



Date: 2nd January 2020

The Secretary of State for the Department for Education

and

BAE Systems Applied Intelligence Limited

Framework Agreement

for the provision of Cyber Security & SOC Services

DfE Call Off 18 (DfE / SMI / 18)

DfE CALL OFF Reference Number: DfE / SMI / 18 & Reference:

DfE Call Off 18 is dated as of 2nd January 2020

DfE Call Off 18 is agreed between:

The Secretary of State for Education whose Head Office is, Department for Education, Sanctuary Buildings, Great SM1th Street, London, SW1P 3BT (the Customer) and

BAE Systems Applied Intelligence Limited (the "SMI").

This is DfE Call Off 18 under a Framework Agreement dated 27 September 2013 between the Secretary of State for Foreign and Commonwealth Affairs and the SMI (the "**Framework Agreement**") and has been agreed pursuant to clause 2 (Statement of Intent, Framework and DfE Call Offs) of the Framework Agreement and the Call Off Process.

1. **CAPACITY IN WHICH CUSTOMER ACTS**

1.1 The Customer is an independent Service Recipient (ISR).

1.2 As an ISR, the Authority has delegated certain of its duties and rights under the Framework Agreement to the Customer in relation to the management of DfE Call Off 18, as set out in this DfE Call Off 18, including:

- (a) the management and implementation of the Services under this DfE Call Off;
- (b) the testing of its Services and the approval of Milestones, Correction Plans and similar procedures;
- (c) the direct invoicing and payment of Charges;
- (d) initiating and negotiating Changes and executing Change Authorisation Notes relating to its Services;
- (e) the provision of approvals and instruction, and receipt of reports and the carrying out of audits relating to its Services;
- (f) the exercise of remedies relating to its Services; and
- (g) dealing with the consequences of termination, including all issues relating to compensation on termination, exit and migration.

2. **DfE CALL OFF TERM**

2.1 The DfE Call Off 18 Term is from 2nd January 2020 and shall continue until 31st March 2021.

2.2 It is the intention of the Parties that this DfE Call Off 18 will expire on 31st March 2021. If required the Customer may extend the DfE Call Off 18 Term by up to two (2) further periods of twelve (12) months each, and if it does wish to extend shall give the SMI prior written notice not less than three (3) months before the end of the current term or as agreed between the Parties

3. **SERVICES REQUIREMENTS AND SMI SERVICE DESCRIPTION**

3.1 The New Services to be provided under this Call Off are Delivered Services and Management Services which are to be provided as:

3.1.1 Operational Services

3.2 The SMI confirms that where it is aware that this Call Off may affect other Services provided under the Contract it has, before the Effective Date of this Call Off, disclosed the same to the Customer, the Authority and to other affected Customers.

IN WITNESS of which this DfE Call Off 18 has been duly executed by the Parties.

SIGNED for and on behalf of **THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS:**

Signature ...REDACTED.....

Name.....REDACTED.....

Position.....REDACTED.....

Date.....REDACTED.....

SIGNED for and on behalf of **THE SECRETARY OF STATE FOR THE DEPARTMENT FOR EDUCATION:**

SignatureREDACTED.....

Name.....REDACTED.....

Position.....REDACTED.....

Date.....REDACTED.....

SIGNED for and on behalf of **BAE SYSTEMS APPLIED INTELLIGENCE LIMITED:**

SignatureREDACTED.....

Name.....REDACTED.....

Position.....REDACTED.....

Date.....REDACTED.....

Appendix 1 - Project Services

This Appendix 1 is not used in this DfE Call Off 18.

Appendix 2 - Operational Services

Part 1 - DfE Call Off Requirement (Services Requirement)

1. Schedule 4.1 (Service Requirements) does not apply to DfE Call Off 18.
2. This appendix shall replace the description of services as set out in schedule 4.1 (Service Requirements) of the Framework Contract.
3. This part contains the Customer's services requirements for provision of the Services in this DfE Call Off.
4. Through this DfE Call Off 18, the Customer requires that the SMI will provide the following Services from the New Services Commencement Date (NSCD)::
 - (a) Architecture role – Security & Infrastructure Architect
 - (b) SOC Analyst role – DevSecOps
 - (c) SOC Engineer role – Splunk Engineer
5. The Customer requires that the SMI provide these Services as defined in greater detail in **Part 4a - Call Off Services** and **Part 4b - Call Off Service Details** of this Appendix.

Part 2 - DfE Call Off Requirement (Standards)

1. Introduction

- 1.1 This part forms an appendix to schedule 4.2 (Standards) of the Contract.
- 1.2 The SMI confirms that it will meet the Standards set out in schedule 4.2 (Standards) as required during the delivery of this DfE Call Off 18.

Part 3 - DfE Call Off requirement Service Levels

In respect of the provision of Services under this DfE Call Off 18, Schedule 4.3 of the Framework Agreement (Service Levels and Service Credits) is replaced by this Part 3.

1. Scope

- 1.1 The SMI will work in accordance with the scope and requirements set out in this DfE Call Off 18. There will be no service levels related to this work unless agreed via Change Request.

Part 4a - Call Off Services

1. Introduction

- 1.1 Schedule 4.1 (Service Requirements) and Schedule 4.4 (SMI Service Description) do not apply to Call Off 18.
- 1.2 This appendix shall replace the description of services as set out in schedule 4.4 (SMI Service Description) of the Framework Contract.
- 1.3 This part 4a provides the overview and the detail on how the SMI will deliver the Services. This part 4a contains detail on:
 - (a) Call Off Service List; and
 - (b) Call Off Services and Charging Mechanisms.

2. Call Off Service List

- 2.1 Through this Call-Off, the SMI will provide the following Services, for which the detail is provided in Part 4b.
 - (a) Architecture role – Security & Infrastructure Architect
 - (b) SOC Analyst role – DevSecOps
 - (c) SOC Engineer role – Splunk Engineer
- 2.2 When this DfE Call Off 18 expires and responsibilities transition to the Customer, then any additional activities or incremental resources required to deliver Exit Services (and TUPE) are addressed within this DfE Call Off 18 **Appendix 7 - Exit Management**. The charges associated with that Appendix are not included within the **Part 5 - Charges** of this **Appendix 2 - Operational Services**.

3. Call Off Services and Charging Mechanisms

- 3.1 The charging mechanism for the services provided under this Call Off 18 will be invoicing on a monthly T&M basis in accordance with the DfE Call Off 18 Project Rate Card.

Part 4b - Call Off Service Details

1. Introduction

- 1.1 This appendix in DfE Call Off 18 forms an appendix to schedule 4.4 (SMI Service Description) of the Contract.
- 1.2 The provisions in schedule 4.4 (SMI Service Description) do not apply to this DfE Call Off 18. The following Service Description set out in this Part 4 shall apply for the duration of DfE Call Off 18.
- 1.3 This section describes in more detail, the services or service roles that make up the scope of Services that the SMI will provide under this DfE Call Off 18.

2. Cyber Security & SOC Services

2.1 The SMI will provide a team of three (3) for the duration of this DfE Call Off 18 to work within the Customer's security operations team, and to fulfil the following roles:

- (a) Architecture role – Security & Infrastructure Architect
- (b) SOC Analyst role – DevSecOps
- (c) SOC Engineer role – Splunk Engineer

2.2 These roles are provided on a T&M basis.

2.3 The IT Architect may be required to provide support to the Customer's Architecture Review Board (ARB) in the technical assurance of non-functional changes and new solutions in the Customer IT estate.

2.4 Scope

2.4.1 Resources will work under the direction of the Customer to support the below activities and tasks. These tasks and activities may change over time and can be amended via a Change Request.

2.4.2 Architecture Role (Security & Infrastructure Architect) - The IT Architect will support the TDA by managing IT Security Risks and providing security architecture advice. This role will report to the DfE Security Operations Manager and deputise when required. The role may involve the following tasks:

- (a) Reporting to the CISO and attending CISO function meetings as and when required.
- (b) Provide support to the TDA in the technical assurance of non-functional changes and new solutions in the Customer IT estate. This may involve the following tasks: "Monitor that IT solutions can achieve their non-functional requirements and do this without a detrimental effect to the existing estate."
- (c) Monitor that IT solutions, specifically those utilised by the CISO division, integrate with the existing estate in a manner that is compliant with Customer strategy and policy. There may also be a requirement to support the DfE central architecture function.
- (d) For non-functional requirements, monitor that projects and services produce the technical design documents needed to gain TDA approval.
- (e) Based on the infrastructure capacity requirements requested by a service or project, propose how hosting providers should provide the total estate capacity required (e.g. network bandwidth, disk space, CPU) within a chosen infrastructure SMI i.e. Azure
- (f) Provide a channel to articulate risks to the Customer Accreditor to enable Customer to develop services and solutions that will be accreditable.
- (g) Manage the direct engagement between the individual Customer domain architects and the Accreditor to enable the development of an accreditation approach for all design packages.
- (h) Support the Customer domain architects and Customer Security Operations Manager to identify, quantify and record information risks that arise from solution architectures under development or from service and technical changes.

- (i) Engage with the Accreditor and Customer Security Manager and where appropriate provide recommendations on the most appropriate risk treatment plan for identified risks within solution architectures.
- (j) When required support with the domain architects to develop alternate design solutions or approaches to mitigate identified information risks.
- (k) Monitor the compliance of services and solutions to the Customer's Security Standards and Requirements.
- (l) Development of a security roadmap for vulnerability management, protective management, log management and other initiatives as required.

2.4.3 SOC Analyst Role (DevSecOps) – The SOC analyst will support the Customer with the following activities

- (a) Standing up the chosen log management solution, Syslog-NG.
 - (i) Ensuring a stable environment and integration with the DfE's chosen SIEM tool, Splunk prioritising the available data and ensure that the events that do get forwarded to Splunk provide the department with the best value for money
- (b) Migrate proven and tested Splunk Architecture from the PoC to a production environment, ensuring that the underlying hardware and operating system is tuned and optimised, the architecture is stable and provides high availability.
 - (i) Ensuring that log data is ingested cleanly and ensuring that normalisation and integration into Splunk Common Information Model is occurring. Creation of a RACI for the management/maintenance of the system and underlying infrastructure along with sufficient knowledge transfer to allow those responsible to perform their duties.
- (c) Developing and implementing customised security use cases within Splunk, tuning of existing/prebuilt use cases/alerting/reporting.
 - (i) Knowledge transfer for Analysts, aiding in their learning and defining triage/response processes to notable events generated by Splunk.

2.4.4 SOC Engineer Role (Splunk Engineer) – The SOC Engineer will support the Customer with the following activities

- (a) Complete the build of the Splunk environment.
 - (i) Ensuring a stable environment and integration with the DfE's chosen SIEM tool, Splunk prioritising the available data and ensure that the events that do get forwarded to Splunk provide the department with the best value for money.
- (b) Migrate existing log sources into Splunk.
 - (i) Ensuring that log data is ingested cleanly and ensuring that normalisation and integration into Splunk Common Information Model is occurring. Ensure that existing reports/tasks run correctly from log sources.
- (c) Migrate new log sources into Splunk. Provide recommendations for use of new logs.
 - (i) DNS and other log sources are successfully migrated into Splunk. License usage is

monitored appropriately.

- (ii) Knowledge transfer for Analysts, aiding in their learning and defining triage/response processes to notable events generated by Splunk.

2.5 Service Volumes

- 2.5.1 There are no defined Service Volumes. This Service shall be delivered based on the provision of agreed resources.

2.6 Service Hours

- 2.6.1 The SMI will provide this service during Core Hours only.

2.7 Service Dependencies

- 2.7.1 To enable this Service, the Customer will meet the responsibilities listed in Appendix 16 (**Error! Reference source not found.**) that are relevant to this Service.

2.8 Service Knowledge Transfer

- 2.8.1 At the expiry of this DfE Call Off 18 the SMI resources will assist in knowledge transfer to the future provider (whether they be from the Customer or another party) by:
 - (a) enabling the future providers to observe the SMI resources in operation;
 - (b) handing over to the Customer all relevant service process or architectural documentation and supporting information that is not available to the Customer already via the ITSM Toolset or other Customer information repositories;
 - (c) the SMI resources will attend workshops to explain the scope of the activities, the process followed, and other relevant information to the future provider.
- 2.8.2 The SMI will support this knowledge transfer using reasonable endeavours in periods agreed with the Customer so as not to impact service performance.
- 2.8.3 If the SMI needs to provide additional resources to enable knowledge transfer, above those resources already involved in the Service delivery, then those resources would be provided under the Exit Management provisions (see Appendix 7 - Exit Management).

3. **SMI Team Location**

3.1 The SMI resources will be based in the locations listed in Table 1 - SMI Team Locations, below. Where travel to other locations is required expenses will be charged in accordance with the DfE travel and expenses policy. It is anticipated that SMI resources will be required to travel to London on average once per week and expenses will be charged for this in accordance with the DfE expense policy.

3.2 The team will be based in the following locations (though these may change from time to time):

Role / Team	Base Location
Architecture Role – Security & Infrastructure Architect	DfE office in Coventry
SOC Analyst Role – DevSecOps	DfE office in Coventry
SOC Engineer Role – Splunk Engineer	DfE office in Coventry

Table 1 - SMI Team Locations

4. **Right of substitution**

4.1 The SMI will adjust the individual resources provided as required to continue to deliver the following Services (as previously defined in Appendix 2, Part 4b):

- (a) Architecture role – Security & Infrastructure Architect
- (b) SOC Analyst role – DevSecOps
- (c) SOC Engineer role – Splunk Engineer

4.2 Wherever resources do need to be replaced the SMI will provide a suitable replacement. The Customer may only reject such a replacement on grounds related to skills, qualifications or experience. If the Parties cannot agree on a suitable replacement then the Services below will cease to be provided.

Part 5 - Charges

This appendix shall form an appendix to schedule 4.9 (Operational Charges) of the Framework Agreement.

1. Overview

- 1.1 The Charges are based on the Project Rates captured in schedule 4.9 of the Framework Agreement and are subject to agreement to use the Framework Agreement.
- 1.2 DfE Call Off 18 start date (NSCD): 2 January 2020.
- 1.3 DfE Call Off 18 end date: 31 March 2021.
- 1.4 Indexation will apply in October 2019 & October 2020 in accordance with the Framework.
- 1.5 The overall financial value for DfE Call Off 18 is £1,200,000.00. This is based on the Call Off lasting for one year and expiring on the 31st March 2021. If the Call Off is extended then the value will be increased via a Change Request.
- 1.5.1 £1,200,000.00 is total possible value of DfE Call Off 18 however the initial forecast spend is less than this and is outlined in Part 5 Section 2 Charges.

2. Charges

- 2.1 The following section sets out the Charges for the Services.
- 2.2 The Charges for each year of DfE Call Off 18 are presented in accordance with schedule 4.9 (Operational Charges).
- 2.3 All Charges are T&M and are quoted exclusive of VAT and in 2018 prices. Indexation for 2019 has not yet been agreed prior to the signing of this DfE Call Off 18, as such indexation will be applied prior to the commencement of this DfE Call Off 18 via the Change Control Procedure in accordance with the Framework Contract.
- 2.4 The SMI shall invoice for these roles on a monthly basis for the number of days that have been delivered in that month against the agreed activities in accordance with the rates in the Project Rate Card as shown below.

REDACTED

- 2.4.1 Any discounts to the Project Rate Card will be agreed on a case by case basis. The discounts agreed for the resources provided at the commencement of DfE Call Off 18 are outlined below.

REDACTED

- 2.5 Exit Charges for any additional Exit Services or incremental resources are excluded.
- 2.6 The Operational Charges for each resource are detailed below. These charges are based on a forecast number of days for each role provided under DfE Call Off 18.

REDACTED

3. **Additional Services or Roles**

- 3.1 If there are further roles that are provided outside of the Services these shall be paid for independently of the Operational Charges through a separate purchase order and will be agreed through a Change Request.
- 3.2 These additional roles shall be provided in accordance with the Project Rate Card.
- 3.3 All prices are subject to indexation in accordance with this Contract and are exclusive of VAT and/or any other applicable taxes.
- 3.4 The SMI shall invoice for these roles on a monthly basis for the number of days that have been worked against the agreed activities in that month.
- 3.5 If applicable expenses can be charged for these roles. The values quoted for expenses are indicative only. Expenses shall be invoiced on a monthly basis.

4. **Transferring Employees to the SMI**

- 4.1 The Customer confirms that no Customer Employees are in scope to transfer to the SMI.
- 4.2 Due to the limited information received from the Customer the SMI has excluded any employment liabilities arising from staff transferring over to the SMI. Employment liabilities include any difference between actual staffing costs and budgeted employment costs applying the BAE Systems model, salary, allowances, employee benefits, pension provision, contractual bonuses and the cost of providing any long term illness benefits which cannot be replicated by BAE Systems. The SMI reserves the right to assess the impact of the potential Transferring Employees.

5. **Sub-contracts**

- 5.1 N/A

6. **Invoicing**

- 6.1 Invoicing shall be on the following basis:
 - 6.1.1 The Services shall be invoiced and paid monthly in arrears following the agreement of the monthly charge, this will be agreed via the approval of monthly timesheets by the Customer.

Appendix 3 - Security Management Plan

This appendix shall form an appendix to schedule 4.5 (Security Management Planning) of the Framework Agreement.

Schedule 4.5 shall not apply to DfE Call Off 18. The SMI will not provide a security management plan as part of this Call Off but will contribute to the Customers Security Management Plan where required.

Appendix 4 - ITSC Plan

1. This appendix shall form an appendix to schedule 4.6 (IT Service Continuity Planning) of the Framework Agreement.
2. **Service Continuity of its own Services**
 - 2.1 The SMI will deliver the Services from its own locations and from the Customer's location, using technology and networks provided by the Customer (in accordance with Appendix 11).
 - 2.2 The SMIs own service continuity plans are documented in the ITSC Plan, created for Appendix 4. In summary, the key aspects of that plan are:
 - (a) The SMI will provide disaster recovery facilities so that in the event that the SMIs buildings become unavailable for use, the SMI will follow their own service continuity plans to make use of alternative SMI buildings and facilities.
 - (b) In the event that the Customer's Coventry location becomes unavailable, the SMI staff based at the Customer site will follow the Customer's own disaster recovery plans.

Appendix 5 - Quality and Continuous Improvement Plans

This appendix shall form an appendix to schedule 4.7 (Quality and Continuous Improvement Planning) of the Framework Agreement.

Schedule 4.7 shall not apply to DfE Call Off 18.

Appendix 6 - Sustainability Plan

This appendix shall form an appendix to schedule 4.8 (Sustainability Planning) of the Framework Agreement.

Schedule 4.8 shall not apply to DfE Call Off 18.

Appendix 7 - Exit Management

This appendix shall form an appendix to schedule 5.1 (Exit Management) of the Framework Agreement.

Exit Services under DfE Call Off 18 will take the form of knowledge transfer from the SMI's resources to nominated customer or replacement supplier resources either at the expiry of DfE Call Off 18 or sooner if agreed between the SMI and the Customer.

Knowledge transfer will be conducted in accordance with the scope outlined in Appendix 2 Part 4b – Call Off Service Details.

Appendix 8 - Software

This appendix shall form an appendix to schedule 7.1 (SMI's Software) of the Framework Agreement.

1. No software will be provided by the SMI under DfE Call Off 18.
2. None of the Software in schedule 7.1 (SMI's Software) is applicable to DfE Call Off 18.

Appendix 9 - Licence Terms

This appendix shall form an appendix to schedule 7.2 (Licence Terms) of the Framework Agreement.

Part 1 - The Standard Licence Terms

1. No software is being provided by the SMI under DfE Call Off 18.
2. The items as defined in part 1 of the appendix to schedule 7.2 (Licence Terms) do not apply to DfE Call Off 18.

Part 2 - The Enhanced Licence Terms

1. No software is being provided by the SMI under DfE Call Off 18.
2. The items as listed in part 2 of the appendix to schedule 7.2 (Licence Terms) do not apply to DfE Call Off 18.

Appendix 10 - Escrow

This appendix shall form an appendix to schedule 7.3 (Escrow) of the Framework Agreement.

1. There are no Escrow requirements under DfE Call Off 18.
2. The content set out in schedule 7.3 (Escrow) does not apply to DfE Call Off 18.

Appendix 11 - Customer Equipment

This appendix shall form an appendix to schedule 7.4 (Authority Equipment) of the Framework Agreement.

1. **The Customer will provide the Equipment and services stated in this section to the SMI for use by the SMI and its Key Sub-contractor in replacement for those listed in schedule 7.4 (Authority Equipment). In this section is listed the equipment and the numbers of items required (if relevant).**

1.1 Access to Customer network

- 1.1.1 The Customer will provide a PC-device to each of the SMI staff who is providing Services to the Customer. The Customer will provide a mechanism for the PC-device to connect to the Customer's network for the purposes of accessing Customer IT systems as appropriate for the provision of the Services.
- 1.1.2 The SMI must not use PC-devices that are not Customer supplied devices, to connect to the Customer network.

1.2 Desks in Coventry with Customer PC-device and access to Customer network

- 1.2.1 The Customer will provide dedicated desk facilities for SMI staff that are based at the Customer's site in Coventry, for the purposes of delivering on DfE Call Off 18.
- 1.2.2 For each desk, the Customer will provide a PC-device with access to the Customer's network and the systems defined in this section.

2. Summary of Items to be provided by the Customer

- 2.1 A summary of number of relevant equipment items that the Customer will provide for the staff involved in the delivery of DfE Call Off 18 is shown below.

Connectivity Type	Number provided for this DfE Call Off
Desks in Coventry assigned to the SMI with network connectivity and standard peripherals (regardless of whether myIT and hence LAN or SMI devices and hence wifi are used)	3

Appendix 12 - SMI's Exclusive Equipment

This appendix shall form an appendix to schedule 7.5 (SMI's Equipment) of the Framework Agreement.

1. Part 1 - SMI's Exclusive Equipment

- 1.1 There are no SMI Exclusive Equipment requirements under DfE Call Off 18.
- 1.1 The content of schedule 7.5 (SMI's Equipment) does not apply to DfE Call Off 18.

Appendix 13 - Governance and Key Personnel

This appendix forms an appendix to schedule 8.1 (Governance) of the Framework Agreement.

The SMI's resources will support the Customers governance activities as required to deliver the activities outlined in DfE Call Off 18.

If regular meetings are required between the Customer and the SMI these will be agreed via a Change Request.

Part 2 - Key Personnel

1. This appendix forms an appendix to schedule 8.2 (Key Personnel) of the Framework Agreement.
- 1.1 Customer Representative: REDACTED
- 1.2 SMI Representative: REDACTED
- 1.3 SMI Key Personnel: shows the SMI's key personnel.

Name	Key Role	Full Time/Part Time (in which case specify level of involvement)	Responsibilities	Phase of each Service's lifecycle during which they will be regarded as Key Personnel
REDACTED	Network Architect	Full Time	As defined in Appendix 2, Part 4b.	All

Table 2 - SMI Key Personnel

2. The Personal Balanced Scorecard does not apply to DfE Call Off 18.

Appendix 14 - Commercially Sensitive Information

This appendix shall form an appendix to schedule 8.6 (Commercially Sensitive Information) of the Framework Agreement.

1. The SMI's Commercially Sensitive Information in schedule 8.6 (Commercially Sensitive Information) shall apply. Additional Commercially Sensitive Information is set out below.

REDACTED

Appendix 15 - Notified Sub-contractors

1. This appendix shall form an appendix to schedule 8.7 (Notified Subcontractors) of the Framework Agreement.
2. The SMI's does not have any sub-contractors as part of DfE Call Off 18.

wAppendix 16 - SMI Scope and Operating Model and Other Amendments

Part 1 - Amended form of SMI Scope and Operating Model

1. This Part of this Appendix shall not apply to DfE Call Off 18.

Part 2 - Industry Price Tracking and Contestability

1. This Part of this Appendix shall not apply to DfE Call Off 18.

Part 3 - Options

1. This Part of this Appendix shall not apply to DfE Call Off 18.

Part 4 - Framework Agreement Amendments

1. The table below shows the Framework agreement amendments made in this DfE Call Off 18. These amendments are contained in the relevant part of this DfE Call Off 18 as well as a number of non-scope specific amendments contained in Appendix 16.

Schedule	Document	DfE Call Off amendment
T&Cs	Framework Agreement	Y
1	Definitions	Y
2.1	DfE Call Off Process	N
2.2	Conditions Precedent	N
3.1	Project Services Process	N
3.2	Project Testing Procedures	N
3.3	Transferred Assets	N
3.4	Staff Transfer on Commencement	N
3.5	Project Charges	Y
4.1	Service Requirements	Y
4.2	Standards	N
4.3	Service Levels	Y
4.4	SMI Service Description	Y
4.5	Security Management Planning	Does not apply
4.6	IT Service Continuity Planning	Y
4.7	Quality and Continuous Improvement Planning	Does not apply
4.8	Sustainability Planning	Does not apply
4.9	Operational Charges	Y
4.10	Authority Responsibilities	Y
4.11	SMI Principles	N
5.1	Exit Management	Y
5.2	Compensation on Termination and Exit Charges	N
5.3	Staff Transfer on Exit	Y
6.1	Value for Money	Y
6.2	Financial Model	Does not apply
6.2	Diagram of Financial Model	Does not apply
6.3	Insurance	N
6.3	Contents of Insurance Brokers Letter	N
6.4	Financial Distress	N
6.4	Credit Rating Agencies	N
6.4	Credit Rating Thresholds	N
6.5	Guarantee and Floating Charge	N
6.6	Invoicing	Y
7.1	SMI Software	N
7.2	Licence Terms	N
7.3	Escrow	Does not apply
7.4	Authority Equipment	Y
7.5	SMI Equipment	Does not apply
8.1	Governance	Y
8.2	Key Personnel	N

8.3	Change Control Procedure	N
8.4	Dispute Resolution Procedure	N
8.5	Records Provisions	N
8.6	Commercially Sensitive Information	Y
8.7	Notified Subcontractors	N

2. Defined Terms

- 2.1 For the purpose of DfE Call Off 18, the following expressions shall have the meanings set out in **Error! Reference source not found.** below, other Framework definitions will continue to apply:

Defined Term	Meaning
Core Hours	means 08:00 – 18:00 Monday to Friday (excl. English Public Holidays);
DfE Call Off	means DfE Call Off 18;
Framework Agreement	means the framework agreement dated 27 September 2013 between the Secretary of State for Foreign and Commonwealth Affairs and the SMI;
Services	means any and all of the services provided by the SMI under the DfE Call Off 18;
Term	means the 2 nd January 2020 until the 31 st March 2021 unless extended via Change Request;

3. Delegation of Rights

- 3.1 In accordance with Clause 2.12 of the Framework Agreement, the Authority agrees that, subject to the provisions of paragraphs 4, 5 and 6 below, the exercise of its rights and receipt of its benefits (and the performance of all its duties associated with the receipt of such benefits) as set out in this Part 3, shall be delegated to the Customer and the Customer and the SMI agree to such delegation.
- 3.2 Where the context requires, a reference in the Framework Agreement to the “Contract” shall be taken to be a reference to the DfE Call Off.

4. Rights not Delegated

- 4.1 The Authority, the SMI and the Customer agree that the exercise of the rights and the receipt of the benefits in the following clauses of the Framework Agreement shall not be delegated to the Customer:
- (a) Clause 1.11 to 1.17 (Service Recipients);
 - (b) Clause 2.12 (delegation of rights).

5. Terms not applicable to the DfE Call Offs

- 5.1 The Authority, the SMI and the Customer agree that the following clauses and schedules to the Framework Agreement shall not apply to the DfE Call Offs:
- 5.1.1 Clause 29.8 (Authority points system);
 - 5.1.2 Clause 40.6 and 40.9 (back-ups and restoration of Authority Data);

- 5.1.3 Clause 44.3 (primary management responsibility);
- 5.1.4 Clauses 45.2.4 and 45.2.10 (warranties);
- 5.1.5 Clauses 48.5, 48.7 and 48.8 (Security Requirements);
- 5.1.6 Schedule 4.2 (Standards), paragraphs 7.2 and 7.5;
- 5.1.7 Schedule 6.3 (Insurance), paragraph 2.1.1;
- 5.1.8 Schedule 8.5 (Records Provision) Appendix, paragraph 2.4.
- 5.1.9 Clauses 12.4, 12.5, 12.6, (Service Levels for Operational Services)
- 5.1.10 Clause 12.8 is deleted and replaced by:
 - (a) If the SMI reasonably believes that any proposed change which is requested by the Customer would materially and adversely increase its costs of providing the Services, the SMI shall be entitled to submit a price variation request (supported by appropriate evidence, which should include an updated Financial Model) and must do so within ten (10) Working Days of the date of receiving the Customer's written notice.
- 5.1.11 Clause 57.1.6 (Step in Rights).
- 5.1.12 Clause 55.2 (Termination for convenience by the Customer) shall not apply
- 6. **Special Terms relating to the DfE Call Off 18**
- 6.1 Termination of the Framework Agreement shall not automatically lead to termination of the DfE Call Off which shall continue in force in accordance with their terms.
- 7. **Schedule 4.3 (Service Levels and Service Credits)**
- 7.1 This schedule shall not apply.
- 8. **Schedule 4.5 (Security Management Planning)**
- 8.1 This Schedule shall not apply. A revised schedule applicable to DfE Call Off 18 can be found in DfE Call Off 18 Appendix 3.
- 9. **Schedule 4.6 (IT Service Continuity Planning)**
- 9.1 This Schedule shall not apply. A revised schedule applicable to DfE Call Off 18 can be found in DfE Call Off 18 Appendix 4.
- 10. **Schedule 4.9 (Operational Charges)**
- 10.1 The Operational Charges that apply to this DfE Call Off 18 are documented in Appendix 2, Part 5 - Charges.
- 11. **Schedule 4.10 (Authority Responsibilities)**
- 11.1 The responsibilities of the Customer are set out below. These responsibilities are in addition to the responsibilities set out in schedule 4.10 (Authority Responsibilities).

Ref	Service that the Responsibility relates to	Customer Responsibility
CR001	All	The Customer will provide any reasonable support that may be required for the SMI to fulfil its responsibilities.
CR004	All	The Customer shall provide office facilities (such desks, telephones and Wi-Fi) for any of those SMI staff that are based in the Customer's offices in Coventry as well as access to the relevant equipment and networks identified as being required to fulfil the SMIs responsibilities under DfE Call Off 18.
CR006	IT Architecture Service	Providing relevant Customer technical policies, standards that apply.
CR007	IT Architecture Service	The Customer shall provide feedback on the performance of any SMI personnel where deemed appropriate and/ or when reasonably requested by the SMI.

12. Schedule 5.3 (Staff Transfer on Exit)

12.1 See Appendix 18

13. Schedule 6.1 Value for Money

13.1 Clause 2.3 (Gain share) shall not apply to DfE Call Off 18.

13.2 Clause 2.4 (Balanced Scorecard) shall not apply to any DfE Call Offs. There will be no Balanced Scorecard under this DfE Call Off 18.

14. Schedule 7.1 (SMI Software)

14.1 Amendments and application of schedule 7.1 can be found in Appendix 8 to this DfE Call Off 18.

15. Schedule 7.2 (Licence Terms)

15.1 Amendments and application of schedule 7.2 can be found in Appendix 8 to this DfE Call Off 18.

16. Schedule 7.4 (Authority Equipment and Authority Assets)

16.1 The terms in schedule 7.4 are not applicable to DfE Call Off 18. The amendment to schedule 7.4 is documented in Appendix 11.

17. Schedule 7.5 (SMI's Equipment)

17.1 The terms in schedule 7.5 are not applicable to DfE Call Off 18. Equipment provided by the SMI is listed in Appendix 12.

Appendix 17 - DfE Call Off 18 Financial Model

1. No financial model will be provided as part of DfE Call Off 18 as services are being provided on a T&M basis in accordance with the relevant rate card.

Appendix 18 – Schedule 5.3 Staff Transfer on Exit

1. Introduction – this is an amended version of the Framework Schedule 5.3.

1.1 This appendix 18 sets out the amended contents of Schedule 5.3 (Staff Transfer on Exit)

1.2 This schedule 5.3 sets out the Parties' respective rights and obligations in relation to the application of the Employment Regulations to this Contract.

2. APPLICATION OF THE EMPLOYMENT REGULATIONS ON TERMINATION OF THE PROVISION OF THE SERVICES BY SMI OR AT THE END OF THE TERM

2.1 This DfE Call Off 18 envisages that, after the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract or any Call Off under it, or part of it, or otherwise) resulting in Replacement Services being undertaken by the Customer or a Replacement SMI. Such change in the identity of the SMI of such services shall be a Termination Transfer. A Termination Transfer may constitute a Staff Transfer and in such event, the Customer and the SMI agree that, the contracts of employment between the SMI and the Termination Transferring Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Termination Transfer Date as if originally made between the Replacement SMI and each such Termination Transferring Employee.

3. Pre-service Transfer Obligations

3.1 The SMI agrees, subject to compliance with the Data Protection Legislation, that within twenty (20) Working Days of the earliest of:

- (a) receipt of a notification from the Customer of a Termination Transfer or intended Termination Transfer;
- (b) receipt of the giving of notice of early termination of this DfE Call Off 18 or any part thereof;
- (c) the date which is twelve (12) months before the end of the Term (or the applicable Call Off Term); or
- (d) receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),

it shall provide the SMI's Provisional Staff List and the Staffing Information in relation to all those employees listed in the SMI's Provisional Staff List to the Customer or, at the direction of the Customer, to a Replacement SMI and it shall provide an updated SMI's Provisional Staff List at such intervals as are reasonably requested by the Customer.

3.2 At least twenty (20) Working Days before the Termination Transfer Date, SMI shall prepare (subject to compliance with Data Protection Legislation) and provide to the Customer or, at the direction of the Customer, to the Replacement SMI, the SMI's Final Staff List, which shall be complete and accurate. The SMI's Final Staff List shall identify which of the SMI Personnel named are Termination Transferring Employees. To the extent that the provision of Personal Data regarding those individuals detailed on the SMI's Final Staff List is, under the Data Protection Legislation, subject to the consent of such individuals the SMI shall use its reasonable endeavours to obtain such consent. Where it is not able to obtain such consent, it shall provide the SMI's Final Staff List on a suitably anonymised basis so as to comply with Data Protection Legislation.

- 3.3 The Customer may use and disclose the SMI's Provisional Staff List, the SMI's Final Staff List and the Staffing Information in relation to such employees for informing any tenderer or other prospective Replacement SMI, provided that the Customer imposes on such third party appropriate obligations of confidence.
- 3.4 Upon reasonable request by the Customer and subject to compliance with the Data Protection Legislation, the SMI shall provide the Customer, or at the request of the Customer, the Replacement SMI, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and shall allow the Customer or the Replacement SMI to have copies of any such documents.
- 3.5 The SMI warrants (for the benefit of the Customer and the Replacement SMI(s) that the SMI's Provisional Staff List, the SMI's Final Staff List and the Staffing Information provided in relation to those listed shall be true and accurate in all material respects.
- 3.6 From the date of the earliest event referred to in paragraphs 3.1 (a) to 3.1 (c) (inclusive), the SMI shall not, other than in the ordinary course of business, assign any person to the provision of the Services (or the relevant part) which is the subject of a Termination Transfer who is not listed in the SMI's Provisional Staff List and shall not, other than in the ordinary course of business, without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed):
- (a) Increase or reduce the total number of employees listed on the SMI's Provisional Staff List save as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer;
 - (b) make, agree to make, propose or permit any material changes to the terms and conditions of employment of any employees listed on the SMI's Provisional Staff List (including any payments connected with the termination of employment);
 - (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the SMI Personnel save as may be necessary in order to fulfil assignments and projects previously scheduled and agreed by the Customer;
 - (d) introduce, or agree to 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 SMI's Provisional Staff List; or
 - (e) replace any SMI Personnel listed on the SMI's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the SMI's Provisional Staff List save for:
 - (i) the execution of assigned operations as detailed in paragraphs 3.6 (a) and 3.6 (c); and/or
 - (ii) replacing voluntary resignations, staff absence due to maternity leave, death, retirement, long term jury service or ill-health, staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is of equivalent grade, skill, experience and expertise and is employed on the terms and conditions of employment that are no more favourable than the person he/she replaces.
- 3.7 In addition, during the time period set out in paragraph 3.6, the SMI shall promptly notify the Customer or, at the direction of the Customer, the Replacement SMI, of any notice to terminate

employment given to or received from any persons listed on the SMI's Provisional Staff List regardless of when such notice takes effect.

- 3.8 The SMI shall provide all reasonable cooperation and assistance to the Customer and/or any Replacement SMI to ensure the smooth transfer of the Termination Transferring Employees on the Termination Transfer Date, including providing sufficient information in advance of the Termination Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Termination Transferring Employees to be paid as appropriate.
- 3.9 Within seven (7) Working Days following the Termination Transfer Date, the SMI shall provide to the Customer or any Replacement SMI, in respect of each person on the SMI's Final Staff List who is a Termination Transferring Employee:
- (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;
 - (e) details of any voluntary deductions from pay; and
 - (f) bank/building society account details for payroll purposes.
- 3.10 During the Term, the SMI shall provide to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:
- (a) the numbers of employees engaged in providing the Services;
 - (b) the percentage of time spent by each employee engaged in providing the Services;
 - (c) the pension arrangements and entitlements of each employee engaged in providing the Services; and
 - (d) a description of the nature of the work undertaken by each employee by location.

4. Termination Transfers

- 4.1 The Customer shall, or shall procure that the Replacement SMI shall (as the case may be), comply with its duties under Regulation 13 of the Employment Regulations and the SMI shall comply with its duties under Regulation 13 of the Employment Regulations. Each of the SMI and the Customer shall (or, where appropriate, the Customer shall procure that the Replacement SMI shall) promptly provide to the other in writing such information as is necessary to carry out their respective duties under Regulation 13 of the Employment Regulations.
- 4.2 In respect of the Termination Transferring Employees there shall be apportioned as at the Termination Transfer Date pro rata all emoluments and outgoings (including all wages, benefits, bonuses, commissions, accrued but untaken holiday pay, PAYE, employers' NICs and pension contributions) between the SMI and the Replacement SMI or the Customer (as the case may be). The SMI shall be responsible for the period up to and including the Termination Transfer Date and the Replacement SMI or the Customer (as the case may be) shall be responsible for the period thereafter.

4.3 The SMI shall:

- (a) comply with all of its obligations in respect of the Termination Transferring Employees arising under the Employment Regulations and shall pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Termination Transferring Employees up to and including, the Termination Transfer Date;
- (b) procure that true, accurate and complete copies of all original employment records relating to the Termination Transferring Employees are provided to the Replacement SMI or the Customer (if it is providing the Replacement Services) on the Termination Transfer Date;
- (c) subject to paragraph 4.4, indemnify the Customer and the Replacement SMI from and against all Employee Liabilities awarded against or incurred by the Customer or the Replacement SMI (as the case may be) as a result of or in connection with:
 - (i) any failure of the SMI to comply with its obligations pursuant to paragraph 4.3(a) above;
 - (ii) the employment or termination of employment by the SMI of any Termination Transferring Employee in the period up to and including the Termination Transfer Date. This indemnity shall not apply where such claim arises out of the resignation of any such Termination Transferring Employee on or before the Termination Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Customer or Replacement SMI (as the case may be) in the period after the Termination Transfer Date;
 - (iii) the employment or termination of employment by the SMI of any existing or former employee of the SMI (who is not a Termination Transferring Employee identified in the SMI's Final Staff List) in respect of whom it is alleged that the Customer or Replacement SMI has inherited liability from the SMI by virtue of the Employment Regulations and/or this Contract; and
 - (iv) any act or omission of the SMI in relation to its obligations under Regulation 13 of the Employment Regulations (other than where any such act or omission is as a result of a failure by the Replacement SMI or the Customer (if it is providing the Replacement Services) to comply with Regulation 13(4) of the Employment Regulations); procure that true, accurate and complete copies of all original employment records relating to the Termination Transferring Employees are provided to the Replacement SMI or the Customer (if it is providing the Replacement Services) on the Termination Transfer Date.
 - (v) any act or omission of the SMI in respect of any Termination Transferring Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Termination Transferring Employee whether occurring before, on or after the Termination Transfer Date;
 - (vi) the breach or non-observance by the SMI on or before the Termination Transfer Date of:
 - any collective agreement applicable to the Termination Transferring Employees; and/or
 - any other custom or practice with a trade union or staff association in respect of any Termination Transferring Employees which the SMI is contractually bound

to honour;

- (vii) any claim by any trade union or other body or person representing any Termination Transferring Employees arising from or connected with any failure by the SMI to comply with any legal obligation to such trade union, body or person arising on or before the Termination Transfer Date;
- (viii) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - in relation to any Termination Transferring Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Termination Transfer Date; and
 - in relation to any employee who is not identified in the SMI's Final Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the SMI to the Customer and/or Replacement SMI (as the case may be), to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Termination Transfer Date.

4.4 The indemnities in paragraph 4.3(c) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer or Replacement SMI (as the case may be) whether occurring or having its origin before, on or after the Termination Transfer Date, including any Employee Liabilities arising from the failure by the Customer or Replacement SMI (as the case may be) to comply with its obligations under the Employment Regulations.

4.5 The Customer shall procure that the Replacement SMI (or the Customer itself to the extent it provides the relevant Replacement Services) shall:

- (a) comply with all of its obligations in respect of the Termination Transferring Employees arising under the Employment Regulations and shall pay all salaries and provide all other benefits and make all appropriate deductions and payments in respect of all Termination Transferring Employees for the duration of their employment with the Replacement SMI or the Customer (as the case may be) in the period after the Termination Transfer Date;
- (b) Subject to paragraph 4.6 and 4.7, indemnify the SMI from and against all Employee Liabilities awarded against or incurred by the SMI as a result of or in connection with:
 - (i) any failure of the Replacement SMI or the Customer (as the case may be) to comply with its obligations pursuant to paragraph 4.5(a) above;
 - (ii) any claim brought by or on behalf of any Termination Transferring Employee identified in the SMI's Final Staff List arising out of the resignation of such Termination Transferring Employee on or before the Termination Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement SMI or the Customer (if it is providing the Replacement Services) in the period after the Termination Transfer Date;
 - (iii) any claim brought by or on behalf of any Termination Transferring Employee identified in the SMI's Final Staff List relating to any failure by the Replacement SMI or the Customer (if it is providing the Replacement Services) to comply with its obligations under Regulation 13 of the Employment Regulations;

- (iv) any act or omission of the Customer or the Replacement SMI (as the case may be) in respect of any Termination Transferring Employee identified in the SMI's Final Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Termination Transferring Employee;
 - (v) the breach or non-observance by the Customer or the Replacement SMI (as the case may be) on or after the Termination Transfer Date of:
 - any collective agreement applicable to the Termination Transferring Employees identified in the SMI's Final Staff List; and/or
 - any other custom or practice with a trade union or staff association in respect of any Termination Transferring Employees identified in the SMI's Final Staff List which the Customer or the Replacement SMI (as the case may be) is contractually bound to honour;
 - (vi) any claim by any trade union or other body or person representing any Termination Transferring Employees identified in the SMI's Final Staff List arising from or connected with any failure by the Customer or the Replacement SMI (as the case may be) to comply with any legal obligation to such trade union, body or person arising on or after the Termination Transfer Date;
 - (vii) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - in relation to any Termination Transferring Employee identified in the SMI's Final Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Termination Transfer Date; and
 - in relation to any employee who is not a Termination Transferring Employee identified in the SMI's Final Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the SMI to the Customer and/or Replacement SMI (as the case may be), to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Termination Transfer Date; and
- (c) comply with all of its obligations under Section 258 of the Pensions Act 2004 where it applies in the case of any employee.
- 4.6 The indemnities in paragraph 4.5(b) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the SMI whether occurring or having its origin before, on or after the Termination Transfer Date, including any Employee Liabilities arising from the failure by the SMI to comply with its obligations under the Employment Regulations.
- 4.7 If any person who is not identified in the SMI's Final Staff List claims or it is determined that his contract of employment has been transferred from the SMI to the Customer or a Replacement SMI pursuant to the Employment Regulations, then:
- (a) the Customer shall, or shall procure that the Replacement SMI shall (as the case may be), within seven (7) Working Days of becoming aware of that fact, give notice in writing to the

SMI;

- (b) the SMI may offer employment to such person within twenty one (21) Working Days of the notification by the Customer or the Replacement SMI (as the case may be) or take such other reasonable steps as it considers appropriate to deal with the matter, provided such steps are in compliance with Law;
- (c) if such offer of employment is accepted or if the situation has otherwise been resolved by the SMI, the Customer shall, or shall procure that Replacement SMI shall immediately release the person from his employment or alleged employment;
- (d) if after that period referred to in paragraph 4.7(b) above has elapsed, no such offer of employment has been made, or such offer has been made but not accepted, or the situation has not been otherwise resolved, the Customer or the Replacement SMI (as the case may be) may give notice to terminate the employment or alleged employment of such person; and
- (e) the SMI shall indemnify the Customer and the Replacement SMI (as the case may be) against:
 - (i) all Employment Liabilities arising out of such termination of employment or otherwise arising out of the employment of such person by the Customer or a Replacement SMI (as the case may be); and/or
 - (ii) any direct employment costs (if any) associated with the employment of such person by the Customer or the Replacement SMI (as the case may be) up to the date of termination of such person's employment.
- (f) If such person is neither re-employed by the SMI nor dismissed by the Customer or the Replacement SMI (as the case may be) within the time scales set out in this paragraph 7, such person shall be treated as a Termination Transferring Employee.

4.8 The indemnity in paragraph 4.7 (e) shall not apply:

- (a) to any claim for sex, race, disability, sexual orientation, religion or belief or age discrimination in relation to any alleged act or omission of the Replacement SMI or the Customer (as the case may be);
- (b) to any claim by any person in respect of whom the notification given to SMI under paragraph 4.7 is given by the Customer or the Replacement SMI (as the case may be) more than six (6) months after the Termination Transfer Date; or
- (c) if such person is neither re-employed by the SMI nor dismissed by the Replacement SMI or the Customer within the time scales set out in paragraph 4.7.

5. Pension Obligations on Exit

5.1 The SMI shall, and shall use all reasonable efforts to procure that the trustees of the SMI's Scheme, do all such acts and things, provide all such information and access to each Exit Employee as may in the reasonable opinion of the Customer be necessary or desirable to enable the Customer and/or the Replacement SMI to achieve the following objectives:

- (a) to maintain ongoing pension accrual for each Exit Employee in a pension arrangement sponsored by the Replacement SMI or the Customer (as the case may be) which provides

benefits for service after the Exit Date which:

- (i) are Broadly Comparable to those provided for each Exit Employee immediately prior to the Transfer Date (unless the Customer agrees); or
 - (ii) otherwise meet the terms of any applicable guidance or policy to which the Customer adheres at that time;
 - (iii) do not to adversely affect any pension rights accrued by each Exit Employee in the period ending on the date of the Exit Date;
- (b) to comply with all applicable legislation, binding codes of practice and non-binding codes of practice issued by any statutory authority which may be admissible as evidence of legislative compliance; and
- (c) to ensure that, to the extent which the Customer specifies having regard to the terms of any applicable guidance or policy to which the Customer adheres at that time, each Exit Employee is given the opportunity to transfer fully funded pension rights from the SMI's Scheme to an occupational pension scheme sponsored by the Replacement SMI or the Customer (as the case may be). For the purposes of this paragraph 5.1 (c) "fully funded" means:
- (i) a Past Service Reserve or, if greater, a basis which is no less favourable than that which applied in the calculation of the value of retirement benefits of each Exit Employee as at the Transfer Date according to, and calculated using the method and assumptions set out in, the Customer Actuary's Letter but reflecting financial market conditions at the Exit Date for pension rights transferred into the SMI's Scheme; and
 - (ii) for rights which build up in the SMI's Scheme after the Transfer Date, a Past Service Reserve; and
 - (iii) "Past Service Reserve" shall be consistent with the terms of any certificate of Broad Comparability for the SMI's Scheme and, otherwise, shall mean a reasonable actuarial basis taking into account salary growth for active members.

5.2 If the SMI does not make available to a Replacement SMI or the Customer (as the case may be) an onward bulk transfer as described in paragraph 5.1(c), the SMI shall, in respect of the past service reserve funding of any rights transferred to the SMI's Scheme and any rights accrued during the period between the Transfer Date and the Exit Date under the SMI's Scheme, augment each member's benefits to be as valuable as the amount that would have been payable in a transfer out under paragraph 5.1(c).

5.3 Where a Pensions Top Up has been payable under schedule 3.4 (Staff Transfer on Commencement), this schedule 5.3 shall be amended as provided for in clause 3.5 appendix 6 to schedule 3.4 (Staff Transfer on Commencement) with the reference to Paragraph 5.1.3(a) replaced with the reference Paragraph 5.1(c)(i).

6. **Third Party Rights**

6.1 Paragraphs 3, 4, 7 & 8 are intended to benefit Replacement SMIs, and the Contracts (Right of Third Parties) Act 1999 shall apply to paragraphs 3, 4, 7 & 8 to the extent necessary that any Replacement SMI shall have the right to enforce the obligations owed to, and indemnities given

to, the Replacement SMI by the SMI. These paragraphs may be amended by the Parties without notice to or consent from any third party.

7. Provisions Where Transfer Regulations Do Not Apply

- 7.1 The provisions of this paragraph 7 shall apply in the event of a Termination Transfer to which the Employment Regulations or the Acquired Rights Directive do not apply.
- 7.2 The Customer or the Replacement SMI may, in its absolute discretion, make to any of the employees listed on the SMI's Provisional Staff List or any SMI Personnel assigned to the Services an offer, in writing, to employ that employee under a new contract of employment to take effect on the day after the termination referred to in paragraph 7.3 or at the earliest reasonable opportunity.
- 7.3 When such offer has been made by the Customer or Replacement SMI and accepted by any employee or worker, the SMI shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the SMI, which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow.
- 7.4 If such employee does not accept an offer of employment made by the Customer or Replacement SMI, the employee shall remain employed by the SMI and all Employee Liabilities in relation to the employee shall remain with the SMI.
- 7.5 If the Customer or the Replacement SMI do not make an offer to any employee on the SMI's Provisional Staff List or any SMI Personnel, then the contract of employment of that employee, and all Employee Liabilities in relation to that employee shall remain with the SMI.

8. Conduct of Claims

- 8.1 This paragraph 8 shall apply to the conduct, by a Party from whom an indemnity is sought under this schedule 5.3, of claims made by a third person against a Party having (or claiming to have) the benefit of such indemnity. The Party having, or claiming to have, the benefit of such indemnity is referred to as the "**Beneficiary**" and the Party giving the indemnity is referred to as the "**Indemnifier**".
- 8.2 If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this schedule 5.3 ("**Claim**"), the Beneficiary shall give notice to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 8.3 Subject to paragraphs 8.4 and 8.5, on the giving of a notice by the Beneficiary pursuant to paragraph 8.2, 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 co-operation, access and assistance for the purposes of such Claim and, subject to paragraph 8.5, 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.

- 8.4 With respect to any Claim conducted by the Indemnifier pursuant to paragraph 8.3 the Indemnifier shall:
- (a) keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) not bring the name of the Beneficiary into disrepute;
 - (c) not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) conduct the Claim with all due diligence.
- 8.5 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 Contract if the Indemnifier:
- (a) is not entitled to take conduct of the Claim in accordance with paragraph 8.3;
 - (b) fails to notify the Beneficiary of its intention to take conduct of the relevant Claim within ten (10) Working Days of the notice from the Beneficiary under paragraph 8.2 or if the Indemnifier notifies the Beneficiary that it does not intend to take conduct of the Claim; or
 - (c) fails to comply in any material respect with paragraph 8.4.

9. Sensitive Claims

- 9.1 With respect to a Sensitive Claim, the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if any failure to do so results in an increase in the amount recoverable by the Beneficiary in respect of an indemnity under this Contract, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 9.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim to which paragraph 8.3 applies notwithstanding that it does not have the right to do so pursuant to paragraph 8.3 if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim. In such cases, the provisions of paragraph 9.1 shall apply.

10. Recovery of Sums

- 10.1 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 is the lesser of:
- (a) 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
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity,

- 10.2 provided that there shall be no obligation on the Beneficiary to pursue such recovery and that the Indemnifier is repaid only to the extent that the amount of such recovery aggregated with any sum recovered from the Indemnifier exceeds any loss sustained by the Beneficiary (including for this purpose any Losses sustained by the Beneficiary which may otherwise be excluded by clause 52 (Limitations on Liability) from being recovered from the Indemnifier).
11. **Insurance**
- 11.1 Any person taking any of the steps contemplated by paragraphs 8.2 to 9.1 (inclusive) shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Contract.
12. **Mitigation**
- 12.1 Each of the Customer and the SMI 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 schedule 5.3.
13. **Taxation**
- 13.1 If any payment by one Party under an indemnity in this schedule 5.3 is subject to income tax or corporation tax (or any tax replacing either or both of them) in the hands of the recipient (or a withholding made by the paying Party in respect of tax), the recipient may demand in writing to the Party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax or withholding.
14. **Sub-contractors**
- 14.1 References in this schedule 5.3 to the SMI shall include any relevant SMI Party providing any of the Services.
- 14.2 Where a provision in this schedule 5.3 imposes an obligation on the SMI and/or where the SMI provides an indemnity, undertaking or warranty in this schedule 5.3, the SMI shall procure that each of its Sub-contractors or other agents and contractors shall comply with such obligation and/or provide such indemnity, undertaking or warranty to the Customer, Outgoing Service Providers or Replacement SMI as the case may be.
- 14.3 References in this schedule 5.3 to the Outgoing Service Providers shall include any of their relevant subcontractors providing any of the services which are the same as or similar to the Services which are provided by the SMI in replacement of those services.
- 14.4 References in this schedule 5.3 to the Replacement SMI shall include any of its relevant sub-contractors.

Appendix 19 – Additional Support as a Result of Change Requests

1. **The SMI has agreed to provide additional support to the Customer as agreed via Change Requests. Where that additional support has resulted in the provision of additional resource it will be included for reference in this Appendix 19.**
2. **Change Requests**