

12 ANTI-CORRUPTION PROVISIONS

12.1 In this Clause 12 the following terms have the following meanings:

~~“Agent” means any agent, intermediary, consultant or other person:~~

- ~~1. who has been instructed by, or on behalf of, the Insured; and~~
- ~~2. who has been directly or indirectly involved in the process of tendering for, or seeking the award of, the Contract or any Related Agreement;~~

“Consortium Partner” means any company, person or other legal entity (other than the Insured) which is a party to any written joint venture, consortium or other similar arrangement (other than a sub-contract) to which the Insured is also a party and which joint venture, consortium or other arrangement has been, or will be, entered into in connection with the performance of all, or any part of, the Contract;

“Corrupt Activity” means any bribery or corrupt activity (including without limitation, the offering of any payment, reward or other advantage to any public official or other person) ~~which that:~~

- ~~(1) constitutes an offence under the Bribery Act 2010 (as from time to time amended or re-enacted) or any offence relating to bribery or corruption under the law of any jurisdiction outside the United Kingdom; or~~
- ~~(2) is subsequently found by a court in a competent jurisdiction (after all available rights of appeal have been exhausted) to have rendered the Contract or any Related Agreement illegal, void, voidable or unenforceable under its governing law; and~~
- ~~(1) the Insured or anyone (including any employee) acting (with due authority) on the Insured’s behalf or with the Insured’s subsequent acquiescence has, other than under duress, admitted engaging in; or) to constitute an offence under any applicable law (except by virtue of any changes to that law having retrospective effect); or~~
- ~~(2) is subsequently found by a court in the United Kingdom (after all available rights of appeal have been exhausted) to constitute a Relevant Offence;~~

~~and which activity, in respect of paragraphs (1), (2), and (3) above corresponds to a Relevant Offence~~

~~provided that, where, for the purpose of sub-paragraph (2) above, any such activity is admitted by an Excluded Person, such activity shall not, for the purposes of this Policy, constitute “Corrupt Activity” if such activity was not, at the time it was engaged in, unlawful under the laws and regulations of the country in which it took place.~~

“Excluded Person” means, in relation to activity engaged in prior to 1st July 2011, (i) a person other than a national of the United Kingdom (as defined in section 109(4) of the Anti-terrorism, Crime and Security Act 2001) or, (ii) a body incorporated under the laws of a country other than the United Kingdom; or, in relation to activity engaged in on or after that date, a person or body of a type not listed in s.12(4) of the Bribery Act 2010; “Related Agreement” means:

Comment [I1]: This term has been deleted as it is not used in clause 12.

Comment [I2]: The requirements for the court to have competent jurisdiction and for all rights of appeal to have been exhausted, or expired, are now captured in clause 12.4(1).

Comment [I3]: Admissions of corrupt activity are now covered in clause 12.4(2).

Comment [I4]: The exclusion for retrospectivity in relation to offences in jurisdictions outside the UK is now in clause 12.5.

Comment [I5]: See comment L2

Comment [I6]: See comment L9 below

Comment [I7]: As stated in the new (1) above, offences in jurisdictions outside the UK must relate to bribery or corruption: they no longer have to correspond to an offence under the Bribery Act.

Comment [I8]: This proviso and definition are now captured in clause 12.5.

(1) any agreement or undertaking, other than any agreement or undertaking for the supply of goods or services to the Insured or any Consortium Partner, which relates to the Contract and to which the Insured or any Consortium Partner is a party; and/or

(2) any consent or authorisation, required by the Insured or any Consortium Partner for the obtaining or performance of the Contract and of which the Insured or any Consortium Partner is the direct recipient or beneficiary; ~~and~~

“Relevant Offence” means, in relation to acts committed or events occurring before 1st July 2011, an offence under the Prevention of Corruption Acts 1889 to 1916 as amended by Part 12 of the Anti-Terrorism Crime and Security Act 2001; or, in relation to acts committed or events occurring on or after 1st July 2011, an offence under section 1, 2 or 6 of the Bribery Act 2010 (as from time to time amended or re-enacted).

Comment [I9]: This definition is no longer required as the offences under the Prevention of Corruption Acts have been replaced by the Bribery Act which is mentioned specifically in the definition of Corrupt Activity.

12.2 The Insured represents and warrants that it has not:

- 12.2.1 engaged in any Corrupt Activity in relation to the Contract or any Related Agreement;
- 12.2.2 authorised any person to engage in any such Corrupt Activity; ~~and/or~~
- 12.2.3 consented to, or acquiesced in, any such Corrupt Activity on the part of any person.

12.3 The Insured warrants and undertakes that:

12.3.1 it will not:

- (1) engage in any Corrupt Activity in relation to the Contract or any Related Agreement;
- (2) authorise any person to engage in any such Corrupt Activity; and
- (3) consent to, or acquiesce in, any such Corrupt Activity on the part of any person; ~~-~~

12.3.2 if the Insured becomes aware that any ~~person Consortium Partner or anyone~~ (including any ~~Consortium Partner or any of its of the Consortium Partner's~~ employees) has engaged in any Corrupt Activity ~~for any activity which, subject to the occurrence of the subsequent events referred to in sub paragraphs (1), (3) or (4) of the definition of Corrupt Activity would amount to Corrupt Activity~~ in relation to the Contract or any Related Agreement, the Insured shall promptly notify ECGD UK Export Finance accordingly and supply ECGD UK Export Finance with full details of the Corrupt Activity in question save where such notification would, or might reasonably be ~~argued considered~~ to, constitute the offence of “tipping off” under s.333A of the Proceeds of Crime Act 2002; ~~and~~.

Comment [I10]: The changes to the definition of Corrupt Activity make this wording unnecessary.

Comment [I11]: UK Export Finance is ECGD’s operating name and is being used in its documents as a defined term in place of ECGD.

12.3.3 the Insured shall:

- (1) if it has not done so already, require ~~anyone every person~~ (including any of its employees) acting on its behalf ~~with due authority~~ and involved in obtaining or in performing the Contract or any Related Agreement) not to engage in any Corrupt Activity ~~for any activity which, subject to the occurrence of the subsequent events referred to in sub paragraphs (1), (3) or (4) of the definition of Corrupt Activity would amount to Corrupt Activity~~ in relation to the Contract or any Related Agreement;
- (2) monitor compliance with that requirement; and

Comment [I12]: See comment L10

- (3) take appropriate action against anyone found to have engaged in any such Corrupt Activity.

12.4 Subject to the provisions of Clause 12.5,

~~if at any time, whether during or after the term of this Policy, the Insured (1) is found by a court of competent jurisdiction (after all available rights of appeal have been exhausted or expired) to have engaged in Corrupt Activity in relation to the Contract or any Related Agreement or (2) admits to having engaged, in Corrupt Activity in relation to the Contract or any Related Agreement other than where that admission is made under duress any of the matters represented and warranted in Clause 12.2 are untrue or incorrect or if any of the undertakings and warranties on the part of the Insured in Clause 12.3 are breached, ECGD:~~

~~12.4.1—UK Export Finance~~

~~12.4.2—shall be discharged from any liability under this Policy and ~~and~~~~

~~12.4.3—~~

~~12.4.1 may cancel this Policy with effect from its commencement; and~~

~~12.4.2 the Insured shall on demand repay to UK Export Finance all sums which UK Export Finance may have paid to the Insured under this Policy,~~

and in ~~either any~~ event ~~(1) ECGD~~ UK Export Finance shall be entitled to retain all premium which it may have received ~~and (2) the Insured shall on demand repay to ECGD all sums which ECGD may have paid to the Insured under this Policy.~~

12.5 Clause 12.4 shall not apply, and none of the matters represented and warranted in Clause 12.2 shall be deemed to be untrue or incorrect or any of the undertakings and warranties on the part of the Insured in Clause 12.3 deemed breached, if the Corrupt Activity concerned has occurred solely by virtue of changes to any laws or regulations of any jurisdiction other than the United Kingdom that have retrospective effect.

Comment [I13]: See comment L8