out in Framework Schedule 4 (*Award Criteria*);

"Further Competition Procedure" means the procedure for awarding a Contract of Insurance as set out in Paragraph 3 of Framework Schedule 3 (*Call Off Procedure*);

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law" means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a comparable supply of services;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person carrying on the relevant regulated activities in the United Kingdom and in accordance with applicable Regulatory Requirements;

"Government" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Government Data" means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority Confidential Information, and which:
 - (i) are supplied to the Supplier or an Insurer by or on behalf of the Authority; and/or
 - (ii) the Supplier is required to generate, process, store or transmit pursuant to this Framework Agreement; or
- (b) any Personal Data for which the Authority is the Controller;

"Guidance" means any guidance issued or updated by the Government from time to time in relation to the Regulations;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"HMRC" means Her Majesty's Revenue and Customs;

"Improvement Notice" means the notice served by the Authority pursuant to Clause 19 (*Authority Remedies*);

"Improvement Plan" means the plan developed and revised by the Supplier from time to time in accordance with Clause 19 (*Authority Remedies*);

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

"Insolvency Event" means when:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service), an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) whilst being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (h) where the Supplier is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership;

"Insurer" means an entity acting as insurer or reinsurer under a Contract of Insurance placed pursuant to the Framework from time to time including (as the context requires):

- (a) a Framework Lot 2 Supplier;
- (b) where relevant, the member(s) of the relevant Lloyd's Syndicate of which a Framework Lot 2 Supplier is the managing agent;
- (c) where relevant, the member(s) of the relevant Lloyd's Syndicate of which a Nominated Insurer is the managing agent; or
- (d) where relevant, a Nominated Insurer of a Framework Lot 2 Supplier,

and **"Insurers"** shall be interpreted accordingly;

"Insurance Services Brokerage" means the fee paid by the Authority to the Broker under a Broker Call Off Contract for placing a Contract of Insurance and the provision

of ongoing services in respect of such Contract of Insurance (where relevant), and as calculated in accordance with Framework Prices applied to a Contract of Insurance;

"Intellectual Property Rights" or "IPR" means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trademarks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction;

"Invitation to Tender" has the meaning given to it in the Recitals;

"IPT" means Insurance Premium Tax at the current rate payable in the event that export credit insurance ceases to be exempt;

"Joint Schedule" means each of the following:

- (a) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (b) Joint Schedule 2 (*Data Processing*),

which are incorporated into this Framework Agreement;

"Key Performance Indicators" or "KPIs" means the performance measurements and targets set out in Part C of Framework 0 (*Services and Key Performance Indicators*) as varied from time to time in accordance with this Framework Agreement;

"Key Sub-Contract" means any contract or agreement (or proposed contract or agreement), other than a Call Off Contract or this Framework Agreement, pursuant to which a third party:

- (a) provides the Services (or any part of them);
- (b) is responsible for the management, direction or control of the provision of the Services (or any part of them);
- (c) provides the services (or any part of them) under any Call Off Contract; or
- (d) is responsible for the management, direction or control of the provision of the services (or any part of them) under any Call Off Contract;

"Key Sub-Contractor" means a sub-contractor with a Key Sub-Contract;

"KPI Targets" means the KPI targets set out in Table 1 of Part C of Framework 0 (*Services and Key Performance Indicators*);

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Services but excluding know-how already in the Supplier's or the Authority's possession before the Framework Commencement Date;

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, rule of common law, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation with which the relevant Party is bound to comply and **"Laws"** shall be construed accordingly;

"Lloyd's" means the society incorporated by Lloyd's Act 1871 by the name of Lloyd's of One Lime Street London EC3M 7HA;

"Lloyd's Requirements" means the Lloyd's Acts 1871 to 1982, all byelaws made thereunder and all requirements of the Council;

"Lloyd's Syndicate" means a member or a group of members of Lloyd's forming a syndicate for one or more years of account in accordance with Lloyd's Requirements;

"Losses" means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis), disbursements, costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and **"Loss"** shall be interpreted accordingly;

"Lot 1" has the meaning given to it in the Recitals;

"Lot 2" has the meaning given to it in the Recitals;

"Market Presentation" means the information provided to the Insurer(s) by the Authority and/or Broker during a Further Competition Procedure in order to seek insurance quotations;

"Month" means an entire calendar month and **"Monthly"** shall be interpreted accordingly;

"National Insurance Contributions" means the contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"Nominated Insurer" means an Affiliate of a Framework Lot 2 Supplier and listed in Framework **Error! Reference source not found.** (*Nominated Insurers*) and **"Nominated Insurers"** shall be interpreted accordingly;

"Notice" has the meaning given to it in the Recitals;

"Occasion of Tax Non-Compliance" means where:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2015 which is found on or after 1 April 2016 to be incorrect as a result of:
 - (i) the Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax abuse principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2015 which gives rise, on or after 1 April 2016, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Framework Commencement Date or to a civil penalty for fraud or evasion;

"Party" means the Authority or the Supplier and **"Parties"** shall be interpreted accordingly;

"Personal Data" shall have the same meaning given to it in the UK GDPR;

"Personal Data Breach" shall have the meaning given to it in the UK GDPR;

"Premium" means the cost of a Contract of Insurance excluding the Insurance Services Brokerage, VAT (if applicable) and IPT (if applicable);

"Primary Broker" means the supplier who submitted the most economically advantageous Lot 1 tender;

"Processing" has the meaning given to it under the Data Protection Legislation but, for the purposes of this Framework Agreement, it shall include both manual and automatic processing and **"Process"** and **"Processed"** shall be interpreted accordingly;

"Processor" has the meaning given to it in the Data Protection Legislation;

"Prohibited Act" means:

- (a) directly or indirectly offering, promising or giving any person working for or engaged by the Authority a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant

function or activity in connection with this Framework Agreement and each Call Off Contract;

- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts in relation to this Framework Agreement or any other contract with the Authority;
 - (iv) by defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; and/or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"PRA" means the Prudential Regulation Authority, part of the Bank of England, with statutory powers derived from the Financial Services and Markets Act 2000 and its successors in title;

"Regulations" means the Public Contracts Regulations 2015 as amended from time to time;

"Regulatory Bodies" means the FCA and PRA and their overseas equivalent and other government departments and Lloyd's regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement and **"Regulatory Body"** shall be construed accordingly;

"Regulatory Requirements" means all rules and regulations (including all applicable and other financial services laws, statutes, statutory guidance rules and regulations and the FCA's or PRA's handbook of rules and guidance as amended, Lloyd's guidance, bye-laws or codes of conduct, and any other rules which the FCA, PRA or Lloyd's is applying to the relevant person), bye-law, order, decree, code of practice, circular, directive or other legislative measure, of or made by any relevant Regulatory Body;

"Relevant Requirements" all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010, and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority" means HMRC or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;

"Replacement Services" means any services which are substantially similar to any of the Services and which are received in substitution for the Services following the expiry or termination of this Framework Agreement;

"Replacement Supplier" any third party provider of Replacement Services appointed by or at the direction of the Authority from time to time;

"Request for Information" means a request for information relating to this Framework Agreement, any Call Off Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIR;

"Reserve Broker" means the supplier who submitted the second most economically advantageous Lot 1 tender;

"Security Policy" means the Cyber Essentials Scheme;

"Services" means the services described in Framework 0 (*Services and Key Performance Indicators*) which may be ordered under a Call Off Contract by the Authority pursuant to Framework Schedule 3 (*Call Off Procedure*);

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and which would not affect a comparable supply of services to another customer of the Supplier that are the same or similar to the Services;

"Standards" means:

- (a) any standards published by a Regulatory Body, BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- (b) any standards detailed in the specification in Framework 0 (*Services and Key Performance Indicators*);
- (c) any standards detailed by the Authority in the Call Off Contract following a Further Competition Procedure or agreed between the Parties from time to time; and
- (d) any relevant Government codes of practice and guidance applicable from time to time;

"Statement of Requirements" means a statement issued by the Broker on behalf of the Authority detailing the Lot 2 Services issued in accordance with the Call Off Procedure and during a Further Competition Procedure;

"Storage Media" means the part of any device that is capable of storing and retrieving data;

"Supplier" has the meaning given to it above;

"Supplier Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including all IPRs, together with information derived

from the foregoing and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Supplier Personnel" means all persons employed or engaged by the Supplier together with the Supplier's directors, officers, employees, agents, suppliers, contractors, consultants and, without prejudice to Clause 24.1.2, sub-contractors (including Key Sub-Contractors) used in the performance of its obligations under this Framework Agreement or any Call Off Contracts;

"Supplier Representative" means the representative appointed by the Supplier from time to time in relation to this Framework Agreement;

"Template Broker Call Off Letter of Appointment" means the template letter of appointment incorporated into Part A of Framework Schedule 11 (*Template Broker Call Off Letter of Appointment and Template Broker Call Off Terms*);

"Template Broker Call Off Terms" means the template call off terms incorporated into Part B of Framework Schedule 11 (*Template Broker Call Off Letter of Appointment and Template Broker Call Off Terms*);

"Template Contract of Insurance" means the template contractual terms incorporated into Framework Schedule 12 (*Template Contract of Insurance and Template Contract of Insurance Letter of Award*);

"Template Contract of Insurance Letter of Award" means the template letter of award incorporated into Framework Schedule 12 (*Template Contract of Insurance and Template Contract of Insurance Letter of Award*);

"Tender" means the tender submitted by the Supplier to the Authority, a copy of which is set out in Framework Schedule 13 (*Tender*) including the Supplier's response to the award questionnaire;

"Termination Notice" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Framework Agreement on a specified date and setting out the grounds for termination;

"Transparency Information" means the Transparency Reports and the Framework Agreement, including any changes to this Framework Agreement agreed from time to time, except for:

- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;
- (b) Authority Confidential Information;
- (c) Commercially Sensitive Information; and
- (d) any information which the Authority may withhold from disclosure pursuant to Regulation 108(3) of the Regulations;

"Transparency Reports" means the information relating to the performance of this Framework Agreement as detailed further in Table 1 to Part C of Framework 0 (*Services and Key Performance Indicators*) which are identified as being reported publicly by Government;

"UK GDPR" means the UK Data Protection Act 2018 ("DPA 2018") and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 under the European Union (Withdrawal) Act 2018;

"Variation" has the meaning given to it in Clause 13.1.1;

"Variation Form" means the form that will be completed and signed by the Parties to effect a Variation which shall be in the form set out in Framework Schedule 8 (*Variation Form*);

"Variation Procedure" means the procedure for carrying out a Variation as set out in Clause 13.1 (*Variation Procedure*);

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994 as amended;

"Working Day" means any day other than a Saturday, Sunday or public holiday in England and Wales and **"Working Days"** shall be interpreted accordingly; and

"Year" means a period of 12 Months and **"Years"** shall be construed accordingly.

1.2 Interpretation

1.2.1 In this Framework Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) reference to a gender includes the other gender and the neuter;
- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
- (e) the words **"including"**, **"other"**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
- (f) references to **"writing"** include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;

- (g) references to "**representations**" shall be construed as references to present facts; to "**warranties**" as references to present and future facts; and to "**undertakings**" as references to obligations under this Framework Agreement;
- (h) references to "**Clauses**" and "**Framework Schedules**" are, unless otherwise provided, references to the clauses and schedules of this Framework Agreement and references in any Framework Schedule to "**Paragraphs**", parts, annexes and tables are, unless otherwise provided, references to the Paragraphs, parts, annexes and tables of the Framework Schedule or the part of the Framework Schedule in which the references appear;
- (i) any reference to this Framework Agreement includes Clause 1.1 (*Definitions*) and the Framework Schedules; and
- (j) the headings in this Framework Agreement are for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement.

1.2.2 The following documents are incorporated into this Framework Agreement:

- (a) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (b) Joint Schedule 2 (*Data Processing*).

1.2.3 Subject to Clauses 1.2.4 and 1.2.5, in the event and to the extent only of a conflict between any of the provisions of this Framework Agreement, the conflict shall be resolved, in accordance with the following descending order of precedence:

- (a) Framework Clauses including Clause 1 (*Definitions and Interpretation*);
- (b) Joint Schedule 2 (*Data Processing*);
- (c) Framework Schedule 1 (*Services and Key Performance Indicators*) to Framework Schedule 12 (*Template Contract of Insurance and Template Contract of Insurance Letter of Award*) inclusive (excluding Framework Schedule 13 (*Tender*));
- (d) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (e) Framework Schedule 13 (*Tender*).

1.2.4 If there is any conflict between the provisions of this Framework Agreement and provisions of any Call Off Contract, the provisions of this Framework Agreement shall prevail over those of the Call Off Contract save that:

- (a) any refinement to the Template Broker Call Off Letter of Appointment and Template Broker Call Off Terms permitted for the purposes of a Call Off Contract under Clause 4 (*Scope of Framework Agreement*) and Framework Schedule 3 (*Call Off Procedure*) shall prevail over the

Template Broker Call Off Letter of Appointment and Template Broker Call Off Terms; and

- (b) subject to Clause 1.2.5, the Call Off Contract shall prevail over Framework Schedule 13 (*Tender*).

1.2.5 Where Framework Schedule 13 (*Tender*) contains provisions which are more favourable to the Authority in relation to the rest of the Framework Agreement, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in relation to this Framework Agreement.

- 1.3 In entering into this Framework Agreement, the Authority is acting as part of the Crown.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that:

2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Framework Agreement;

2.1.2 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Framework Commencement Date) and has entered into this Framework Agreement in reliance on its own due diligence alone; and

2.1.3 it shall not be excused from the performance of any of its obligations under this Framework Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of, any misrepresentation of the requirements of the Supplier in the Invitation to Tender or elsewhere.

3. SUPPLIER'S APPOINTMENT

- 3.1 The Authority hereby appoints the Supplier as a potential provider of the Services.

3.2 *Not used.*

3.3 *Not used.*

- 3.4 In consideration of the Supplier agreeing to enter into this Framework Agreement and to perform its obligations under it, the Authority agrees to pay and the Supplier agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Supplier).

4. SCOPE OF FRAMEWORK AGREEMENT

- 4.1 The Supplier acknowledges and agrees that:

4.1.1 there is no obligation whatsoever on the Authority to invite or select the Supplier to provide any Services and/or to purchase any Services under this Framework Agreement; and

4.1.2 without prejudice to Paragraph 2.2.4 of Framework Schedule 3 (*Call Off Procedure*), in entering into this Framework Agreement, no volume or value guarantee is granted by the Authority in relation to the provision of the Services by the Supplier.

0. CALL OFF PROCEDURE

5.1 If the Authority decides to source any of the Services through this Framework Agreement, then it shall be entitled at any time in its absolute and sole discretion during the Framework Period to award Call Off Contracts for the Services from the Supplier by following Framework Schedule 3 (*Call Off Procedure*).

5.2 The Supplier shall comply with the relevant provisions in Framework Schedule 3 (*Call Off Procedure*).

1. REPRESENTATIONS AND WARRANTIES

6.1 Each Party represents and warrants that:

6.1.1 it has full capacity and authority to enter into and to perform this Framework Agreement;

6.1.2 this Framework Agreement is executed by its duly authorised representative;

6.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Framework Agreement; and

6.1.4 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

6.2 The Supplier represents and warrants that:

6.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

6.2.2 it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into and perform its obligations under this Framework Agreement;

- 6.2.3 it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Authority before the Framework Commencement Date;
 - 6.2.4 the execution, delivery and performance of its obligations under this Framework Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
 - 6.2.5 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement;
 - 6.2.6 it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non-Compliance;
 - 6.2.7 it has and shall continue to have all necessary Intellectual Property Rights including in and to any materials made available by the Supplier to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement;
 - 6.2.8 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into systems, data, software or the Authority's Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
 - 6.2.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement; and
 - 6.2.10 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 6.3 Each of the representations and warranties set out in Clauses 6.1 and 6.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Framework Agreement.
- 6.4 If at any time a Party becomes aware that a representation or warranty given by it under Clauses 6.1 and 6.2 has been breached, is untrue or is misleading, it shall immediately

notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

- 6.5 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination the Authority may have in respect of the breach of that provision by the Supplier which constitutes a material Default of this Framework Agreement.
- 6.6 Each time that a Call Off Contract is entered into, the warranties and representations in Clauses 6.1 and 6.2 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time.

2. CYBER ESSENTIALS SCHEME CONDITION

- 7.1 *Not used.*
- 7.2 The Supplier shall deliver to the Authority evidence of a valid Cyber Essentials Plus Certificate (or equivalent) on or prior to the Framework Commencement Date.
- 7.3 *Not used.*
- 7.4 Where the Supplier continues to Process Cyber Essentials Data during the Framework Period or the term of any Call Off Contract the Supplier shall deliver to the Authority evidence of renewal of a valid Cyber Essentials Plus Certificate or equivalent on each anniversary of the first Cyber Essentials Plus Certificate or equivalent obtained by the Supplier under Clause 7.2.
- 7.5 In the event that the Supplier fails to comply with Clause 7.4, the Authority reserves the right to terminate this Framework Agreement for material Default.

3. FRAMEWORK PERIOD

- 8.1 This Framework Agreement shall have effect from the Framework Commencement Date (so as to govern the relationship of the Parties from that date) and shall expire on 15 January 2025 at the end of the Framework Period:
- 8.1.1 unless it is terminated earlier in accordance with the terms of this Framework Agreement; or
- 8.1.2 unless otherwise terminated by operation of Law.
- 8.2 The Authority may extend the duration of this Framework Agreement for any period or periods up to a maximum of two (2) Years in total from the expiry of the initial Framework Period, with each period of extension not exceeding 12 Months at each time by giving the Supplier no less than three (3) Months' written notice.

4. FRAMEWORK AGREEMENT PERFORMANCE

- 9.1 The Supplier shall perform its obligations under this Framework Agreement in accordance with:
- 9.1.1 the requirements of this Framework Agreement;

9.1.2 Good Industry Practice;

9.1.3 all applicable Standards; and

9.1.4 in compliance with all applicable Law.

- 9.2 The Supplier shall bring to the attention of the Authority any conflict between any of the requirements of Clause 9.1 and shall comply with the Authority's decision on the resolution of any such conflict.

5. KEY PERFORMANCE INDICATORS

The Supplier shall at all times during the Framework Period comply with the Key Performance Indicators and achieve the KPI Targets set out in Part C of Framework 0 (*Services and Key Performance Indicators*).

6. STANDARDS

- 11.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of the Framework Agreement and any Call Off Contract, including any Standards set out in Part B of Framework 0 (*Services and Key Performance Indicators*).
- 11.2 Throughout the Framework Period, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Variation Procedure.
- 11.3 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision of the Services is explained to the Authority within a reasonable timeframe, prior to the implementation of the new or emergent Standard.
- 11.4 Where Standards referenced conflict with each other or with best professional or industry practice adopted after the Framework Commencement Date, then the later Standard or best practice shall be adopted by the Supplier.
- 11.5 Where a standard, policy or document is referred to in Framework 0 (*Services and Key Performance Indicators*) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.

FRAMEWORK AGREEMENT GOVERNANCE

7. RECORDS, AUDIT ACCESS AND REPORTING

- 12.1 The Supplier shall keep and maintain, until the later of:

12.1.1 seven (7) Years after the date of termination or expiry of this Framework Agreement;

12.1.2 seven (7) Years after the date of termination or expiry of the last Call Off Contract to expire or terminate; or

12.1.3 such other date as may be agreed between the Parties,

full and accurate records and accounts of the operation of this Framework Agreement, including the Call Off Contracts entered into with the Authority, the Services provided pursuant to the Call Off Contracts, and the amounts paid and/or received by the Authority under the Call Off Contracts. The Supplier shall keep the records and accounts referred to in Clause 12.1 in accordance with Good Industry Practice and Law.

12.2 The Supplier shall afford any Auditor access to the records and accounts referred to in Clause 12.1 at the Supplier's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Auditors from time to time, in order that the Auditor may carry out an inspection to assess compliance by the Supplier of any of the Supplier's obligations under this Framework Agreement, including for the following purposes to:

12.2.1 verify the Supplier's compliance with the applicable Law;

12.2.2 identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

12.2.3 identify or investigate any circumstances which may impact upon the financial stability of the Supplier or its ability to perform the Services;

12.2.4 obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;

12.2.5 carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;

12.2.6 enable the National Audit Office to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

12.2.7 review the integrity, confidentiality and security of the Authority Confidential Information; and/or

12.2.8 receive from the Supplier on request summaries of all central government public sector expenditure placed with the Supplier including through routes outside the Framework in order to verify that the Supplier's practice is consistent with the Government's transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.

12.3 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services pursuant to the Call Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditors is outside of the control of the Authority.

12.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including by providing:

12.4.1 all information within the scope of the Audit requested by the Auditor;

12.4.2 reasonable access to any sites controlled by the Supplier and to equipment used in the provision of the Services; and

12.4.3 access to the Supplier Personnel.

12.5 If an Audit reveals that a material Default has been committed by the Supplier then the Authority shall be entitled to terminate this Framework Agreement.

12.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 12.

12.7 The Supplier shall provide the following information to the Authority:

12.7.1 a copy of the annual audited accounts within two (2) Months from approval;

12.7.2 Not used

13. CHANGE

13.1 Variation Procedure

13.1.1 Subject to the provisions of this Clause 13.1 (*Variation Procedure*), the Authority may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by the Supplier, request a variation to this Framework Agreement provided always that such variation does not amount to a material change of this Framework Agreement within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".

13.1.2 The Authority may request a Variation by completing and sending the Variation Form as set out in Framework Schedule 8 (*Variation Form*) to the Supplier giving sufficient information for the Supplier to assess the extent of the proposed Variation and any additional cost that may be incurred.

13.1.3 The Supplier shall respond to the Authority's request pursuant to Clause 13.1.2 within the time limits specified in the Variation Form. Such time limits shall be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

13.1.4 In the event that:

- (a) the Supplier is unable to agree to or provide the Variation; and/or
- (b) the Parties are unable to agree a change to the Framework Prices (in the case of a Framework Lot 1 Supplier) that may be included in a request for a Variation or response to it as a consequence thereof,

the Authority may:

- (a) agree to continue to perform its obligations under this Framework Agreement without the Variation; or
- (b) acting reasonably, terminate this Framework Agreement with immediate effect.

13.2 Legislative Change

13.2.1 The Supplier shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase in the Framework Prices as a result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Framework Commencement Date.

13.2.2 If a Specific Change in Law occurs or will occur during the Framework Period (other than as referred to in Clause 13.2.1(b)), the Supplier shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the Services, the Framework Prices or this Framework Agreement; and
- (b) provide the Authority with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs; and
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services.

13.2.3 Any change in the Framework Prices or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.1(b)) shall be implemented in accordance with Clause 13.1 (*Variation Procedure*).

14. PROMOTING TAX COMPLIANCE AND FINANCIAL STANDING

14.1 If, at any point during the Framework Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

14.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

14.1.2 promptly provide to the Authority:

- (a) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance, together with any mitigating factors that it considers relevant; and

- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

14.2 Financial Standing and Credit rating

14.2.1 The Supplier shall as soon as reasonably practicable notify the Authority in writing of any material change in financial standing.

14.3 In the event that the Supplier fails to comply with this Clause 14 (*Promoting Tax Compliance and Financial Standing*) and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable, the Authority reserves the right to terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier.

15. PROVISION AND PROTECTION OF INFORMATION

15.1 Confidentiality

15.1.1 For the purposes of this Clause 15.1 (*Confidentiality*), "**Disclosing Party**" shall mean a Party which discloses or makes available, directly or indirectly, its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains, directly or indirectly, Confidential Information.

15.1.2 Except to the extent set out in this Clause 15.1 (*Confidentiality*), or where disclosure is expressly permitted elsewhere in this Framework Agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Framework Agreement or without obtaining the Disclosing Party's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Framework Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

15.1.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 15.3 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:

- (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Framework Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of its resources; or
 - (iii) the conduct of a Central Government Body review in respect of this Framework Agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office or National Crime Agency.

15.1.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

15.1.5 The Supplier may only disclose Authority Confidential Information on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know Authority Confidential Information to enable the performance of the Supplier's obligations under this Framework Agreement;
- (b) its auditors; and/or
- (c) its professional advisers for the purposes of obtaining advice in relation to this Framework Agreement.

15.1.6 Where the Supplier discloses the Authority Confidential Information pursuant to Clause 15.1.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Framework Agreement by the persons to whom disclosure has been made.

15.1.7 The Authority may disclose Supplier Confidential Information:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;

- (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 15.1.7(a) for any purpose relating to or connected with this Framework Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Framework Agreement;
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Authority; or
- (g) to the Authority's employees, agents, consultants, advisers and contractors,

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 Authority under this Clause 15.1.7.

- 15.1.8 For the avoidance of doubt, the Supplier Confidential Information that the Authority may disclose under Clause 15.1.7 shall include information relating to Call Off Contracts, including service levels, pricing information (which includes information on prices tendered in a Further Competition Procedure, even where such a Further Competition Procedure does not result in the award of a Call Off Contract) and the terms of any Call Off Contract may be shared with any Central Government Body from time to time.
- 15.1.9 Nothing in this Clause 15.1 (*Confidentiality*) shall prevent a Recipient from using any techniques, ideas or Know-How which the Recipient has gained during the performance of this Framework Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.
- 15.1.10 The Supplier shall, at all times during and after the performance of this Framework Agreement, indemnify the Authority and keep the Authority fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Supplier's obligations under this Clause 15.1 (*Confidentiality*) except and to the extent that such liabilities have resulted directly from the Authority's instructions.
- 15.1.11 In the event that the Supplier fails to comply with Clauses 15.1.2 to 15.1.5, the Authority reserves the right to terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier.

15.2 Transparency

15.2.1 The Parties acknowledge that Transparency Information is not Confidential Information.

15.2.2 Notwithstanding any other provision of this Framework Agreement, the Supplier hereby gives its consent for the Authority to publish:

- (a) Transparency Information; or
- (b) this Framework Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Regulations redacted), including any changes to this Framework Agreement agreed from time to time,

and the Supplier shall assist and cooperate with the Authority to enable the Authority to publish the Transparency Information or Framework Agreement.

15.3 Freedom of Information

15.3.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Framework Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in the Supplier's possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

15.3.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Framework Agreement) for the purpose of this Framework Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

15.4 Protection of Data

- 15.4.1 The Supplier must process Personal Data and ensure that Supplier Personnel process Personal Data only in accordance with Joint Schedule 2 (*Processing Data*).
- 15.4.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 15.4.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Authority copies every six (6) Months.
- 15.4.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy.
- 15.4.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under this Framework Agreement or any Call Off Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.
- 15.4.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable, the Authority may either or both:
 - (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
 - (b) restore the Government Data itself or using a third party.
- 15.4.7 The Supplier must pay each Party's reasonable costs of complying with Clause 15.4.6 unless the Authority is at fault.
- 15.4.8 The Supplier must:
 - (a) provide the Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;
 - (b) have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - (c) securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
 - (d) subject to Clause 12 (*Records, Audit Access and Reporting*), securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and
 - (e) indemnify the Authority against any and all Losses incurred if the Supplier breaches this Clause 15.4 (*Protection of Data*) and any Data Protection Legislation.

16. PUBLICITY AND BRANDING

16.1 The Supplier shall not:

16.1.1 make any press announcements or publicise this Framework Agreement in any way; or

16.1.2 use the Authority's name or brand in any promotion or marketing or announcement of Call Off Contracts, without Approval (the decision of the Authority to Approve or not shall not be unreasonably withheld or delayed).

16.2 Each Party acknowledges to the other that nothing in this Framework Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.

16.3 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation upon the Authority and Clause 15.2.2 including any examination of this Framework Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

LIABILITY AND INSURANCE

17. LIABILITY

17.1 Neither Party excludes or limits its liability for:

17.1.1 death or personal injury caused by its negligence, or that of its employees, sub-contractors or agents (as applicable);

17.1.2 bribery or Fraud by it or its employees; or

17.1.3 any liability to the extent it cannot be excluded or limited by Law.

17.2 Subject always to Clauses 17.1, 17.3 and 17.5, the Supplier's liability to the Authority for each year of this Framework Agreement:

17.2.1 in respect of loss of or damage to the Authority's premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Government Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed £1 million (One Million Pounds) for each individual claim;

17.2.2 in respect of:

(a) loss or damage to Government Data; or

(b) breach of the Data Protection Legislation,

that is caused by Default of the Supplier shall in no event exceed £5 million (Five Million Pounds) for each individual claim; and

17.2.3 in respect of all other Losses incurred by the Authority under or in connection with this Framework Agreement as a result of Defaults by the Supplier shall in no event exceed £5 million (Five Million Pounds) for each individual claim.

17.3 Notwithstanding Clause 17.2, the Supplier does not exclude or limit its liability for the indemnity given under Clause 15.1.10.

17.4 Subject to Clause 17.1 and without prejudice to Clause 17.5, the Authority's total aggregate liability to the Supplier under this Framework Agreement (whether in tort, contract or otherwise) is no more than £100,000.

17.5 Subject to Clauses 17.1 and 17.6, neither Party shall be liable to the other Party for any:

17.5.1 indirect, special or consequential Loss; or

17.5.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

17.6 Notwithstanding to Clause 17.5, but subject to the limits stated in Clause 17.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

17.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

17.6.2 any wasted expenditure or charges;

17.6.3 the additional cost of procuring Replacement Services for the remainder of the Framework Period, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Framework Agreement;

17.6.4 any compensation or interest paid to a third party by the Authority; and/or

17.6.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

17.7 For the avoidance of doubt, the Parties acknowledge and agree that this Clause 17 (*Liability*) shall not limit the Supplier's liability to the Authority under any Call Off Contract and the Supplier's liability under a Call Off Contract shall be as provided for in that Call Off Contract only.

18. **INSURANCE**

18.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Framework Agreement and any Call Off Contract, in accordance with Framework Schedule 5 (*Insurance Requirements*).

18.2 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Framework Agreement or any Call Off Contract.

REMEDIES

19. AUTHORITY REMEDIES

19.1 Without prejudice to any other rights or remedies arising under this Framework Agreement, including under Clause 20.1 (*Termination on Material Default*), if the Supplier fails to achieve a KPI Target, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

19.1.1 the Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable;

19.1.2 the Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings; and

19.1.3 the Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

19.2 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

19.2.1 fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

19.2.2 fails to implement an Improvement Plan Approved by the Authority,

then (without prejudice to any other rights and remedies of termination provided for in this Framework Agreement), the Authority shall be entitled to terminate this Framework Agreement.

TERMINATION AND SUSPENSION

20. AUTHORITY TERMINATION RIGHTS

20.1 Termination on Material Default

20.1.1 The Authority may terminate this Framework Agreement for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier fails to accept a Call Off Contract pursuant to Paragraph 5 of Framework Schedule 3 (*Call Off Procedure*);
- (b) the Authority expressly reserves the right to terminate this Framework Agreement for material Default including pursuant to:

- (i) Clause 7.5 (*Cyber Essentials Scheme Condition*);
 - (ii) Clause 13.1 (*Variation Procedure*);
 - (iii) Clause 15.1.11 (*Confidentiality*);
 - (iv) Clause 19.2 (*Authority Remedies*);
 - (v) Clause 23.1.2 (*Compliance*);
 - (vi) Clause 27.6.2 (*Prevention of Fraud and Bribery*);
 - (vii) Clause 28.3 (*Conflicts of Interest*); and/or
 - (viii) anywhere that is stated in this Framework Agreement that the Supplier by its act or omission will have committed a material Default;
- (c) the Supplier commits a material Default of any of the following Clauses or Framework Schedules:
 - (i) Clause 6 (*Representations and Warranties*), except Clause 6.2.6;
 - (ii) Clause 9 (*Framework Agreement Performance*);
 - (iii) Clause 12 (*Records, Audit Access and Reporting*);
 - (iv) Clause 14 (*Promoting Tax Compliance and Financial Standing*);
 - (v) Clause 15.3 (*Freedom of Information*);
 - (vi) Clause 15.4 (*Protection of Data*); and/or
 - (vii) Paragraph 1.2 of Part C of Framework 0 (*Services and Key Performance Indicators*);
- (d) the representation and warranty given by the Supplier pursuant to Clause 6.2.6 is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;
- (e) the occurrence of an event which renders the performance of all or a material part of the Supplier's obligations under this Agreement unlawful under applicable Law;
- (f) the Supplier commits any material Default which is not, in the reasonable opinion of the Authority, capable of remedy; and/or
- (g) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice from the Authority to the Supplier specifying

the remediable Default and requesting it to be remedied in accordance with any instructions of the Authority.

20.2 Termination in Relation to Financial Standing

20.2.1 The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Services under this Framework Agreement; or
- (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services under this Framework Agreement.

20.3 Termination on Insolvency

The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where an Insolvency Event affecting the Supplier occurs.

20.4 Termination on Change of Control

20.4.1 The Supplier shall notify the Authority immediately if the Supplier is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law, shall notify the Authority immediately in writing of the circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place. The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control is planned or is in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control is planned or is in contemplation or has occurred, but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

20.5 Termination for Loss of Insurance Licence

The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier where either:

- a) the Supplier ceases to be licensed to carry on regulated activities in the UK including, if the Supplier is a Lloyd's Syndicate or the managing agent of a Lloyd's Syndicate, the Supplier ceases to be authorised to carry on business at Lloyd's, which form part of the Supplier's obligations under this Framework Agreement; or

- b) a Regulatory Body imposes a suspension or restriction upon the Supplier which materially adversely affects the Supplier's ability to perform any part of the Services.

20.6 *Not used.*

20.7 *Not used.*

20.8 Termination for breach of Regulations

The Authority may terminate this Framework Agreement by issuing a Termination Notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) and (b) of the Regulations.

20.9 Termination Without Cause

The Authority shall have the right to terminate this Framework Agreement at any time following nine (9) Months after the Framework Commencement Date by giving at least three (3) Months' written notice to the Supplier.

20.10 Partial Termination

20.10.1 Where the Authority has the right to terminate this Framework Agreement, the Authority is entitled to terminate all or part of this Framework Agreement pursuant to this Clause 20.10 (*Partial Termination*) provided always that, if the Authority elects to terminate this Framework Agreement in part, the parts of this Framework Agreement not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Framework Agreement.

20.10.2 The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 13.1 (*Variation Procedure*) including the effect that the partial termination may have on the provision of any other Services and the Framework Prices provided that:

- (a) where the Supplier has provided Framework Prices, the Supplier shall not be entitled to an increase in the Framework Prices in respect of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 20 (*Authority Termination Rights*) with the exception of Clause 20.9 (*Termination Without Cause*); and/or
- (b) the Supplier shall not be entitled to reject the variation.

21. SUSPENSION OF SUPPLIER'S APPOINTMENT

21.1 If the Authority is entitled to terminate this Framework Agreement pursuant to Clause 20 (*Authority Termination Rights*), the Authority may instead elect in its sole discretion to suspend the Supplier's ability to accept Call Off Contracts under this Framework Agreement by giving notice in writing to the Supplier, and the Supplier agrees that it shall not be entitled to enter into any new Call Off Contract during the period specified in the Authority's notice.

21.2 Any suspension under Clause 21.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.

21.3 The Parties acknowledge that suspension shall not affect the Supplier's obligation to perform any existing Call Off Contracts concluded prior to the suspension notice.

21.4 If the Authority provides notice to the Supplier in accordance with Clause 21.1, the Supplier's appointment under this Framework Agreement shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Authority in writing from time to time.

21.5 For the avoidance of doubt, no period of suspension under this Clause 21 (*Suspension of Supplier's Appointment*) shall result in an extension of the Framework Period.

22. CONSEQUENCES OF EXPIRY OR TERMINATION

22.1 Notwithstanding the service of a Termination Notice, the Supplier shall continue to fulfil its obligations under this Framework Agreement until the date of expiry or termination of this Framework Agreement or such other date as required under this Clause 22 (*Consequences of Expiry or Termination*).

22.2 Termination or expiry of this Framework Agreement shall not cause any Call Off Contracts to terminate automatically. For the avoidance of doubt, all Call Off Contracts shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Contract.

22.3 If the Authority terminates this Framework Agreement under Clause 20.1 (*Termination on Material Default*) or Clause 20.5 (*Termination for Loss of Insurance License*) and then makes other arrangements for the supply of the Services, the Supplier shall indemnify the Authority in full upon demand for the reasonable cost of procuring and implementing any alternative or replacement services to the Services.

22.4 Within ten (10) Working Days of the date of termination or expiry of this Framework Agreement, the Supplier shall promptly delete or return to the Authority any and all of the Authority's Confidential Information and Government Data in the Supplier's possession, power or control, either in its then current format or in a format nominated by the Authority, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under Clause 12 (*Records, Audit Access and Reporting*) of this Framework Agreement or under any Law or pursuant to any requirements of the FCA.

22.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.

22.6 The Supplier must, at no cost to the Authority, co-operate fully in the handover and re-procurement (including to a Replacement Supplier) of the Services.

22.7 Termination or expiry of this Framework Agreement shall be without prejudice to the survival of any provision of this Framework Agreement which expressly (or by

implication) is to be performed or observed notwithstanding termination or expiry of this Framework Agreement, including the provisions of:

22.7.1 Clause 1 (*Definitions and Interpretation*), Clause 6 (*Representations and Warranties*), Clause 6.6, Clause 9 (*Framework Agreement Performance*), Clause 11.1 (*Standards*), Clause 12 (*Records, Audit Access and Reporting*), Clause 15.1 (*Confidentiality*), Clause 15.2 (*Transparency*), Clause 15.3 (*Freedom of Information*), Clause 15.4 (*Protection of Data*), Clause 17 (*Liability*), Clause 18 (*Insurance*), Clause 22 (*Consequences of Expiry or Termination*), Clause 23 (*Compliance*), Clause 25 (*Waiver and Cumulative Remedies*), Clause 27 (*Prevention of Fraud and Bribery*), Clause 29 (*Severance*), Clause 31 (*Entire Agreement*), Clause 32 (*Third Party Rights*), Clause 33 (*Notices*), Clause 34 (*Dispute Resolution*) and Clause 35 (*Governing Law and Jurisdiction*); and

22.7.2 Framework 0 (*Services and Key Performance Indicators*), Framework Schedule 1 (*Framework Prices*), Framework Schedule 5 (*Insurance Requirements*), Framework Schedule 6 (*Commercially Sensitive Information*) and Framework Schedule 13 (*Tender*).

MISCELLANEOUS AND GOVERNING LAW

23. COMPLIANCE

23.1 Compliance with Law

23.1.1 The Supplier shall comply with all applicable Law in connection with the performance of this Framework Agreement.

23.1.2 In the event that the Supplier or the Supplier Personnel fails to comply with Clause 23.1.1, this shall be deemed to be a material Default and the Authority reserves the right to terminate this Framework Agreement by issuing a Termination Notice to the Supplier.

23.2 Equality and Diversity

23.2.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement (including those in relation to the provision of the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or

tribunal, or the Equality and Human Rights Commission or (any successor organisation).

23.3 Official Secrets Act and Finance Act

The Supplier shall comply with the provisions of:

23.3.1 the Official Secrets Acts 1911 to 1989; and

23.3.2 section 182 of the Finance Act 1989.

24. TRANSFER, ASSIGNMENT AND NOVATION

24.1 The Supplier shall not:

24.1.1 assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Framework Agreement or any part of it without Approval; or

24.1.2 enter into Key Sub-Contracts without Approval. Upon receipt of Approval, the Supplier shall comply with the requirements of Procurement Policy Note 01/18 Supply Chain Visibility (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698482/PPN_0118_Contract_Condition_for_Subcontracting_Supply_chain_spend_on_CF_final_.docx.pdf) as updated from time to time.

24.2 The Supplier remains responsible for all acts and omissions of the Supplier Personnel as if they were its own.

24.3 The Authority may assign, novate or otherwise transfer of any or all of its rights, liabilities and obligations under this Framework Agreement or any part thereof to:

24.3.1 any Central Government Body; or

24.3.2 a body other than a Central Government Body which performs any of the functions that previously had been performed by the Authority,

and the Supplier must, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 24.2.

24.4 A change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 24.5, affect the validity of this Framework Agreement and this Framework Agreement shall be binding on any successor body to the Authority.

24.5 If the Authority assigns, novates or otherwise transfers of any of its rights, obligations or liabilities under this Framework Agreement to a body which is not a Contracting Authority or if a body which is not a Contracting Authority succeeds the Authority (a "**Transferee**" in the rest of this Clause 24.5) the right of termination of the Authority in Clause 20.3 (*Termination on Insolvency*) shall be available to the Supplier in the

event of the insolvency of the Transferee (as if the references to Supplier in Clause 20.3 (*Termination on Insolvency*) and in the definition of Insolvency Event are to the Transferee).

25. WAIVER AND CUMULATIVE REMEDIES

25.1 The rights and remedies under this Framework Agreement may be waived only by notice in accordance with Clause 33 (*Notices*) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

25.2 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

26. RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Framework Agreement, nothing in this Framework Agreement, nor any actions taken by the Parties pursuant to this Framework Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

27. PREVENTION OF FRAUD AND BRIBERY

27.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Framework Commencement Date:

27.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

27.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

27.2 The Supplier must not during the Framework Period:

27.2.1 commit a Prohibited Act or any other criminal offence in Regulations 57(1) to 57(3) of the Regulations; and/or

27.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability under them.

27.3 The Supplier must, during the Framework Period:

27.3.1 establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

- 27.3.2 keep appropriate records of its compliance with its obligations under Clause 27.3.1 and make such records available to the Authority on request;
 - 27.3.3 if so required by the Authority, within twenty (20) Working Days of the Framework Commencement Date, and annually thereafter, certify in writing to the Authority, the compliance with this Clause 27.3.3 of all persons associated with the Supplier who are responsible for supplying the Services in connection with this Framework Agreement. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and
 - 27.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 27.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 27.1 or 27.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 27.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 27.4.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 27.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Framework Agreement has committed or attempted to commit a Prohibited Act.
- 27.5 If the Supplier makes a notification to the Authority pursuant to Clause 27.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation and allow the Authority to Audit any books, records and/or any other relevant documentation in accordance with Clause 12 (*Records, Audit Access and Reporting*).
- 27.6 If the Supplier breaches Clause 27.1 or Clause 27.2, the Authority may:
- 27.6.1 by notice, require the Supplier to remove from the performance of this Framework Agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
 - 27.6.2 immediately terminate this Framework Agreement for material Default by issuing a Termination Notice.
- 27.7 Any notice served by the Authority under Clause 27.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Framework Agreement shall terminate).

28. CONFLICTS OF INTEREST

28.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Contract.

28.2 The Supplier shall promptly notify, and provide full particulars to the Authority, if such conflict referred to in Clause 28.1 arises or may reasonably have been foreseen as arising.

28.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is an actual conflict between the pecuniary interests of the Supplier and the duties owed to the Authority under the provisions of this Framework Agreement or any Call Off Contract. The action of the Authority pursuant to this Clause 28 (*Conflicts of Interest*) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

28.4 Not used

29. SEVERANCE

29.1 If any provision of this Framework Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall, to the extent necessary to ensure that the remaining provisions of this Framework Agreement are not void or unenforceable, be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Framework Agreement shall not be affected.

29.2 In the event that any deemed deletion under Clause 29.1 is so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or if the deemed deletion materially alters the balance of risks and rewards in this Framework Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Framework Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Framework Agreement and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

29.3 If the Parties are unable to conclude good faith negotiations in accordance with Clause 29.2 to the satisfaction of both Parties within twenty (20) Working Days of the date of the notice given pursuant to Clause 29.2, this Framework Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Framework Agreement is terminated pursuant to this Clause 29 (*Severance*).

0. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning of this Framework Agreement.

1. ENTIRE AGREEMENT

31.1 This Framework Agreement and the other documents referred to in it constitute the entire agreement between the Parties in respect of the subject matter and supersede and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

31.2 Neither Party has been given, nor entered into this Framework Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Framework Agreement.

31.3 Nothing in this Clause 31 (*Entire Agreement*) shall exclude any liability in respect of misrepresentations made fraudulently.

2. THIRD PARTY RIGHTS

32.1 A person who is not Party to this Framework Agreement has no right to enforce any term of this Framework Agreement under the CRTPA, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA.

32.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Framework Agreement.

3. NOTICES

33.1 Except as otherwise expressly provided within this Framework Agreement, any notices issued under this Framework Agreement must be in writing. For the purpose of this Clause 33 (*Notices*), an e-mail is accepted as being "in writing".

33.2 Subject to Clause 33.1, the following table sets out the method by which notices may be served under this Framework Agreement and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (subject to Clause 33.3)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise,	Properly addressed and delivered as evidenced by

	delivery will occur at 9.00am on the next Working Day	signature of a delivery receipt
Royal Mail Signed For TM 1st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

33.3 The following notices may be served as an attachment to an email or by personal delivery or Royal Mail Signed ForTM 1st Class or other prepaid in the manner set out in the table in Clause 33.2:

33.3.1 any Termination Notice under Clause 20 (*Authority Termination Rights*), including in respect of partial termination;

33.3.2 any notice in respect of:

- (a) Clause 21 (*Suspension of Supplier's Appointment*);
- (b) Clause 25 (*Waiver and Cumulative Remedies*); or
- (c) Default or Authority Cause; and

33.3.3 any Dispute Notice.

33.4 The deemed time of delivery of such notice shall be the deemed time of delivery as set out in the table in Clause 33.2.

33.5 This Clause 33 (*Notices*) does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Framework Schedule 7 (*Dispute Resolution Procedure*)).

33.6 For the purposes of this Clause 33 (*Notices*), the address of each Party shall be:

33.6.1 For the Authority:

UK Export Finance

Address: 1 Horse Guards London SW1A 2HQ

For the attention of: **Text Redacted**, Head of Active Portfolio Management, Claims and Recoveries

E-mail address: **Text Redacted**

33.6.2 For the Supplier:

Berry Palmer & Lyle Limited
Address: 52 Lime Street, London, England, EC3M 7AF

Text Redacted

E-mail address: **Text Redacted**

33.7 Either Party may change its address for service by serving a notice in accordance with this Clause 33 (*Notices*).

34. DISPUTE RESOLUTION

34.1 The Parties shall resolve Disputes arising out of or in connection with this Framework Agreement in accordance with the Dispute Resolution Procedure.

34.2 Subject to Clause 20 (*Authority Termination Rights*) and Clause 21 (*Suspension of Supplier's Appointment*), the Supplier shall continue to provide the Services in accordance with the terms of this Framework Agreement until a Dispute has been resolved.

35. GOVERNING LAW AND JURISDICTION

35.1 This Framework Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

35.2 Subject to Clause 34 (*Dispute Resolution*) and Framework Schedule 7 (*Dispute Resolution Procedure*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any Dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Framework Agreement or its subject matter or formation.

IN WITNESS of which this Framework Agreement has been duly executed by the Parties.

Signed for and on behalf of the **SUPPLIER**

Signature:

Name:

Position:

Managing Director

Date

6/1/2023

Signed for and on behalf of the **AUTHORITY**

Signature:

Name:

Position:

Director of Resources

Date

6/1/2023

SCHEDULE 1
SERVICES AND KEY PERFORMANCE INDICATORS

PART A
INTRODUCTION

1. GENERAL

- 1.1 The purpose of Part B of Framework 0 (*Services and Key Performance Indicators*) is for the Authority to lay down the characteristics of the Services that the Supplier will be required to make available under this Framework Agreement (including, if applicable, in each Lot) together with any specific Standards applicable to the Services.
- 1.2 The Services and any Standards set out in Part B below may be refined (to the extent permitted and set out in Framework Schedule 3 (Call Off Procedure) during a Further Competition Procedure to reflect the Authority's Services requirements for entering a particular Call Off Contract.

PART B
THE SERVICES

SPECIFICATION OF REQUIREMENTS

1. INTRODUCTION

- 1.1 The Authority is seeking the provision of an insurance broking service.
- 1.2 Subject to Paragraph 1.3 below, the Primary Broker shall perform and/or make available to the Authority the Services defined in this Part B of Framework 0 (*Services and Key Performance Indicators*) together with any specific Standards applicable to the Services. The Primary Broker shall perform the Services described in Paragraphs 2 and 3 of Part B below from the Framework Commencement Date. The Services set out in Paragraphs 4, 5 and/or 6 of Part B below shall be procured separately by the Authority through a Broker Call Off Contract in accordance with Framework Schedule 3 (*Call Off Procedure*). The Services and any Standards set out in Part B below for a particular Call Off Contract may be refined to the extent permitted and set out in Framework Schedule 3 (*Call Off Procedure*) to reflect the Authority's particular requirements.
- 1.3 Save to the extent expressly set out in this Framework 0 (*Services and Key Performance Indicators*), nothing in the Services would require the Supplier to give legal or regulatory advice to the Authority.
- 1.4 If:
- (a) the framework agreement with the Primary Broker has been terminated in accordance with that framework agreement;
 - (b) the framework agreement with the Primary Broker has been suspended in accordance that framework agreement; or
 - (c) in respect of a specific instruction or request by the Authority in respect of Paragraphs 3, 4, 5 and/or 6, the Primary Broker has a conflict of interest.

the Reserve Broker shall instead perform and/or make available the Services. In the case of (c) above, the Services described in Paragraph 2 below remain the responsibility of the Primary Broker.

2. INSURER RELATIONSHIP MANAGEMENT BROKER RESPONSIBILITIES

- 2.1 The Supplier's team shall take steps to gain an understanding of the structure of the Authority, the credit approval process and the overall portfolio management approach. The Authority will provide documentation and make staff available to explain procedures and answer questions.
- 2.2 Maintain regular contact with all Framework Lot 2 Suppliers and their Nominated Insurers.
- 2.3 Notify the Authority of any material events or occurrences relating to an Insurer (e.g. regulatory authorisation, changes in structure, personnel, capacity, market willingness to write particular risks or ownership) no later than three (3) Working Days after the information becomes publicly available.
- 2.4 Notify the Authority of any relevant regulatory developments which would affect either an Insurer or contractual arrangements no later than one (1) Month from its announcement.
- 2.5 Collect accounting information (and, where relevant) funds at Lloyd's information from Insurers.
- 2.6 Co-ordinate communications (e.g. questions and answers) between Insurers and the Authority).
- 2.7 Arrange relationship and financial due diligence meetings between the Authority and Insurers as appropriate.
- 2.8 Attend Committee Meetings of the Authority (e.g. Board, Executive Committee, Enterprise Risk and Credit Committee), as appropriate.
- 2.9 Attend Monthly (or such other frequency as considered appropriate by the Authority) meetings with the Authority.
- 2.10 Identify alternative products or approaches to support the Authority's mission.
- 2.11 The Authority may require incidental insurance brokerage advice and support which may include, but is not limited to advice on:
 - (a) Insurer security arrangements;
 - (b) alternatives to insurance, for example reinsurance, surety or counter-indemnity arrangements; and
 - (c) levels of insurance or where applicable reinsurance and levels of excess.
- 2.12 Provide semi-annual reports to the Authority in April and October describing:

- (a) General state of the market;
- (b) Opportunities for the Authority;
- (c) Contact with Insurers during the 6-month periods ending March and September; and
- (d) Identification of issues and areas for improvement.

2.13. Notify the Authority immediately and before any Market Sounding exercise, if the Supplier becomes aware of any conflict of interest issues that would affect an Insurer's participation in any Market Sounding and Further Competition Procedure.

3. MARKET SOUNDINGS – BROKER RESPONSIBILITIES

- 3.1 At the request of the Authority, engage with the market including on a named, non-binding basis to establish willingness to write particular risks and risk requirements for specific risks.
- 3.2 Engage with the market to provide advice to the Authority regarding features and characteristics of potential requirements which might influence an Insurer's willingness to write particular risks.
- 3.3 At the request of the Authority, establish general market capacity for general requirements on a non-named basis.
- 3.4 Provide advice to the Authority in the identification and evaluation of the insurance market capacity for portfolio risk exposures by geography or by industry sector or otherwise.
- 3.5 Provide advice, guidance and recommendations to the Authority to assist in the selection of the most economically advantageous arrangements.

4. FURTHER COMPETITION PROCEDURES – BROKER RESPONSIBILITIES

- 4.1 The Supplier shall co-ordinate and manage the approach to the Insurers in consultation with the Authority and in accordance with Framework Schedule 3 (*Call Off Procedure*) and Framework Schedule 4 (*Award Criteria*).
- 4.2 The Supplier will review the Statement of Requirements, premium calculators and any changes from the Template Contract of Insurance with the Insurers to allow documentation to be finalised before launching a Further Competition under Lot 2, including providing advice regarding insured events, policy structures and policy tenors.
- 4.3 The Supplier shall identify material challenges, dependencies, risks and issues related to the process of procuring the insurance by the effective date.
- 4.4 The Supplier shall provide a dedicated team of key people with the appropriate skills, experience and qualifications and sufficient capacity to provide the afore-mentioned service.

4.5 The Supplier shall:

- (a) attend ad hoc meetings as required drawing in any relevant specialist skills; and
- (b) respond to queries promptly with appropriate advice and guidance.

4.6 The Supplier will advise the Authority in respect of performance of its duty under section 3 of the Insurance Act 2015 to present all relevant information to the Insurers fairly.

4.7 On request, as and when a project requires a firm proposal, the Supplier shall support the development of a Market Presentation and facilitate/host its presentation to those Insurers which meet the selection criteria during the Further Competition Procedure. The Supplier will make available a secure electronic data room to store relevant transaction documents provided by the Authority to allow, as far as is reasonable, simultaneous release of information and communications to all invited Insurers.

4.8 At the start of the Further Competition Procedure, the Supplier shall provide insurance brokerage support and advice to the Authority in relation to the Market Presentation on:

- (a) due diligence exercises and the Authority's approach to documentation risk;
- (b) risk profiling and the Authority's credit approval processes;
- (c) insurance and indemnity matters ("follow the fortunes"); and
- (d) contractual procedures for claims ("follow the settlement").

4.9 The Supplier shall:

- (a) remind Insurers of their confidentiality obligations under the Framework Agreement and any non-disclosure agreements as appropriate; and
- (b) confirm that each Insurer is an entity with permission under Part IVA of the Financial Services and Markets Act 2000 (as amended from time to time) ("**FSMA**") to carry out regulated activities in the UK in connection with carrying out and effecting contracts of insurance or, in the case of a Managing Agent, to manage the underwriting capacity of a Lloyd's syndicate and that, in respect of the member(s) of a Lloyd's Syndicate, that they are approved as members under the Lloyd's Acts 1871-1982.

4.10 The Supplier shall facilitate the process of clarification relating to the opportunities proposed by the Authority by collating and sharing questions from Insurers and sharing responses provided by the Authority without disclosing the identity of the Insurers.

4.11 Unless advised otherwise by the Authority, the Supplier shall check that the Insurers' quotations and insurance terms are in accordance with the Market Presentation and documentation agreed with the Authority.

4.12 The Supplier shall present all the Insurer quotations to the Authority explaining the individual quotes, including the Insurers who declined to quote with their reason(s).

- 4.13 Following written instruction from the Authority, the Supplier shall place the required cover with the selected Insurer(s) on behalf of the Authority. The Supplier shall identify material challenges, dependencies, risks and issues related to the process of procuring the insurance by the effective date.
- 4.14 The Supplier shall finalise the Contract of Insurance with the selected Insurer(s) by an effective date within the validity period of the tenders received under the Further Competition Procedure and provide written confirmation of cover to the Authority.
- 4.15 The Supplier's advice under the preceding Paragraphs 4.12 and 4.13 shall be included in the pricing proposal.
- 4.16 The Supplier shall provide invoices and statements to the Authority as in accordance with the terms of the Call Off Contract. The Supplier's invoice shall include the following details as a minimum, per Contract of Insurance procured:
- (a) Contract of Insurance;
 - (b) Insurer details;
 - (c) policy number;
 - (d) payment terms;
 - (e) Premium in the applicable currency and, if applicable, the VAT and/or IPT amounts; and
 - (f) Insurance Services Brokerage.
- 4.17 During the policy period there may be circumstances where contract details change. Where necessary, the Authority shall request (in writing) that the Supplier shall seek to arrange an amendment to the Contract of Insurance and / or Premium accordingly with the relevant Insurer(s). The request to amend the policy shall be acknowledged by the Supplier within two (2) Working Days of receipt and shall implement and manage the amendment process within a timetable to be agreed between the Parties and the Insurers and in accordance with the process set out in the Contract of Insurance.
- 4.18 The Authority reserves the right to require the Supplier to establish appropriate escrow arrangements regarding the collection and distribution of funds (including Premiums, Premium refunds and the proceeds of any claims).
- 4.19 On request and before any Further Competition Procedure, the Supplier shall disclose any relevant regulatory document(s) to the Authority.
- 4.20 The Supplier shall, upon request by the Authority, disclose all earnings relating to the Call Off Contract and Contract of Insurance including Insurance Services Brokerage (as an amount in the applicable currency and as a percentage).
- 4.21 The Supplier shall, upon receipt of bids, prepare and provide a report to the Authority including the following detail as a minimum:

- (a) the basis of cover - any variation(s) from the original Statement of Requirements shall be clearly identified and allow for contract certainty;
- (b) the period of quotation validity; and
- (c) Premium (as determined through a Further Competition Procedure).

4.22 Where requested, the Supplier shall advise the Authority in the performance of its duty to make a fair presentation of the risk, present to Insurers the relevant documents and information, including, where appropriate, providing to the Authority the documents and information which it holds in its own capacity which are required to be presented.

4.23 The Supplier will review, check and propose amendments and provide advice relating to draft Lot 2 Award Letters and Contracts of Insurance (including Schedules thereto) within 2 Working Days of receipt.

4.24 The Supplier shall ensure that each Contract of Insurance procured pursuant to this Framework Agreement is a properly documented contract of insurance which meets the Authority's needs as communicated to the Supplier from time to time, save where it has not been possible to do so in which case the Authority needs to have been informed of and accepted the limitations.

4.25 The Supplier shall ensure valid execution of documentation by suitably authorised individuals on behalf of Insurers.

4.26 As set out in Paragraph 4 of Framework Schedule 3 (*Call Off Procedure*), the Authority shall be entitled at all times to decline to make an award for its requirements and the Supplier acknowledges and agrees that:

- (a) nothing in this Framework Agreement shall oblige the Authority to award a Contract of Insurance after initiating a Further Competition Procedure; and
- (b) no amounts shall be payable by the Authority to the Supplier in respect of costs incurred by the Supplier in connection with a Further Competition Procedure that does not result in the award of a Contract of Insurance.

4.27 At the request of the Authority, and where no tenders or no suitable tenders (e.g. one which does not generate the Authority's minimum level of risk transfer) have been submitted in response to a Further Competition Procedure, the Supplier shall coordinate and manage the procurement of any contracts of insurance by the Authority in accordance with the "negotiated procedure without prior publication" as set out in the Regulations.

5. MANAGEMENT OF CONTRACTS OF INSURANCE (INCLUDING CLAIMS HANDLING) – BROKER RESPONSIBILITIES

5.1 The Supplier shall manage all communications between the Authority and Insurers during the term of each Contract of Insurance placed under each Call Off Contract. At all times, the Supplier will ensure that no information relating to one Insurer's pricing and/or Premium is shared with any other Insurer.

- 5.2 The Supplier shall support the Authority in negotiating any amendments to a Contract of Insurance and arranging to issue relevant Endorsements.
- 5.3 The Supplier shall handle any and all claims procedures between the Authority and Insurers. This will include arrangements for the Authority, through the Supplier, to notify Insurers of likely claims and keep them informed on progress in realising recoveries.
- 5.4 The Supplier shall make all reasonable endeavours to ensure that any costs for which the Authority is liable are minimised.
- 5.5 The Supplier shall provide advice to the Authority as appropriate, e.g. if an Insurer requires support to arrange its own reinsurance to close.
- 5.6 Claim notification details shall be confirmed by the Authority and the Supplier prior to completion of the Contract of Insurance and documented in accordance with the relevant Contract of Insurance (as refined in accordance with the Call Off Procedure). The Supplier shall ensure that:
 - (a) conflicts of interest are managed and disclosed; and
 - (b) claims are handled fairly and settled promptly.

6. CLAIMS AND RECOVERIES – BROKER RESPONSIBILITIES

- 6.1 The Supplier shall promptly transmit to the Insurer(s) their share of any recoveries held or received by the Supplier.

PART C

KEY PERFORMANCE INDICATORS

1. GENERAL

- 1.1 The purpose of this Part C is to set out the KPIs by which the Supplier's overall performance under this Framework Agreement shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Framework Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 13.1 (*Variation Procedure*).
- 1.2 The Supplier shall comply with all its obligations related to KPIs set out in this Framework Agreement, use all reasonable endeavours to meet the KPI Targets identified in the table below, and establish processes to monitor its performance against them.
- 1.3 The Authority and the Government (including Cabinet Office) reserve the right to publish:
 - 1.3.1 the Transparency Information; or
 - 1.3.2 any further information relating to the performance of the Supplier against the KPIs as required by the Cabinet Office subject to exemptions under the Regulations and/or FOIA 2000. The Authority shall consult the Supplier on KPIs to be published no less than twenty (20) Working Days before the date on which such publication is due.
- 1.4 Performance review meetings will take place throughout the Framework Period ("**Supplier Review Meetings**") at such times and frequencies as the Authority determine from time to time. The Supplier Review Meetings shall be attended, as a minimum, by the Authority's Representative(s) and/or representative and the Supplier framework manager and/or representative.
- 1.5 The Supplier Review Meetings will review the Supplier's performance under this Framework Agreement.
- 1.6 The KPIs from which performance of this Framework Agreement by the Supplier will be reported against are set out in Table 1 of this Framework 0 (*Services and Key Performance Indicators*).

Table 1

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
Insurer Relationship Management & Strategic Direction				
1. Timely, Complete and Correct provision of Framework Lot 2 Supplier Reports	<p>The Supplier shall provide complete and correct Framework Lot 2 Supplier Reports relating to Framework Lot 2 Suppliers and their Nominated Insurers.</p> <p>The Framework Lot 2 Supplier Report shall include:</p> <ol style="list-style-type: none"> 1. Identification of all current issues arising related to managing the Lot 2 (insurance panel), e.g., <ul style="list-style-type: none"> • Insurer Credit Rating changes • Insurer changes of name • Insurer changes of ownership • Insurer changes of personnel • Insurer changes of registration • reinsurance arrangements • regulatory developments • changes of risk appetite • Insurer Cyber Essentials status • data breaches • addition/removal of Nominated Insurers – these are just examples 2. Strategic Direction of the Market 3. Insurers' positions <ul style="list-style-type: none"> • Insurers' perspective of the Authority and the Authority opportunities 	Zero late, incomplete or inaccurate reports	<p>Semi-annually, no later than 30 April and 31 October covering 6-month periods ended 31 March and 30 September.</p> <p>First report due: 30 April 2023</p>	<p>To be reported publicly by UK Government semi-annually as:</p> <ul style="list-style-type: none"> • Red = Late or incomplete or inaccurate (or unless expressly agreed in writing by the Authority) • Green=Timely, Complete and Correct

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
	<ul style="list-style-type: none"> Feedback Suggestions / Innovations from Brokers / Insurers 			
Market Soundings				
2.99% response rate: Percentage of Responses received from Framework Lot 2 Suppliers and Nominated Insurers	The ratio of responses received to Market Sounding requests to the total number of responses sought	<ul style="list-style-type: none"> Target: 99% responses N/A (if no Market Soundings completed in the quarter) 	Quarterly (before 1 December, 1 March, 1 June, 1 September)	To be reported publicly by UK Government semi-annually as: Green = 99% or over Red = below 99%
Further Competitions				
3. Additional Capacity Secured	Shortfall/ Surplus of capacity targets set by the Authority at the beginning of a Further Competition Procedure Within each Quarter: The net total secured after deducting the Authority's reasonable target	Target met = green Target not met (but reasonable justification provided by supplier) = green Target not met = red	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
Management of Contracts of Insurance				
4. Response to issues arising after the binding of the Contract of Insurance	Time taken to respond to issues related to the delivery of the management of contracts of insurance, the KPI will report the number of instances where the Broker fails to address / communicate to the Authority an issue arising on any Contract of Insurance within two (2) Working Days.	Target is Zero that exceed two (2) Working Days	Quarterly (before 1 December, 1 March, 1 June, 1 September)	To be reported publicly by UK Government semi-annually as: Green = achieves target Red = does not achieve the target
Framework Contract Compliance				
5. Framework Contract Compliance	The Supplier shall at all times comply fully with this Framework Agreement.	Zero breaches	Quarterly (before 1 December, 1 March, 1 June, 1 September)	To be reported publicly by UK Government semi-annually as: Red = breaches reported Green = no breaches
Social Values				
6. Timely and Complete: Social Value Review (Equal	The report shall include (i) the number and details of new initiatives launched for disadvantaged or minority groups (e.g., opportunities offered under the contract for initiatives such as work	<input type="checkbox"/> Target: Meets / exceeds the Authority requirements,	Annually (no later than 31 August)	To be reported publicly by UK Government semi-annually as: Green = achieves target

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
Opportunity)	experience placements, internships, graduate schemes, engagement, recruitment and staff development); and (ii) the number and details of existing initiatives for disadvantaged and minority groups. There are opportunities to tackle training, employment, skills and pay inequality in the contract workforce, or to support in-work progression to help people in the contract workforce to move into higher paid work by developing new skills relevant to the contract.	including Tender commitments □ N/A (November, February, May)		To be reported publicly by UK Government semiannually as: Red = does not achieve the target
Fighting climate change	Annual reporting on the Carbon Reduction Plan	Reporting Carbon Reduction improvements Plan	Annually	To be reported publicly by UK Government semi-annually as: Red — no report submitted Green — report submitted annually

SCHEDULE 2 FRAMEWORK PRICES

1. GENERAL PROVISIONS

- 1.1 The Framework Prices set out in Annex 1 to this Framework Schedule 1 (*Framework Prices*) are the maximum that the Framework Lot 1 Supplier may charge pursuant to any Call Off Contract.
- 1.2 The Supplier acknowledges and agrees that, subject to Paragraph 3 of this Framework Schedule 1 (*Framework Prices*), the Framework Prices cannot be increased.

2. COSTS AND EXPENSES

- 2.1 The Framework Prices shall be used as the basis for calculating the Insurance Services Brokerage as detailed further in the Call Off Contract.
- 2.2 Subject to Paragraph 2.3 below, the Framework Prices shall include all costs and expenses relating to the Services provided to the Authority and/or the Supplier's performance of its obligations under any Call Off Contract, and no amounts in addition to the Insurance Services Brokerage shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:
 - 2.2.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
 - 2.2.2 any amount for any services provided or costs incurred by the Supplier prior to the commencement date of any Call Off Contract.
- 2.3 The Framework Prices shall exclude any Contract of Insurance Charges as defined and payable pursuant to and in accordance with the Call Off Contract.

3. ADJUSTMENT OF THE FRAMEWORK PRICES

- 3.1 The Framework Prices shall only be varied due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Framework Prices in accordance with Clause 13.2 (*Legislative Change*) of the Framework Agreement.
- 3.2 Subject to Paragraph 3.1 of this Framework Schedule, the Framework Prices will remain fixed for the duration of the Call Off Contract.

ANNEX 1: FRAMEWORK PRICES

	Brokerage (%) of the Contract of Insurance Premium	Brokerage Cap
Broker	<div>Text Redacted</div> (the "Brokerage Percentage")	<div>Text Redacted</div> Further Competition pursuant to a Broker Call Off Contract (the "Brokerage Cap")
<p>Notes: The Brokerage Cap applies to each Further Competition Procedure, regardless of the number of (a) further competition lots; and (b) policies incepted.</p> <p>The value of the Broker Cap will be converted from GBP into the currency of the Premium at the rate prevailing on the day of policy inception.</p>		

SCHEDULE 3 CALL OFF PROCEDURE

1. AWARD PROCEDURE

- 1.1 If the Authority decides to source services through the Framework, it will then award a call off contract in accordance with the procedure set out in this Framework Schedule 3 (*Call Off Procedure*) and the requirements of the Regulations and the Guidance.

2. LOT 1 AWARD PROCEDURE

- 2.1 Subject to Paragraph 1.1 above, the Authority will award Broker Call Off Contracts by way of direct award in accordance with this Paragraph 2.
- 2.2 Before awarding the Broker Call Off Contract, the Authority shall:
- 2.2.1 define a clear scope of requirements for the Broker Call Off Contract;
 - 2.2.2 confirm that its requirements can be met by the Supplier;
 - 2.2.3 confirm that the Template Broker Letter of Appointment and Template Broker Call Off Terms do not require any amendments or modification to cover its requirements; and
 - 2.2.4 award the Call Off Contract in accordance with Paragraph 2.3 below.
- 2.3 Subject to Paragraph 2.4 below, the Broker Call Off Contract will be awarded to the Primary Broker.
- 2.4 The Reserve Broker will only be awarded a Broker Call Off Contract if:
- 2.4.1 a conflict of interest in respect of the Primary Broker has been identified and the Authority considers that there has been a failure by the Primary Broker to satisfy the Authority that the Primary Broker can mitigate against the conflict of interest;
 - 2.4.2 the framework agreement with the Primary Broker has been terminated in accordance with that framework agreement; or
 - 2.4.3 the framework agreement with the Primary Broker has been suspended in accordance that framework agreement.
- 2.5 The Broker will manage Lot 2 Further Competition Procedures on the Authority's behalf and will provide the Authority with any ancillary Services as required under Lot 1.

3. LOT 2 AWARD PROCEDURE

The Authority's Obligations

- 3.1 The Authority is not permitted to use the Framework as a benchmarking tool.

3.2 The Authority shall award Contracts of Insurance through a Further Competition Procedure managed by the Broker by:

3.2.1 developing a Statement of Requirements setting out its requirements for the Services;

3.2.2 issuing a Market Presentation to all Framework Lot 2 Suppliers and Nominated Insurers capable of performing the Contract of Insurance;

3.2.3 amending or refining the Template Contract of Insurance to reflect its Services requirements only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;

3.2.4 inviting tenders from Framework Lot 2 Suppliers and Nominated Insurers capable of performing the Contract of Insurance by conducting a Further Competition Procedure for its Statement of Requirements in accordance with the Regulations and Guidance and in particular the Authority or its appointed Broker shall:

- (a) invite Framework Lot 2 Suppliers and Nominated Insurers to submit a tender in writing for each proposed Contract of Insurance to be awarded by giving written notice by email to the relevant supplier representative of each Insurer;
- (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed Contract of Insurance and the time needed to submit tenders; and
- (c) keep each tender confidential until the time limit set out for the return of tenders has expired;

3.2.5 apply the Further Competition Award Criteria to the Framework Lot 2 Suppliers' and Nominated Insurers' compliant tenders submitted through the Further Competition Procedure as the basis of its decision to award a Contract of Insurance for its Statement of Requirements;

3.2.6 on the basis set out above, award its Contract of Insurance to the successful Framework Lot 2 Supplier(s) and/or Nominated Insurer(s) in accordance with Paragraph 5. The Contract of Insurance shall:

- (a) reference the Statement of Requirements;
- (b) reference the tender submitted by the successful Insurer;
- (c) state the up-front insurance Premium payable for the Services requirements in accordance with the tender submitted by the successful Insurer; and

- (d) incorporate the terms of the Template Contract of Insurance (as may be amended or refined by the Authority in accordance with Paragraph 3.2.3 above); and

3.2.7 provide unsuccessful Framework Lot 2 Suppliers and Nominated Insurers with written feedback via the Broker in relation to the reasons why their tenders were unsuccessful.

- 3.3 At the request of the Authority, and where no tenders or no suitable tenders (e.g. one which does not generate the Authority's minimum level of risk transfer) have been submitted in response to a Further Competition Procedure, the Broker shall co-ordinate and manage the procurement of any contracts of insurance by the Authority in accordance with the "negotiated procedure without prior publication" as set out in the Regulations.

The Framework Lot 2 Supplier's Obligations

- 3.4 The Framework Lot 2 Supplier or Nominated Insurer shall in writing, by the time and date specified by the Authority following an invitation to tender pursuant to Paragraph 3.2.4 above, provide the Authority with either:

3.4.1 a statement to the effect that it does not wish to tender in relation to the relevant Statement of Requirements or cannot tender pursuant to Clause 28 (*Conflicts of Interest*). If the Framework Lot 2 Supplier or Nominated Insurer declines to provide a quote, they shall provide the Broker with reason(s) as to why a quote was not provided; or

3.4.2 the full details of its tender made in respect of the relevant Statement of Requirements. In the event that the Framework Lot 2 Supplier or Nominated Insurer submits such a tender, it should include, as a minimum:

- (a) an email response subject line to comprise unique reference number and the Framework Lot 2 Supplier's or Nominated Insurer's name, so as to clearly identify the Supplier or the Nominated Insurer;
- (b) a brief summary, in the email, stating that the Supplier is bidding for the Statement of Requirements; and
- (c) a proposal covering the Statement of Requirements.

- 3.5 The Supplier or the Nominated Insurer agrees that all tenders submitted by it in relation to a Further Competition Procedure held pursuant to this Paragraph 3:

3.5.1 shall remain open for acceptance by the Authority for sixty (60) Working Days (or such other period specified in the invitation to tender issued by the Authority in accordance with the Call Off Procedure); and

3.5.2 are made and will be made in good faith and that the Supplier or the Nominated Insurer has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person.

The Supplier or the Nominated Insurer certifies that it has not and undertakes that it will not:

- (a) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
- (b) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

4. NO AWARD

Notwithstanding the fact that the Authority has followed a procedure as set out above in Paragraph 2 or 3 (as applicable), the Authority shall be entitled at all times to decline to make an award and nothing in this Framework Agreement shall oblige the Authority to award any call off contract.

5. AWARDING AND CREATING A CALL OFF CONTRACT

Lot 1

- 5.1 The Authority may award a Broker Call Off Contract with the Broker by sending (including electronically) a signed Broker Call Off Letter of Appointment in the form of the Template Broker Call Off Letter of Appointment.
- 5.2 On receipt of the signed Broker Call Off Letter of Appointment from the Authority, the Broker shall accept the Broker Call Off Contract by promptly counter signing and returning (including by electronic means) the Broker Call Off Letter of Appointment to the Authority.
- 5.3 On receipt of the countersigned Broker Call Off Letter of Appointment from the Broker, the Authority shall send (including by electronic means) a written notice of receipt to the Broker and the Broker Call Off Contract shall be formed with effect from the commencement date stated in the Broker Call Off Letter of Appointment.

Lot 2

- 5.4 The Authority may enter into a Contract of Insurance with the Insurer by sending (including electronically) a Contract of Insurance Letter of Award.
- 5.5 On receipt of the Contract of Insurance Letter of Award as described in Paragraph 5.4 from the Authority and/or the Broker, the Authority will provide the Broker with a signed application for insurance that reflects the Statement of Requirements and the Contract of Insurance Letter of Award and the Broker shall obtain binding Contracts of Insurance from the Insurer.

**SCHEDULE 4
AWARD CRITERIA**

1. GENERAL

- 1.1 A call off contract shall be awarded on the basis of most economically advantageous tender ("MEAT") from the point of view of the Authority.
- 1.2 This Framework Schedule 4 (*Award Criteria*) lays out the criteria for direct award (Lot 1) and for further competition (Lot 2) in accordance with the Call Off Procedure.

2. LOT 1 – DIRECT AWARD CRITERIA

- 2.1 See Paragraph 2 of Framework Schedule 3 (*Call Off Procedure*).

3. LOT 2 – FURTHER COMPETITION AWARD CRITERIA

- 3.1 The criteria in Table 1 (Award Criteria weighting) below shall be applied to evaluate compliant tenders submitted through the Further Competition Procedure.
- 3.2 For supplier guidance, Table 1 (Award Criteria weighting) shows the weightings that shall be applied at the Further Competition Procedure stage in accordance with Framework Schedule 3 (Call Off Procedure) of this Framework Agreement.
- 3.3 Bids shall be ranked according to the overall score, as determined below. The highest-ranking bids will be prioritised for full allocation.

Table 1 (Award Criteria weighting):

CRITERIA	PERCENTAGE WEIGHTINGS
Selection Criteria ¹	Pass/ Fail
Price	70%
Quality	20%
Social Value	10%
Total	100%

4. AWARD CRITERIA:

4.1 Price Evaluation:

- 4.2 Maximum score available 70%
- 4.3 The price score for a Tenderer is determined using the following methodology:

¹The Selection criteria set at Tender Stage are met

4.3.1 Bids converted to Premium per Million of Exposure 4.3.2

The lowest Bid on this basis will be allocated 70 marks

4.3.3 The price score for a bidder is determined using the inverse price proportion method where the lowest priced of all the submissions are divided by each Tenderers' price in turn. i.e., bids of £100, £150 and £200 per £1m exposure would generate relative scores of 100/100, 100/150 and 100/200 (100%, 66.67% and 50% respectively).

4.3.4 This scenario would generate scores of 70, 46.67 and 35 respectively for inclusion in the overall assessment

4. Quality Evaluation:

5.1 Maximum score available 20%

5.2 *Table 2 - Grading Scheme (Credit Rating)* shows the grading scheme to be applied to the Tenderer's lowest credit rating.

Table 2 - Grading Scheme (Credit Rating)

Lowest Credit Rating	Marks
Below A- (AM Best / Fitch / S&P); A3 (Moody's)	Zero
A- (AM Best / Fitch / S&P); (Moody's A3)	5
A (A2)	10
A+ (A1)	15
Above A+ (A1)	20

5.3 For the avoidance of doubt, for these purposes all Lloyd's Syndicates will be evaluated on the lower of their own Syndicate Credit Rating (where held) and the Lloyd's market rating.

5. Social Value Evaluation (Tackling economic inequality)

6.1 Scores will be allocated based upon the most recent report available from the Insurer. Insurers will be at liberty to provide an updated report for consideration with their bid.

6.2 Scores will be allocated by the Authority on the following basis:

Numerical Score	Scoring Grade	Description
0	No evidence	No relevant response
2	Poor Response	The response approach fails to demonstrate an adequate understanding of the question and fails to address the listed points of content, with major concerns leading to the conclusion of a low level of confidence that the Tenderer can meet the requirement.
4	Minimal Response	The response approach demonstrates only a basic understanding of question and coverage of the listed points is either incomplete or not relevant to the requirements, with major concerns leading to the conclusion of a low level of confidence that the Tenderer can meet the requirement.
6	Acceptable Response	The response approach demonstrates an adequate understanding of the question and adequately covers all the points listed. The response also adequately demonstrates how the Tenderer complies with the requirements, with minor concerns leading to the conclusion of a medium level of confidence that the Tenderer can meet the requirement.
8	Good Response	The response approach demonstrates a good understanding of the question, fully covers all the points listed to a good standard and/or demonstrates innovation, insight or efficiency in provision of the services. The response also fully demonstrates how the Tenderer complies with the requirements, leading to the conclusion of a high level of confidence that the Tenderer can meet the requirement.
10	Excellent Response	The response approach demonstrates a comprehensive understanding of the module, fully covers all the points listed to an excellent standard and/or demonstrates excellent innovation, insight or efficiency in provision of the services. The response also fully demonstrates how the Tenderer complies with the requirements, leading to the conclusion of a high level of confidence that the Tenderer can meet the requirement.

SCHEDULE 5 INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

- 1.1 The Supplier shall for the periods specified in this Framework Schedule 5 (*Insurance Requirements*) either self-insure in accordance with Paragraph 8 below or take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (*Required Insurances*) to this Framework Schedule 5 (*Insurance Requirements*) and any other insurances as may be required by applicable Law (together the "**Insurances**"). The Supplier shall ensure that each of the Insurances is effective no later than the Framework Commencement Date.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Framework Agreement, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, and has not elected to self-insure pursuant to Paragraph 8, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. EVIDENCE OF POLICIES

The Supplier shall upon the Framework Commencement Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Framework Schedule 5 (*Insurance Requirements*). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5. AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

5.1.1 if a claim or claims which do not relate to this Framework Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

- (a) details of the policy concerned; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Framework Agreement are paid by insurers, the Supplier shall:

- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Framework Agreement; or
- (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6. CANCELLATION

The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7. INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Framework Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall cooperate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of £5,000,000.00 relating to or arising out of the provision of the Services or this Framework Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Framework Agreement or otherwise.

8. SELF-INSURANCE

- 8.1 Paragraphs 1 to 7 of this Framework Schedule 5 (*Insurance Requirements*) shall not apply where the Supplier:
- 8.1.1 has notified the Authority in writing that it has the financial capability to provide the Authority with financial resource for all risks which may be incurred by the Supplier arising out of the Supplier's performance of its obligations under the Framework Agreement and any Call Off Contract, including death and personal injury, loss or damage to property or any other loss, that is equal to or greater than the financial recourse that would be available to the Authority through the insurances set out in Paragraphs 1 to 7 of this Framework Schedule 5 (*Insurance Requirements*);
 - 8.1.2 has provided the Authority with its most recent audited accounts and those of its ultimate parent company (if any) and any other information that the Authority may reasonably request; and
 - 8.1.3 the Authority has, at its sole discretion, given its Approval to the Supplier providing such self-insurance.
- 8.2 In the event that the Authority receives a claim relating to or arising out of the Services or this Framework Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

- 8.3 The Authority may notify the Supplier at any time that it requires the Supplier to procure the Insurances specified in Paragraphs 1 to 7 of this Framework Schedule 5 (*Insurance Requirements*) and on receipt of such notice the Supplier shall procure such Insurances within five (5) Working Days of such notice (or such other period as the Authority may specify in such notice) and both Parties shall comply with Paragraphs 1 to 7 of this Framework Schedule 5 (*Insurance Requirements*) in their entirety.

ANNEX 1: REQUIRED INSURANCES

1. GENERAL

The Supplier shall hold the following insurance cover from the Framework Commencement date in accordance with this Schedule:

1.1.1 employer's liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than 5 million pounds (£5,000,000).

1.1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than 5 million pounds (£5,000,000); and

1.1.3 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than 1 million pounds (£1,000,000).

SCHEDULE 6
COMMERCIALLY SENSITIVE INFORMATION

1. INTRODUCTION

- 1.1 In this Framework Schedule 6 (*Commercially Sensitive Information*) the Parties have sought to identify the Supplier Confidential Information that is genuinely commercially sensitive information and the disclosure of which would be the subject of an exemption or exceptions under the FOIA and/or the Regulations.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Framework Schedule 6 applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 15.3 (*Freedom of Information*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA and/or the Regulations to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
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SCHEDULE 7 DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

- 1.1 In this Framework Schedule 7 (*Dispute Resolution Procedure*), the following definitions shall apply:

"CEDR"	means the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 100 St. Paul's Churchyard, London, EC4M 8BU;
"Counter Notice"	has the meaning given to it in Paragraph 5.2;
"Expedited Dispute Timetable"	means the accelerated timetable for the resolution of disputes as set out in Paragraph 2.6;
"Mediation Notice"	has the meaning given to it in Paragraph 3.2; and
"Mediator"	means the independent third party appointed in accordance with Paragraph 4 of this Framework Schedule 7 (<i>Dispute Resolution Procedure</i>).

2. INTRODUCTION

- 2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable time, either Party may give to the other a Dispute Notice.

- 2.2 The Dispute Notice shall set out:

2.2.1 the material particulars of the Dispute;

2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in Paragraph 2.6, the reason why.

- 2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Framework Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure set out in this Framework Schedule 7 (*Dispute Resolution Procedure*).

- 2.4 Subject to Paragraph 3.2, the Parties shall seek to resolve Disputes:

2.4.1 first by commercial negotiation (as prescribed in Paragraph 3);

2.4.2 then by mediation (as prescribed in Paragraph 4); and

2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 5) or litigation (in accordance with Clause 35 (*Governing Law and Jurisdiction*)).

2.5 In exceptional circumstances where the use of the times in this Framework Schedule 7 (*Dispute Resolution Procedure*) would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

2.6 If the use of the Expedited Dispute Timetable is determined in accordance with Paragraph 2.5 or is otherwise specified under the provisions of this Framework Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs of this Framework Schedule 7 (*Dispute Resolution Procedure*):

2.6.1 in Paragraph 3.2.3, ten (10) Working Days;

2.6.2 in Paragraph 4.2, ten (10) Working Days;

2.6.3 in Paragraph 5.2, ten (10) Working Days.

2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

3. **COMMERCIAL NEGOTIATIONS**

3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Representative and the Supplier's Representative, such discussions being commercial negotiations.

3.2 If:

3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;

3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this Paragraph 3; or

3.2.3 the Parties have not settled the Dispute in accordance with Paragraph 3.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with Paragraph 4.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Framework Agreement.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the procedure for variations under Clause 13.1 (*Variation Procedure*) where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. ARBITRATION

- 5.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 5.4.
- 5.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 5.4 or be subject to the jurisdiction of the courts in accordance with Clause 35 (*Governing Law and Jurisdiction*). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 5.3 If:
 - 5.3.1 the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 5.4 shall apply;
 - 5.3.2 the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 35 (*Governing Law and Jurisdiction*), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings; and
 - 5.3.3 the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 5.2, the Supplier may either commence

arbitration proceedings in accordance with Paragraph 5.4 or commence court proceedings in the courts in accordance with Clause 35 (*Governing Law and Jurisdiction*) which shall (in those circumstances) have exclusive jurisdiction.

5.4 In the event that any arbitration proceedings are commenced pursuant to Paragraphs 5.1 to 5.3, the Parties hereby confirm that:

5.4.1 all disputes, issues or claims arising out of or in connection with this Framework Agreement (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 5.4.5, 5.4.6 and 5.4.7);

5.4.2 the arbitration shall be administered by the LCIA;

5.4.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Framework Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

5.4.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

5.4.5 the chair of the arbitral tribunal shall be British and Article 6 of the LCIA Rules shall not apply to disqualify the chair on the basis of nationality;

5.4.6 the arbitration proceedings shall take place in London and in the English language; and

5.4.7 the seat of the arbitration shall be London.

6. **URGENT RELIEF**

6.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

6.1.1 for interim or interlocutory remedies in relation to this Framework Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

6.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 8 VARIATION FORM

Variation Form No:

.....

BETWEEN:

the Secretary of State acting through the Export Credits Guarantee Department operating as UK Export Finance ("**the Authority**")

and [•] ("the Supplier")

1. This Framework Agreement is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Framework Agreement.
3. The Framework Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Authority

Signature	
Date	
Name (in Capitals)	
Address	

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature	
Date	
Name (in Capitals)	
Address	

SCHEDULE 9 CONDUCT OF CLAIMS

1. INDEMNITIES

- 1.1 This Framework Schedule 9 (*Conduct of Claims*) shall apply to the conduct by a Party from whom an indemnity is sought under this Framework Agreement or any Call Off Contract (the "**Indemnifier**") or claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Framework Agreement or any Call Off Contract (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraph 1.5, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim, and the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Framework Agreement or any Call Off Contract if:
 - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or

1.5.3 the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. RECOVERY OF SUMS

2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever the lesser is of:

2.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and

2.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

3. MITIGATION

The Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Framework Schedule 9 (*Conduct of Claims*).

SCHEDULE 10
NOT USED

SCHEDULE 11
TEMPLATE BROKER CALL OFF LETTER OF APPOINTMENT AND TEMPLATE
BROKER CALL OFF TERMS

Draft Date: 5 May 2022

FRAMEWORK SCHEDULE 11

TEMPLATE BROKER CALL OFF LETTER OF
APPOINTMENT

AND

TEMPLATE BROKER CALL OFF ORDER TERMS

(LOT 1)

PART A: TEMPLATE BROKER CALL OFF LETTER OF APPOINTMENT

[Letterhead of Authority]

[Name and address of firm constituting the Supplier]

[Date]

Dear [Name of Recipient],

[insert name of opportunity being insured here **DRAFTING NOTE: COMMERCIAL SENSITIVE INFORMATION**]

1. This Call Off Contract is for the provision of insurance brokerage and associated support services by [Insert Supplier Name] ([company number]) as the **"Supplier"** to the Secretary of State, acting through Export Credits Guarantee Department, operating as UK Export Finance as Authority pursuant to Lot 1 of the Political and Credit Risk Insurance Framework Agreement which commenced **16 January 2023** (the **"Framework Agreement"**).

For the purposes of this Letter of Appointment:

- ☐ capitalised terms and expressions used in this Letter of Appointment shall have the same meanings given to them below or in or pursuant to Clause 1.1 (*Definitions*) of the Call Off Terms attached to this Letter of Appointment unless the context otherwise requires;
 - ☐ where capitalised terms and expressions used in this Letter of Appointment or the Call Off Terms are not defined below or in the Call Off Terms attached to this Letter of Appointment then they shall have the same meanings given to them in or pursuant to the Framework Agreement;
 - ☐ references to Appendix 1 are references to the appendices to this Letter of Appointment; and
 - ☐ Appendix 1 shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order issued in accordance with the Call Off Procedure. The Supplier in their capacity as a broker agrees to supply the **Contract Services specified in Appendix 1** in accordance with the terms of this Letter of Appointment and the Call Off Terms for the Call Off Contract Period.
 3. The Call Off Commencement Date shall be [DD/MM/YYYY].
 4. The Call Off Expiry Date shall be the later of:
 - (a) the last expiry date of any Contract of Insurance incepted pursuant to this Call Off Contract; and

- (b) if no Contracts of Insurance have been incepted pursuant to this Call Off Contract, the date on which the Authority completes or terminates the Further Competition Procedure undertaken pursuant to this Call Off Contract without entering into a Contract of Insurance.
2. The Supplier's Representative with overall responsibility for the supply of the Contract Services and for the purposes of this Call Off Contract is [*name of Supplier Representative*].
 3. The Authority's Representative for the purpose of this Call Off Contract is [*Katherine Baeten, Head of Active Portfolio Management*] and any Disputes shall be escalated in accordance with Clause 21 (*Disputes and Law*) of the Call Off Terms.
 4. The Authority confirms that the applicable law for this Call Off Contract shall be the law of England and Wales.
 5. The Supplier shall:
 - (a) supply the Contract Services to the Authority in accordance with the provisions of the Call Off Contract;
 - (b) comply with all reasonable and lawful instructions given to the Supplier and Supplier Personnel by the Authority in relation to the provision of the Contract Services;
 - (c) immediately report to the Authority's Representative any matters which involve or could potentially involve a conflict of interest;
 - (d) ensure that neither it, nor any of its Affiliates or Supplier Personnel, embarrasses the Authority, damage the reputation of the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Call Off Contract;
 - (e) where requested, advise the Authority in the performance of its duty to make a fair presentation of the risk, present to Insurers the relevant documents and information, including, where appropriate, presenting the documents and information which it holds in its own capacity which are required to be presented;
 - (f) procure for the benefit of the Authority properly documented Contract(s) of Insurance which meet(s) the Authority's needs as communicated to the Supplier from time to time, save where it has not been possible to do so in which case the Authority needs to have been informed of and accepted the limitations (the "**Policy Document(s)**");
 - (g) subject to clause 12 (*Records, Audit Access and Reporting*) of the Framework Agreement and Clause 9 (*Consequences of Expiry and Termination*) of this Call Off Contract ensure that it retains, and will make available to the Authority on request at any time (including after termination of this Call Off Contract and/or of the Framework Agreement), the documents comprising the placing file (including, *inter alia*, all copies of written communications between the Supplier

and Insurer and other records of communications between the Supplier and Insurer, whether such communications are written or oral, prior to and following inception) in respect of the policies incepted under this Call Off Contract (the "**Placing File(s)**");

- (a) co-operate with the Authority and the Authority's other professional advisers in relation to the Contract Services as required by the Authority;
 - (b) if requested, comply with the Authority's internal policies in each case as notified to the Supplier in writing by the Authority and procedures and Government and FCA codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) and in each case notified to the Supplier in writing by the Authority. Notwithstanding the above, the Supplier shall comply with the relevant principles of any Authority policy requirements which are notified to the Supplier by the Authority (a) to the extent that these requirements are reasonable, proportionate and relevant to the performance of this Call Off Contract and (b) in accordance with and subject to the Supplier's duty to exercise reasonable skill and care in the performance of this Call Off Contract; and
 - (c) ensure that it has a valid Cyber Essentials Plus Certificate or equivalent acceptable to the Authority.
9. The Supplier shall not:
- (a) knowingly act at any time during the term of this Call Off Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Authority shall thereby exist in relation to the Contract Services; and
 - (b) engage in any conduct which in the reasonable opinion of the Authority is prejudicial to the Authority.
10. Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
11. No variation of this Call Off Contract shall be effective unless it is agreed in accordance with Clause 2.1 (*Variation of Contract Services*) of the Call Off Terms.
12. The unique order reference number for this Call Off Contract is [insert number]. ("**Order Reference Number**"). [DRAFTING NOTE: UKEF GENERATES THIS NUMBER (e.g. Tranche 7 onwards)]
13. For the purposes of Clause 20 (*Notices*) of the Call Off Terms, the address or email address of each Party shall be:
- For the attention of: [name and title]
- Tel: [telephone number]
- Email: [insert e-mail address]

for the Supplier:

[*name, telephone number, email address of firm constituting the Supplier for service of notices*]

For the attention of: [*name and title*]

Tel: [*telephone number*]

Email: [*email address*]

14. The following special terms are incorporated into this Call Off Contract:

- (a) [*Insert terms to revise or supplement Call Off Terms, Joint Schedules, Call Off Schedules; or none*] [*special term 1*] [*special term 2*] [*special term 3*] [*none*]

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Supplier agrees to enter into a Call Off Contract with the Authority to provide the Contract Services.

The Parties hereby acknowledge and agree that they have read the Letter of Appointment, the Joint Schedules and the Call Off Terms and by signing below agree to be bound by this Call Off Contract.

Please sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by an authorised representative of the Supplier.

Yours faithfully

For and on behalf of the Authority

as an authorised signatory of the Authority

[*Duplicate copy to have the following signature block added:*]

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

APPENDIX 1 CONTRACT SERVICES

*[insert name of opportunity being insured here **DRAFTING NOTE: COMMERCIALLY SENSITIVE INFORMATION**]*

1. The Contract Services shall incorporate the following:

- (a) The services set out in paragraph 4 of Part B Specification of Requirements for Lot 1 in Framework Schedule 1 (*Services and Key Performance Indicators*) of the Framework Agreement;
- (b) The services set out in paragraphs 5 and 6 of Part B Specification of Requirements for Lot 1 in Framework Schedule 1 (*Services and Key Performance Indicators*) of the Framework Agreement; [and]
- (c) [insert any other relevant information or services required which are specific to this Broker Call Off Contract including any refinements to paragraphs 4, 5 and 6 of Part B Specification of Requirements for Lot 1 in Framework Schedule 1 (*Services and Key Performance Indicators*) of the Framework Agreement.]

2. The Insurance Services Brokerage shall be a percentage, equal to the Brokerage Percentage, of the Premium due to the Insurer under a Contract of Insurance which shall be capped at an amount equal to the Broker Cap. The Broker Cap shall apply per Further Competition Procedure pursuant to this Call Off Contract and at the prevailing exchange rate (where currencies of Premium and Broker Cap differ) as at the date of inception of the Contract of Insurance.

3. The Authority reserves the right to require the Supplier to establish appropriate escrow arrangements regarding the collection and distribution of funds (including premiums, premium refunds and the proceeds of any claims).

PART B: TEMPLATE BROKER CALL OFF TERMS

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Call Off Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below. Where provisions in the Call Off Terms are not defined below then they shall have the same meanings given to them in or pursuant to the Framework Agreement:

"Affiliates" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time and **"Affiliate"** shall be interpreted accordingly;

"Approval" means the prior written consent of the Authority and **"Approve"** and **"Approved"** shall be construed accordingly;

"Auditor" means:

- (a) the Authority internal and external auditors;
- (b) the Authority statutory or regulatory auditors;
- (c) the Comptroller and Auditor General and their staff;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; or
- (f) successors or assigns of any of the above;

"Authority" means the Secretary of State acting through the Export Credits Guarantee Department whose office is at 1 Horse Guards Road, London, SW1A 2HQ and which operates as UK Export Finance;

"Authority Confidential Information" means all Authority's Personal Data and any information (including the existence or content of any Contract of Insurance), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers, customers and clients of the Authority, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Authority's Premises" means premises owned, controlled or occupied by the Authority which are made available for use by the Supplier for provision of the Contract Services (or any of them);

"Authority's Personal Data" means any Personal Data supplied by the Authority to the Supplier for the purposes of, or in connection with, this Call Off Contract;

"Authority's Representative" means the representative of the Authority appointed by the Authority from time to time in relation to this Call Off Contract and notified to the Supplier;

"Brokerage Cap" has the meaning given to it in Annex 1 of Framework Schedule 2 (*Framework Prices*);

"Brokerage Percentage" has the meaning given to it in Annex 1 of Framework Schedule 2 (*Framework Prices*);

"Call Off Commencement Date" means the date of commencement of this Call Off Contract set out in paragraph 3 of the Letter of Appointment;

"Call Off Contract" means the contract between the Authority and the Supplier (entered into pursuant to the provisions of the Framework Agreement) and consisting of the Letter of Appointment, these Call Off Terms (save to the extent varied by the Letter of Appointment), the Joint Schedules and any other documents referred to in either of them;

"Call Off Contract Period" means the period commencing on the Call Off Commencement Date and ending on the Call Off End Date;

"Call Off End Date" means the earlier of:

- (a) the Call Off Expiry Date; and
- (b) if the Call Off Contract is terminated before the Call Off Expiry Date, the date of termination of the Call Off Contract;

"Call Off Expiry Date" has the meaning given to it in paragraph 4 of the Letter of Appointment;

"Call Off Schedules" means the schedules to the Call Off Terms;

"Call Off Terms" means the Template Broker Call Off Terms (as varied by the Letter of Appointment);

"Central Government Body" means a body listed in one of the following subcategories 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:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Change in Law" means any change in Law which impacts on the supply and performance of the Contract Services, which comes into force after the Call Off Commencement Date;

"Change of Control" means a change of control within the meaning of section 450 of the Corporation Tax Act 2010;

"Commercially Sensitive Information" means the information listed in Schedule 4 (*Commercially Sensitive Information*) which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;

"Confidential Information" means the Authority Confidential Information and/or the Supplier Confidential Information as the context requires;

"Contract of Insurance" means a legally binding contract of insurance or reinsurance issued to the Authority by the Insurer under the Framework placed by the Supplier pursuant to this Call Off Contract;

"Contract of Insurance Charges" means the following charges arising in respect of a Contracts of Insurance incepted under this Call Off Contract:

- (a) Premium; and
- (b) IPT (if applicable); and
- (c) VAT (if applicable);

"Contract Services" means the services to be supplied by the Supplier to the Authority as set out in Appendix 1 to the Letter of Appointment;

"Control" means control as defined in sections 1124 and 450 of the Corporation Tax Act 2010, and **"Controls"** or **"Controlled"** shall be interpreted accordingly;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Crown Body" means any department, office or executive agency of the Crown;

"Cyber Essentials Scheme" means the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the Cyber Essentials scheme can be found here: <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data Breach;

"Data Protection Legislation" means:

- (a) the UK GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time; and
- (b) all applicable Law about the processing of personal data and privacy;

"Data Subject" has the meaning given in the Data Protection Legislation;

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default" means any breach of the obligations of the Supplier (including but not limited to abandonment of this Call Off Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Call Off Contract and in respect of which the Supplier is liable to the Authority;

"Dispute" means any dispute, difference or question of interpretation arising out of or in connection with this Call Off Contract, including any dispute, difference or question of interpretation relating to the Contract Services, or any matter where this Call Off Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Schedule 2 (*Dispute Resolution Procedure*);

"EIR" means the Environmental Information Regulations 2004;

"Existing IPR" means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Call Off Contract (whether prior to the Call Off Commencement Date or otherwise);

"FCA" means the Financial Conduct Authority, an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title;

"FOIA" means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Framework Agreement" means the Framework Agreement between the Authority and the Supplier referred to in the Letter of Appointment;

"Framework Prices" means the prices contained in Framework Schedule 2 (*Framework Prices*);

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence,

prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person carrying on the relevant regulated activities in the United Kingdom and in accordance with applicable Regulatory Requirements;

"**Government**" shall take the same meaning as the Crown;

"**Government Data**" means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Authority Confidential Information, and which:
 - (i) are supplied to the Supplier by or on behalf of the Authority; and/or
 - (ii) the Supplier is required to generate, process, store or transmit pursuant to this Call Off Contract; or
- (b) any Personal Data for which the Authority is the Data Controller;

"**Improvement Notice**" means the notice served by the Authority pursuant to Clause 2.2 (*Remedies for KPI Target Failure*);

"**Improvement Plan**" means the plan developed and revised by the Supplier from time to time in accordance with Clause 2.2 (*Remedies for KPI Target Failure*);

"**Information**" has the meaning given under section 84 of Freedom of Information Act 2000;

"**Insurance Services Brokerage**" means the fee paid by the Authority to the Supplier for placing a Contract of Insurance under the Call Off Contract, and the provision of ongoing services in respect of such Contract of Insurance (where directed by the Authority), as calculated in accordance with paragraph 2 of Appendix 1 to the Letter of Appointment and payable in accordance with Clause 2.3 (*Payments and Invoicing*);

"**Insurer**" means an entity acting as insurer or reinsurer under a Contract of Insurance placed pursuant to the Framework from time to time including (as the context requires):

- (a) a Framework Lot 2 Supplier;
- (b) where relevant, the member(s) of the relevant Lloyd's Syndicate of which the Framework Lot 2 Supplier is the managing agent;
- (c) where relevant, the member(s) of the relevant Lloyd's Syndicate of which a Nominated Insurer is the managing agent; or
- (d) where relevant, a Nominated Insurer of a Framework Lot 2 Supplier,

and "**Insurers**" shall be interpreted accordingly;

"**Intellectual Property Rights**" or "**IPR**" means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trademarks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"**IPT**" means Insurance Premium Tax at the current rate payable in the event that export credit insurance ceases to be exempt;

"**Joint Schedule**" means each of the following:

- (a) Joint Schedule 1 (*Corporate Social Responsibility*); and
- (b) Joint Schedule 2 (*Data Processing*),

which are incorporated into this Call Off Contract and "**Joint Schedules**" will be interpreted accordingly;

"**Key Performance Indicators**" or "**KPIs**" means the performance measurements and targets set out in Schedule 3 (*Key Performance Indicators*) as varied from time to time in accordance with this Call Off Contract;

"**Key Sub-Contract**" means any contract or agreement (or proposed contract or agreement), other than this Call Off Contract or the Framework Agreement, pursuant to which a third party:

- (a) provides the Contract Services (or any part of them); and/or
- (b) is responsible for the management, direction or control of the provision of the Contract Services (or any part of them);

"**Key Sub-Contractor**" means a sub-contractor with a Key Sub-Contract;

"**Know How**" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Contract Services but excluding know-how already in the Supplier's or the Authority's possession before the Call Off Commencement Date;

"**KPI Targets**" means the key performance indicator targets set out in Table 1 of Schedule 3 (*Key Performance Indicators*);

"**Law**" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or

directives or requirements with which the relevant Party is bound to comply and "**Laws**" shall be interpreted accordingly;

"**Lloyd's Syndicate**" means a member or a group of members supporting a common underwriting venture. All syndicates are managed by a Lloyd's managing agent;

"**Letter of Appointment**" means the letter from the Authority to the Supplier which contains details of an Order (including without limitation the description of the Contract Services to be supplied) and is used to create a Call Off Contract;

"**Losses**" means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis), disbursements, costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and "**Loss**" shall be interpreted accordingly;

"**Month**" means a calendar month and "**Monthly**" shall be interpreted accordingly;

"**New IPR**" means:

- (a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Call Off Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) IPR in or arising as a result of the performance of the Supplier's obligations under this Call Off Contract and all updates and amendments to the same,

but shall not include the Supplier's Existing IPR;

"**Nominated Insurer(s)**" means the insurance services suppliers who are an Affiliate of a Lot 2 Supplier and listed in Framework Schedule 10 (*List of Nominated Insurer(s)*);

"**Order**" means the order for the provision of the Contract Services placed by the Authority with the Supplier in accordance with the Framework Agreement and under the terms of the Call Off Contract;

"**Order Reference Number**" has the meaning given to it in paragraph 12 of the Letter of Appointment;

"**Party**" means the Supplier or the Authority and "**Parties**" shall mean both of them;

"**Personal Data**" has the meaning given to it in the UK GDPR;

"**Placing Files**" has the meaning given to it in paragraph 8(g) of the Letter of Appointment;

"**Premium**" means the cost of a Contract of Insurance to the Authority excluding Insurance Services Brokerage, VAT (if applicable) and IPT (if applicable);

"**Processor**" has the meaning given to it in the Data Protection Legislation;

"Policy Documents" has the meaning given to it in paragraph 8(f) of the Letter of Appointment;

"Prohibited Act" means any of the following:

- (a) directly or indirectly offering, promising or giving any person working for or engaged by the Authority, any other Contracting Body or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Call Off Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) by defrauding, attempting to defraud or conspiring to defraud the Authority or other public body; and/or
- (d) any activity, practice or conduct which would constitute one of the offences listed under paragraph (c) above if such activity, practice or conduct had been carried out in the UK;

"PRA" means the Prudential Regulation Authority, part of the Bank of England, with statutory powers derived from the Financial Services and Markets Act 2000 and its successors in title;

"Regulations" means the Public Contracts Regulations 2015 as amended from time to time;

"Regulatory Bodies" means the FCA and their overseas equivalent and other government departments and Lloyd's, regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement and "Regulatory Body" shall be interpreted accordingly;

"Regulatory Requirements" means all rules and regulations (including all applicable and other financial services laws, statutes, statutory guidance rules and regulations and the FCA's handbook of rules and guidance as amended, Lloyd's guidance, bye-laws or codes of conduct, and any other rules which the FCA or Lloyd's is applying to the

relevant person), bye-law, order, decree, code of practice, circular, directive or other legislative measure, of or made by any relevant Regulatory Body;

"Relevant Requirements" means all applicable Laws relating to bribery, corruption and fraud, including the Bribery Act 2010, and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Request for Information" means a request for information relating to this Call Off Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIR;

"Security Management Plan" means evidence of the Supplier's Cyber Essentials Plus Certificate in accordance with Schedule 5 (*Security*);

"Security Policy" means the Cyber Essentials Scheme;

"Specific Change in Law" means a Change in Law that relates specifically to the business of the Authority and which would not affect a comparable supply of services to another customer of the Supplier that are the same or similar to the Contract Services;

"Storage Media" the part of any device that is capable of storing and retrieving data;

"Supplier" means the person, firm or company with whom the Authority enters into this Call Off Contract with as identified in the Letter of Appointment;

"Supplier Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing and any other information clearly designated as being confidential or which ought reasonably be considered to be confidential (whether or not it is marked "confidential");

"Supplier Personnel" means all directors, officers, employees, agents, consultants, contractors and sub-contractors (including, without prejudice to Clause 13.2, Key Sub-Contractors) of the Supplier engaged in the performance of the Supplier's obligations under this Call Off Contract;

"Supplier's Representative" means the representative of the Supplier appointed by the Supplier from time to time in relation to this Call Off Contract and notified to the Authority;

"Termination Notice" means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Call Off Contract on a specified date and setting out the grounds for termination;

"Transparency Information" means the Transparency Reports and this Call Off Contract, including any changes to this Call Off Contract agreed from time to time, except for:

(a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority;

- (b) Authority Confidential Information;
- (c) Commercially Sensitive Information; and
- (d) any information which the Authority may withhold from disclosure pursuant to Regulation 108(3) of the Regulations;

"**Transparency Reports**" means the information relating to the performance of the Call Off Contract in Table 1 to Schedule 3 (*Key Performance Indicators*) which are identified as being reported publicly by Government;

"**UK GDPR**" means the UK Data Protection Act 2018 ("DPA 2018") and the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 under the European Union (Withdrawal) Act 2018;

"**Valid Invoice**" means an invoice issued by the Supplier to the Authority in accordance with Clause 3.4 (*Invoicing Procedure*);

"**Variation**" has the meaning given to it in Clause 2.1 (*Variation of Contract Services*); and

"**Working Day**" means any day other than a Saturday, Sunday or public holiday in England and Wales and "**Working Days**" shall be interpreted accordingly.

1.2 Interpretation

1.2.1 The interpretation and construction of this Call Off Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) the words "**include**", "**includes**" and "**including**" "**for example**" and "**in particular**" and words of similar effect are to be construed as if they were immediately followed by the words "**without limitation**" and shall not limit the general effect of the words which precede them;
- (d) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (e) the appendices form part of these Call Off Terms and shall have effect as if set out in full in the body of these Call Off Terms and any reference to these Call Off Terms includes the appendices;
- (f) references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment,

modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Call Off Contract);

- (g) headings are included in this Call Off Contract for ease of reference only and shall not affect the interpretation or construction of this Call Off Contract;
- (h) references to "**Clauses**" are, unless otherwise provided, references to the clauses of these Call Off Terms and references in any Call Off Schedule to "**Paragraphs**", parts, annexes and tables are, unless otherwise provided, references to Paragraphs, parts, annexes and tables of the Call Off Schedule in which the references are made;
- (i) terms or expressions contained in this Call Off Contract which are capitalised but which do not have an interpretation in Clause 1.1 (*Definitions*) shall be interpreted in accordance with the Framework Agreement;
- (j) a reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (k) the Joint Schedules are incorporated into this Call Off Contract;
- (l) in the event of and only to the extent of any conflict between the Letter of Appointment, these Call Off Terms, the Joint Schedules, any other document referred to in the Call Off Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following descending order of precedence:
 - (i) Letter of Appointment;
 - (ii) The Clauses in the Call Off Terms;
 - (iii) Joint Schedule 2 (*Data Processing*);
 - (iv) Call Off Schedules;
 - (v) Framework Clauses including Clause 1 (*Definitions and Interpretation*);
 - (vi) Framework Schedules 1 to 12;
 - (vii) Joint Schedule 1 (*Corporate Social Responsibility*); and
 - (viii) Framework Schedule 13 (*Tender*).

1.2.2 In entering into this Call Off Contract, the Authority is acting as part of the Crown.

2. **SUPPLY OF CONTRACT SERVICES**

2.1 **Variation of Contract Services**

2.1.1 The Authority may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order. Such a change once implemented is hereinafter called a "**Variation**".

2.1.2 Any request by the Authority for a Variation to the Contract Services shall be by written notice:

- (a) giving sufficient information for the Supplier to assess the extent of the Variation and any additional costs that may be incurred; and
- (b) specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable, and the Supplier shall respond to such request within such timeframe.

2.1.3 If the Authority and the Supplier agree to vary this Call Off Contract, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Call Off Contract.

2.1.4 In the event that the Supplier and the Authority are unable to agree to vary this Call Off Contract, the Authority may agree that the Supplier should continue to perform its obligations under this Call Off Contract without the Variation, or the Authority may terminate this Call Off Contract in accordance with Clause 8.5 (*Termination Without Cause*).

2.2 **Remedies for KPI Target Failure**

2.2.1 Without prejudice to any other rights or remedies arising under this Call Off Contract, including under Clause 8.2 (Termination on Material Default), if the Supplier fails to achieve a KPI Target, the Supplier acknowledges and agrees that the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

- (a) the Authority shall be entitled to require the Supplier, and the Supplier agrees to prepare and provide to the Authority, an Improvement Plan within ten (10) Working Days of a written request by the Authority for such Improvement Plan. Such Improvement Plan shall be subject to Approval and the Supplier will be required to implement any Approved Improvement Plan, as soon as reasonably practicable;
- (b) the Authority shall be entitled to require the Supplier, and the Supplier agrees to attend, within a reasonable time one (1) or more meetings at the request of the Authority in order to resolve the issues raised by the Authority in its notice to the Supplier requesting such meetings; and
- (c) the Authority shall be entitled to serve an Improvement Notice on the Supplier and the Supplier shall implement such requirements for improvement as set out in the Improvement Notice.

2.2.2 In the event that the Authority has, in its absolute and sole discretion, invoked one or more of the remedies set out above and the Supplier either:

(a) fails to implement such requirements for improvement as set out in the Improvement Notice; and/or

(b) fails to implement an Improvement Plan Approved by the Authority,

then (without prejudice to any other rights and remedies of termination provided for in the Call Off Contract), the Authority shall be entitled to terminate the Call Off Contract for material Default.

2.3 Conflicts of Interest

2.3.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority under the provisions of this Call Off Contract.

2.3.2 The Supplier shall promptly notify, and provide full particulars to the Authority, if such conflict referred to in Clause 28.1 arises or may reasonably be foreseen as arising.

2.3.3 The Authority reserves the right to terminate this Call Off Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is an actual conflict between the pecuniary interests of the Supplier and the duties owed to the Authority under the provisions of this Call Off Contract. The action of the Authority pursuant to this Clause 28 (*Conflicts of Interest*) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

3. PAYMENT AND INVOICING

3.1 Insurance Services Brokerage

3.1.1 In consideration of the Supplier's performance of its obligations under this Call Off Contract, the Authority shall pay to the Supplier the Insurance Services Brokerage in accordance with Clause 3.4 (*Invoicing Procedure*) and subject to Clause 3.1.3.

3.1.2 The Insurance Services Brokerage shall include all costs and expenses relating to the Contract Services provided to the Authority and/or the Supplier's performance of its obligations under this Call Off Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

(a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel,

network or data interchange costs or other telecommunications charges;
or

- (b) any amount for any services provided or costs incurred by the Supplier prior to the Call Off Commencement Date.

3.1.3 The Supplier acknowledges and agrees that:

- (a) the Insurance Services Brokerage is only payable in respect of Contracts of Insurance that have been entered into pursuant to this Call Off Contract; and
- (b) no amounts shall be payable by the Authority to the Supplier in respect of a Further Competition Procedure that does not result in a Contract of Insurance.

3.1.4 The Brokerage Cap and/or Brokerage Percentage shall only be varied:

- (a) due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Brokerage Cap and/or Brokerage Percentage; and/or
- (b) where all or part of the Brokerage Cap and/or Brokerage Percentage are reviewed and reduced in accordance with Clause 2.1 (*Variation of Contract Services*).

3.2 **Payment of Contract of Insurance Charges to the Insurers**

3.2.1 The Supplier shall pay the Contract of Insurance Charges to the relevant Insurer(s) on behalf of the Authority:

- (a) within [sixty (60)] calendar days of inception of the Contract of Insurance; and
- (b) in accordance with any other provisions of the Contract of Insurance,

provided that the Authority pays the Contract of Insurance Charges to the Supplier within [thirty (30)] calendar days of inception of the Contract of Insurance.

3.2.2 The Supplier shall pay the Contract of Insurance Charges to the Insurer on behalf of the Authority without set off or deduction.

3.2.3 The Authority reserves the right to require the Supplier to establish appropriate escrow arrangements regarding the collection and distribution of funds (including Premiums, Premium refunds and the proceeds of any claims).

3.3 **VAT**

The Supplier shall indemnify the Authority on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Authority at any

time in respect of the Supplier's failure to account for or to pay any VAT, relating to payments made to the Supplier under this Call Off Contract. Any amounts due under this Clause 3.3 (VAT) shall be paid by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

3.4 **Invoicing Procedure**

3.4.1 The Authority shall pay all sums properly due and payable to the Supplier in respect of the Insurance Services Brokerage in cleared funds by no later than thirty (30) calendar days after receipt of a Valid Invoice. Such payment period shall in no event exceed thirty (30) days from the inception of a Contract of Insurance.

3.4.2 The Supplier shall ensure that each invoice for the Insurance Services Brokerage (whether submitted electronically or in a paper form, as the Authority may specify):

- (a) contains:
 - (i) all appropriate references, including the Order Reference Number; and
 - (ii) a detailed breakdown of the Contracts of Insurance to which the invoice refers;
- (b) shows separately:
 - (i) Premium(s);
 - (ii) any credits due to the Authority if applicable;
 - (iii) the VAT and/or IPT added to the due and payable Premium if applicable; and
 - (iv) Insurance Services Brokerage;
- (c) it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice has been submitted in accordance with this Clause 3.4 (*Invoicing Procedure*); and
- (d) is submitted within ten (10) days from the inception of a Contract of Insurance.

3.4.3 The Supplier shall ensure that each invoice submitted to it from an Insurer for any Contract of Insurance Charges (whether submitted electronically or in a paper form, as the Authority may specify):

- (a) contains:
 - (i) all appropriate references; and

- (ii) Premium payable; and
- (b) shows separately:
 - (i) any credits due to the Authority if applicable; and
 - (ii) it is supported by any other documentation reasonably required by the Authority.

3.4.4 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

3.4.5 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate this Call Off Contract under Clause 8.9 (*Supplier's Termination Rights*) on the grounds of the Authority's failure to pay undisputed sums of money. Interest shall be payable by the Authority in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.

3.4.6 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

3.5 Recovery of Sums Due

3.5.1 Wherever under this Call Off Contract any sum of money excluding Contract of Insurance Charges is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Call Off Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under any Call Off Contract.

3.5.2 Any overpayment by either Party, whether of the Insurance Services Brokerage or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

4. LIABILITY AND INSURANCE

4.1 Liability

4.1.1 Neither Party excludes or limits its liability for:

- (a) for death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
- (b) fraud or fraudulent misrepresentation by it or its employees.

4.1.2 No individual of the Supplier shall have any personal liability to the Authority for the Contract Services supplied by that individual on behalf of the Supplier and the Authority shall not bring any claim under this Call Off Contract against

that individual in respect of the Contract Services save in the case of fraud or any liability for death or personal injury.

4.1.3 Subject to the limits stated in Clause 17.2, subject to Clause 4.1.4 and without prejudice to the provisions of 4.1.5 the Supplier shall fully indemnify and keep indemnified the Authority on demand in full from and against all claims, proceedings, actions, damages, reasonable costs and expenses and any other liabilities whatsoever arising any breach by the Supplier of its obligations under this Call Off Contract.

4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

4.1.5 Notwithstanding Clause 4.1.4, but subject to the limits stated in Clause 17.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

- (a) the additional operational and/or administrative costs and expenses arising from any material Default;
- (b) the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services;
- (c) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- (d) amounts paid by the Authority to third parties (including lenders) under an Authority guarantee agreement and which it is not able to recover under a Contract of Insurance incepted pursuant to this Call Off Contract as a result of a Default by the Supplier.

4.1.6 No enquiry, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Authority to any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Authority to discern any defect in or omission from any such document or information, shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a Authority/Supplier relationship.

4.1.7 Save as otherwise expressly provided, the obligations of the Authority under this Call Off Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority, in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Call Off Contract (howsoever arising) on the part of the Authority to the Supplier.

4.1.8 Subject always to Clause 4.1.1, Clause 4.1.4 and Clause 17.3, the Supplier's liability to the Authority for each year of this Call Off Contract:

- (a) in respect of loss of or damage to the Authority's Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Government Data or any other data) that is caused by Defaults of the Supplier shall in no event exceed £1 million (one million pounds) for each individual claim;
- (b) in respect of:
 - (i) loss or damage to Government Data; or
 - (ii) breach of the Data Protection Legislation,that is caused by Default of the Supplier shall in no event exceed £5 million (five million pounds) for each individual claim; and
- (c) in respect of all other Losses incurred by the Authority under or in connection with this Call Off Contract as a result of Defaults by the Supplier shall in no event exceed £5 million (five million pounds) for each individual claim.

4.1.9 Subject to Clause 4.1.1, and without prejudice to Clause 4.1.4, the Authority's total aggregate liability to the Supplier under this Call Off Contract is no more than £100,000 (one hundred thousand pounds).

4.1.10 Notwithstanding Clause 17.2, the Supplier does not exclude or limit its liability for any indemnity given under Clause 2.3, Clause 5.4, Clause 15.1.10 and Paragraph 2.3 of Part B of Schedule 6 (*Staff Transfer*).

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

5.1.1 receive and use the Contract Services; and

5.1.2 make use of the deliverables provided by a Replacement Supplier (as defined in Schedule 6 (*Staff Transfer*)).

- 5.2 Any New IPR created under this Call Off Contract is owned by the Authority. The Authority gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Call Off Contract Period.
- 5.3 Where a Party acquires ownership of IPRs incorrectly under this Call Off Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 5.4 The Supplier shall, on demand, fully indemnify and keep fully indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being an "**IPR Claim**").
- 5.5 If an IPR Claim arises, the Authority shall notify the Supplier in writing of the IPR Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that the Supplier:
- 5.5.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 5.5.2 shall take due and proper account of the interests of the Authority;
- 5.5.3 shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute; and
- 5.5.4 shall not settle or compromise the IPR Claim without Approval (not to be unreasonably withheld or delayed).
- 5.6 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in this Clause 5 (*Intellectual Property Rights*) or otherwise agreed in writing.

6. **PROTECTION OF DATA**

6.1 **Protection of Data**

- 6.1.1 The Supplier must process Personal Data, and ensure that Supplier Personnel process Personal Data, only in accordance with Joint Schedule 2 (*Processing Data*).
- 6.1.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 6.1.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Authority copies every six (6) Months.

6.1.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

6.1.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under this Call Off Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Authority and immediately suggest remedial action.

6.1.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Authority may either or both:

- (a) tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Authority receives notice, or the Supplier finds out about the issue, whichever is earlier; and/or
- (b) restore the Government Data itself or using a third party.

6.1.7 The Supplier must pay each Party's reasonable costs of complying with Clause 6.1.6 unless the Authority is at fault.

6.1.8 The Supplier must:

- (a) provide the Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;
- (b) have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- (c) securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice;
- (d) subject to clause 12 (*Records, Audit Access and Reporting*) of the Framework Agreement and Clause 9 (*Consequences of Expiry and Termination*) of this Call Off Contract, securely erase all Government Data and any copies it holds when asked to do so by the Authority unless required by Law to retain it; and
- (e) indemnify the Authority against any and all Losses incurred if the Supplier breaches this Clause 6.1 (*Protection of Data*) and any Data Protection Legislation.

6.2 Confidentiality

6.2.1 Except to the extent set out in this Clause 6.2 (*Confidentiality*) or where disclosure is expressly permitted elsewhere in the Call Off Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly;

- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent, excluding the need for the Supplier to comply with the duty of fair presentation or to obtain an insurance quote from any Insurer;
- (c) not use or exploit the other Party's Confidential Information in any way except for the purposes anticipated under this Call Off Contract; and
- (d) immediately notify the other Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other Party's Confidential Information.

6.2.2 Clause 6.2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIRs;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Call Off Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

6.2.3 The Supplier may only disclose the Authority Confidential Information to those members of the Supplier Personnel who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.

6.2.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Authority Confidential Information received otherwise than for the purposes of this Call Off Contract.

6.2.5 Nothing in this Call Off Contract shall prevent the Authority from disclosing the Supplier Confidential Information:

- (a) to any Crown Body or any other Contracting Authority to the Framework Agreement on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any other Contracting Authority save as required by Law;
- (b) to any consultant, contractor or other person engaged by the Authority for any purpose relating to or connected with this Call Off Contract or

the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;

- () for the purpose of the examination and certification of the Authority's accounts;
- (a) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (b) to the Authority's employees, agents, consultants, advisers and contractors.

6.2.6 The Authority shall use all reasonable endeavours to ensure that any government department, Authority, employee or third party to whom the Supplier Confidential Information is disclosed pursuant to Clause 6.2 (*Confidentiality*) is made aware of the Authority's obligations of confidentiality.

6.2.7 Nothing in this Clause 6.2 (*Confidentiality*) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Call Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

6.2.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Call Off Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

6.2.9 The Supplier shall, at all times during and after the performance of this Call Off Contract, indemnify the Authority and keep the Authority fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Authority arising from any breach of the Supplier's obligations under this Clause 6.2 (*Confidentiality*) except and to the extent that such liabilities have resulted directly from the Authority's instructions.

6.2.10 In the event that the Supplier fails to comply with its obligations in this Clause 6.2 (*Confidentiality*), the Authority reserves the right to terminate this Call Off Contract for material Default.

6.3 **Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**

6.3.1 The Supplier shall comply with, and shall ensure that Supplier Personnel comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

6.4 Freedom of Information

6.4.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

6.4.2 The Supplier shall and shall procure that its Supplier Personnel shall:

- (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

6.4.3 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Call Off Contract) for the purpose of this Call Off Contract, the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

6.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Authority.

6.4.5 The Supplier acknowledges that the Authority may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the EIRs to disclose information concerning the Supplier or the Contract Services:

- (a) in certain circumstances without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where paragraph (a) of this Clause 6.4.5 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

6.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Call Off Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Authority on reasonable notice to inspect such records as requested from time to time.

6.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Authority may be obliged to disclose it in accordance with Clause 6.4.5.

6.5 Transparency

6.5.1 The Parties acknowledge that Transparency Information is not Confidential Information.

6.5.2 Notwithstanding any other provision of this Call Off Contract, the Supplier hereby gives its consent for the Authority to publish this Call Off Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the Regulations redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

6.5.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including, where relevant, the preparation of the Transparency Reports.

7. REPRESENTATIONS AND WARRANTIES

7.1 Each Party warrants that:

7.1.1 it has full capacity and authority to enter into and to perform this Call Off Contract;

7.1.2 this Call Off Contract is executed by its duly authorised representative;

7.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the Supplier, any of its Affiliates) that might affect its ability to perform its obligations under this Call Off Contract; and

7.1.4 its obligations under this Call Off Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each Party) bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or Law).

7.2 The Supplier represents and warrants that:

- 7.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 7.2.2 it has all necessary consents (including, where its procedures so require, the consent of its parent company) licences authorisations permissions (statutory, regulatory, contractual or otherwise) to enter into this Call Off Contract;
- 7.2.3 in entering the Call Off Contract, it has not committed any fraud;
- 7.2.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 7.2.5 as at the Call Off Commencement Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Call Off Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.2.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Call Off Contract;
- 7.2.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Call Off Contract;
- 7.2.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Call Off Contract;
- 7.2.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 7.2.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Authority;
- 7.2.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under

the Call Off Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services;

7.2.12 it has read and fully understood the Letter of Appointment and these Call Off Terms and is capable of performing the Contract Services in all respects in accordance with the Call Off Contract;

7.2.13 the Supplier has all staff, equipment and experience necessary for the proper performance of the Contract Services; and

7.2.14 it will at all times:

- (a) perform its obligations under the Call Off Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
- (b) comply with all the KPIs;
- (c) carry out the Contract Services within the timeframe agreed with the Authority; and
- (d) ensure to the satisfaction of the Authority that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Supplier Personnel as shall be necessary for the proper performance of the Contract Services.

7.3 The Supplier shall immediately notify the Authority in writing:

7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;

7.3.2 if the Supplier undergoes a Change of Control; or

7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

7.4 For the avoidance of doubt, the fact that any provision within the Call Off Contract is expressed as a warranty shall not preclude any right of termination the Authority would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

8. TERMINATION RIGHTS

8.1 Termination on Insolvency

8.1.1 The Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier if:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;

- (b) a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for the winding-up of the Supplier (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days;
- (f) an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given;
- (g) if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (h) the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business;
- (i) in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
 - (i) adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Call Off Contract; or
 - (ii) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with this Call Off Contract;
- (j) the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier;
- (k) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- (l) any event analogous with those listed in paragraphs (a) to (k) of Clause 8.1.1 occurs under the law of any other jurisdiction.

8.2 Termination on Material Default

8.2.1 The Authority may terminate this Call Off Contract for material Default by issuing a Termination Notice to the Supplier where:

- (a) the Supplier commits any material Default of this Call Off Contract which is not, in the reasonable opinion of the Authority, capable of remedy;
- (b) the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority within ten (10) Working Days or such other longer period as may be specified by the Authority after issue of a written notice to the Supplier specifying the material Default and requesting it to be remedied;
- (c) the Authority expressly reserves the right to terminate this Call Off Contract for material Default, including pursuant to any of the following Clauses: Clause 2.2 (*Remedies for KPI Target Failure*), Clause 28 (*Conflicts of Interest*), Clause 6.2.10 (*Confidentiality*), and Clause 11.6 (*Prevention of Fraud and Bribery*);
- (d) there is a Default of any of the following Clauses:
 - (i) Clause 5 (*Intellectual Property Rights*);
 - (ii) Clause 6.1 (*Protection of Data*);
 - (iii) Clause 6.4 (*Freedom of Information*);
 - (iv) Clause 7 (*Representations and Warranties*); and/or
- (e) the occurrence of an event which renders the performance of all or a material part of the Supplier's obligations under this Call Off Contract unlawful under applicable Law.

8.3 Termination on Change of Control

8.3.1 The Supplier shall notify the Authority immediately if the Supplier undergoes or is intending to undergo a Change of Control and provided this does not contravene any Law shall notify the Authority immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation or has taken place. The Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier within six (6) Months of:

- (a) being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

- (b) where no notification has been made, the date that the Authority becomes aware that a Change of Control has occurred or is planned or is in contemplation,

but shall not be permitted to terminate where the Authority's written consent to the continuation of this Call Off Contract was granted prior to the Change of Control.

8.4 Termination in Relation to Financial Standing

The Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where in the reasonable opinion of the Authority there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:

- (a) adversely impacts on the Supplier's ability to supply the Contract Services under this Call Off Contract; or
- (b) could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Contract Services under this Call Off Contract.

8.5 Termination Without Cause

The Authority shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving written notice of at least three (3) Months.

8.6 Partial Termination

Where the Authority is entitled to terminate this Call Off Contract pursuant to this Clause 8 (*Termination Rights*), the Authority shall be entitled to terminate all or part of this Call Off Contract provided always that the parts of this Call Off Contract not terminated can operate effectively to deliver the intended purpose of this Call Off Contract or a part thereof. The Parties shall endeavour to agree the effect of any Variation necessitated by a partial termination in accordance with Clause 2.1 (*Variation of Contract Services*).

8.7 Termination for loss of Insurance Licence

The Authority may terminate this Call Off Contract with immediate effect by issuing a Termination Notice to the Supplier where the Supplier ceases to be authorised by the FCA to carry on regulated activities in the UK including, if the Supplier is regulated by Lloyd's, if the Supplier ceases to be authorised to carry on business at Lloyd's, which form part of the Supplier's obligations under this Call Off Contract.

8.8 Termination for breach of Regulations

The Authority may terminate this Call Off Contract by issuing a Termination Notice to the Supplier where Regulation 73(1) of the Regulations applies.

8.9 **Supplier's Termination Rights**

In the event that the Authority fails to pay an undisputed Valid Invoice in accordance with the terms of this Call Off Contract, the Supplier shall notify the Authority in writing of such failure. Where the relevant undisputed Valid Invoice remains unpaid for 30 days following the Authority's receipt of such notice from the Supplier, the Supplier may terminate this Call Off Contract on no less than three (3) Months' written notice to the Authority.

9. **CONSEQUENCES OF EXPIRY OR TERMINATION**

9.1 Where the Authority terminates this Call Off Contract pursuant to Clause 8 (*Termination Rights*) and then makes other arrangements for the supply of the Contract Services:

9.1.1 the Authority may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Authority in securing the Contract Services in accordance with the requirements of this Call Off Contract; and

9.1.2 the Authority shall take all reasonable steps to mitigate such additional expenditure.

9.2 Clause 9.1 shall not apply where the Authority terminates this Call Off Contract solely pursuant to Clause 8.5 (*Termination Without Cause*).

9.3 On the termination of this Call Off Contract for any reason, the Supplier shall, at the request of the Authority and at the Supplier's cost:

9.3.1 immediately return to the Authority all Confidential Information and the Authority's Personal Data in its possession, or in the possession or under the control of the Supplier Personnel, which was obtained or produced in the course of providing the Contract Services, except where the retention of Authority's Personal Data is required by Law and or the FCA;

9.3.2 promptly destroy all copies of the Government Data and provide written confirmation to the Authority that the data has been destroyed, except where the retention of Authority's Personal Data is required by Law and or the FCA;

9.3.3 immediately deliver to the Authority in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Authority in connection with this Call Off Contract provided to the Supplier;

9.3.4 vacate, and procure that the Supplier Personnel vacate, any premises of the Authority occupied for the purposes of providing the Contract Services;

9.3.5 promptly provide the Placing Files and Policy Documents; and

9.3.6 promptly provide all other information and documentation concerning the provision of the Contract Services which may reasonably be requested by the

Authority for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Authority to conduct due diligence.

9.4 Without prejudice to any other right or remedy which the Authority may have, if any Contract Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Call Off Contract then the Authority may (whether or not any part of the Contract Services has been delivered) do any one or more of the following:

9.4.1 at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of this Call Off Contract are fulfilled, in accordance with the Authority's instructions;

9.4.2 without terminating this Call Off Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with this Call Off Contract;

9.4.3 without terminating the whole of this Call Off Contract, terminate this Call Off Contract in respect of part of the Contract Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or

9.4.4 charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

9.5 Save as otherwise expressly provided in this Call Off Contract:

9.5.1 termination or expiry of this Call Off Contract shall be without prejudice to any rights, remedies or obligations accrued under this Call Off Contract prior to termination or expiration and nothing in this Call Off Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

9.5.2 termination or expiry of this Call Off Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under:

(a) paragraph (b) of Appendix 1 (*Contract Services*) to the Letter of Appointment;

- (b) Clause 2.3 (*Payment and Invoicing*); Clause 4 (*Liability and Insurance*); Clause 5 (*Intellectual Property Rights*); Clause 6 (*Protection of Data*); Clause 6.2 (*Confidentiality*); Clause 6.3 (*Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989*); Clause 6.4 (*Freedom of Information*); Clauses 9.3, 9.5 and 9.6 (*Consequences of Expiry or Termination*); Clause 10 (*Publicity, Media and Official Enquiries*); Clause 11 (*Prevention of Fraud and Bribery*); Clause 14 (*Waiver and Cumulative Remedies*); Clause 18 (*Entire Agreement*); Clause 19 (*Third Party Rights*); Clause 20 (*Notices*); and Clause 21 (*Dispute and Law*);
- (c) Schedule 6 (*Staff Transfer*);
- (d) Joint Schedule 2 (*Data Processing*); and
- (e) without limitation to the foregoing, any other provision of this Call Off Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Call Off Contract.

9.6 The Supplier shall fully indemnify the Authority against any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.

10. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

10.1 The Supplier shall not make any press announcements or publicise this Call Off Contract in any way without Approval and shall ensure that the Supplier Personnel and professional advisors comply with this Clause 10 (*Publicity, Media and Official Enquiries*). Any such press announcements or publicity proposed under this Clause 10 (*Publicity, Media and Official Enquiries*) shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Authority shall be entitled to publicise this Call Off Contract in accordance with any legal obligation upon the Authority including any examination of this Call Off Contract by the Auditors.

10.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

11. PREVENTION OF FRAUD AND BRIBERY

11.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:

- 11.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 11.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

11.2 The Supplier must not during the Call Off Contract Period:

11.2.1 commit a Prohibited Act; and/or

11.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

11.3 The Supplier must during the Call Off Contract Period:

11.3.1 establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

11.3.2 keep appropriate records of its compliance with its obligations under Clause 11.3.1 and make such records available to the Authority on request;

11.3.3 if so required by the Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Authority in writing that the Supplier and all Supplier Personnel are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Authority may reasonably request; and

11.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

11.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 11.1 or 11.2, or has reason to believe that it has or any of the Supplier Personnel have:

11.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

11.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

11.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this Call Off Contract has committed or attempted to commit a Prohibited Act.

11.5 If the Supplier makes a notification to the Authority pursuant to Clause 11.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any

investigation, and allow the Authority to audit any books, records and/or any other relevant documentation.

11.6 If the Supplier breaches Clause 11.3, the Authority may by written notice:

11.6.1 require the Supplier to remove from performance of this Call Off Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

11.6.2 immediately terminate this Call Off Contract for material Default.

11.7 Any notice served by the Authority under Clause 11.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Call Off Contract shall terminate).

12. EQUALITY AND DIVERSITY

12.1 The Supplier shall:

12.1.1 perform its obligations under this Call Off Contract (including those in relation to provision of the Contract Services) in accordance with:

- (a) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- (b) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

12.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

13. TRANSFER, ASSIGNMENT AND NOVATION

The Supplier

13.1 The Supplier shall not assign, novate, or in any other way dispose of this Call Off Contract or any part of it without the Authority's prior written consent.

13.2 The Supplier is not permitted to enter into Key Sub-Contracts without the Authority's prior written consent. Upon receipt of the Authority's prior written consent, the Supplier shall comply with the requirements of Procurement Policy Note 01/18 Supply Chain Visibility

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachm>

ent_data/file/698482/PPN_0118_Contract_Condition_for_Subcontracting__Supply_chain_spend_on_CF_final_.docx.pdf) as updated from time to time.

13.3 Without prejudice to Clause 13.2, the Supplier acknowledges and agrees that it remains responsible for all acts and omissions of the Supplier Personnel.

13.4 Without prejudice to Clause 13.2, the Supplier acknowledges and agrees that it must ensure that all sub-contracts (which in this Clause 13.4 includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call Off Contract) contain provisions:

13.4.1 requiring the Supplier or other party to pay any undisputed sums which are due from it to the sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed invoice;

13.4.2 giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and

13.4.3 requiring the sub-contractor to include a clause to the same effect as this Clause 13.4 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Call Off Contract.

The Authority

13.5 The Authority may assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof to:

13.5.1 any Central Government Body; or

13.5.2 a body other than a Central Government Body which performs any of the functions that previously had been performed by the Authority,

and the Supplier must, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 13.5 (*Transfer, Assignment and Novation*).

13.6 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 13.7, affect the validity of this Call Off Contract. In such circumstances, this Call Off Contract shall bind and inure to the benefit of any successor body to the Authority.

13.7 If the rights and obligations under this Call Off Contract are assigned, novated or otherwise disposed of pursuant to Clause 13.5 to a body which is not a Contracting Authority or there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority any such body being referred to as a "**Transferee**"):

13.7.1 the rights of termination of the Authority in Clause 8 (*Termination Rights*) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

13.7.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Call Off Contract or any part thereof with the previous consent in writing of the Supplier.

13.8 The Authority may following consultation with the Supplier disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Call Off Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under this Call Off Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking to the Supplier in relation to such Confidential Information.

13.9 For the purposes of Clause 13.7 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Call Off Contract.

14. WAIVER AND CUMULATIVE REMEDIES

14.1 The failure of either Party to insist upon strict performance of any provision of this Call Off Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Call Off Contract.

14.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 20 (*Notices*).

14.3 A waiver by either Party of any right or remedy arising from a breach of this Call Off Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Call Off Contract.

14.4 Except as otherwise expressly provided by this Call Off Contract, all remedies available to either Party for breach of this Call Off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

15. FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Call Off Contract.

16. SEVERABILITY

16.1 If any provision of this Call Off Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Call Off Contract are not void or unenforceable be deemed to be deleted and the validity

and/or enforceability of the remaining provisions of this Call Off Contract shall not be affected.

16.2 In the event that any deemed deletion under Clause 16.1 is so fundamental as to prevent the accomplishment of the purpose of this Call Off Contract or materially alters the balance of risks and rewards in this Call Off Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Call Off Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Call Off Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

16.3 If the Parties are unable to resolve the good faith negotiations referred to in Clause 16.2 within twenty (20) Working Days of the date of the notice given pursuant to Clause 16.2 and to the satisfaction of both Parties, this Call Off Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Call Off Contract is terminated pursuant to this Clause 16.3.

12. RELATIONSHIP OF PARTIES

Except as expressly provided otherwise in this Call Off Contract, nothing in this Call Off Contract, nor any actions taken by the Parties pursuant to this Call Off Contract, shall create a partnership, joint venture or relationship of employer and employee.

13. ENTIRE AGREEMENT

18.1 This Call Off Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them, constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

18.2 Each of the Parties acknowledges and agrees that in entering into this Call Off Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Call Off Contract.

18.3 The Supplier acknowledges that it has:

18.3.1 entered into this Call Off Contract in reliance on its own due diligence alone; and

18.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of this Call Off Contract.

18.4 Nothing in Clauses 18.1 and 18.2 shall operate:

18.4.1 to exclude fraud or fraudulent misrepresentation; or

18.4.2 to limit the rights of the Authority pursuant to the Third Party Rights clause set out in the Framework Agreement.

14. THIRD PARTY RIGHTS

- 19.1 A person who is not a party to this Call Off Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 19.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 19.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Call Off Contract or any one or more Clauses of it.

15. NOTICES

- 20.1 Any notices given under or in relation to this Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service or by electronic mail to the address or email address and for the attention of the relevant Party set out in Clause 20.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 20.5.
- 20.2 A notice shall be deemed to have been received:
- 20.2.1 if delivered personally, at the time of delivery;
 - 20.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; or
 - 20.2.3 in the case of electronic communication, 9:00 am on the first Working Day after sending.
- 20.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail, the confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 20.2 (or as

otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery.

20.4 For the purposes of Clause 20.2, the address or email address of each Party shall be the address or email address specified in paragraph 14 of the Letter of Appointment.

20.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 20 (*Notices*).

20.6 For the avoidance of doubt, any notice given under this Call Off Contract shall not be validly served if sent by electronic mail (email) where the confirmation letter is not sent within 24 hours of the electronic mail (email) being sent.

16. DISPUTES AND LAW

21.1 The Parties shall follow the dispute resolution procedure as set out in Schedule 2 (*Dispute Resolution Procedure*).

21.2 This Call Off Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with the Laws of the country stipulated in the Letter of Appointment (England & Wales).

21.3 Subject to Clause 21.1 and Schedule 2 (*Dispute Resolution Procedure*), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Call Off Contract or its subject matter or formation.

17. SUPPLIER COUNTERPARTS

The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

SCHEDULE 2

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

1.1 In this Call Off Schedule, the following definitions shall apply:

"**CEDR**" the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 100 St. Paul's Churchyard, London, EC4M 8BU;

"**Counter Notice**" has the meaning given to it in Paragraph 5.2 of this Call Off Schedule;

"**Mediation Notice**" has the meaning given to it in Paragraph 3.2 of this Call Off Schedule; and

"**Mediator**" the independent third party appointed in accordance with Paragraph 4 of this Call Off Schedule.

2. INTRODUCTION

2.1 If a Dispute arises then:

- (a) the representative of the Authority and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable time either Party may give to the other a Dispute Notice.

2.2 The Dispute Notice shall set out:

- (a) the material particulars of the Dispute;
- (b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- (c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in Paragraph 2.6 of this Call Off Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Call Off Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to Paragraph 2.6 of this Call Off Schedule, the Parties shall seek to resolve Disputes:

- (a) first by commercial negotiation (as prescribed in Paragraph 3 of this Call Off Schedule); then by mediation (as prescribed in Paragraph 4 of this Call Off Schedule); and

- (b) lastly by recourse to arbitration (as prescribed in Paragraph 5 of this Call Off Schedule) or litigation in accordance with Clause 21 (*Disputes and Law*).
- 2.5 In exceptional circumstances where the use of the times in this Call Off Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use of the Expedited Dispute Timetable within five (5) Working Days of the issue of the Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 2.6 If the use of the Expedited Dispute Timetable is determined in accordance with Paragraph 2.2(c) or is otherwise specified under the provisions of this Call Off Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable paragraphs:
 - (a) in Paragraph 3.2, ten (10) Working Days;
 - (b) in Paragraph 4.2, ten (10) Working Days;
 - (c) in Paragraph 5.2, ten (10) Working Days.
- 2.7 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.
- 3. **COMMERCIAL NEGOTIATIONS**
- 3.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by discussion between the Authority's Commercial Manager and the Supplier's Head of Crisis Management.
- 3.2 If:
 - (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution;
 - (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this Paragraph 3 of this Call Off Schedule; or
 - (c) the Parties have not settled the Dispute in accordance with Paragraph 3.1 of this Call Off Schedule within thirty (30) Working Days of service of the Dispute Notice,either Party may serve a written notice to proceed to mediation (a "**Mediation Notice**") in accordance with Paragraph 4 of this Call Off Schedule.

4. MEDIATION

- 4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call Off Contract.
- 4.2 If the Parties are unable to agree on the joint appointment of a Mediator within thirty (30) Working Days from service of the Mediation Notice then either Party may apply to CEDR to nominate the Mediator.
- 4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if the Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 4.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Variation Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

5. ARBITRATION

- 5.1 The Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 5.4 of this Call Off Schedule.
- 5.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "Counter Notice") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 5.4 of this Call Off Schedule or be subject to the jurisdiction of the courts in accordance with Clause 21.3 (*Disputes and Law*). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 5.3 If:
 - (a) the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 5.4 of this Call Off Schedule shall apply;
 - (b) the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 21.3 (*Disputes and Law*). The Supplier shall not commence any court proceedings or arbitration until the expiry), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings;
 - (c) the Authority does not serve a Counter Notice within the fifteen (15) Working Days period referred to in Paragraph 5.2 of this Call Off Schedule, the Supplier may either commence arbitration proceedings in accordance with Paragraph 5.4 of this Call Off Schedule or commence court proceedings in the courts in

accordance with Clause 21.3 (*Disputes and Law*) which shall (in those circumstances) have exclusive jurisdiction.

5.4 In the event that any arbitration proceedings are commenced pursuant to Paragraphs 5 to 5.3 of this Call Off Schedule, the Parties hereby confirm that:

- (a) all disputes, issues or claims arising out of or in connection with this Call Off Contract (including as to its existence, validity or performance) shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to paragraphs (b) to (g) of this Paragraph 5.4 of this Call Off Schedule);
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Call Off Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British and Article 6 of the LCIA Rules shall not apply to disqualify the chair on the basis of nationality;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

6. **URGENT RELIEF**

6.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- (a) for interim or interlocutory remedies in relation to this Call Off Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 of this Call Off Schedule and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

SCHEDULE 3

KEY PERFORMANCE INDICATORS

1. The purpose of this Schedule 3 (*Key Performance Indicators*) is to set out the KPIs by which the Supplier's overall performance under this Call Off Contract shall be monitored and managed. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Call Off Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Supplier in accordance with Clause 2.1 (*Variation of Contract Services*).
2. The Supplier shall comply with all its obligations related to KPIs set out in this Call Off Contract and shall meet the KPI Targets identified in the table below.
3. The KPIs from which performance of this Call Off Contract by the Supplier will be reported against are set out in Table 1 of this Schedule 3 (*Key Performance Indicators*).

Table 1

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
Further Competition Procedures				
1. Additional Capacity Secured	<p>Shortfall/ Surplus of capacity targets set by the Authority at the beginning of a Further Competition Procedure</p> <p>Within each Quarter:</p> <p>The net total secured after deducting the Authority's reasonable target</p>	<p>Target met = green</p> <p>Target not met (but reasonable justification provided by supplier) = green</p> <p>Target not met = red</p>	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Management of Contracts of Insurance				
2. Response to issues arising after the binding of the Contract of Insurance	Time taken to respond to issues related to the delivery of the management of contracts of insurance, the KPI will report the number of instances where the Broker fails to address / communicate to the Authority an issue arising on any Contract of Insurance within two (2) Working Days.	Target is Zero that exceed two (2) Working Days	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Framework Contract Compliance				

Key Performance Indicator	Description	KPI Measure / Target	Frequency	Transparency Reports (information to be reported publicly by Government)
3. Framework Contract Compliance	The Supplier shall at all times comply fully with this Framework Agreement.	Zero breaches	Quarterly (before 1 December, 1 March, 1 June, 1 September)	Not applicable
Social Values				
4. Timely and Complete:	<p>The report shall include</p> <p>(i) the number and details of new initiatives launched for disadvantaged or minority groups (e.g., opportunities offered under the contract for initiatives such as work experience placements, internships, graduate schemes, engagement, recruitment and staff development); and</p> <p>(ii) the number and details of existing initiatives for disadvantaged and minority groups. There are opportunities to tackle training, employment, skills and pay inequality in the contract workforce, or to support in-work progression to help people in the contract workforce to move into higher paid work by developing new skills relevant to the contract.</p>	<ul style="list-style-type: none"> Target: Meets / exceeds the Authority requirements, including Tender commitments N/A (November, February, May) 	Annually (no later than 31 August)	Not applicable
Social Value Review (Equal Opportunity)				
Fighting climate change	Annual reporting on the Carbon Reduction Plan	Reporting Carbon Reduction Plan improvements	Annually	N/A

SCHEDULE 4
COMMERCIALLY SENSITIVE INFORMATION

1. INTRODUCTION

- 1.1 In this Schedule 4 (*Commercially Sensitive Information*) the Parties have sought to identify the Supplier Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA.
- 1.2 Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule 4 (*Commercially Sensitive Information*) applies.
- 1.3 Without prejudice to the Authority's obligation to disclose Information in accordance with FOIA or Clause 6.4 (*Freedom of Information*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

No.	Date	Item(s)	Duration of Confidentiality
1			

SCHEDULE 5 SECURITY

1. DEFINITIONS

1.1 In this Schedule 5 (*Security*), the following definitions shall apply:

"Breach of Security" means the occurrence of:

- (a) any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("**ICT**"), information or data (including the Confidential Information and the Government Data) used by the Authority and/or the Supplier in connection with this Call Off Contract; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Call Off Contract,

in either case as more particularly set out in the Security Policy where the Authority has required compliance therewith in accordance with Paragraph 2.1 of this Schedule 5;

"Sites" any premises (including the Authority Premises, the Supplier's premises or third party premises) from, to or at which:

- (a) the Contract Services are (or are to be) provided; or
- (b) the Supplier manages, organises or otherwise directs the provision or the use of the Contract Services; and

"Variation Procedure" the procedure set out in Clause 2.1 (*Variation of Contract Services*).

2. COMPLYING WITH SECURITY REQUIREMENTS AND UPDATES TO THEM

- 2.1 The Supplier shall comply with the requirements in this Schedule 5 in respect of the Security Management Plan. Where specified by the Authority that has undertaken a Further Competition it shall also comply with the Security Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 2.2 Where the Security Policy applies the Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Contract Services it may propose a Variation to the Authority. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Brokerage Cap and/or Brokerage Percentage shall be subject to the Variation Procedure.

- 2.4 Until and/or unless a change to the Brokerage Cap and/or Brokerage Percentage is agreed by the Authority pursuant to the Variation Procedure the Supplier shall continue to provide the Contract Services in accordance with its existing obligations.

3. SECURITY STANDARDS

- 3.1 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Contract Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
- 3.2.1 is in accordance with the Law and this Call Off Contract;
- 3.2.2 as a minimum demonstrates Good Industry Practice;
- 3.2.3 meets any specific security threats of immediate relevance to the Contract Services and/or the Government Data; and
- 3.2.4 where specified by the Authority in accordance with Paragraph 2.1 of this Schedule 5 complies with the Security Policy.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 of this Schedule 5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

4.1 Introduction

The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule 5. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

5. SECURITY BREACH

- 5.1 Either Party shall notify the other upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

- 5.2 Upon becoming aware of any of the circumstances referred to in Paragraph 5.1 of this Schedule 5, the Supplier shall immediately take all reasonable steps (which may include any action or changes reasonably requested by the Authority) necessary to:
- 5.2.1 minimise the extent of actual or potential harm caused by any Breach of Security;
 - 5.2.2 remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - 5.2.3 prevent an equivalent breach in the future exploiting the same cause failure; and
 - 5.2.4 as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Authority. Any disclosures by the Supplier shall be subject to the requirements of confidentiality and provided to the extent that it relates to the Authority and affects the delivery of the Services.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Policy (where relevant in accordance with Paragraph 2.1 of this Schedule 5 (*Security*)) or the requirements of this Schedule 5 (*Security*), then any required change shall be at no cost to the Authority.

SCHEDULE 6 STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule 6 (*Staff Transfer*), the following definitions shall apply:

"Broadly Comparable" means

- (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,

and **"Broad Comparability"** shall be construed accordingly;

"Employee Liability" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions; and/or
- (f) claims whether in tort, contract or statute or otherwise,

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

"Equality and Human Rights Commission" means the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;

"Fair Deal Employee" means those;

- (a) Transferring Authority Employees;
- (b) Transferring Former Supplier Employees;
- (c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier, and whose employment is not terminated in accordance with the provisions of Paragraph 1.2.4 of Part A; and/or
- (d) where the Former Supplier becomes the Supplier those employees,

who at the Call Off Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Authority;

"Fair Deal Schemes" means the relevant Statutory Scheme or a Broadly Comparable pension scheme;

"Former Supplier" means a supplier supplying the Contract Services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Contract Services (or any part of the Contract Services);

"National Insurance Contributions" means contributions required by the National Insurance Contributions Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

"New Fair Deal" means the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for Staff Pensions: Staff Transfer from Central Government"* issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection as notified to the Supplier by the Authority;

"Partial Termination" means the partial termination of the Call Off Contract to the extent that it relates to the provision of any part of the Contract Services as further provided for in Clause 8.6 (*Partial Termination*);

"Relevant Transfer" means a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" means in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, where appropriate;

"Replacement Contract Services" means any services which are substantially similar to any of the Contract Services and which the Authority receives in substitution for any of the Contract Services following the Call Off End Date, whether those services are provided by the Authority internally and/or by any third party;

"Replacement Supplier" means any third party provider of Replacement Contract Services appointed by or at the direction of the Authority from time to time or where the Authority is providing Replacement Contract Services for its own account, shall also include the Authority;

"Service Transfer" means any transfer of the Contract Services (or any part of the Contract Services), for whatever reason, from the Supplier to a Replacement Supplier;

"Service Transfer Date" means the date of a Service Transfer;

"Staffing Information" means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymized format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Statutory Schemes" means the Principal Civil Service Pension Scheme, the Local Government Pension Scheme and the National Health Service Pension Scheme for England and Wales;

"Supplier's Final Supplier Personnel List" a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;

"Supplier's Provisional Supplier Personnel List" means a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Contract Services or any relevant part of the Contract Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

"Transferring Authority Employees" means those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

"Transferring Former Supplier Employees" means in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date; and

"Transferring Supplier Employees" means those employees of the Supplier to whom the Employment Regulations will apply to the Service Transfer Date.

2. **INTERPRETATION**

Where a provision in this Schedule 6 (*Staff Transfer*) imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, or Replacement Supplier, as the case may be and the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

PART A
NO STAFF TRANSFER ON THE CALL OFF COMMENCEMENT DATE

1. What happens if there is a staff transfer

1.1 The Authority and the Supplier agree that the commencement of the provision of the Contract Services or of any part of the Contract Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 Subject to Paragraphs 1.3, 1.4 and 1.5 of this Schedule 6 (*Staff Transfer*), if any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier pursuant to the Employment Regulations then:

1.2.1 the Supplier will, within five (5) Working Days of becoming aware of that fact, notify the Authority in writing;

1.2.2 the Authority may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Supplier;

1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment; and

1.2.4 if after the period referred to in Paragraph 1.2.2 of this Schedule 6 (*Staff Transfer*) no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person,

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 of this Schedule 6 (*Staff Transfer*):

(a) the Authority will indemnify the Supplier against all Employee Liabilities arising out of the termination of the employment of any of the Authority's employees referred to in Paragraph 1.2 of this Schedule 6 (*Staff Transfer*); and

(b) the Authority will procure that the Former Supplier indemnifies the Supplier against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2.

1.3 The indemnities in Paragraph 1.2 of this Schedule 6 (*Staff Transfer*) shall not apply to any claim:

1.3.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier; or

1.3.2 any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure.

1.4 The indemnities in Paragraph 1.2 of this Schedule 6 (*Staff Transfer*) shall not apply to any termination of employment occurring later than three (3) Months from the Call Off Commencement Date.

1.5 If the Supplier does not comply with Paragraph 1.2 of this Schedule 6 (*Staff Transfer*), all Employee Liabilities in relation to such employees shall remain with the Supplier and the Supplier shall indemnify the Authority and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier.

2. **LIMITS ON THE FORMER SUPPLIER'S OBLIGATIONS**

Where in this Part A the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavors to procure that the Former Supplier does or does not act accordingly.

PART B STAFF TRANSFER ON EXIT

1. OBLIGATIONS BEFORE A STAFF TRANSFER

1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the Call Off Contract;

1.1.3 the date which is 12 Months before the Call Off Expiry Date; and

1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 of this Schedule 6 (*Staff Transfer*) for the purpose of informing any prospective Replacement Supplier.

1.4 The Supplier warrants, for the benefit of the Authority, and any Replacement Supplier, that all information provided pursuant to Paragraphs 1.1 and 1.2 of this Schedule 6 (*Staff Transfer*) shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraphs 1.1, 1.1.1 and 1.1.2 of this Schedule 6 (*Staff Transfer*), the Supplier agrees that it shall not assign any person to the provision of the Contract Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Authority (acting reasonably):

1.5.1 not replace or re-deploy any Supplier Personnel listed on the Supplier's Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces not make, promise, propose, permit or implement any material changes to the terms and

conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

- 1.5.2 not increase the proportion of working time spent on the Contract Services (or the relevant part of the Contract Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.3 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.4 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Contract Services (or the relevant part of the Contract Services);
- 1.5.5 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 1.5.6 not dissuade or discourage any employees engaged in the provision of the Contract Services from transferring their employment to the Authority and/or the Replacement Supplier;
- 1.5.7 give the Authority and/or the Replacement Supplier reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Authority, Replacement Supplier in respect of persons expected to be Transferring Supplier Employees;
- 1.5.8 co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Contract Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.9 promptly notify the Authority or, at the direction of the Authority, any Replacement Supplier of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 1.5.10 not for a period of 12 Months from the Service Transfer Date re-employ or re-engage or entice any employees, or suppliers whose employment or engagement is transferred to the Authority and/or the Replacement Supplier (unless otherwise instructed by the Authority (acting reasonably));
- 1.5.11 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.12 fully fund any Broadly Comparable pension schemes set up by the Supplier;

- 1.5.13 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier in the provision of the Contract Services on the expiry or termination of this Call Off Contract (including without limitation identification of the Fair Deal Employees); and
 - 1.5.14 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier in the provision of the Contract Services on the expiry or termination of this Call Off Contract.
- 1.6 On or around each anniversary of the Call Off Commencement Date and up to four times during the last 12 Months of the Call Off Contract Period, the Authority may make written requests to the Supplier for information relating to the manner in which the Contract Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Authority may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Contract Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Contract Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes; and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Authority, and any Replacement Supplier to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Authority or, at the direction of the Authority, to any Replacement Supplier (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent Month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and

1.7.6 bank/building society account details for payroll purposes.

2. **STAFF TRANSFER AT CALL OFF CONTRACT EXPIRY**

- 2.1 A change in the identity of the supplier of the Contract Services (or part of the Contract Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes.
- 2.3 Subject to Paragraph 2.4 of this Schedule 6 (*Staff Transfer*), the Supplier shall indemnify the Authority and/or the Replacement Supplier against any Employee Liabilities arising from or as a result of any act or omission of the Supplier in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.
- 2.4 The indemnity in Paragraph 2.3 of this Schedule 6 (*Staff Transfer*) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier whether occurring or having its origin before, on or after the Service Transfer Date.
- 2.5 Subject to Paragraphs 2.6 and 2.7 of this Schedule 6 (*Staff Transfer*), if any employee of the Supplier who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier pursuant to the Employment Regulations then.
 - 2.5.1 the Replacement Supplier will, within five (5) Working Days of becoming aware of that fact, notify the Authority and the Supplier in writing;
 - 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Replacement Supplier;
 - 2.5.3 if such offer of employment is accepted, the Replacement Supplier shall immediately release the person from its employment; and
 - 2.5.4 if after the period referred to in Paragraph 2.5.2 of this Schedule 6 (*Staff Transfer*) no such offer has been made, or such offer has been made but not

accepted, the Replacement Supplier may within five (5) Working Days give notice to terminate the employment of such person,

and subject to the Replacement Supplier's compliance with Paragraphs 2.5.1 to 2.5.4 of this Schedule 6 (*Staff Transfer*) the Supplier will indemnify the Replacement Supplier against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 of this Schedule 6.

2.6 The indemnity in Paragraph 2.5 of this Schedule 6 (*Staff Transfer*) shall not apply to:

- (a) any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than three (3) Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier accepts the employment of any such person as is described in Paragraph 2.5 of this Schedule 6 (*Staff Transfer*), such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall promptly provide the Authority and any Replacement Supplier, in writing such information as is necessary to enable the Authority, the Replacement Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier, shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier to carry out their respective duties under regulation 13 of the Employment Regulations.

2.10 Subject to Paragraph 2.9 of this Schedule 6 (*Staff Transfer*), the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

2.11 The indemnity in Paragraph 2.10 of this Schedule 6 (*Staff Transfer*) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in

accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 of this Schedule 6 (*Staff Transfer*)).

SCHEDULE 12
TEMPLATE CONTRACT OF INSURANCE AND TEMPLATE CONTRACT OF
INSURANCE LETTER OF AWARD

Draft Date: 5 May 2022

FRAMEWORK SCHEDULE 12

TEMPLATE CONTRACT OF INSURANCE LETTER
OF AWARD AND TEMPLATE CONTRACT OF
INSURANCE (LOT 2)

TEMPLATE CONTRACT OF INSURANCE LETTER OF AWARD

[Insurer address]

[Date]

Dear Sirs,

Contract of Insurance Letter of Award pursuant to Lot 2 of the Political and Credit Risk Insurance Framework Agreement dated [dd/mm/yyyy] between UKEF (1) and the Supplier (2) (the “Framework Agreement”) in which [x] is named as a Nominated Insurer

[Failure by the Borrower(s) to Honour Loan Agreement Contract(s) insert name of opportunity being insured here DRAFTING NOTE: COMMERCIALY SENSITIVE INFORMATION].

Thank you for submitting your Tender as an Insurer for the above-mentioned procurement (the “**Further Competition Procedure**”). This Further Competition Procedure was conducted on behalf of UK Export Finance under Lot 2 (Insurance Panel) of the Political and Credit Risk Insurance Framework.

I am writing to advise that the Further Competition Procedure is now complete and UKEF have completed their analysis on the placement structure options and have decided that the option which provides the most advantageous tenor in respect of the risk impact on Expected Loss and Unexpected Loss (for each \$10m of risk reduction) is [x years cover].

I am pleased to inform you that your company has been selected for the “Failure by the Borrower(s) to Honour Loan Agreement Contract(s)” as part of a coinsurance placement for a line size of [insert value].

Confirmation of Insurer(s)

Name of Insurer(s)	Line Size	Proportion
[x]	[x]	[x]

Evaluation Approach

By way of confirmation, your submission was evaluated in accordance with the rules and award criteria published in the tender documentation and has been assessed as a Most Economically Advantageous Tender . [The following table provides feedback on your submission:

[DRAFTING NOTE: UKEF MAY, AT ITS SOLE AND ABSOLUTE DISCRETION, PROVIDE QUANTITATIVE (WHETHER SCORES OR RANKINGS) AND/OR QUALITATIVE FEEDBACK ON THE INSURER’S TENDER RESPONSE TO THE FURTHER COMPETITION PROCEDURE]

	<i>[e.g. Social Value]</i>	<i>[e.g. Price]</i>	<i>[e.g. Quality]</i>
[x]	[x]	[x]	[x]

[Standstill Period]

UKEF will be observing a voluntary ten-day standstill period before entering into any contract. This period will conclude on xxx.

[DRAFTING NOTE: UKEF MAY, AT ITS SOLE AND ABSOLUTE DISCRETION, OBSERVE A VOLUNTARY STANDSTILL PERIOD].

You are requested not to make any press announcements regarding the Further Competition Procedure and award of this Contract of Insurance.

A copy of the Contract of Insurance in its final form will be forwarded to you shortly for binding.

If you have any queries about the contents of this letter, please contact [INSERT CONTACT NAME AND CONTACT DETAILS OF THE BROKER].

Yours sincerely

[Broker Authorised signatory]

Policy Number:

TEMPLATE CONTRACT OF INSURANCE

Policy Number:

RISK DETAILS

NON PAYMENT INSURANCE

[Insert description of insured risk]

This facultative insurance policy (hereinafter referred to as the “**Contract**”) is entered into between the Insured and the Insurer(s) as of *[date]* (“**Contract Inception**”).

UNIQUE MARKET REFERENCE

[To be inserted]

TYPE

Non Payment Insurance

INSURED

**The Secretary of State acting through the Export Credits
Guarantee Department (operating as UK Export Finance)**

1 Horse Guards Road,

London

SW1A 2HQ

United Kingdom

For the avoidance of doubt, the Insurer(s) shall treat the Insured as a completely separate entity of the Government/all other Government departments. The actions and knowledge of any Government department not party to the Contract of Insurance shall be treated as being the knowledge and actions of an independent third party so that the position and rights of the Insured under this Policy shall not be prejudiced in any way.

INSURED'S COUNTRY

United Kingdom

Policy Number:

BORROWER

[To be inserted]

**BORROWER'S
ADDRESS**

[To be inserted]

**CONTRACT
PERIOD**

From *[date]* (“**Contract Inception**”) to *[date]* (“**Contract Expiry**”), both dates inclusive, local standard time at the address of the Insured.

**FACILITY
AGREEMENT**

[To be inserted]

GUARANTOR

[To be inserted, where

LENDERS

As defined within the Facility Agreement.

INSURED'S

INTEREST

Non-Payment Insurance. To indemnify the Insured for any amounts it is required to pay in respect of any valid claims in respect of unpaid principal under *[Description of UKEF Guarantee to be inserted]*(the “**Agreement**”) between UK Export Finance, the Lenders and the Agent Bank, following non-payment under the Facility Agreement by the Borrower of the instalments described in Schedule B.

DELAY INTEREST Interest which, under the terms of the Agreement is payable by the Insured and accrues from the date on which the relevant default occurs under the Facility Agreement to the date on which the Insured pays a claim under the Agreement.

CESSION

Subject to “**Security Details**” the Insured shall cede to the Insurer(s), and the Insurer(s) shall accept *[total ceded percentage]* of the Insured's liability set out in Schedule B.

Policy Number:

**INSURED’S
LIABILITY**

The total amount of repayments of principal under the Facility Agreement, as guaranteed by UKEF under the Agreement and repayable during the Contract Period, being a maximum of [INSERT AMOUNT].

**INSURER’S
MAXIMUM LIMIT
OF LIABILITY**

The liability of the Insurer(s) will be limited to [INSERT Total Ceded Exposure in Schedule B] (the “Maximum Limit of Liability”).

**TRANSACTION
DOCUMENTS**

[To be inserted]

AGENT BANK

As defined within the Facility Agreement.

INSURER(S)

[Name] [Max Liability]

[Address][Percentage cover]

Address
Address

Address]

[Name] [Max Liability]

[Address][Percentage cover]

Address
Address

Address]

[Name][Max Liability]

[Address][Percentage cover]

Address
Address

Policy Number:

Address]

BROKER

[To be inserted]

INSURED’S DEAL TEAM Those individuals employed from time to time by the Insured who are directly involved in the origination, negotiation, management (including post-issue and claims management) and/or approval of the Agreement and/or this Contract.

ARBITRATION As set out in the Policy Wording (Condition 24)

CHOICE OF LAW AND JURISDICTION The formation, existence, construction, performance, validity and all aspects whatsoever of this Contract or of any term of this Contract will be governed by the laws of England and Wales.

Any dispute or matter which requires reference to a court arising out of or relating to arbitration, or falling outside the scope of the arbitration clause, shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

PREMIUM Premium is payable in accordance with the Premium Payment Terms and as specified in the Schedule B.

CEDING COMMISSION As per the respective Schedule B.

CURRENCY Currency of the Facility Agreement and the Agreement.

PREMIUM ADJUSTMENT RATE As per the respective Schedule B.

Policy Number:

**PREMIUM
PAYMENT TERMS**

[INSERT]

60 days from Contract Inception.

**TAX(ES)
PAYABLE BY THE
INSURED AND
ADMINISTERED
BY INSURERS**

None.

**RECORDING,
TRANSMITTING
AND STORING
INFORMATION**

The Parties agree that where the Broker maintains risk and/or claim data / information / documents, the Broker may hold and transmit such data / information / documents electronically.

**INSURER
CONTRACT
DOCUMENTATION**

This Contract details the contract terms entered into by the Insurer(s), and is constituted of the Risk Details (including the Conditions), Schedule A, Schedule B, Joint Schedule 1 (Corporate Social Responsibility) and Joint Schedule 2 (Processing Data), which are incorporated into this Contract.

Any further documentation changing this Contract, agreed in accordance with the contract change provisions set out in this Contract, shall form the evidence of such change.

RISK DETAILS - WORDING

Risk Details – Conditions

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**Schedule B:**

- Exposure & Premium Calculations
- Insurer(s) Participations

Condition 1: Follow the Fortunes

The Insurer(s) shall indemnify the Insured in accordance with item Insured's Interest of the Risk Details in respect of each Cession hereunder. Each Cession hereunder shall be subject to the same risks, terms, warranties, periods, clauses, conditions and the like as the Agreement and the Insurer(s) shall follow the fortunes of the Insured in respect of each Cession hereunder except as specified herein.

Condition 2: Notification

The Insured undertakes to advise the Insurer(s) in writing within 30 days of receiving notice of any event or circumstance likely to give rise to a claim hereunder, together, if reasonably practicable, with an estimate of the liability of Insurer(s) and thereafter keep the Insurer(s) fully informed of any developments regarding the event, circumstance and/or claim.

Condition 3: Access to/provision of information

- a) The Insured has provided the Insurer(s) with access to Transaction Documents via its Broker.
- b) Subject to Condition 17(d), the Insured shall furnish the Insurer(s) with access to any additional information related to the Agreement as the Insurer(s) may from time-to-time reasonably request.
- c) The Insurer(s) shall notify the Insured immediately if the Insurer(s) is intending to undergo, undergoes or has undergone a Change of Control and provided this does not contravene any Law, shall notify the Insured immediately in writing of the circumstances suggesting and/or explaining that a Change of Control is planned or is in contemplation or has taken place.

“Change of Control” means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

Condition 4: Premium Payment

- a) Premium shall be payable in full at Contract Inception as specified in Schedule B.

- b) The Premium is payable via the Broker to the Insurer(s) within sixty (60) calendar days of Contract Inception.

Condition 5: Due Diligence

The Insured shall apply the same due diligence with respect to the underwriting and administration of the Agreement and with respect to loss mitigation, recovery and the adjustment of claims thereunder as if such Agreement was not insured.

Condition 6: Amendments to the Insured's Agreement/Facility Agreement

The Insurer(s) acknowledge that the Agent Bank may have the right to request that coverage under the Agreement or the Facility Agreement be extended or modified. The Insurer(s) agree that the Insured may amend (or consent to the amendment of) any provision, term or condition of either the Agreement or the Facility Agreement without the prior written consent of Insurer(s), save for the following which shall require the Insurer(s)' prior written consent, such consent not to be unreasonably withheld or delayed:

- (i) a change of the repayment profile of the Facility Agreement within the Contract Period;
- (ii) an extension of the final maturity of the Facility Agreement;
- (iii) a reduction of the margin and/or fixed interest payable under the Facility Agreement;
- (iv) a decision to forgive all or part of the debt owed under the Facility Agreement;
- (v) a change to the ranking of the debt owed under the Facility Agreement;
- (vi) a discharge of any security unless such discharge is the result of a sale of the relevant charged asset and the sale proceeds have been applied to prepay the principal outstanding under the Facility Agreement;
- (vii) a change of Borrower or Guarantor under the Facility Agreement;
- (viii) the conversion of any monies payable under the Facility Agreement into equity;
- (ix) a change in currency of any payment payable under the Facility Agreement to a non-convertible currency; or
- (x) an amendment to any provision under the Facility Agreement which relates to prepayment or cancellation.

Condition 7: Amendments to this Contract

- a) In the event that Insurer(s) do not consent to any proposed amendment to the Agreement or the Facility Agreement in Condition 6 (i), (ii) or (x) and the Insured wishes to proceed or does proceed to make such an amendment, the liability of the Insurer(s) under this Contract shall be unaffected until the amendment takes effect, at which point:

- (i) the Insurer(s) shall remain liable to indemnify the Insured in respect of any events of non payment by the Borrower under the Facility Agreement that occur during the Contract Period, save that the liability of the Insurer(s) under this Contract shall not extend in respect of the portion of the coverage that is new or extended and the Insurer(s) shall, if their exposure would be reduced as a result, return the proportion of the Premium [based on Schedule B] to the Insured, within 30 business days of a request from the Insured; and
 - (ii) the Insured may (at any point in time) terminate this Contract in accordance with Condition 13, after which the liability of the Insurer(s) to indemnify the Insured shall be in accordance with Condition 13 (e).
- b) In the event that Insurer(s) do not consent to any proposed amendment to the Agreement or the Facility Agreement in Condition 6 (iii), (iv), (v), (vi), (vii), (viii) or (ix) and the Insured wishes to proceed or does proceed to make such an amendment, the Insured shall be entitled to terminate this Contract in accordance with Condition 13 (a).
- c) Any amendment to this Contract can only be made by endorsement(s), which shall be binding upon the Insured and the Insurer(s) when agreed by the Insured and the Insurer(s) and executed by the Insurer(s). For the avoidance of doubt, such endorsement shall record any additional terms (including as to premium) as are reasonably requested by the Insurer(s) and agreed by the Insured.

Condition 8: Claims Payments and Follow the Settlements

- a) The Insured at its discretion may adjust, pay or compromise all claims brought by the Agent Bank under the Agreement and may institute, process, defend, settle or compromise any proceedings in respect of such claims.
- b) All claim payments made by the Insured that are (i) reasonably perceived by the Insured or its advisers to be justified within the scope of the Agreement and (ii) within the terms and conditions of this Contract shall be binding on the Insurer(s) whose judgment shall not be substituted for the judgment of the Insured as to any matter relating to the eligibility of a claim or loss, or the adjustment, settlement or compromise of any such claim.
- c) The Insurer(s) agree(s) to follow all such payments made by the Insured, excluding ex-gratia payments, and to bear their proportionate share of the Insured's claim thereof. The Insured shall be entitled to present a claim using the form of notice set out in Schedule A in respect of any loss arising from an event of non payment by the Borrower under the Facility Agreement, provided that:
 - (a) such loss is in respect of instalments set out in Schedule B (including, for the avoidance of doubt, where the Agent Bank or the Insured has exercised a right in respect of such instalments);
 - (b) the event of non-payment occurs during the Contract; and
 - (c) in the event that the Agent Bank or the Insured has exercised a right in respect of such instalments, those instalments are not ones which, absent the exercise of such right by the Agent Bank or the Insured, would not have been repayable during the Contract Period.

- d) The Insurer(s) further agree to bear their proportionate share of any reasonable out-of-pocket expenses incurred whether legal or otherwise in the investigation, defence, adjustment, settlement or compromise of any claim under the Agreement.
- e) Where a claim is payable under this Contract, the Insured shall, using the form of notice set out in Schedule A to this Contract, present the claim in writing to the Insurer(s), who shall pay their proportionate shares of the claim to the Insured within 30 business days of the date of receipt of such claim.
- f) If the proportionate share of a claim is not paid to the Insured by that/those Insurer(s) on or before the date that it is due in accordance with the provisions of the paragraphs above, late payment interest shall thereafter accrue and be payable by the Insurer(s) to the Insured on the amount in default (both before and after any award or judgment) at the reference rate set out in the table below applicable to the currency in which the payment from the Insurer(s) was due:

Currency	Reference Rate
EURO (“EUR”) and all currencies of the European Currency Union	the Euro Short-Term Rate (€STR), compounded in arrears, with observation shift
Pounds Sterling (“GBP”)	the Bank of England Sterling Overnight Interbank Average rate (SONIA), calculated on a non-cumulative basis, compounded in arrears with no observation shift and a 5 day lookback
US Dollars (“USD”)	the New York Fed Secured Overnight Financing Rate (SOFR), compounded in arrears with no observation shift
Japanese Yen (“YEN”)	The Quick Corp. Tokyo Overnight Average rate (TONA), compounded in arrears with no observation shift and a 5 day lookback

(or its nearest successor equivalent) rate plus 1% (1% being expressed here as an annual rate).
Interest shall accrue on a compounded monthly basis.

g) In the event that the Insured exercises a right to accelerate the payment of claims into a single payment under the Agreement, the Insurer(s) may either:

- (i) follow the Insured and make a single claims payment to the Insured of the total amounts due in Schedule B, for the avoidance of doubt, provided that such amounts are not ones which, had no acceleration taken place, would not have been repayable during the Contract Period; or
- (ii) make claims payments as they fall due in accordance with the original instalments described in Schedule B.

h) Entirely without prejudice to the Insured's rights under this Condition, the Insured shall:

- (i) consult with the Insurer(s) on a timely basis, in respect of such actions;
- (ii) inform the Insurer(s) from time to time, or when reasonably requested by the Insurer(s), of the status of the Insured's actions;
- (iii) in good faith take into account the interests and recommendations of the Insurer(s) in making any claim determination; and,
- (iv) after it has made its final determination, but before it notifies the Agent Bank, inform the Insurer(s) of the results of such determination.

Condition 9: Recoveries

a) The Insured at its discretion may institute, process, defend, settle or compromise any proceedings in respect of a claim under the Agreement (including final write-off).

Without prejudice to the Insured's rights under the preceding sentence, the Insured shall:

- (i) consult with the Insurer(s) and in good faith take into account the interests and recommendations of the Insurer(s) when proceeding with such actions; and,
- (ii) inform the Insurer(s) from time to time, or when reasonably requested by the Insurer(s), of the status of the Insured's actions.

b) After Insurer(s) have paid their share of a claim and/or claims under this Contract, Insurer(s) shall receive such proportion of all subsequent salvage and recoveries (whether in respect of principal or commission/interest) as the total of their claim(s) payments received by the Insured hereunder bear to the total amount paid by the Insured under the Agreement. This is subject to:

- (i) any recoveries received first being shared on a pro rata basis in accordance with the amounts borne:

- (a) by the Insured in respect of its expenses including but not limited to any reasonable out-of-pocket expenses incurred whether legal or otherwise in the investigation, defence, adjustment, settlement or compromise of any claim under the Agreement; and
 - (b) the Insurer(s) pursuant to Condition 8(d) of the Agreement, until both the Insured and the Insurer(s) have been reimbursed in respect thereof;
 - (ii) the Insured subsequently and prior to any apportionment retaining any recoveries in respect of the Delay Interest;
 - (iii) the total amount of recoveries received by the Insurer(s) not exceeding the total amount paid by the Insurer(s) in respect of such claim and/or claims including, for the avoidance of doubt, any amount borne by the Insurer(s) pursuant to Condition 8(d); and
 - (iv) amounts received by the Insured pursuant to any insurance, or reinsurance in respect of either the Insured's liability under the Agreement or due to the Insured under the Facility Agreement (for example from an export credit agency or under a direct loan) not being deemed to be recoveries or salvage for the purposes of this Contract.
- c) Pending payment of such part of the net salvage and recoveries to the Insurer(s), the Insured holds it on trust for the Insurer(s).
- d) For the avoidance of doubt, the Insurer(s)'s rights under this Condition 9 replace any rights of subrogation that they would otherwise have.

Condition 10: Rates of Exchange

If the Insured pays a claim or receives a recovery under the Agreement in a currency other than the Currency, for the purposes of making a claim under this Contract that sum shall be deemed converted to the Currency at the relevant exchange rate quoted by the Bank of England as of the date of the Insured's payment/receipt of a recovery.

Condition 11: Confidentiality

- a) The Insurer(s) shall not, without the consent of the Insured, disclose the existence or terms of this Contract or any information with respect to the business insured hereunder ("**Confidential Information**") to any third party except to their affiliates, directors, employees, financial and legal advisers, agents, auditors, reinsurers, reinsurance brokers, third party service providers or as may be required by law, regulation or arbitration provided, however that the Insurer(s) shall take all necessary measures to inform any such party of the confidential nature of the Confidential Information.

b) The Insured shall not disclose any Confidential Information, except:

- (i) on a confidential basis to any Central Government Body for any proper purpose of the Insured or of the relevant Central Government Body;
- (ii) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (iii) to the extent that the Insured (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (iv) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in (i) above for any purpose relating to or connected with this Contract;
- (v) on a confidential basis for the purpose of the exercise of the Insured's rights under this Contract;
- (vi) to a proposed transferee, assignee or novatee of, or successor in title to the Insured;
- (vii) to the Insured's employees, agents, consultants, advisers and contractors;
- (viii) to any person with the consent of the Insurer(s) (such consent not to be unreasonably withheld or delayed); or
- (ix) if the Insured decides that it is required to disclose that information in accordance with the Public Contracts Regulations 2015 as amended, government transparency requirements, Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

The Insured shall take reasonable steps to notify the Insurer(s) of any request for information and/or the Insured's intention to publish any part of the Confidential Information.

Condition 12: Errors and Omissions

Inadvertent delays, errors or omissions made in connection with this Contract or any transaction hereunder shall not relieve either party from any liability which would have attached had such delay, error or omission not occurred, provided always that such error or omission is rectified as soon as possible after discovery.

Condition 13: Contract Termination

- a) The Insured may terminate this Contract immediately upon written notice to the Insurer(s), providing a full release of liability, in the event that:
- (i) the Insured ceases to have any liability under the Agreement; or

- (ii) the Insurer(s) do not agree to any amendment to any terms or conditions of this Contract and/or the Agreement and/or the Facility Agreement requested to be made by the Insured or to new or extended coverage, as provided for under Conditions 6 and 7.
- b) The Insured may terminate the participation of Insurer(s) in this Contract immediately upon written notice, providing a full release of liability (save in respect of any rights and obligations of the Insured under this Contract in connection with any claims made or circumstances notified by the Agent Bank under the Agreement prior to the date of such termination), to that/those Insurer(s) in the event that any one of the following circumstances occurs after Contract Inception:
 - (i) the Insurer(s) become(s) insolvent or is placed into liquidation or receivership (whether voluntary or involuntary), or there is instituted against it proceedings for the appointment of a receiver, liquidator, rehabilitator, conservator or trustee in bankruptcy, or other agent known by whatever name, to take possession of its assets or control its operations; or
 - (ii) the Insurer(s) is/are acquired by or relinquishes control of itself to any individual(s) or State/Government authorities; or
 - (iii) the Insurer fails to maintain at least one of the following credit rating:
 - a. AM Best at A-;
 - b. Standard and Poor's at A-;
 - c. Fitch rating at A-; or
 - d. Moody's rating at A3.
 - (iv) the Insurer(s) fail(s) to comply with any of the terms and conditions of this Contract, provided that the Insured first notifies the Insurer(s) of the failure to comply, and the Insurer(s) does/do not rectify the failure within 30 business days from the receipt of such notification.
- c) The Insurer(s) may terminate this Contract if premium payable to them is overdue and remains unpaid 60 days after the Insured receives a written notice to this effect from the Insurer(s) which indicates that the Policy will be terminated if the sums are not paid. In the event of such termination, the Insurer(s) shall have no liability for any loss in connection with the risk insured under this Contract after the effective date of the termination with all other liabilities of the Insurer(s) under this Contract remaining unaffected.
- d) In the event of a termination, the Premium the Insurer(s) is/are entitled to retain is that proportion of the total Premium otherwise paid or payable to the Insurer(s) which their abridged time on risk bears to the full Contract Period. The Insurer(s) shall return any Premium they are not entitled to retain to the Insured within 10 business days of the relevant notice of the termination.

- e) Termination of this Contract will not affect any rights and obligations of the Insured or the Insurer(s) under this Contract in connection with any claims made or circumstances notified by the Agent Bank under the Agreement where the circumstances giving rise to the claim or the notification arose prior to the date of such termination subject, however, to either:
 - (i) the Insurer(s) retaining the Premium earned in respect of such losses as though the exposure had amortised as set out in the Agreement; or
 - (ii) the Insured withdrawing such claims and reimbursing such Insurer(s) for any payments made under this Contract.
- f) If the Insured's risk under the Agreement is reduced by reason of a pre-payment of part of the loan made under the Facility Agreement, the Insurer(s) shall rebate to the Insured a proportionate part of the premium paid or payable by the Insured under this Contract, taking account of the date and amount of that pre-payment.

Condition 14: Transfer and Assignment

- a) The rights and obligations of the Insurer(s) under this Contract may not be transferred, novated or assigned without the prior written consent of the Insured. The Insurer(s) may not transfer or outsource the management, claims handling and/or underwriting authority of this Contract to a third party without the prior written consent of the Insured, which consent will not unreasonably be withheld.
- b) The rights and obligations of the Insured under this Contract may not be transferred, novated or assigned without the prior written consent of the Insurer(s) except when the transfer, novation or assignment is made to:
 - (i) any Central Government Body; or
 - (ii) a body other than a Central Government Body which performs any of the functions that previously had been performed by the Insured, and the Insurer(s) shall, at the Insured's request, enter into a novation agreement in such form as the Insured shall reasonably specify.

Condition 15: Mode of Execution

- a) This Contract and any amendment or changes thereto shall be executed by the Insurer(s) and the Insured (or by the Broker on behalf of the Insured), by the following and no other means:
 - (i) an original written ink signature of paper documents (or a true representation of a signature, such as a rubber-stamp); and/or
 - (ii) electronic signature technology employing computer software and a digital signature or digital pen pad to capture a person's handwritten signature in such a manner that the signature is unique to the person signing, is under the sole control

of the person signing, is capable of verification to authenticate the signature and is linked to the document signed in such a manner that if the data is changed, such signature is invalidated.

- b) The use of any one or a combination of these methods of execution shall constitute a legally binding and valid signing of this Contract or of any amendment or change thereto.
- c) This contract or any amendments or changes thereto, may be executed in one or more of the specified methods, each of which, when duly executed, shall be deemed as original.

Condition 16: Fraud

- a) If the Insured makes a fraudulent claim under this Contract, Insurer(s):
 - (i) shall not be liable to pay the claim;
 - (ii) may recover from the Insured any sums paid by Insurer(s) to the Insured in respect of the claim; and
 - (iii) may by notice to the Insured treat this Contract as having been terminated with effect from the time of the fraudulent act.
- b) If the Insurer(s) exercise(s) their rights under Condition 16(a)(iii) above, the Insurer(s) shall:
 - (i) not be liable to the Insured in respect of any loss occurring after the time of the fraudulent act; and,
 - (ii) retain any premiums earned by Insurer(s) to the date of such fraudulent claim.

Condition 17: Fair Presentation

- a) Under Section 4 of the Insurance Act 2015, the Insured ought to know what should reasonably have been revealed by a reasonable search of information available to it, which includes (under Section 4(7)) information held within the “insured’s organisation” or by any other person. For these purposes the Insurer(s) and Insured agree that the only information available to the Insured is that held by the Insured’s Deal Team (as defined in the Risk Details).
- b) Under Section 4(3)(a) of the Insurance Act, the Insured is deemed to know only what is known to one or more of the individuals who are part of the Insured’s senior management, or responsible for the Insured’s insurance. For these purposes, the Insurer(s) and Insured agree that the “senior management” and those responsible for the Insured's insurance shall be limited to the Insured’s Deal Team.
- c) The Insured represents that to the best of the Insured’s Deal Team’s knowledge and belief after a reasonable search:

- (i) there is no circumstance existing at Contract Inception or at the time of any endorsement to this Contract which is likely to give rise to a Loss hereunder that has not been disclosed to the Insurer(s); :
 - (ii) all material information prepared by the Insured's Deal Team and provided to the Insurer(s) is true and correct in all material respects; and, subject to the provisions of Condition 17(d), no material information has been withheld;
 - (iii) subject to the provisions of Condition 17(0 unless otherwise disclosed by the Insured's Deal Team, the Insured's Deal Team has no reason to believe that any third party information forwarded by the Insured's Deal Team to the Insurer(s) is false, fraudulent, or materially incorrect.
- d) The Insurer(s) agree(s) that the Insured's duty to (i) make a fair presentation of the risk; and (ii) the representations made under this Contract are limited to information known to and/or in possession of the Insured's Deal Team and that the Insured shall not be under a duty to disclose the contents of any documents /communications in respect of which the Insured owes a duty of confidentiality at law or to any third party and/or which are classified as OFFICIAL – SENSITIVE other than such of the factual information contained within the Insured's credit committee papers, transaction related documentation and risk reviews.
- e) The Insurer(s) agree(s) and represent(s) that it/they have made an independent assessment of the risk based on the factual information disclosed to them by the Insured and obtained by them from other sources, and as is publicly available.
- f) Any information provided to the Insurer(s) by the Deal Team that the Insurer(s) regard as material shall be recorded in writing and listed as a Transaction Document. The Insurer(s) confirm that they have not been induced by, or relied on, any information or representation (written or oral) other than that contained in the Transaction Documents.

Condition 18: Notices

All notices under any provision of this Contract shall be in writing and given by hand, prepaid express courier, mail or electronic notice properly addressed to the appropriate party or its designated representative and will be deemed as having been effected only upon actual receipt by the recipient. Any notice to any Insurer shall be deemed received upon receipt by the Broker. Notices shall be given to the Broker unless otherwise agreed in which case notices can be given to the parties at the following addresses:

Attention: [Insurer 1]

Email: [email]

Attention: [Insurer 2]

Email: [email]

Attention: [Insurer 3]

Email: [email]

Condition 19: No Third-party rights

The Parties do not intend that any of the terms of this Contract should be enforceable by any person who is not a Party to this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

Condition 20: Broker

[To be inserted] is recognised as the Broker negotiating this Contract, through whom all notices, correspondence and payments to either party shall be transmitted, unless the Insured notifies the Insurer(s) of alternative arrangements.

The address of the Broker is:

[To be inserted]

Without prejudice to the foregoing, the Insured may direct that any payment shall be made directly to it.

Condition 21: Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by, contributed to by, or arising from:

- (i) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (ii) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (iii) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (iv) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. (The exclusion in this sub-clause does not extend to

radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.); or

- (v) any chemical, biological, bio-chemical, or electromagnetic weapon.

Condition 22: Sanctions Limitation Clause

- a) No Insurer(s) shall be deemed to provide cover and no Insurer(s) shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer(s) to any sanction, prohibition or restriction under any sanctions law or regulation which is applicable to the Insurer(s).
- b) The Insured and Insurer(s) agree that they shall co-operate in good faith in the event that sanction(s) affects the ability of the Insurer(s) or Insured to perform its obligations under this Contract. The affected party will use its reasonable endeavours to apply for the necessary governmental and regulatory permissions, approvals, licenses or authorisations to allow the Insurer(s) or the Insured, as the case may be, to perform its obligations hereunder and the parties shall perform their obligations under this Contract as soon as, if and to the extent, legally possible. Under no circumstances shall the Insurer(s) or the Insured be obliged to carry out any action or comply with any policy obligation that arises under the terms of this Contract or at law if to do so would cause the Insurer(s) or the Insured to breach any laws to which it is subject (including but not limited to any sanction(s)) when carrying out its obligations hereunder.
- c) None of the above gives the Insurer(s) any right to rescind, terminate or cancel this Contract or any liability under it unless specifically required under any sanction(s).

Condition 23: Cyber Act or Cyber Incident

This Condition 23 shall apply to Lloyd's syndicates subscribing hereto. This Condition may apply to non-Lloyd's Insurers provided that this is communicated and agreed with the Insured at the commencement of any Further Competition Procedure.

This Contract does not contain a specific Cyber Act or Cyber Incident exclusion, therefore any claim by the Insured due to a Cyber Act or a Cyber Incident will be payable by the Insurer(s) subject to all of the terms, conditions, warranties and exclusions of this Contract.

For the purposes of this Condition 23,

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.

Cyber Incident means:

- (i) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or

- (ii) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the Insured or any other party.

Condition 24 Disputes

Arbitration

Any dispute which may arise under, out of, in connection with or in relation to this Contract including, but not limited to, any question regarding its existence, validity or termination, or to the determination of the amount of a Claim compensable under this Contract shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, whose Rules (as may be amended from time to time and as are in effect at the date of either party filing a request for Arbitration) are deemed to be incorporated by reference into this clause.

Each party shall nominate one arbitrator. The parties shall attempt to agree the nomination of the Chairperson. If the parties are unable to agree to the nomination of the Chairperson within 60 days of the filing of a request for Arbitration with the LCIA, then the LCIA Court shall appoint a Chairperson in accordance with its Rules, and pursuant to the provision of this clause. Article 6 of the LCIA Rules shall not apply to disqualify a nominated arbitrator or Chairperson on the basis of nationality and is hereby excluded.

The seat of Arbitration: London Court of International Arbitration, London, England

Language of Arbitration

Proceedings: English

Urgent relief

Either Party may at any time take proceedings or seek remedies before any court or tribunal in accordance with Choice of Law and Jurisdiction.

SCHEDULE A – NOTICE OF CLAIM AND RELEASE AGREEMENT

To: [Name of Insurer]
 [Name of Insurer]
 [Name of Insurer]
Date: [-]

Dear Insurer(s),

Notice of Claim under Contract of Insurance Ref [] (the “Contract”) in respect of Guarantee and Agency Agreement no. [Reference Number] (the “Agreement”)

Details of Claim under the Agreement

We, UK Export Finance, hereby notify you for the purposes of condition 8(e) of the Contract, a claim has been paid or is payable under the Agreement on [date]. That claim was paid or is payable in respect of [unpaid amounts/ of principal which fell due under the Facility Agreement to which the Agreement relates on [date or dates]. In addition, we have paid or will be paying Delay Interest on the amounts claimed from the Insured to take account of the fact that, in accordance with the terms of the Agreement, the claims payment was not made until [90 days] after the default in payment to which it relates. Details of those amounts are as follows:

PRINCIPAL

Due Date	Instalment Numbers	Amount Due

INTEREST TO DUE DATE

Interest Period		No of Days	Principal balance outstanding during Interest Period	Interest Rate	Amount Due
From	To (Due Date)				

DELAY INTEREST

	Interest Period		Interest Rate	

	From	To (inclusive)	No of Days	[Relevant Reference Rate]	Margin	Total	Amount Due
on principal							
on interest							

Claim under the Contract

Under the Cession specified in the Risk Details section of the Contract, you assumed the following insured percentage of our liability under the Agreement for amounts of unpaid principal:

[INSERT TABLE SHOWING INSURER(S) LIABILITY]

Accordingly, as a result of the above-mentioned claim under the Agreement in respect of, among other things, principal amounting to [CCY] [insert amount], we now claim from you pursuant to the Contract the sum of [CCY] [insert amount].

Payment of that sum should, pursuant to condition 8(e) of the Contract, be made within 30 business days after the later of (i) the date you receive this notice; and (ii) the date the Insured notify you of the actual payment made.

In anticipation of your accepting this claim, we attach a signed Release Agreement for you to counter-sign, date and copy to us on such date as you agree to pay our claim in full.

Yours faithfully,

[Name]

[Position]

UK Export Finance

RELEASE AGREEMENT

WHEREAS:

- A. UK Export Finance has advanced a claim under the Contract in the amount of **[INSERT AMOUNT]** [[and B applies] or [and C applies] delete as applicable]
- B. Insurer(s) intend to settle the claim on a full and final basis on the terms set out herein.
- C. Further claims may be due and payable under this Contract for which further Notice of Claim and Release Agreements will be submitted.

IT IS HEREBY AGREED as follows:

- 1. The Insurers agree, severally, to pay their respective share of *[insert amount]* (the Settlement Sum).
- 2. Payment of the Settlement Sum shall be effected by way of electronic transfer to the following bank account *[insert bank account details]*.
- 3. On receipt by UK Export Finance and in consideration of payment by each Insurer of its several share of the Settlement Sum and in full and final settlement UK Export Finance hereby forever releases and discharges that Insurer (inclusive of all successors, assigns, affiliates, subsidiaries, related companies, directors, officers and employees thereof) with respect to any claim, loss, right or cause of action, contractual or otherwise and whether known or unknown, in respect of the Settlement Sum.
- 4. The Insured acknowledges its continuing obligations under the Contract, specifically with regard to Due Diligence (Condition 5), Claim Payments (Condition 8) and Recoveries (Condition 9).
- 5. This Release Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each signatory had signed the same document.
- 6. Any dispute which may arise under, out of, in connection with or in relation to this Release Agreement including, but not limited to, any question regarding its existence, validity or termination shall be determined in accordance with Condition 24 of the Policy which shall apply as if set out in this Release Agreement *mutatis mutandis*. Any dispute under this Release Agreement may be determined in the same arbitral proceedings as a dispute under the Policy.
- 7. The formation, existence, construction, performance, validity and all aspects whatsoever of this Release Agreement or of any term of this Release Agreement will be governed by the laws of England and Wales.

8. Any dispute or matter which requires reference to a court arising out of or relating to arbitration, or falling outside the scope of the arbitration clause, shall be submitted to the exclusive jurisdiction of the courts of England and Wales.

Authorised Signatory for and on
behalf of UK Export Finance

Date

Authorised Signatory for and on
behalf of [*insert Insurer*]

Date

Authorised Signatory for and on
behalf of [*insert Insurer*]

Date

Authorised Signatory for and on
behalf of [*insert Insurer*]

Date

SCHEDULE B

Exposure & Premium Calculations Insurer(s) Participations

SECURITY DETAILS

(RE)INSURER'S LIABILITY:

(Re)insurer's liability several not joint

The liability of a (re)insurer under this contract is several and not joint with other (re)insurers party to this contract. A (re)insurer is liable only for the proportion of liability it has underwritten. A (re)insurer is not jointly liable for the proportion of liability underwritten by any other (re)insurer. Nor is a (re)insurer otherwise responsible for any liability of any other (re)insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by a (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp. This is subject always to the provision concerning "signing" below.

In the case of a Lloyd's syndicate, each member of the syndicate (rather than the syndicate itself) is a (re)insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise responsible for any liability of any other (re)insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Proportion of liability

Unless there is "signing" (see below), the proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together) is shown next to its stamp and is referred to as its "written line".

Where this contract permits, written lines, or certain written lines, may be adjusted ("signed"). In that case a schedule is to be appended to this contract to show the definitive proportion of liability under this contract underwritten by each (re)insurer (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of the syndicate taken together). A definitive proportion (or, in the case of a Lloyd's syndicate, the total of the proportions underwritten by all the members of a Lloyd's syndicate taken together) is referred to as a "signed line". The signed lines shown in the schedule will prevail over the written lines.

Although reference is made at various points in this clause to "this contract" in the singular, where the circumstances so require this should be read as a reference to contracts in the plural.

LMA3333 (amended)

ORDER HEREON: 100% of 100%

BASIS OF WRITTEN LINES:

- ☐ Percentage of Whole
- ☐ Percentage of Order
- ☒ Part of Whole
- ☐ Part of Order

BASIS OF SIGNED LINES:

- ☐ Percentage of Whole
- ☐ Percentage of Order
- ☐ Part of Whole
- ☐ Part of Order

SIGNING PROVISIONS:

In the event that the written lines hereon exceed 100% of the order, any lines written "to stand" will be allocated in full and all other lines will be signed down in equal proportions so that the aggregate signed lines are equal to 100% of the order without further agreement of any of the (re)insurers.

However:

- a) in the event that the placement of the order is not completed by the commencement date of the period of insurance then all lines written by that date will be signed in full; and,
- b) the (re)insured may elect for the disproportionate signing of (re)insurers' lines, without further specific agreement of (re)insurers, providing that any such variation is made prior to the commencement date of the period of insurance, and that lines written "to stand" may not be varied without the documented agreement of those (re)insurers.

The signed lines resulting from the application of the above provisions can be varied, before or after the commencement date of the period of insurance, by the documented agreement of the (re)insured and all (re)insurers whose lines are to be varied. The variation to the contracts will take effect only when all such (re)insurers have agreed, with the resulting variation in signed lines commencing from the date set out in that agreement.

WRITTEN LINES: As per attached

In a co-insurance placement, following (re)insurers may, but are not obliged to, follow the premium charged by the lead (re)insurer.

(Re)insurers may not seek to guarantee for themselves terms as favourable as those which others subsequently achieve during the placement.

Submission to UKEF ITT

Berry Palmer & Lyle Limited

Submission to UKEF ITT

Berry Palmer & Lyle Limited

**SCHEDULE 13
TENDER**

1. GENERAL

- 1.1 This Framework Schedule 13 (*Tender*) sets out a copy of the Supplier's Tender including the Supplier's responses to the whole award questionnaire in accordance with the ITT.
- 1.2 Subject to Clause 1.2 (*Interpretation*), in addition to any other obligations on the Supplier under this Framework Agreement and any Call Off Contract, the Supplier shall provide the Services to the Authority in accordance with the Tender.

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JOINT SCHEDULES

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JOINT SCHEDULE 1 CORPORATE SOCIAL RESPONSIBILITY

1. DEFINITIONS

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement the definitions in the Framework Agreement (as the context requires):

"**Code**" means the Supplier Code of Conduct setting out the standards and behaviors expected of suppliers who work with government published by the Crown in September 2019 and accessible at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf;

"**Contract**" means either the Framework Agreement, Broker Call Off Contract or the Contract of Insurance, as the context requires; and

"**Modern Slavery Helpline**" means the mechanism for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700.

- 1.2 References to "**Paragraphs**" are, unless otherwise provided, references to Paragraphs of this Joint Schedule 1.

2. COMPLIANCE WITH THE CODE

- 2.1 The Authority expects its suppliers to meet the standards set out in the Code. In addition, the Authority expects its suppliers and subcontractors to comply with the standards set out in this Joint Schedule.
- 2.2 The Supplier acknowledges that the Authority may have additional requirements in relation to corporate social responsibility. The Authority expects that the Supplier and its subcontractors will comply with such corporate social responsibility requirements as the Authority may notify to the Supplier from time to time.

3. EQUALITY AND ACCESSIBILITY

- 3.1 In addition to legal obligations, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under s149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the contract with the authority it is party to in a way that seeks to:

3.1.1 eliminate discrimination, harassment or victimisation of any kind; and

3.1.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage and civil partnership) and those who do not share it.

21. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

4.1 The Supplier:

- 4.1.1 shall not use, nor allow its subcontractors to use forced, bonded or involuntary prison labour;
- 4.1.2 shall not require any Supplier Personnel or personnel employed by any subcontractor to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- 4.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 4.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- 4.1.5 shall make reasonable enquires to ensure that its officers, employees and subcontractors have not been convicted of slavery or human trafficking offenses anywhere around the world;
- 4.1.6 shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- 4.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 4.1.8 shall prepare and deliver to the Authority an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 4 of this Joint Schedule 1;
- 4.1.9 shall not use, nor allow its employees or subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- 4.1.10 shall not use or allow child or slave labour to be used by its subcontractors; and
- 4.1.11 shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors to the Authority and Modern Slavery Helpline.

22. INCOME SECURITY

5.1 The Supplier shall:

- 5.1.1 ensure that that all wages and benefits paid for a standard working week meet, at a minimum, national legal standards in the country of employment;

5.1.2 ensure that all Supplier Personnel are provided with written and understandable Information about their employment conditions in respect of wages before they enter;

5.1.3 provide all workers with written and understandable information about their employment conditions in respect of wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid;

5.1.4 not make deductions from wages:

- (a) as a disciplinary measure;
- (b) except where permitted by law; or
- (c) without expressed permission of the worker concerned; 5.1.5

record all disciplinary measures taken against Supplier Personnel; and

5.1.6 ensure that Supplier Personnel are engaged under a recognised employment relationship established through national law and practice.

6. WORKING HOURS

6.1 The Supplier shall:

6.1.1 ensure that the working hours of Supplier Personnel comply with national laws and any collective agreements;

6.1.2 ensure that the working hours of Supplier Personnel, excluding overtime, shall be defined by contract, and shall not exceed 48 hours per week unless the individual has agreed in writing; and

6.1.3 ensure that use of overtime used responsibly, taking into account:

- (a) the extent;
- (b) frequency; and
- (c) hours worked,

by individuals and by the Supplier Personnel as a whole.

6.2 The total hours worked in any seven day period shall not exceed sixty (60) hours, except where covered by Paragraph 6.3 of this Joint Schedule 1 below.

6.3 Working hours may exceed sixty (60) hours in any seven day period only in exceptional circumstances where all of the following are met:

6.3.1 this is allowed by national law;

6.3.2 this is allowed by a collective agreement freely negotiated with a workers' organisation representing a significant portion of the workforce; appropriate safeguards are taken to protect the workers' health and safety; and

6.3.3 the employer can demonstrate that exceptional circumstances apply such as unexpected production peaks, accidents or emergencies.

6.4 All Supplier Personnel shall be provided with at least one (1) day off in every seven (7) day period or, where allowed by national law, two (2) days off in every fourteen (14) day period.

7. **SUSTAINABILITY**

7.1 The supplier shall meet the Government Buying Standards applicable to the Services which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

JOINT SCHEDULE 2 PROCESSING DATA

38. DEFINITIONS

38.1 In this Schedule, the following words shall have the following meanings and they shall supplement the definitions in the Framework Agreement or the Call Off Contract (as the context requires):

"Contract" means either the Framework Contract or any Call Off Contract, as the context requires;

"Controller" has the meaning given to it in the UK GDPR;

"Data Protection Impact Assessment" means where an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Independent Control" means where a Controller has provided Personal Data to another Party which is not a Processor or a Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data and **"Independent Controller"** shall be construed accordingly;

"Information Commissioner's Office" means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;

"Joint Controllers" means where two or more Controllers jointly determine the purposes and means of processing;

"LED" means the Law Enforcement Directive (Directive (EU) 2016/680);

"Personal Data Breach" has the meaning given to it in the UK GDPR;

"Processing" has the meaning given to it in the UK GDPR;

"Processor" has the meaning given to it in the UK GDPR;

"Processor Personnel" means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under the Framework Agreement and Call-Off Contract;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it; and

"Sub-processor" means any third Party appointed to process Personal Data on behalf of that Processor related to the Contract (as the case may be).

38.2 References to "**Paragraphs**" are, unless otherwise provided, references to Paragraphs of this Joint Schedule 2.

39. STATUS OF THE CONTROLLER

The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under the Contract dictates the status of each party under the UK GDPR. A Party may act as:

39.1.1 "**Controller**" in respect of the other Party who is "**Processor**";

39.1.2 "**Processor**" in respect of the other Party who is "**Controller**";

39.1.3 "**Joint Controller**" with the other Party; and/or

39.1.4 "**Independent Controller**" of the Personal Data where the other Party is also "**Controller**",

in respect of certain Personal Data under the Contract and shall specify in Annex 1 (*Processing Personal Data*) which scenario they think shall apply in each situation.

40. WHERE ONE PARTY IS CONTROLLER AND THE OTHER PARTY ITS PROCESSOR

40.1 Where a Party is a Processor, the only processing that it is authorised to do is listed in Annex 1 (*Processing Personal Data*) by the Controller.

40.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

40.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

40.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;

40.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;

40.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

40.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

40.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under the Contract:

40.4.1 Process that Personal Data only in accordance with Annex 1 (*Processing Personal Data*) unless the Processor is required to do otherwise by Law. If it is

so required the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

40.4.2 ensure that it has in place Protective Measures which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

40.4.3 ensure that:

- (a) the Processor Personnel do not Process Personal Data except in accordance with the Contract (and in particular Annex 1 (*Processing Personal Data*));
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Joint Schedule 2 and the Contract;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) 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 Controller or as otherwise permitted by the Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

40.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Controller;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal

Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);

- (c) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

40.5 Subject to Paragraph 40.6 of this Joint Schedule 2, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with the Contract it:

40.5.1 receives a Data Subject Request (or purported Data Subject Request);

40.5.2 receives a request to rectify, block or erase any Personal Data;

40.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

40.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract;

40.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

40.5.6 becomes aware of a Data Loss Event.

40.6 The Processor's obligation to notify under Paragraph 40.5 of this Joint Schedule 2 shall include the provision of further information to the Controller in phases, as details become available.

40.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 40.5 of this Joint Schedule 2 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

40.7.1 the Controller with full details and copies of the complaint, communication or request;

40.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

40.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- 40.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
- 40.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 40.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Joint Schedule 2. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 40.8.1 the Controller determines that the Processing is not occasional;
 - 40.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 40.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 40.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 40.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 40.11 Before allowing any Sub-processor to Process any Personal Data related to the Contract, the Processor must:
 - 40.11.1 notify the Controller in writing of the intended Sub-processor and Processing;
 - 40.11.2 obtain the written consent of the Controller;
 - 40.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Joint Schedule 2 such that they apply to the Sub-processor; and
 - 40.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 40.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 40.13 The Authority may, at any time on not less than thirty (30) Working Days' notice, revise this Joint Schedule 2 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).
- 40.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

41. INDEPENDENT CONTROLLERS OF PERSONAL DATA

41.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller (but where the Parties are not Joint Controllers), each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.

41.2 Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

41.3 Where a Party has provided Personal Data to the other Party in accordance with paragraph 40.6 of this Joint Schedule 2 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

41.4 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the Processing of Personal Data for the purposes of the Contract.

41.5 The Parties shall only provide Personal Data to each other:

41.5.1 to the extent necessary to perform their respective obligations under the Contract;

41.5.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and

41.5.3 where it has recorded it in Annex 1 (*Processing Personal Data*).

41.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

41.7 A Party Processing Personal Data for the purposes of the Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

41.8 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to the Contract ("**Request Recipient**"):

41.8.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

41.8.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:

- (a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- (b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

41.9 Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to the Contract and shall:

41.9.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;

41.9.2 implement any measures necessary to restore the security of any compromised Personal Data;

41.9.3 work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

41.9.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

41.10 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under the Contract as specified in Annex 1 (*Processing Personal Data*).

41.11 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under the Contract which is specified in Annex 1 (*Processing Personal Data*).

41.12 Notwithstanding the general application of paragraph 40 (*Where one party is Controller and the other party is its Processor*) of this Joint Schedule 2 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller in accordance with this paragraph 41 (*Independent Controllers of Data*).

ANNEX 1 – PROCESSING PERSONAL DATA

This Annex 1 shall be completed by the Controller, who may take account of the view of the Processor(s), however the final decision as to the content of this Annex shall be with the Authority at its absolute discretion.

1. The contact details of the Authority's Data Protection Officer are: Information Access Team, UK Export Finance, 1 Horse Guards Road, London SW1A 2HQ Email: **Text Redacted**
2. The contact details of the Supplier's Data Protection Officer are: **Text Redacted**
Text Redacted
3. The Processor shall comply with any further written instructions with respect to Processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex 1.

Description	Details
Identity of Controller for each Category of Personal Data	<p style="text-align: center;">The Authority is the Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Paragraph 3 of this Joint Schedule 2 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> • Name of any individual reference to which is critical to the fair presentation of the risks under each Call Off Contract. <p style="text-align: center;">The Parties are Independent Controllers of Personal Data</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details of Supplier Personnel for which the Supplier is the Controller. • Business contact details of any directors, officers, employees, agents, consultants and contractors of Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under the Contract for which the Authority is the Controller.

Description	Details
Duration of the Processing	From the Framework Commencement Date until the Call Off Expiry Date for each Call-Off Contract under the Framework Agreement.
Nature and purposes of the Processing	<p>Purpose:</p> <p>Information will be shared between the Controller and the Processor(s) for the purpose of the performance of its obligations under the Framework Agreement and each Call Off Contract to provide the Authority with insurance and insurance brokerage services.</p> <p>This processing is permitted under Article 6(1)(e) of the UK GDPR that is, that the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller.</p> <p>Nature of Processing:</p> <p>The processing will include as a minimum:</p> <p>Collection, recording, organization, storage, retrieval of data critical to the presentation of risks to the Insurer(s).</p> <p>Disclosure under certain conditions specified in the Framework Agreement and Call Off Contract.</p> <p>Restrictions of access to this data, erasure and/or destruction of data once the period specified in this Annex 1 is complete.</p> <p>OTHER PURPOSES:</p> <p>Where agreed by the Parties, further types of processing may be permitted and once agreed must be incorporated by way of variation to Annex 1 to this Joint Schedule 2.</p>
Type of Personal Data	<p>Name</p> <p>E-mail address</p> <p>Phone number</p> <p>Mobile number</p>
Categories of Data Subject	<p>Authority staff</p> <p>Staff of business subject of the insurance</p> <p>Suppliers (and Staff)</p>

Description	Details
	<i>No special category data</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	Personal Data will be destroyed after a minimum of 7 years from the Call Off Expiry Date of each Call-Off Contract.