

THIS AGREEMENT is made as a deed on the 10th day of December 2003

BETWEEN:

- (1) **The Secretary of State for Work and Pensions ("DWP");** and
- (2) **The First Secretary of State** (the "**SS1**"); and
- (3) **Trillium (PRIME) Limited**, a company registered and incorporated in accordance with the laws of England and Wales registered under number 3258384 and having its registered office at 140 London Wall, London EC2Y 5DN (the "**PRIME Contractor**"); and
- (4) **Trillium (PRIME) Property GP Limited**, a company registered and incorporated in accordance with the laws of England and Wales registered under number 3424587 and having its registered office at 140 London Wall, London EC2Y 5DN ("**PRIME Property**") in its own capacity and acting as general partner of Trillium (PRIME) Property Limited Partnership, a limited partnership registered under the Limited Partnerships Act 1907 ("**the Partnership**").

WHEREAS:

- (A) The Secretary of State for Social Security ("**DSS**") and The Secretary of State for the Environment, Transport and the Regions ("**SSE**") entered into a contract with the Partnership Property Management (PRIME) Limited and PPM (PRIME) Property Limited (acting as general partner of PPM (PRIME) Property Limited Partnership, a limited partnership registered under the Limited Partnerships Act 1907) dated 27 March 1998 ("**the Initial PRIME Contract**") whereby the DSS agreed to transfer its right title and interest in certain properties (the "**Former DSS Estate Properties**") to PRIME Property, and PRIME Property and PRIME Contractor agreed to undertake certain Operations (as more particularly described in the Initial PRIME Contract, including the provisions of serviced accommodation to the DSS).
- (B) On 9 July 1998 PPM (PRIME) Property Limited Partnership changed its name to Trillium (PRIME) Property Limited Partnership and on 17 July 1998 Partnership Property Management (PRIME) Limited, changed its name to Trillium (PRIME) Limited, and PPM (PRIME) Property Limited changed its name to Trillium (PRIME) Property GP Limited. The relevant name changes were all registered at Companies House.
- (C) By a Supplemental Agreement dated 6 June 2000 the parties agreed certain amendments to the Initial PRIME Contract. The form of the Initial PRIME Contract incorporating such amendments and updating parties as a result of name changes and/or statutory devolution is referred to in this Agreement as "**the Amended PRIME Contract**".

- (D) By the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568, Arts 8 & 9, all immoveable property in the United Kingdom of The Secretary of State for the Environment Transport and the Regions was transferred to the Secretary of State for Transport, Local Government and the Regions.
- (E) By the Secretaries of State for Education and Skills and for Work and Pensions Order 2002 (the "**Order**"), the employment functions carried on by the former Secretary of State for Education and Employment (the "**Employment Service**" or "**ES**") were transferred to the Secretary of State for Social Security who was by the Order renamed the Secretary of State for Work and Pensions. By virtue of the Order, DWP assumed control and responsibility for the property interests used in connection with the ES (such property interests, as set out in Part 5 of Schedule 1 being referred to herein as the "**Former ES Estate Properties**").
- (F) By the Transfer of Functions (Transport, Local Government and the Regions) Order 2002 SI2002/2626 the property rights and liabilities of The Secretary of State for Transport, Local Government and the Regions were transferred to the First Secretary of State ("**SS1**") with effect from 25 November 2002.
- (G) On 20 December 2002, DWP invited (in accordance with the UK Government's Private Finance Initiative) the PRIME Contractor to submit a tender for the transfer of the properties comprising the Former ES Estate Properties and the provision of certain services in connection with the provision of accommodation to DWP in relation to the its business, in particular associated with the combination of former DWP business with the former ES business.
- (H) Proposals were submitted on behalf of the PRIME Contractor in response to DWP's invitation. Following negotiations, it appears to DWP to be expedient for the purpose of or in connection with the discharge of its functions to enter into this Second Supplemental Agreement, which
- (a) provides, in accordance with the terms of this Second Supplemental Agreement, for the transfer by DWP (and where necessary the SS1) of their rights, title and interests in certain Former ES Estate Properties to PRIME Property acting in its own capacity;
 - (b) provides for variations to be made to the PRIME Contract so that the expanded PRIME Contract as shown in its amended and restated form in Schedule 7 hereto (the "**Expanded PRIME Contract**") shall, with effect from and on the Contract Expansion Date govern the terms whereby PRIME Property and the PRIME

Contractor agree to undertake certain Operations, including the provision of serviced accommodation to DWP;

- (c) makes provision for other matters preparatory to the coming into effect of the Expanded PRIME Contract and also for certain transitional arrangements.
- (l) This agreement is supplemental to the PRIME Contract in the manner referred to in Clause 37 of the PRIME Contract.

IT IS AGREED:

PART 1 - INTERPRETATION AND ADMINISTRATIVE MATTERS

1. INTERPRETATION

1.1

(a) The "**PRIME Contract**" means the contract between DSS, SSE, Partnership Property Management (PRIME) Limited and PPM (PRIME) Property Limited (acting as general partner of PPM (PRIME) Property Limited Partnership, a limited partnership registered under the Limited Partnerships Act 1907) dated 27 March 1998 as amended from time to time.

(b) The provisions of clause 1 (including, to avoid doubt, clause 1.1 and the definitions in Schedule 1 thereto) of the PRIME Contract shall apply to this Second Supplemental Agreement as if incorporated herein except to the extent that any express provision of this Second Supplemental Agreement is inconsistent with such application.

1.2 Except where the context requires otherwise references to clauses and Schedules are references to clauses of and schedules to this Second Supplemental Agreement and references to Appendices, Annexes, Parts, paragraphs and sub-paragraphs are references to appendices, annexes, parts, paragraphs and sub-paragraphs contained in Schedules to this Second Supplemental Agreement.

1.3 For the purposes of the execution of this Second Supplemental Agreement in terms of the Requirements of Writing (Scotland) Act 1995, the Schedules to this Second Supplemental Agreement (together with their Appendices, Annexes and Parts) and the Expanded PRIME Contract and all of its Schedules (together with their Appendices, Annexes and Parts) shall be deemed to form one single Schedule, and to the extent necessary each of the Schedules and the Expanded PRIME Contract itself shall be deemed to be sub-schedules.

1.4 The SS1 is a party to this Second Supplemental Agreement for the purpose amongst other things of agreeing to transfer the title to the Former ES Estate Properties vested in him and certain other ancillary actions. DWP (acting as agent for and on behalf of the SS1, which appointment the SS1 hereby confirms) shall give any agreement, waiver, allowance or consent of the SS1 required pursuant to this Second Supplemental Agreement.

1.5 This Second Supplemental Agreement is supplemental to the PRIME Contract.

2. **CONDITIONS PRECEDENT**

2.1 Save for this clause 2 and Parts 1 and 2 of Schedule 1 and save for the obligations of the PRIME Contractor and PRIME Property under clause 9 [*Warranties, Undertakings and Indemnities*], clause 14 [*Confidentiality*] and such other parts of this Supplemental Agreement that must be referred to in order to give meaning and effect to those clauses, the obligations of the parties under this Second Supplemental Agreement are subject to and in all respects conditional upon fulfilment or (where permitted) waiver of the conditions set out in Schedule 5 [*Conditions Precedent*].

2.2 The PRIME Contractor and DWP shall use their respective reasonable endeavours to procure that the conditions set out in Schedule 5 [*Conditions Precedent*] are fulfilled as soon as reasonably practicable and in any event by 23.59 hours on 14 December 2003.

2.3 The conditions set out in Schedule 5 [*Conditions Precedent*] may be waived in whole or in part only with the consent of both DWP and the PRIME Contractor.

2.4 Not used.

2.5 If any condition set out in Schedule 5 [*Conditions Precedent*] has not been fulfilled or waived by the PRIME Contractor and/or DWP (as the case may be) on or before the date specified in clause 2.2 or such later date as may be agreed in writing between DWP and the PRIME Contractor this Second Supplemental Agreement shall lapse and be of no further force and effect and no party shall have any further rights against the other and (subject only to clause 14 [*Confidentiality*] and clause 9 [*Warranties, Undertakings and Indemnities*]) the parties shall be released from all further obligations under this Second Supplemental Agreement, but without prejudice to any rights or obligations which may have already accrued prior to such time and date. In the event that prior to such lapse any of the parties to this Second Supplemental Agreement has caused any entry to be made in any public register of any of its rights under this Second Supplemental Agreement that party shall forthwith cause such registration to be withdrawn or cancelled.

2.6 If DWP becomes aware of any fact or event (not being a fact or event provided for or contemplated by this Second Supplemental Agreement) which:

- (a) would constitute an Event of Default under clause 25 [*Events of Default*] of the Expanded PRIME Contract had the same come into effect; or
- (b) is a material breach of any of the provisions in clause 9 [*Warranties, Undertakings and Indemnities*],

then, unless it has issued a Certificate of Commencement under clause 2.8, DWP may elect to rescind this Second Supplemental Agreement without prejudice to its remedies against the PRIME Contractor.

- 2.7 The PRIME Contractor shall notify DWP forthwith of any matter of which it becomes aware which gives rise to a right of rescission under this clause.
- 2.8 Provided that the conditions set out in Schedule 5 [*Conditions Precedent*] have been fulfilled or waived then, unless DWP has exercised its rights under clause 2.6, the Department's Representative shall issue the Certificate of Commencement stating the Contract Expansion Date, which date shall be 15 December 2003 (or such later date as is agreed in accordance with clause 2.5).

3. **APPLICATION OF SPECIFIC PROVISIONS OF EXPANDED PRIME CONTRACT**

To avoid doubt, clauses 4.4 and 4.9 of the Expanded PRIME Contract shall apply to this Second Supplemental Agreement as if set out, *mutatis mutandis*, herein.

PART 2 - TRANSFER OF THE FORMER ES ESTATE PROPERTIES AND FORMER ES EQUIPMENT AND FURNITURE AND PAYMENT OF THE FORMER ES ESTATE TRANSFER PRICE

4. TRANSFER OF THE FORMER ES ESTATE PROPERTIES AND FORMER ES EQUIPMENT AND FURNITURE

Transfer of Former ES Estate Properties

- 4.1 The SS1 (or where relevant DWP) agrees to sell the Former ES Estate Properties together with the plant and machinery therein (other than the Former ES Estate OGD Properties) and DWP agrees to sell or, as appropriate, to procure that any relevant OGD shall sell each of the Former ES Estate OGD Properties together with the plant and machinery therein and PRIME Property agrees to buy the same, and DWP agrees to grant, or procure the granting of, certain rights in relation to the Former ES Estate Excluded Properties in each case on the Contract Expansion Date, for the Former ES Estate Transfer Price, which shall be paid to DWP in accordance with the provisions of this Second Supplemental Agreement.
- 4.2 Subject as hereinafter in this Second Supplemental Agreement provided, the sale and purchase of the Former ES Estate Properties shall take place on the Contract Expansion Date when all but not some only of the matters in this clause 4.2 shall occur:
- (a) PRIME Property will tender payment of £100 million (the "**Former ES Estate Transfer Price**") in full to DWP by direct transfer to the account previously notified to PRIME Property by DWP;
 - (b) to the extent that the Former ES Estate Transfer Price comprises consideration for any property in respect of which Virtual Assignments or Scottish Property Agreements are to be entered into, the Former ES Estate Transfer Price shall be exclusive of VAT (and PRIME Property shall on receipt of a valid tax invoice pay to DWP an additional amount equal to any VAT properly chargeable in respect of such consideration (such amount to be paid in cleared and immediately available funds two days prior to the date upon which DWP is obliged to account to H M Customs for such amount)) but the balance of the Former ES Estate Transfer Price shall be inclusive of VAT;
 - (c) upon receipt of the Former ES Estate Transfer Price, the SS1 and (to the extent necessary) DWP will transfer, or DWP will cause the Secretary of State for any relevant OGD to transfer, the Former ES Estate Freehold Properties in favour of PRIME Property in the form of the Transfer duly executed;
 - (d) subject to the provisions of Part 1 of Schedule 1 [*Land Matters*] the SS1 and (to the extent necessary) DWP will assign, or DWP will cause the Secretary of State

for any other relevant OGD to assign, the Former ES Estate Leasehold Properties in favour of PRIME Property in the form of the Assignments duly executed;

- (e) subject to clause 4.10, PRIME Property will grant, and DWP will accept the grant of, the PRIME Leases in respect of the Former ES Estate Freehold Properties and subject always to Part 1 of Schedule 1 [*Land Matters*], of the Former ES Estate Leasehold Properties, provided that, subject to clause 7.21 of the Expanded PRIME Contract, no PRIME Leases shall be granted in respect of any Former ES Estate Property which is a Former ES Estate Surplus Property;
- (f) PRIME Property will grant and deliver in a registerable form to DWP the First Charges over the Specified Properties and the Second Charges over the Retained Properties set out in Part 2 of Schedule 11 of the Expanded PRIME Contract;
- (g) DWP and the SS1 will deliver, and DWP will procure that any other relevant OGD delivers (in the same form *mutatis mutandis*) the Powers to PRIME Property;
- (h) in relation to any Former ES Estate English and Welsh Properties where, for whatever reason as is provided in this Second Supplemental Agreement, the relevant Transfer or Assignment cannot be completed on the Contract Expansion Date, the SS1 (or the Secretary of State for any other relevant OGD), DWP and PRIME Property will execute a Virtual Assignment;
- (i) in relation to any Former ES Estate Scottish Properties where, for whatever reason as is provided in this Second Supplemental Agreement, the relevant Transfer or Assignment cannot be completed on the Contract Expansion Date, the SS1, DWP and PRIME Property (or, as the case may be, DWP and PRIME Property) will execute a Scottish Property Agreement;
- (j) PRIME Property shall execute a PRIME Property Guarantee in the form set out in Schedule 6; and
- (k) the PRIME Contractor shall grant and deliver in a registerable form to DWP a Floating Charge over Former ES Equipment and Former ES Furniture in the form set out in Part 3 of Schedule 30 of the Expanded PRIME Contract;
- (l) Land Securities Group plc shall grant and deliver the Parent Guarantee in the form set out in Schedule 6 to the Second Supplemental Agreement;
- (m) the Subordination Agreement executed in the required form by the Subordinated Creditors as identified in the schedule attached thereto;

- (n) DWP to provide rent authority/landlord notification letters and statutory declarations in respect of those properties with either no title deeds or where due diligence has been based on copy title deeds only;
- (o) DWP to provide Stamp Duty Land Tax money;
- (p) DWP to provide a letter of confirmation that in respect of the Sceptre House title indemnity insurance the policy is on risk and that the policy will be delivered to PRIME Property 25 Business Days from Contract Expansion Date;
- (q) DWP to provide the option agreements or a letter reflecting the intention of the parties in respect of the provisions of clause 6 of the Expanded PRIME Contract in relation to the Former DSS Estate;
- (r) DWP to provide the rent deposit deed assignment and rent deposit money in respect of (14990013) Finchley; and
- (s) PRIME Property to provide the PRIME Lease for 301 to 309 Perry Barr Walsall Birmingham

provided that, for the purposes of this clause 4, an obligation to grant any document shall include an obligation to execute and deliver the same to the intended recipient, together (where appropriate) with full particulars of execution.

4.3 The parties to this Second Supplemental Agreement agree that:

- (a) this Second Supplemental Agreement; and
- (b) the Transfers and Assignments; and
- (c) the Virtual Assignments and the Scottish Property Agreements.

in each case made pursuant to the Supplemental Agreement shall be duly stamped.

4.4 The parties to this Second Supplemental Agreement agree that PRIME Property shall pay any Stamp Duty Land Tax in respect of a land transaction (as that expression is used for the purposes of that tax) arising as a result of a renewal of any lease or new lease arising from an assignment referred to in clause 4.3.

4.5 DWP shall, from time to time, pay any stamp duty payable on the documents referred to in clause 4.3 each such payment to be in the form of a cheque made payable to the Inland Revenue (delivered to the PRIME Contractor or, upon its request, to its advisers within five Business Days of proper request by the PRIME Contractor) or such other manner as the parties agree.

- 4.6 If, for any reason, DWP fails to pay the stamp duty payable by it under clause 4.5 before the date on which any interest or penalties become payable in respect of the payment of that stamp duty, then DWP shall be responsible for all interest and penalties attributable to its failure.
- 4.7 If and to the extent that PRIME Property becomes liable to account for any Stamp Duty Land Tax in respect of a land transaction (as that expression is used for the purposes of that tax) arising as a result of or in respect of the documents referred to in clauses 4.3 and 4.4, DWP shall indemnify and keep indemnified PRIME Property on an after tax basis for such Stamp Duty Land Tax and any interest or penalties relating thereto within five Business Days of a proper request from PRIME Property, provided that this indemnity shall not extend to any interest or penalties to the extent they arise from any delay or default on the part of PRIME Property or the PRIME Contractor. PRIME Property confirms that it is its intention, as at the date of this Second Supplemental Agreement, provided that Extra Statutory Concession D33 remains in force in its current form, to submit its relevant company tax returns on the basis that any indemnity payment(s) in respect of Stamp Duty Land Tax made by DWP pursuant to this clause 4.7 should fall within the terms of that concession, so that the receipt of the indemnity payment(s) will not be treated as taxable in the hands of PRIME Property (but instead will reduce the base cost of the Former ES Estate Properties, otherwise increased by the amount of Stamp Duty Land Tax payable pursuant to section 38 of the Taxation of Chargeable Gains Act 1992, by the amount of such indemnity payment(s)).
- 4.8 On the Contract Expansion Date, (a) in relation to the Former ES Estate English and Welsh Properties, PRIME Property and DWP will execute the Transfers and the Assignments in duplicate and DWP will execute and deliver to PRIME Property counterparts of the PRIME Leases, and (b) in relation to the Former ES Estate Scottish Properties, the provisions of paragraphs 1.7 and 6 of Section B of Part 1 of Schedule 1 shall apply.
- 4.9 DWP and PRIME Property will enter into, and PRIME Property will procure that the Funders enter into, any priority agreements with the Funders (and any other holders of a charge over Specified Properties that are the subject of the First Charge and/or Retained Properties that are the subject of the Second Charge) as are reasonably required by DWP to ensure that:
- (a) DWP is afforded full priority ahead of the Funders' security (and the security of any other holder of a charge over the Specified Properties that are the subject of the First Charge) in respect of the assets charged by the First Charges; and
 - (b) the Second Charges in favour of DWP rank immediately behind in priority to any security granted in accordance with the requirements of any of the Funding

Agreements and shall be fully subordinated to (and, to avoid doubt, only to) funders under the Funding Agreements to the extent that the aggregate borrowing of the PRIME Contractor and PRIME Property does not exceed £350 million, who shall not be prejudiced by the existence of such charge.

- 4.10 The obligation of PRIME Property to grant and DWP to accept a PRIME Lease in accordance with clause 4.2(e) in respect of any of the Former ES Estate English and Welsh Properties, (and hence the obligation of PRIME Property to accept and DWP or the relevant OGD to grant a Transfer or an Assignment) shall be conditional upon the provisions of sections 24 to 28 Landlord and Tenant Act 1954 being excluded from application to the PRIME Lease pursuant to a court order under the provisions of section 38(4) Landlord and Tenant Act, 1954. Accordingly, DWP and PRIME Property shall in a timely manner apply jointly to the relevant court for such a court order. The relevant PRIME Lease shall not be executed until after the relevant order is made.
- 4.11 The provisions of Schedule 1 to this Second Supplemental Agreement [*Land Matters*] shall apply to the sale and purchase and the transfer and leasing of the Former ES Estate Properties and to the other matters therein contained. The agreed form documents contained in Schedule 4 to the Expanded PRIME Contract [*Land Matters*] shall be used for the transfer and leasing of the Former ES Estate Properties, with such amendments as are necessary to accommodate application to the Former ES Estate Properties, including, without limitation, changes of reference from "Flexible" to "Flexi-Core" and from "Commencement Date" to "Contract Expansion Date".

Former ES Estate Excluded Properties

- 4.12 (a) In relation to the Former ES Estate Excluded Properties, the parties acknowledge that the titles or other matters in relation thereto are such that, at the date hereof, none of the Former ES Estate Excluded Properties are the subject of the sale and purchase provisions contained in this clause 4. Accordingly, the parties shall consult with each other as to the appropriate arrangements thereof to ensure, so far as possible, that each of the Former ES Estate Excluded Properties can, eventually, be included within the sale and purchase provisions of this clause 4 and each of the parties shall use all reasonable endeavours to effect such arrangements.
- (b) In the event that the parties do not agree on such arrangements prior to the Contract Expansion Date, then the parties (or such of them as are relevant) agree to (i) enter into a Virtual Assignment (for each of the Former ES Estate Excluded Properties which is in England or Wales) or a Scottish Property Agreement (for each of the Former ES Estate Excluded Properties which is in Scotland) each with such amendments as are agreed between the parties or are reasonably

necessary and/or (ii) take such other steps as are practicable or appropriate to arrange for the equivalent of the financial benefits and burdens of each Former ES Estate Excluded Property to pass to PRIME Property and to ensure that the PRIME Contractor shall be able to carry out the Operations at each Former ES Estate Excluded Property as if they were each a Former ES Estate Property.

- (c) If at any time after the date hereof, in the reasonable opinion of PRIME Property, the title or other matter by reason of which the property is treated as a Former ES Estate Excluded Property ceases to render it inappropriate for the property to be the subject of the said sale and purchase provisions, the parties shall sign and complete such memorandum of agreement reasonably requested by PRIME Property to sell and purchase such property or properties consistent with the provisions contained in clause 4 and Schedule 1 and such property or properties shall thereafter be treated as a Former ES Estate Property or Former ES Estate Properties for the purposes of the Expanded PRIME Contract.
- (d) SS1 and DWP shall not (and shall ensure that any relevant OGD shall not) make any dealings with the Former ES Estate Excluded Properties (including for the avoidance of doubt not limited to any transfer, assignment, sale, lease surrender, charge, or other disposition or agreement for any of the same) other than any arrangements pursuant to sub-clauses 4.12(a) and 4.12(c).
- (e) DWP shall indemnify the PRIME Contractor and PRIME Property in respect of any loss, claim, damages, costs, expenses or liability arising from or in connection with the title or other matter, by reason of which the property is treated as a Former ES Estate Excluded Property or the failure to transfer the interest of the SS1, DWP or any relevant OGD (as appropriate) in the Former ES Estate Excluded Property to PRIME Property, including but not limited to any inability of the PRIME Contractor to provide, and therefore charge for, the Operations at such Former ES Estate Excluded Property. Without limiting the indemnity from DWP contained in this sub-clause 4.12(e), DWP covenants on request to pay to PRIME Property an amount equal to the open market value assessed on the basis of the Red Book of the interest of the SS1, DWP or any relevant OGD (as appropriate) in any Former ES Estate Excluded Property at the time at which PRIME Property would, but for the failure to transfer the interest of SS1, DWP or any relevant OGD (as appropriate) in that Former ES Estate Excluded Property to PRIME Property, have been entitled, pursuant to the provisions of this Agreement and/or the Expanded PRIME Contract (as appropriate), to dispose of such interest (which, for the avoidance of doubt, shall include the termination of the Expanded PRIME Contract in any circumstance).

- (f) In the event of any dispute as to the terms of the documentation to be entered into pursuant to sub-clauses 4.12(b) or (c), the dispute shall be referred to the Dispute Resolution Procedure.
- (g) To avoid doubt, nothing in this clause shall affect in any way the obligation of PRIME Property to pay the Former ES Estate Transfer Price in full.
- (h) The provisions of clauses 4.3 to 4.7 shall apply *mutatis mutandis* in respect of any documents or land transactions entered into by the parties in respect of Former ES Estate Excluded Properties.

Transfer of Former ES Equipment and Former ES Furniture

- 4.13 DWP and, to the extent necessary in the case of any fixtures, the SS1 will procure (or DWP will procure that any relevant OGD procures) that title to all Former ES Equipment and Former ES Furniture owned by DWP and the SS1 and situated at a Former ES Estate Property at the Contract Expansion Date is transferred to the PRIME Contractor at the Contract Expansion Date. On the Contract Expansion Date immediately following the completion of such transfer, the PRIME Contractor will execute and grant and deliver in a registerable form the Floating Charge to DWP over the Former ES Equipment and Former ES Furniture. DWP and the PRIME Contractor will enter into, and the PRIME Contractor will procure that the Funders (and any other holder of a charge over the Specified Properties that are the subject of the First Charge) enter into, priority agreements in or substantially in the terms of the Inter-Creditor Agreement.
- 4.14 For the purposes of section 8 of the Sale of Goods Act 1979, the price payable by the PRIME Contractor for the Former ES Equipment and Former ES Furniture shall be deemed to form part of the Former ES Estate Transfer Price and to have been determined accordingly.
- 4.15A Subject to clause 4.15B:
- (a) on the Contract Expansion Date, DWP will novate or assign and the PRIME Contractor will accept a novation or assignment from DWP of each existing Equipment Leases listed in Part 2 of Schedule 4 [*Former ES Existing Service Contracts and Equipment Leases*], such novation or assignment to be in the form set out in Part 2 of Schedule 25 [*Existing Service Contracts*];
 - (b) after the Contract Expansion Date:
 - (i) DWP will, on written request by the PRIME Contractor, novate or assign, and the PRIME Contractor will accept, a novation or assignment of any Equipment Lease in existence on the Contract Expansion Date which is

not set out in Part 2 of Schedule 4 [*Former ES Existing Service Contracts and Equipment Leases*] and which relates to Former ES Equipment, such novation or assignment to be in the form set out in [Part 2 of Schedule 25 [*Existing Service Contracts*]], provided the PRIME Contractor identifies the relevant Equipment leased by DWP and requests a novation or assignment of the leased in writing not later than 12 months after the Contract Expansion Date; and

- (ii) the PRIME Contractor will, on request from DWP, accept a novation or assignment from DWP of any Equipment Leases.

4.15B If the terms of any of an Equipment Lease to be assigned or novated requires the consent of the lessor of the Equipment Lease to the assignment or novation of the same:

- (a) the assignment or novation of the Equipment Lease shall be completed as soon as practicable after the consent of the lessor to the assignment or novation shall have been obtained or on the Contract Expansion Date, whichever is the later;
- (b) the PRIME Contractor shall act as the agent of DWP for the purpose of obtaining the consent of the lessor (but shall not incur any liability on behalf of DWP);
- (c) if the consent of the lessor is not obtained, DWP shall, until the assignment or novation is completed, hold the benefits under the Equipment Lease on trust for the PRIME Contractor which shall, at the PRIME Contractor's own cost, duly discharge and perform all the liabilities, obligations and stipulations on the part of DWP to be discharged or performed under or by virtue of the Equipment Lease with effect from the Contract Expansion Date to the extent that those liabilities, obligations and stipulations have been disclosed to the PRIME Contractor; and
- (d) the PRIME Contractor will be responsible for managing the Equipment Leases held by DWP pursuant to sub-clause 4.15B(c).

4.15C

- (a) Subject to sub-clause 4.15C(b) and to clause 4.15E, DWP shall reimburse to the PRIME Contractor:
 - (i) all rental payments; and
 - (ii) all other payments to the extent reasonably incurred by the PRIME Contractor under Equipment Leases assigned or novated to the PRIME Contractor pursuant to clause 4.15A or which would be assigned pursuant to clause 4.15A but which are in fact treated in accordance with clause 4.15B including any costs associated with any enforcement of such

contract save to the extent that such costs result from a PRIME Contractor's breach or failure to reasonably mitigate payments due under such Equipment Leases to the extent reasonably possible having regard to the terms of such Equipment Leases.

- (b) If services provided by or on behalf of the lessor under an Equipment Lease include service elements such as line rental, monitoring, maintenance or similar matters, being costs which would be the responsibility of the PRIME Contractor if the relevant asset had not been the subject of an Equipment Lease then DWP may deduct from payments due under sub-clause 4.15C(a) either:
- (i) any amount expressly attributable to such matters pursuant to the terms of the relevant Equipment Lease up to a maximum of the amount which can be ascertained from the Cost Plan, or if this information cannot be ascertained from the Cost Plan a fair and reasonable amount to be agreed between the parties, both acting reasonably, having regard to the Cost Plan for the Facility; or
 - (ii) where paragraph (i) does not apply, a fair and reasonable proportion of the amount which is subject to reimbursement up to a maximum of the amount which can be ascertained from the Cost Plan, or if this information cannot be ascertained from the Cost Plan a fair and reasonable amount to be agreed between the parties, both acting reasonably, having regard to the Cost Plan for the Facility.

Where paragraph (ii) applies DWP and the PRIME Contractor shall seek to agree the amount to be deducted from the reimbursement, and failing agreement the matter shall be determined by final and binding adjudication pursuant to the Dispute Resolution Procedure.

- (c) The amount determined in accordance with sub-clauses (a) and (b) above shall be included in the Variable Amount Statement submitted on the Statement Date next following completion of such calculation.

Decision to terminate or continue with Equipment Lease dealt with pursuant to clause 4.15A and 4.15B

4.15D If the PRIME Contractor wishes to consider the termination of an Equipment Lease assigned pursuant to clause 4.15A or treated in accordance with clause 4.15B prior to expiry of the full term of such lease in circumstances other than those where the plans of the PRIME Contractor for the performance of the relevant parts of the Operations involve

the imminent replacement of the relevant item of Equipment in any event then the provisions of this clause 4.15D will apply.

- (a) The PRIME Contractor will present a proposal to DWP with regard to such termination identifying:
 - (i) the continuing rental payments and other payments which would otherwise have to be incurred by DWP;
 - (ii) the amount which DWP would have to pay following such early termination pursuant to clause 4.15E;
 - (iii) the amount which DWP would have to pay pursuant to clause 4.15E following expiry of the Equipment Lease at the end of its term;
 - (iv) any cost incurred, or not recovered, by the PRIME Contractor as a consequence of the Equipment Lease not being terminated; and
 - (v) any other relevant facts or matters.

- (b) DWP and the PRIME Contractor will thereafter consult and seek to agree on whether or not the Equipment Lease should be terminated, and the payments to be made by DWP
 - (i) so as to leave the PRIME Contractor in a position which is financially no better and no worse than it would have been in had the assets which were the subject of the Equipment Lease been transferred to the PRIME Contractor at the Contract Expansion Date; and
 - (ii) which achieves the objective in paragraph (i) in a manner which provides the best overall value for DWP.

The parties will then proceed with the steps agreed, and DWP will make any payments agreed. In default of agreement either party may refer the matter to the Dispute Resolution Procedure.

Value of Equipment formerly supplied under Former ES Existing Service Contracts and Equipment Leases

- 4.15E.1 Upon termination or expiry of each Equipment Lease or Former ES Existing Service Contract or any service contract which DWP terminates prior to the Contract Expansion Date which provided for the provision of Equipment (an “**Expired Lease**”), unless otherwise agreed pursuant to clause 4.15D, DWP shall pay to the PRIME Contractor the amount agreed or determined in relation to sub-clauses (a) and (b) below.

- (a) an amount in relation to the value of such Equipment which is removed by the Equipment lessor, Existing Service Provider or other service provider, or which cannot be used as a result of the termination of the relevant Expired Lease, which, unless clause 4.15E.2 applies, shall be calculated as follows:

$$R \times D\%$$

Where

R is the reasonable cost of purchasing a replacement for such equipment incurred in accordance with Good Industry Practice and

D is the percentage of the expected life of the asset which has not yet passed which shall be calculated by applying an industry-standard view of the average life of assets of the relevant type (or if there is no industry-standard view, a reasonable view).

- (b) The cost incurred as a consequence of early termination of an Equipment Lease or Former ES Existing Service Contract, save for any cost which the PRIME Contractor could reasonably have avoided by acting in accordance with Good Industry Practice.

4.15E.2 This clause applies whenever it is apparent from all the circumstances (including the plans of the PRIME Contractor for the performance of the relevant parts of the Operations) that an item of Equipment which is the subject of clause 4.15E.1 would have been replaced imminently by the PRIME Contractor in any event if full ownership of such Equipment had been transferred to the PRIME Contractor at the Contract Expansion Date. In such circumstances no value shall be included under sub-clause 4.15E.1(a) in the calculation of the amount to be paid by DWP.

4.15 No consent shall be required from DWP to the transfer of the Former ES Equipment and/or Former ES Furniture by the PRIME Contractor to an Associate of it subject to the Associate entering into:

- (a) a substitute Floating Charge mutatis mutandis as the Floating Charge to be entered by the PRIME Contractor pursuant to clause 4.13 and on such substitute Floating Charge being granted, the original Floating Charge granted by or on behalf of the PRIME Contractor shall forthwith be released by DWP;
- (b) a Project Associate Direct Service Agreement; and
- (c) an Inter-Creditor Agreement.

- 4.16 Where Equipment is subject to an Equipment Lease that is either assigned or novated to the PRIME Contractor in accordance with clause 4.15A or treated in accordance with 4.15B the Performance Measuring System shall not apply to FM Services provided in connection with such Equipment. The PRIME Contractor shall not be liable for and DWP shall reimburse to the PRIME Contractor, any reasonable costs which it incurs arising from any claim or claims by any counterparty to such Equipment Leases made at any time relating to or arising out of, any pre-transfer obligations, liabilities or breaches of such Equipment Leases.

Allocation of Former ES Estate Transfer Price

- 4.17 The parties agree that the Former ES Estate Transfer Price shall be allocated to the individual Former ES Estate Properties in accordance with the column headed "Former ES Estate Transfer Price" in Part 2 of Schedule 31 to the Expanded PRIME Contract, that the respective market values of each property are as set out in the column headed "Base Value" of that Schedule and that the properties are located in disadvantaged areas (for the purposes of stamp duty and Stamp Duty Land Tax) in accordance with the identification in the column headed "Disadvantaged Area" of that Schedule.

Former ES Estate Surplus Space

- 4.18 On or before 15 December 2003, DWP shall notify the PRIME Contractor of any Former ES Estate Surplus Property or Former ES Estate Surplus Area, which it does not intend to vacate at the Contract Expansion Date, and the FM Services which it requires at such Former ES Estate Surplus Space, in order that the provisions of clauses 7.21 to 7.25 of the Expanded PRIME Contract may apply.

Existing Service Contracts and Equipment Leases

- 4.19 Not used.

Dagenham

- 4.20 (a) the parties agree in the event that a compulsory purchase order (the "**Order**") pursuant to the Town and Country Planning Act 1990 (as varied from time to time) is confirmed in relation to:
- (i) Chequers Lane, Dagenham, RM9 6PS (ref: 14990006) ("**Dagenham**"); or
 - (ii) 11 Cop Lane, Fleetwood, Lancashire, FY7 6HU (ref: 18990366) ("**Fleetwood**")

the PRIME Contractor:

- (1) will negotiate with the relevant authority on behalf of PRIME Property as well as DWP and will use its reasonable endeavours (including where reasonably necessary and at the cost of DWP the commencement of proceedings) to secure the payment to DWP of all compensation properly available under the legislation as a result of the Order being confirmed and PRIME Property will not agree with the relevant authority the level of compensation payable to DWP without DWP's prior written consent (not to be unreasonably withheld or delayed); and
 - (2) will not be liable after the Order has been confirmed for failure to fulfil the Facility Output Requirements at Dagenham and/or Fleetwood pursuant to this Agreement;
- (b) the parties further agree that any request or claim by DWP for the provision of alternative accommodation resulting from the Order being confirmed will be treated by the parties as a Department's Increase Enquiry pursuant to Part 3b of Schedule 10 of the Project Agreement.

PART 3 - EXPANDED PRIME CONTRACT

5. COMING INTO FORCE OF THE AMENDMENTS TO EXPANDED PRIME CONTRACT

5.1 Subject to and in accordance with the provisions of this Second Supplemental Agreement, with effect from 00:01 hours on 15 December 2003 the PRIME Contract shall be amended in the terms of the Contract Expansion Amendments and will be read and construed and otherwise take effect in the form of the Expanded PRIME Contract.

5.2 For the purposes of this clause, "**Contract Expansion Amendments**" means the deletions, insertions and other amendments in the document set out in Schedule 7 [*Expanded PRIME Contract*] when compared against the Amended PRIME Contract.

5.3 The Contract Expansion Amendments shall not operate to rescind the Amended PRIME Contract and shall not prejudice or affect the Parties' acts omissions and associated duties, rights and interests prior to the Contract Expansion Amendments the coming into effect on the Contract Expansion Date with the intention that any such acts omissions and associated duties, rights and interests shall be governed by and referable to the relevant PRIME Contract. To avoid doubt, from the Contract Expansion Date, all acts omissions and associated duties, rights and interests shall be governed by and referable to the Expanded PRIME Contract, save that to the extent that such acts omissions and associated duties, rights and interests occurred and accrued on or before the Contract Expansion Date, they shall be governed by and referable to the relevant PRIME Contract, being either the Initial PRIME Contract or the Amended PRIME Contract as the case may be.

5.4 To avoid doubt, the PRIME Contractor shall commence the Operations in respect of the Facilities provided from Sites which are Former ES Estate Properties with effect from 00:01 at the beginning of the Contract Expansion Date and, subject to the provisions of the Expanded PRIME Contract and this Agreement, shall thereafter continue to implement the Operations throughout the Operating Period.

5A IMPLEMENTATION

Implementation Plan

5A.1 The PRIME Contractor will carry out all procedures necessary for the implementation of the Operations at the Former ES Estate Properties with effect from the Contract Expansion Date in accordance with the Implementation Plan and DWP agrees to grant the PRIME Contractor access to any Former ES Estate Properties (on terms set out in Section A of Part 1 of Schedule 34 [*Use of Sites*] of the PRIME Contract, as if such terms applied to the Former ES Estate Properties) for the purposes of carrying out such procedures and for the purpose of carrying out such surveys as shall be necessary in

order that the PRIME Contractor can comply with its obligations in clauses 5A.12 and 5A.13 of this Agreement and so that the PRIME Contractor will be able to comply with its obligations in clause 10 of the Expanded PRIME Contract.

Generic Method Statement

- 5A.2 (a) DWP and the PRIME Contractor have agreed the generic method statement in the form attached in Part 4 of Schedule 8 to the Expanded PRIME Contract (the "**Generic Method Statement**").
- (b) The PRIME Contractor must submit to DWP its generic disaster recovery proposal in accordance with Good Industry Practice for the Existing ES Sites, by the Contract Expansion Date.

Resource Schedule

5A.3

- (a) The PRIME Contractor shall provide a draft human resource schedule setting out the level of human resources to be employed by the PRIME Contractor to deliver the Operations at each Facility and Minor Occupancy that the PRIME Contractor is required to provide in accordance with the provisions of this Agreement, as required by Section 1(i) of Part 4 of Schedule 8 to the Expanded PRIME Contract ("**the Resource Schedule**") provided that:
- (i) the total number of human resources set out in the draft Resource Schedule shall not be less than; and
 - (ii) the distribution across of the human resources across such Facilities and Minor Occupancies shall not be materially different to:
 - (1) the amount or distribution (as the case may be) proposed in the interim Resource Schedule attached to the Generic Method Statement at the Contract Expansion Date, in relation to the Facilities set out in Part 4b of Schedule 17 to the Expanded PRIME Contract and Minor Occupancies set out in Part 5b of Schedule 17 to the Expanded PRIME Contract; or
 - (2) the amount or distribution (as the case may be) of the resources delivering the Operations immediately prior to the Contract Expansion Date, in relation to Facilities set out in Part 4a of Schedule 17 to the Expanded PRIME Contract and Minor Occupancies set out in Part 5b of Schedule 17 to the Expanded PRIME Contract.

- (b) The PRIME Contractor shall provide a draft Resource Schedule in the agreed form for DWP's review by 15 January 2004, and subject to DWP's review and approval, a final Resource Schedule shall be implemented by 31 January 2004. Such final Resource Schedule shall be inserted as an attachment to the Generic Method Statement.
- (c) The parties acknowledge that an interim Resource Schedule shall apply (as attached to the Generic Method Statement at the Contract Expansion Date) until the Resource Schedule has been agreed in accordance with sub-paragraph (b) above.

5A.4 [Not used]

Staffing and organisation structure

5A.5 By 1 February 2004 the PRIME Contractor must have completed the training of up to 32 additional trainers, being members of DWP staff who will act as trainers of other DWP staff who will have access to the following PRIME Contractor's computer systems;

- (a) MAXIMO
- (b) ATHENA
- (c) or such other equivalent or replacement computer systems to those set out in paragraphs (i) and (ii) above,

5A.6 At the Contract Expansion Date the PRIME Contractor must have:

- (a) in place its organisational structure in accordance with the Implementation Plan,
- (b) have employed or have available to it by secondment or otherwise staff members (save for the Employees),

in each case as verified in accordance with clause 5A.11.

Contracts and systems

5A.7 Subject to clause 5A.9, at the Contract Expansion Date the PRIME Contractor shall have entered into or assumed all Service Contracts necessary to ensure delivery of the FM Services to DWP from that date.

5A.8 Subject to clause 5A.9, the PRIME Contractor shall have in place three months after the Contract Expansion Date the necessary management information systems and financial systems to enable the Performance Measuring System to operate from that date in accordance with its design.

Until the systems are in place, the PRIME Contractor will collect the data required for the purposes of preparing the Performance Report, but the Performance Report shall not be generated until such time as the systems are in place. When the Performance Report is generated, the PMS Deduction Amount for each Facility for the Contract Months between the Contract Expansion Date and the date on which the systems are in place shall be calculated. If such systems are not in place by the end of the third Contract Month following the Contract Expansion Date then until the first day of the Contract Month after it has been verified in accordance with clause 5A.11 that such systems are in place, DWP may monitor the performance of the FM Services by the PRIME Contractor in each Contract Month by measuring such performance at a sample of Facilities in a manner which, in the bona fide opinion of DWP, enables the Performance Measuring System to function reasonably closely to the manner in which the Parties intend it to function. The results of such operation of the Performance Measuring System in respect of such sample testing shall be extrapolated across all of the Facilities then occupied by DWP. For the avoidance of doubt, such sample Facilities may be selected in DWP's absolute discretion, may be of any size and may vary from Contract Month to Contract Month.

- 5A.9 Where DWP notifies the PRIME Contractor pursuant to clause 7.14 of the Expanded PRIME Contract of any Former ES Estate Surplus Space with respect to such Former ES Estate Surplus Space the PRIME Contractor shall not be obliged to comply with clauses 5A.2 to 5A.8 until 15 March 2004.

Extension of time for delay

- 5A.10 Where it is unable to comply with clauses 5A.2 to 5A.8 due to a delay caused by circumstances beyond its control, the PRIME Contractor shall be entitled to an extension of time for compliance with any such clauses equal to the period of the delay. For the purposes of this clause a delay shall be caused by circumstances beyond the control of the PRIME Contractor if it results from any act or omission of:

- (a) DWP, its staff or employees; or
- (b) any other person, other than the Service Providers or any other subcontractor of the PRIME Contractor, the PRIME Contractor's direct suppliers or any direct supplier of a Service Provider or other subcontractor of the PRIME Contractor. For the purposes of this clause the terms Service Provider, subcontractor and supplier include any proposed Service Providers or subcontractors of the PRIME Contractor, any proposed direct suppliers of the PRIME Contractor, any Service Provider or subcontractor of the PRIME Contractor and any tier of subcontractor of the PRIME Contractor; or
- (c) an Existing Service Provider.

Verification Procedures

- 5A.11 (a) The PRIME Contractor shall have complied with clause 5A.5 if the training of all such members of DWP staff has been carried out in accordance with the training plan to be agreed with DWP as soon as possible after the date of this Agreement and in any event by 1 February 2004;
- (b) the PRIME Contractor shall have complied with clause 5A.6(a) if it has in place a structure of sufficient size, composition and functionality to deal efficiently with DWP structure at a national, regional and area level including a list of functions for all management roles at each level of the PRIME Contractor's Facilities Management Team and the functionality of such team has been agreed with DWP;
- (c) the PRIME Contractor shall have complied with clause 5A.6(b) if the employment or secondment of staff members has been carried out in accordance with a staffing plan, making appropriate reference to the transfer of Employees under TUPE, to be agreed with DWP, acting reasonably, as soon as possible after the date of this Agreement and in any event by the Contract Expansion Date; and
- (d) three Contract Months after the Contract Expansion Date, in order to ascertain whether the PRIME Contractor has complied with clause 5A.8, DWP and the PRIME Contractor will carry out a joint testing of such systems using such hypothetical examples of performance by the PRIME Contractor of the FM Services as DWP may choose. If such tests show to the reasonable satisfaction of DWP that the systems operate in such a manner as to enable the Performance Measuring System to operate in accordance with its design, then the PRIME Contractor shall have complied with clause 5A.8. If such tests show to the reasonable satisfaction of DWP that the systems do not operate at the end of the third Contract Month after the Contract Expansion Date, in such a manner as to enable the Performance Measuring System to operate in accordance with its design, then DWP shall exercise its rights under clause 5A.8.
- 5A.12 Where the PRIME Contractor notifies DWP prior to the Contract Expansion Date that an Existing ES Site does not comply with the requirements of all appropriate fire regulation, fire legislation and guidance, DWP agrees to grant the PRIME Contractor access to such Existing ES Sites prior to the Contract Expansion Date (on terms to be notified by DWP on a ES Site by ES Site basis) to enable the PRIME Contractor to carry out the necessary works and/or to prepare the programme referred to in clause 5A.13;
- 5A.13 The PRIME Contractor shall, by no later than 6 months after Contract Expansion Date, deliver to DWP a plan for all sites which will not, at the Contract Expansion Date, comply

with all relevant fire regulations and legislation and guidance relating thereto, setting out all works necessary for achieving compliance with the same and the PRIME Contractor's programme (including interim milestones) for completing such work by no later than the date two (2) years after the Contract Expansion Date. In this regard:

- (a) the programme shall identify any anticipated effect of such works on the number of Available Business Square Metres and/or the delivery of FM Services;
- (b) the PRIME Contractor may revise the dates for the start and end of those works upon giving DWP 20 Business Days' notice provided that no such revision will result in DWP having less than 10 Business Days' notice of the carrying out of any such works;
- (c) the PRIME Contractor shall not effect any such works save in accordance with the programme, or the revision of the programme pursuant to sub-clause 5A.13(b); and
- (d) with effect from the Contract Expansion Date clause 10.15 of the Expanded PRIME Contract shall apply in respect of such works as if the reference in that clause to Maintenance Works were a reference to such works.

5A.14 **Security Risk Assessments**

The PRIME Contractor shall within 3 months of the Contract Expansion Date conduct a Standard Security Risk Assessment at each Facility provided from a Former ES Estate Property.

5B **INTERIM PAYMENT ARRANGEMENTS**

5B.1 Notwithstanding the provisions of clauses 15.1, 15.2, 15.2A and 15.3 of the Expanded PRIME Contract, clauses 5B.2 to 5B.7 shall apply in respect of the period from 15 December 2003 to 31 December 2003 (inclusive) for Facilities which are provided from Sites which are Former ES Estate Properties and Minor Occupancies set out in Part 5b of Schedule 17 [*Payment Provisions*]. The remaining provisions in clause 15 of the Expanded PRIME Contract shall continue to apply *mutatis mutandis*, as if the Interim Amount Invoice had been submitted in accordance with the terms of clause 15.2 of the Expanded PRIME Contract.

5B.2 On 15 December 2003, the PRIME Contractor shall submit to the Department's Representative an Interim Amount Invoice in place of the Basic Amount Invoice, together with such supporting documentation as DWP, acting reasonably, has previously notified the PRIME Contractor it will require (a "**Contract Payment Statement**") in respect of

Facilities which are provided from Sites which are Former ES Estate Properties and Minor Occupancies set out in Part 5b of Schedule 17 [*Payment Provisions*].

Interim Amounts

5B.3 The Interim Amount Invoice submitted pursuant to clause 5B.2 above shall be calculated as 54.8% of the sum of the following amounts:

- (a) for each Facility provided from a Site which is a Former ES Estate Property for the Basic Monthly Facilities Charge for that Facility;
- (b) for each Minor Occupancy set out in Part 5b of Schedule 17 [*Payment Provisions*] which amounts to the Basic Monthly MOFP Charge for that Minor Occupancy,

which amounts shall be calculated as if the Contract Expansion Date had been on 1 December 2003, together with Value Added Tax properly chargeable on such total sum.

5B.4 The Variable Amount Statement submitted pursuant to clause 15.4 of the Expanded PRIME Contract in January 2004 shall set out, as applicable:

- (a) for each Facility provided from a Site which is a Former ES Estate Property, 54.8% of the Adjusted Monthly Facilities Charge for that Facility and the amount which is the result obtained by subtracting the Basic Monthly Facilities Charge for that Facility for the month of December 2003 as if the Contract Expansion Date had been on 1 December 2003 from such Adjusted Monthly Facilities Charge (the "Interim Monthly Facilities Charge Adjustment Amount") which amount may be positive or negative; or
- (b) for each Minor Occupancy set out in Part 5b of Schedule 17 [*Payment Provisions*], 54.8% of the Adjusted Monthly MOFP Charge for that Minor Occupancy for the month of December 2003 (as if the Contract Expansion Date had been on 1 December 2003) and the amount which the result obtained by subtracting the Basic Monthly MOFP Charge for that Minor Occupancy for the month of December 03 (as if the Contract Expansion Date had been on 1 December 2003) from such Adjusted Monthly MOFP Charge (the "Interim Monthly MOFP Charge Adjustment Amount"), which amount may be positive or negative.

5B.5 The Variable Amount Invoice submitted pursuant to clause 15.2 of the Expanded PRIME Contract in January 2004 shall be for the sum of each of the following amounts, as applicable:

- (a) for each Facility provided from a Site which is a Former ES Estate Property, the Accepted Interim Monthly Facilities Charge Adjustment Amount, if any, for that

Facility for the month of December 2003 (as if the Contract Expansion Date had been on 1 December 2003), which amount may be positive or negative; and

- (b) for each Minor Occupancy set out in Part 5B of Schedule 17 [*Payment Provisions*], the Accepted Interim Monthly MOFP Charge Adjustment Amount, if any, for that Minor Occupancy for the month of December 2003 (as if the Contract Expansion Date had been on 1 December 2003), which amount may be positive or negative.

5B.6 In all other respects, the Variable Amount Invoice submitted by the PRIME Contractor in January 2004, in accordance with clauses 15.5 and 15.6 of the Expanded PRIME Contract shall contain such amounts as are appropriate and proper (acting reasonably) bearing in mind that it relates to part of a Contract Month from 15 December to 31 December 2003.

6. MAINTENANCE AND UP-GRADING OF FACILITIES AND EQUIPMENT

Annual Maintenance Programmes

6.1 Not used.

6.2 From the Contract Expansion Date until 1 April 2004 the PRIME Contractor shall perform the Life Cycle Works at Former DSS Estate Existing Sites in accordance with the Life Cycle Maintenance Plans in existence immediately prior to the Contract Expansion Date. Until the Three Year Plans, Schedule of Maintenance Works and Schedule of Life Cycle Works have been finalised as contemplated by clause 6.3 of this Agreement, with effect from the Contract Expansion Date the PRIME Contractor shall perform such Maintenance Works and Life Cycle Works at Existing ES Sites as necessary to meet its obligations under the Expanded PRIME Contract. If the need arises for Life Cycle Works at Existing ES Sites, the PRIME Contractor shall advise the Department's Representative of such need as soon as reasonably practicable and request approval of the proposed commencement date and estimated duration of the requisite Life Cycle Works. The Department's Representative's approval of such works shall not be unreasonably withheld or delayed, having regard to the factors set out in paragraph 3.1(c) of Schedule 13 [*Review Procedure*] of the Expanded PRIME Contract.

6.3 The PRIME Contractor shall provide a Schedule of Maintenance Works, a Schedule of Life Cycle Works and a Three Year Plan in accordance with clause 10.7 of the Expanded PRIME Contract for the Contract Year commencing 1 April 2004 by 31 January 2004 for each Site and Minor Occupancy. If by 31 January 2004 (or such later date as agreed in writing) the PRIME Contractor has not provided a Schedule of Maintenance Works, a Schedule of Life Cycle Works and/or a Three Year Plan for each Site and Minor

Occupancy for the Contract Year commencing 1 April 2004 then in accordance with clause 10.7 of the Expanded PRIME Contract, DWP may propose its own Schedule of Maintenance Works, Schedule of Life Cycle Works and/or Three Year Plan (as the case may be) for each Site and Minor Occupancy for the Contract Year commencing 1 April 2004 and the PRIME Contractor shall be obliged to comply with such Schedule of Maintenance Works, Schedule of Life Cycle Works and/or Three Year Plan (as the case may be) until a Schedule of Maintenance Works, Schedule of Life Cycle Works and/or Three Year Plan (as the case may be) for each Site and Minor Occupancy for the Contract Year commencing 1 April 2004 have been agreed with DWP in accordance with clause 10.7 of the Expanded PRIME Contract (as if the Schedule of Maintenance Works, Schedule of Life Cycle Works over Three Year Plan had been submitted on 31 January in accordance with that clause).

- 6.4 So long as the PRIME Contractor complies with its obligations in respect of Life Cycle Works at the Sites, DWP acknowledges that at the Contract Expansion Date the Existing ES Sites which are used as Sites in order to satisfy the Facility Output Requirements shall, to the extent that they do not actually satisfy the Facility Output Requirements, be deemed to so satisfy and, subject to upgrades to the Required Accommodation Standards in accordance with clause 10.24 of the Expanded PRIME Contract, will continue to so satisfy the same.

7. **FM SERVICES**

Novation or Assignment of Former ES Existing Service Contracts

- 7.1 On the Contract Expansion Date the PRIME Contractor will accept novation or assignments of the Former ES Existing Service Contracts listed in Part 2 of Schedule 4 [*Existing Service Contracts*] in the form set out in Parts 2 and 3 of Schedule 25 to the Expanded PRIME Contract respectively.

- 7.2 Not used.

Indemnities

- 7.3 To avoid doubt, clauses 11.7 to 11.10F (inclusive) of the Expanded PRIME Contract shall apply only to Former DSS Employees.

Former ES Existing Service Contracts

- 7.4 For as long as the PRIME Contractor is liable to make any payment to any Former ES Existing Service Provider in relation to a Former ES Existing Service Contract, clause 15.22 of the Expanded PRIME Contract shall apply as if the reference to "Existing ES Service Contract" included Former ES Existing Service Contracts.

7.5 Not used.

Transfer of persons

7.6 For the purposes of this clause 7.6 to 7.26, the following terms shall have the following meanings:

- (a) **"Employment Claim"** means any claim (whether in contract or at common law or in tort or under statute (including the Treaty establishing the European Community and any directives made under the authority of that Treaty) for any remedy including, without limitation, for breach of contract, unfair dismissal, redundancy, statutory redundancy, failure to inform and consult, any claim under employment protection legislation, equal pay, sex, race or disability discrimination, discrimination on the grounds of sexual orientation and religion or belief, unlawful deductions from wages, a protective award or under the National Minimum Wage Act 1998 or the Working Time Regulations 1998 or for breach of statutory duty or of any other nature;

- (b) **"Employment Costs"** means the cost of providing contractual benefits; the cost of paying contractual bonus, commission and incentive arrangements (to the extent that they are not awarded on a discretionary basis) and employer's National Insurance contributions to which the relevant individual was entitled immediately prior to the Contract Expansion Date. For the avoidance of doubt, the definition of Employment Costs shall include:
 - (i) past and future pension costs directly arising in respect of any ES Employees, SP Employees and/or SP PRIME Employees who transfer to the PRIME Contractor or a Service Provider, but whose details are not contained in the Employment Data; and

 - (ii) future pension costs in respect of those ES Employees, SP Employees and/or SP PRIME Employees who transfer to the PRIME Contractor or a Service Provider, and whose details are contained in the Employment Data,

but shall exclude:

- (i) all costs arising in connection with past service pension benefits accrued up to the Contract Expansion Date, in respect of all the SP Transferring Employees and/or Transferring Employees (both as defined in clause 7.27) details of which are contained in the Employment Data; and

- (ii) all pension related costs arising in respect of any employees recruited by or on behalf of the PRIME Contractor or Service Providers after the Contract Expansion Date.

- (c) "**Employment Data**" shall have the meaning given to it in clause 7.11 and which, to avoid doubt, is contained within the White File.

- (d) "**ES Employees**" means all those employees of DWP who, immediately before 0001 hours on the Contract Expansion Date, are engaged in the provision of services which, following 00.01 hours on the Contract Expansion Date, will form part of the Operations provided to DWP by the PRIME Contractor or any PRIME Service Provider and any employee engaged as a replacement for any such employee in the ordinary course of business and the term "ES Employee" shall be interpreted accordingly. DWP believes that only the employees identified by employee number, National Insurance Number, location and salary in Part C of Schedule 10 hereto are ES Employees as at the date of this Agreement;

- (e) "**Existing Service Provider**" means any contractor, sub-contractor or supplier of any tier directly or indirectly engaged by DWP which provides any service which, from 00.01 hours on the Contract Expansion Date, will form part of the Operations;

- (f) "**PRIME Service Provider**" means any contractor, sub-contractor or supplier of any tier directly or indirectly engaged by the PRIME Contractor to provide all or any part of the Operations;

- (g) "**SP Employees**" means any person (other than the SP PRIME Employees) employed by an Existing Service Provider who, immediately before 0001 hours on the Contract Expansion Date, was engaged in the provision of any service which, from 00.01 hours on the Contract Expansion Date, will form part of the Operations provided to DWP by the PRIME Contractor or any PRIME Service Provider;

- (h) "**SP PRIME Employees**" means any person employed by an Existing Service Provider who, immediately before 00.01 hours on the Contract Expansion Date, was engaged in managing the provision of a service which, from 00.01 hours on the relevant Contract Expansion Date, will form part of the Operations provided to DWP directly or indirectly by the PRIME Contractor or any PRIME Service Provider;

- (i) **"White File"** means the file titled "Employment Data Schedule 9" held for the benefit of both parties by Messrs Lovells and initialled by the parties hereto;

7.7 DWP and the PRIME Contractor acknowledge and agree that:

- (a) the provision of one or more of the Operations by the PRIME Contractor and/or the assumption of such services formerly provided by an Existing Service Provider as contemplated by the Second Supplemental Agreement (in relation to the Former ES Estate Properties) will constitute one or more transfers of undertakings for the purposes of the Transfer Regulations;
- (b) save in relation to any benefit under the Restructured PCSPS or the Existing Service Provider's Scheme (both as defined in clause 7.27) (other than those benefits provided under those schemes which are to be treated under the Transfer Regulations as not part of the Restructured PCSPS or the Existing Service Provider's Scheme), agree that, with effect from 00.01 hours on the Contract Expansion Date, the contracts of employment (and all rights, duties and liabilities associated with such contracts) of the ES Employees will transfer to the relevant PRIME Service Provider, under the Transfer Regulations;
- (c) save in relation to any benefit under the Restructured PCSPS or the Existing Service Provider's Scheme (other than those benefits provided under those schemes which are to be treated under the Transfer Regulations as not part of the Restructured PCSPS or the Existing Service Provider's Scheme), agree that, with effect from 0001 hours on the Contract Expansion Date, the contracts of employment (and all rights, duties and liabilities associated with such contracts) of the SP PRIME Employees will transfer to the PRIME Contractor and the contracts of employment (and all rights, duties and liabilities associated with such contracts) of the SP Employees will transfer to the relevant PRIME Service Provider under the Transfer Regulations;
- (d) DWP shall (and shall use reasonable endeavours to procure that the Existing Service Providers shall) and the PRIME Contractor shall (and shall procure that any PRIME Service Providers shall) comply with all their respective obligations which the Transfer Regulations impose on a transferor and a transferee (as applicable) both before, on or after a relevant transfer.

7.8 Subject always to clause 7.7(d), DWP shall indemnify and keep indemnified the PRIME Contractor (on behalf of itself and the PRIME Service Providers) against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any Employment Claim by an ES Employee as a result of anything done or omitted to be done in relation to the employment of the ES Employee by DWP prior to

the Contract Expansion Date PROVIDED ALWAYS that the PRIME Contractor shall (and shall procure that the PRIME Service Providers shall):

- (a) as soon as reasonably practicable give written notice to DWP of any matter in respect of which the indemnity is being or may be claimed (stating in reasonable detail the nature of the matter and, so far as practicable, the amount claimed); and
- (b) take all reasonable steps to mitigate and/or minimise any potential losses, costs, liabilities, expenses, actions, proceedings, claims and demands and comply with any reasonable instructions by DWP in respect of such steps.

7.9 Subject to clause 7.7(d), the PRIME Contractor shall indemnify and keep indemnified DWP (on behalf of itself and the Existing Service Providers) against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with any Employment Claim by any ES Employee, SP PRIME Employee or SP Employee as a result of anything done by the PRIME Contractor, any PRIME Service Provider or any firm, person or company engaged (whether directly or indirectly) by the PRIME Contractor or any PRIME Service Provider or omitted to be done by them after 0001 hours on the Contract Expansion Date or arising before the Contract Expansion Date as a result of the PRIME Contractor (or any PRIME Service Provider) proposing to employ the ES Employees, SP Employees or SP PRIME Employees on less favourable terms and conditions of employment or to take any other measure in relation to their employment.

7.10 Where any ES Employee, SP Employee or SP PRIME Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) after the Contract Expansion Date in respect of the period before the Contract Expansion Date, the same shall be paid by the PRIME Contractor (or any PRIME Service Provider) who shall, within 30 days of making any demand and providing any supporting information or documentation which may reasonably be required by DWP, be indemnified by DWP, pro rated in respect of the period before the Contract Expansion Date. Where any ES Employee, SP PRIME Employee or SP Employee is due to be paid remuneration (such as salary, holiday pay, commission and all other payments made to the employee) before the Contract Expansion Date in respect of the period after the Contract Expansion Date, the same shall be paid by DWP/Existing Service Providers who shall, within 30 days of making any demand and providing any supporting information and documentation which may reasonably be required by the PRIME Contractor, be indemnified in respect thereof by the PRIME Contractor pro rated in respect of the period after the Contract Expansion Date.

Redundancy costs

- 7.11 The PRIME Contractor and DWP agree that DWP has provided information, documentation and data to the PRIME Contractor in relation to the ES Employees, SP PRIME Employees and SP Employees prior to 16 August 2003 (the "**Employment Data**" as is contained within the White File). DWP acknowledges that the Employment Data may be incomplete or inaccurate.
- 7.12 DWP and the PRIME Contractor agree that the employment of no more than the number of employees identified in the Employment Data (as shown in the Schedule of Transferring Employees at Schedule 10 Parts A and B) ("**Assumed Number**") will transfer from each of DWP or an Existing Service Provider to the PRIME Contractor and/or PRIME Service Provider(s) on the Contract Expansion Date, under the Transfer Regulations. For the avoidance of doubt and as stated in clause 7.14(c), clause 7.13 shall only apply if more than the relevant Assumed Number transfer from either DWP or any individual Existing Service Provider.
- 7.13 In the event that the employment of more ES Employees, SP Employees and SP PRIME Employees than the relevant Assumed Number transfer from DWP or an individual Existing Service Provider to the PRIME Contractor and/or PRIME Service Provider(s) on the Contract Expansion Date, the relevant PRIME Contractor or PRIME Service Provider which receives more employees than expected may, subject always to clause 7.14, dismiss as redundant a number of PRIME Contractor Staff equal to the number by which the number of ES Employees, SP Employees and/or SP PRIME Employees who transfer from DWP or the relevant Existing Service Provider ("**Actual Number**") exceeds the relevant Assumed Number and DWP shall reimburse the costs incurred in connection with any such redundancies in accordance with clause 7.15, provided always that:
- (a) the PRIME Contractor shall as soon as reasonably practicable after the Contract Expansion Date (and in any event at least 7 days before the PRIME Contractor or the PRIME Service Provider begins collective or individual consultation with or in respect of the potentially redundant PRIME Contractor Staff member in accordance with this clause 7.13) notify DWP, in writing, that the relevant Actual Number exceeds the relevant Assumed Number;
 - (b) the PRIME Contractor shall provide (or procure that the relevant PRIME Service Provider(s) shall provide) such information and documentation as DWP may reasonably and lawfully require (within 14 working days of receiving such a request) including such information and documentation as it may reasonably require so that it can decide whether to give instructions in accordance with sub-clauses 7.13(c)(ii) and 7.13(e)(ii) and assess any potential liability which may arise from such instructions or potential instructions. For the avoidance of doubt, DWP and the PRIME Contractor agree that DWP may, depending on the circumstances

giving rise to the request, reasonably require the following information and documentation to be provided:

- (i) the proposed pool for redundancy selection, including whether the individuals making up the proposed redundancy pool are ES Employees, SP Employees or SP PRIME Employees;
- (ii) the proposed selection criteria and reason for such criteria being applied;
- (iii) the material terms and conditions of the employees who make up the proposed redundancy selection pool including details of notice periods, age, length of service, remuneration and any contractual entitlements to redundancy/severance;
- (iv) steps (if any) which have been taken to avoid the redundancies;
- (v) steps (if any) which have been taken to minimise the payments made to any redundant PRIME Contractor Staff member; and
- (vi) the amounts paid to and to be paid to the redundant PRIME Contractor Staff member including details of how the applicable amount was calculated.

DWP and PRIME Contractor agree that a request for information and documentation shall not be reasonable if it is disproportionately onerous in terms of time and/or cost likely to be incurred in complying with the same. This obligation shall be subject to data protection and other legal restraints from time to time in force;

(c)

- (i) the PRIME Contractor and the PRIME Service Providers shall use their reasonable endeavours to:
 - (1) reduce the number of redundancies; and
 - (2) reduce the costs associated with the redundancies,save to the extent that doing so would, in the PRIME Contractor's reasonable opinion:
 - (3) cause the PRIME Contractor or a PRIME Service Provider to incur unreasonable and disproportionate costs; or

- (4) render the PRIME Contractor unable to provide all or any part of the Operations or any part thereof to the standard required in accordance with the terms of this Agreement; or
 - (5) give rise to a material risk of a claim of any kind (except which, in the reasonable opinion of the PRIME Contractor, has no basis in law) by the relevant employee in respect of whom any such steps are taken (or any trade union or employee representative representing any such employee) against the PRIME Contractor or a PRIME Service Provider, bearing in mind that the PRIME Contractor or PRIME Service Provider (as appropriate) shall be obliged to use reasonable endeavours to persuade any individuals who may bring claims which do not have a reasonable prospect of success that that is in fact the case.
- (ii) To the extent that the foregoing sub-clause 7.13(c)(i) shall not apply, the PRIME Contractor shall (and shall procure that the PRIME Service Providers shall) comply with any reasonable instructions of DWP (in its reasonable opinion) with a view to:
- (1) reducing the number of redundancies;
 - (2) reducing the costs associated with the redundancies,

PROVIDED ALWAYS that all instructions are issued in a timely manner to the extent reasonably practicable (bearing in mind that it may not be reasonably practicable to give instructions until such time as DWP has received such information as it may reasonably require in accordance with sub-clause 7.13(b)) and that DWP shall indemnify and keep indemnified the PRIME Contractor (on behalf of itself and the PRIME Service Providers) against all and any costs, losses, liabilities, expenses, claims or demands arising out of or in connection with:

- (3) any claim of any kind by an employee of the PRIME Contractor or PRIME Service Provider (or any trade union or employee representative representing any such employee);
- (4) any strike, lock-out, work to rule or similar disruption to the business of the PRIME Contractor or a PRIME Service Provider as a result of official or unofficial industrial action, save to the extent that any losses, costs, liabilities, expenses, claims or demands arise from a failure by the PRIME Contractor or a PRIME Service

Provider to use endeavours which are reasonable in the PRIME Contractor's reasonable opinion (acting in good faith) to avoid any such official or unofficial industrial action. The PRIME Contractor shall, as soon as reasonably practicable, notify DWP if it comes to the attention of the PRIME Contractor or a PRIME Service Provider that any such industrial action is occurring, threatened or proposed,

where the principal reason for such a claim or action is the instruction by DWP in accordance with this clause 7.13(c)(ii).

The indemnity in this clause 7.13(c)(ii) shall not apply to the extent that DWP is otherwise obliged to reimburse the relevant cost, expense or liability under clauses 7.6 to 7.26 of this Agreement or clause 11.11 of the Expanded PRIME Contract.

- (d) the PRIME Contractor Staff member can reasonably be regarded as genuinely redundant (in the reasonable opinion of the PRIME Contractor, acting in good faith) under section 139 of the Employment Rights Act 1996;
- (e) (i) The PRIME Contractor shall (and shall procure that the relevant PRIME Service Provider shall) use reasonable endeavours to serve notice (being the minimum period required by law or under the contract of employment) to terminate the employment of any redundant PRIME Contractor Staff member as soon as reasonably practicable in all the circumstances after the Contract Expansion Date (which may include giving notice before any period of collective consultation has expired) save to the extent that such steps would, in the PRIME Contractor's reasonable opinion:
 - (1) cause the PRIME Contractor or a PRIME Service Provider to incur unreasonable and disproportionate costs; or
 - (2) render the PRIME Contractor unable to provide the Operations or any part thereof to the standard required in accordance with the terms of this Agreement; or
 - (3) give rise to a material risk of a claim of any kind (except which, in the reasonable opinion of the PRIME Contractor, has no basis in law) by the relevant employee in respect of whom any such step is taken (or any trade union or employee representative representing any such employee) against the PRIME Contractor or a PRIME Service Provider, bearing in mind that the PRIME Contractor or

PRIME Service Provider (as appropriate) shall be obliged to use reasonable endeavours to persuade any individuals who may bring claims which do not have a reasonable prospect of success that that is in fact the case.

(ii) To the extent that the foregoing sub-clause 7.13(e)(i) shall not apply, the PRIME Contractor shall (and shall procure that the PRIME Service Providers shall) comply with any reasonable instructions of DWP (in its reasonable opinion) to procure that notice to terminate the employment relationship is served on the relevant PRIME Contractor Staff member as soon as is reasonably practicable after the Contract Expansion Date PROVIDED ALWAYS that all instructions are issued in a timely manner to the extent reasonably practicable (bearing in mind that it may not be reasonably practicable to give instructions until such time as DWP has received such information as it may reasonably require in accordance with sub-clause 7.13(b)) and that DWP shall indemnify and keep indemnified the PRIME Contractor (on behalf of itself and the PRIME Service Providers) against all and any costs, losses, liabilities, expenses, claims or demands arising out of or in connection with:

- (1) any claim of any kind by an employee of the PRIME Contractor or PRIME Service Providers (or any trade union or employee representative representing any such employee);
- (2) any strike, lock-out, work to rule or similar disruption to the business of the PRIME Contractor or a PRIME Service Provider as a result of official or unofficial industrial action, save to the extent that any losses, costs, liabilities, expenses, claims or demands arise from a failure by the PRIME Contractor or a PRIME Service Provider to use endeavours which are reasonable in the PRIME Contractor's reasonable opinion (acting in good faith) to avoid any such official or unofficial industrial action. The PRIME Contractor shall, as soon as reasonably practicable, notify DWP if it comes to the attention of the PRIME Contractor or a PRIME Service Provider that any such industrial action is occurring, threatened or proposed,

where the principal reason for such claim or action is the instruction by DWP in accordance with this clause 7.13(e)(ii).

The indemnity in this clause 7.13(e)(ii) shall not apply to the extent that DWP is otherwise obliged to reimburse the cost, expense or liability under clauses 7.6 to 7.26 of this Agreement or clause 11.11 of the Expanded PRIME Contract;

- (f) the PRIME Contractor or PRIME Service Provider terminates the employment of the redundant PRIME Contractor Staff member as soon as practicable after the Contract Expansion Date and in any event no later than:
 - (i) where fewer than 100 employees are dismissed by the PRIME Contractor or any individual PRIME Service Provider, within 4 months of the Contract Expansion Date; or
 - (ii) where 100 or more employees are dismissed by the PRIME Contractor or any individual PRIME Service Provider, within 6 months of the Contract Expansion Date.

- (g) the PRIME Contractor shall and shall procure that the PRIME Service Providers shall use its or their reasonable endeavours (in the reasonable opinion of the PRIME Contractor, acting in good faith) to avoid making redundancies by, amongst other things:
 - (i) redeploying potentially redundant PRIME Contractor Staff members (who have, in the reasonable opinion of the PRIME Contractor, appropriate skills and experience or who would have relevant skills and experience after a reasonable amount of retraining) within its or their business and/or associated companies to the extent reasonably practicable. For the avoidance of doubt, the PRIME Contractor and PRIME Service Providers shall not be obliged to create jobs in order to comply with this sub-clause;
 - (ii) offering any suitable vacancies to any potentially redundant PRIME Contract Staff member employed by the PRIME Contractor or another PRIME Service Provider (as appropriate). For the avoidance of doubt, the PRIME Contractor and PRIME Service Providers shall not be obliged to create vacancies in order to comply with this sub-clause; and
 - (iii) procuring, that where reasonably practicable taking into account the PRIME Contractor's ability to provide all or any part of the Operations to the standard required in accordance with the terms of this Agreement and to recruit or engage individuals with the required level of skills and expertise, any individuals employed or otherwise engaged by the PRIME Contractor or PRIME Service Provider(s) either:

- (1) in case the number of ES Employees, SP Employees or SP PRIME Employees who transfer with effect from the Contract Expansion Date are insufficient to deliver the Operations; or
- (2) because it is otherwise anticipated that fewer employees will transfer with effect from the Contract Expansion Date than are needed to provide the Operations (or any part thereof),

are appointed on a temporary basis to the extent reasonably practicable, at least until the PRIME Contractor or PRIME Service Provider is in a position to determine whether a sufficient number of employees have, in fact, transferred on the Contract Expansion Date.

- (h) save in respect of any changes which are imposed by statutory provision or any legally binding obligation to change terms and conditions which pre-dates the Contract Expansion Date, the PRIME Contractor shall not and shall procure that the PRIME Service Providers shall not, change the terms and conditions of employment (including any terms and conditions relating to remuneration or severance/redundancy) of any potentially redundant PRIME Contractor Staff member until such time as the termination of the employment of all the employees who will be made redundant by such party has taken effect in accordance with the terms of this clause 7.13.

7.14 If more than one PRIME Service Provider or the PRIME Contractor and PRIME Service Provider(s) shall become responsible for the Operations (or any part thereof) previously provided by DWP or an individual Existing Service Provider:

- (a) the identity of each PRIME Contractor/PRIME Service Provider and number of employees whom, it is envisaged, will transfer to each such party shall be clearly stated in the Schedule of Transferring Employees and the PRIME Contractor warrants that such information is materially correct in the light of the applicable Assumed Number stated in the Schedule of Transferring Employees;
- (b) DWP shall use its reasonable endeavours to procure that the ES Employees, SP Employees and SP PRIME Employees transfer to (and in such numbers as may be stated in the Schedule of Transferring Employees) the relevant PRIME Contractor and PRIME Service Provider(s) identified by the PRIME Contractor in the Schedule of Transferring Employees;
- (c) no reimbursements shall be made under clause 7.15 unless the total number of ES Employees, SP Employees and SP PRIME Employees whose employment transfers automatically from either DWP or an individual Existing Service Provider

on the Contract Expansion Date exceeds the relevant Assumed Number as shown in the Schedule of Transferring Employees. For the avoidance of doubt, the PRIME Contractor will be responsible for (and bear any costs, liabilities or expenses which arise in connection with) any subsequent transfer of staff between the PRIME Contractor and the PRIME Service Provider(s) and/or between the PRIME Service Providers.

7.15 DWP shall be obliged to reimburse, in respect of each PRIME Contractor Staff member who is made redundant in accordance with clause 7.13, the following:

- (a) the Employment Costs paid or incurred in respect of the redundant PRIME Contractor Staff member between the Contract Expansion Date and the date on which the termination of his/her employment takes effect provided always that the redundant PRIME Contractor Staff member remains wholly or mainly engaged in the provision of the Operations or any part thereof (with a view to improving the standard of such service) until such time as the termination of his/her employment takes effect;
- (b) a payment in lieu of notice (or any unexpired period of notice), being the minimum period of notice required by law or under the redundant PRIME Contractor Staff member's contract of employment;
- (c) any statutory redundancy payment, contractual redundancy payment or redundancy entitlement set out in a collective bargaining agreement (which pre-dates the Contract Expansion Date) provided the individual has the legal right (immediately prior to Contract Expansion Date) to benefit from any such entitlement.

7.16 If a PRIME Contractor Staff member who is not a former ES Employee, SP Employee or SP PRIME Employee is made redundant in accordance with clause 7.13 DWP shall reimburse the relevant party in accordance with clause 7.15(a), (b) and (c), save that:

- (a) the amount of reimbursement under clause 7.15(b) shall be limited to the individual's statutory minimum notice entitlement (as at the Contract Expansion Date) under Section 86 (1) of the Employment Rights Act 1996; and
- (b) the amount of the reimbursement under clause 7.15(c) shall be limited to an amount equivalent to double the individual's entitlement to a statutory redundancy payment (as at the Contract Expansion Date) under Section 162 of the Employment Rights Act 1996.

7.17 No reimbursement shall be made under clause 7.15 in respect of the redundancy of any ES Employee, SP Employee or SP PRIME Employee whose employment either:

- (a) remains with ISS or Securitas (UK) Limited (or any person, firm or company directly or indirectly engaged by such party); or
- (b) transfers from ISS or Securitas (UK) Limited (or any person, firm or company directly or indirectly engaged by such party); or
- (c) transfers to Securitas (UK) Limited (or any person, firm or company directly or indirectly engaged by such party),

with effect from the Contract Expansion Date.

7.18 Subject always to the PRIME Contractor complying with the terms of clauses 7.11 to 7.17 (inclusive) and providing a statement detailing the redundancy payment paid to each redundant PRIME Contractor Staff member, the reimbursement under clause 7.15 shall be made within 28 days of the date on which the employment of the applicable PRIME Contractor Staff member terminates, or, if later, within 28 days of the date on which the PRIME Contractor has materially complied with all its obligations under clauses 7.11 to 7.17 (inclusive) .

Site closures

7.19 DWP and the PRIME Contractor acknowledge and agree that:

- (a) in calculating the Facilities Prices for the purposes of this Second Supplemental Agreement, the PRIME Contractor has taken into account and made an appropriate adjustment for:
 - (i) DWP's need to have the flexibility to vacate Flexi-Core Facilities pursuant to clause 17; and
 - (ii) the financial implications which will arise from DWP exercising its right to vacate the Flexi-Core Facilities, including in particular the statutory redundancy pay costs which are likely to arise pursuant to section 162 of the Employment Rights Act 1996 in respect of ES Employees, SP PRIME Employees and SP Employees who are wholly or mainly engaged in relation to the relevant Facility prior to it being vacated.
- (b) DWP recognises that the Employment Data may be inaccurate and/or incomplete and consequently the allowances that the PRIME Contractor has made in undertaking their Facilities Price calculations prior to the Contract Expansion Date to deal with Severance Costs may be incorrect.
- (c) The PRIME Contractor shall, after the first anniversary of the Contract Expansion Date:

- (i) calculate and provide a schedule (detailing location, age, length of service, salary) setting out the total Severance Costs actually incurred in respect of the ES Employees, SP PRIME Employees and SP Employees (who are wholly or mainly engaged in relation to the relevant Facility prior to it being vacated and in respect of whom steps cannot reasonably be taken with a view to avoiding their redundancy and/or to reducing the applicable Severance Costs) due to the vacation of Flexi-Core Facilities (in accordance with clause 17) to date;
 - (ii) calculate and provide a schedule detailing the expected Severance Costs likely to be incurred in respect of the ES Employees, SP Employees, SP PRIME Employees over the remainder of the contract term due to the vacation of the Flexi-Core Facilities in accordance with clause 17, in the PRIME Contractor's reasonable opinion;
 - (iii) calculate what the costs in (i) above would have been on the basis that all the relevant ES Employees, SP Employees and SP PRIME Employees deployed in Flexi-Core Facilities were entitled only to statutory Severance Costs calculated in accordance with section 162 of the Employment Rights Act 1996;
 - (iv) calculated what the costs in (ii) above would have been on the basis that all the relevant ES Employees, SP Employees and SP PRIME Employees deployed in Flexi-Core Facilities were entitled only to statutory Severance Costs calculated in accordance with section 162 of the Employment Rights Act 1996.
- (d) The parties shall consult in good faith with a view to agreeing the costs referred to in sub-clauses (c)(i) to (iv) inclusive having regard to, amongst other things:
- (1) the likelihood that ES Employees, SP Employees, SP PRIME Employees may cease to be wholly or mainly engaged in relation to the relevant Flexi-Core Facility for whatever reason after the Contract Expansion Date;
 - (2) steps which the relevant PRIME Contractor and/or PRIME Service Provider are likely to be able to take in order to reduce the Severance Costs and/or to redeploy relevant staff. For the avoidance of doubt, no reimbursement shall be made under this clause 7.19 to the extent that the PRIME Contractor and/or PRIME Service Provider could reasonably be expected to take such steps and consequently either avoid or reduce Severance Costs;

- (3) any assumptions regarding the timing and quantum of vacation of Flexi-Core Facilities made at the time of pricing the contract by the PRIME Contractor.
- (e) Once the parties (acting in a timely manner) have agreed amounts referred to in sub-clause (d) the PRIME Contractor shall (if and to the extent applicable) re-calculate the amounts referred to in sub-clause (c)(i)-(iv). If there is no agreement on any of the relevant sums, the matter will be referred to the Disputes Resolution Procedure.
- (f) The PRIME Contractor shall provide (or shall procure that the relevant PRIME Service Providers shall provide) in a timely manner such information and documentation as DWP may reasonably require to satisfy itself (acting reasonably) that the schedules and calculations to which reference is made in this clause 7.19 have been undertaken/compiled in an accurate manner by the PRIME Contractor. DWP will act in a timely manner in considering such information or documents so supplied.
- (g) Provided that the PRIME Contractor has complied with sub-clause (f) and subject to any adjustment pursuant to sub-clause (e) (or as determined under the Disputes Resolution Procedure), DWP shall pay the PRIME Contractor an amount equal to the sum of:
- (i) the sum of the costs set in (c)(i) above, less the sum of costs in accordance with sub-clause (c)(iii) above;
 - (ii) the NPV, calculated at the PRIME discount rate, of the stream of costs in sub-clause (c)(ii) above, less the NPV, calculated at the PRIME discount rate, of the stream of costs in sub-clause (c)(iv) above.
- (h) For the avoidance of doubt, DWP shall have the option to convert the payment determined in accordance with sub-clause (g) above into a Capital Payment Stream by operation of the Change Mechanism.
- (i) For the purposes of this clause 7.19, "**Severance Costs**" means any contractual or statutory redundancy pay of an ES Employee, SP Employee or SP PRIME Employee. For the avoidance of doubt:
- (i) Severance Costs shall not include any employment costs arising during the notice period or as a result of a payment being made in lieu;
 - (ii) contractual redundancy pay shall be those contractual arrangements in place in respect of the relevant individual immediately before the Contract

Expansion Date (but adjusted to reflect any adjustment in basic pay made in the normal course of business which has (or is expected to have occurred) at the time of the actual or projected dismissal).

Employment Costs

7.20 DWP and the PRIME Contractor acknowledge that:

- (a) the employment-related information provided by DWP and/or its Existing Service Providers to the PRIME Contractor and/or the PRIME Service Providers, as part of the Employment Data, may be inaccurate and/or incomplete;
- (b) to the extent that such information has not been provided or may be inaccurate, the PRIME Contractor and the PRIME Service Providers have had no option but to make certain assumptions as to the on-going Employment Costs of the relevant Assumed Number of ES Employees, SP Employees and SP PRIME Employees with effect from the Contract Expansion Date, which assumptions are clearly set out in a document provided to DWP entitled "Staff Transfer - Pricing Issues", (the "Pricing Document"), a copy of which has been provided to DWP and is also contained within the White File. An application of these assumptions gives rise to the assumed total annual Employment Costs in respect of the Assumed Number of employees, who, it is envisaged, will transfer from each Existing Service Provider or DWP to the PRIME Contractor and/or PRIME Service Provider(s), as set out in the Schedule of Transferring Employees, ("**Assumed Total Annual Employment Costs**");
- (c) the assumptions which have been made may be incorrect and accordingly the on-going Employment Costs of the ES Employees, SP Employees and SP Employees with effect from the Contract Expansion Date may be higher or lower than that envisaged by the PRIME Contractor and the PRIME Service Providers.

7.21 The PRIME Contractor may serve written notice on DWP, within 12 months of the Contract Expansion Date, requiring that the actual Employment Costs incurred and which are likely to be incurred over the remaining duration of the Contract by the PRIME Contractor and the PRIME Service Providers in respect of all the ES Employees, SP Employees and SP PRIME Employees who transferred to them be reconciled against the assumptions which have been made regarding on-going Employment Costs which are stated in the Pricing Document. If notice is served by the PRIME Contractor in accordance with this clause 7.21, it shall prepare (at its own cost) and provide to DWP a schedule detailing:

- (a) the actual Employment Costs:

- (i) incurred during the 12 months after the Contract Expansion Date; and
- (ii) likely to be incurred during the remainder of the Contract,

by the PRIME Contractor or any PRIME Service Providers in respect of each ES Employee, SP Employee and SP PRIME Employee who transferred to it, broken into its constituent elements (namely salary, costs of various benefits, pension contribution, etc) ("**Actual Employment Costs**");

- (b) the Employment Costs which would have been incurred in respect of each such individual over such periods had the assumptions set out in the Pricing Document been accurate, broken down into its constituent elements (namely salary, costs of various benefits, pension contribution, etc) ("**Assumed Employment Costs**").

7.22 Following receipt by DWP of the schedule referred to in Clause 7.21 the parties shall consult in good faith with a view to agreeing (in a timely manner) the difference between the Actual Employment Costs and the Assumed Employment Costs (whether in the favour of the PRIME Contractor or DWP) for the period after the Contract Expansion Date up to the date of the notice referred to in 7.21 above and on-going for the remainder of the Operating Period having regard to:

- (a) the following guiding principles:
 - (i) the assumptions in the Pricing Document and Assumed Total Annual Employment Costs as contained within the White File should have been calculated by the PRIME Contractor and PRIME Service Providers taking into account (in a materially accurate manner) the employment-related information provided by DWP in the Employment Data. No adjustment shall be made in the favour of the PRIME Contractor to the extent that the PRIME Contractor and/or a PRIME Service Provider have failed to do so;
 - (ii) no adjustment shall be made in respect of any ES Employees, SP Employees or SP PRIME Employees who are made redundant in accordance with clause 7.13;
 - (iii) no adjustments shall be made under this clause 7.22 in respect of the Employment Costs of any ES Employees, SP Employees or SP PRIME Employees whose employment either remains with or transfers from either ISS or Securitas (UK) Limited (or any firm, person or company directly or indirectly engaged by such party) with effect from the Contract Expansion Date;

- (iv) no adjustment shall be made to the extent that the difference between the Actual Employment Costs and Assumed Employment Costs arises from a change in law or changes to taxation or National Insurance obligations or requirements;
- (v) no adjustments shall be made in the favour of the PRIME Contractor to the extent that the PRIME Contractor and/or the relevant PRIME Service Provider have not used their reasonable endeavours to procure that:
 - (1) actual Employment Costs are not increased after the Contract Expansion Date to the extent reasonably practicable; and
 - (2) any discretion is exercised with a view to minimising the difference between Actual Employment Costs and Assumed Employment Costs to the extent reasonably practicable bearing in mind the duty of trust and confidence and industrial relations implications which may reasonably arise.

The parties acknowledge that the aim of this clause 7.22(a)(v) is to bring Actual Employment Costs down in line with Assumed Employment Costs as soon as reasonably practicable after the Contract Expansion Date.

- (vi) an appropriately pro-rated adjustment shall be made in respect of any ES Employees, SP Employees or SP PRIME Employees:
 - (1) whose employment terminated during the 12 month period after the Contract Expansion Date for whatever reason;
 - (2) who otherwise ceased to be wholly or mainly engaged in the provision of the Operations (or any part thereof) during the 12 month period after the Contract Expansion Date.

For the avoidance of doubt, no adjustment shall be made in respect of the period after the ES Employees, SP Employees or SP PRIME Employees ceased to be employed or so engaged;

- (b) the following factors :
 - (i) the effect of inflation during the 12 months after the Contract Expansion Date and the likely effect of inflation after that period;

- (ii) the likelihood of the employment of any ES Employees, SP Employees or SP Employees terminating for whatever reason after the first anniversary of the Contract Expansion Date; and
 - (iii) the likelihood that any ES Employees, SP Employees or SP Employees shall otherwise cease to be wholly or mainly engaged in the provision of the Operations (or any part thereof) for whatever reason after the first anniversary of the Contract Expansion Date.
- (c) In adjusting the Security Costs in accordance with clause 7.25, the parties recognise that account has already been taken of the Employment Costs stated in the Employment Data (which the parties acknowledge may be inaccurate or incomplete). Accordingly, in order to avoid any double recovery, any adjustment under this clause 7.22 shall only apply in respect of any ES Employees, SP Employees and SP PRIME Employees engaged in the Security Services who transfer to Securitas (UK) Limited (or any firm, person or company directly or indirectly engaged by such company to provide the Security Services) under the Transfer Regulations on the Contract Expansion Date to the extent that the actual Employment Costs in respect of such individuals exceeds the applicable Employment Costs for the relevant level of employee stated in the Employment Data.

7.22A DWP shall pay the PRIME Contractor the difference between the Actual Employment Costs and the Assumed Employment Costs agreed in accordance with clause 7.22.

7.22B For the avoidance of doubt, DWP shall have the option to convert the payment determined in accordance with Clause 22 above into a Capital Payment Stream by operation of the Change Mechanism.

7.22C In the event that DWP and PRIME Contractor fail to agree on any aspect of the matters referred to in Clause 7.22, the relevant aspect will be referred to the Dispute Resolution Procedure.

7.23 No adjustment shall be made unless the schedules detailing the Actual Employment Costs and Assumed Employment Costs to which reference are made in clause 7.21 are materially complete and have been compiled in a materially accurate manner having regard to the assumptions in the White File. For the avoidance of doubt, DWP acknowledges that the assumptions themselves may not, in fact, be correct.

7.24 No adjustment shall be made under clause 7.22, unless and until the PRIME Contractor has provided such information and documentation which DWP may require to satisfy itself (acting reasonably and in a timely manner) that the Assumed Total Annual Employment

Costs and schedule detailing the Assumed Employment Costs correspond with and are calculated materially accurately by reference to the same assumptions, which assumptions are clearly stated in the Pricing Document.

Securitas

7.25 DWP and the PRIME Contractor agree that:

- (a) The PRIME Contractor has calculated the FPs based on a facility by facility cost for the delivery of security services in relation to facilities provided from the Former ES Estate Properties in accordance with the terms of this Contract by one of the PRIME Service Providers, Securitas (UK) Limited ("**Securitas**") ("**Security Services**"), which costs shall be known as the "**Security Costs**" for the purposes of this clause.
- (b) The Schedule of Transferring Employees in Schedule 10, Part D sets out:
 - (i) the numbers of Security Officers;
 - (1) whom, it is envisaged, will transfer from DWP or an Existing Service Provider to Securitas on the Contract Expansion Date under the Transfer Regulations ("**Assumed Number of Security Officers**");
 - (2) employed by Securitas and wholly or mainly engaged in providing Security Services to DWP as at 16 August 2003 ("**Securitas Employees**"); and
 - (ii) the number of customer care officers whom, it is envisaged, will transfer from DWP or an Existing Service Provider to Securitas on the Contract Expansion Date under the Transfer Regulations ("**Assumed Number of Customer Care Officers**").
- (c) In the event that:
 - (i) the status of any Securitas Employees changes from security officer to customer care officer prior to the Contract Expansion Date; or
 - (ii) the actual number of security officers engaged in providing the Security Services who transfer from DWP or an Existing Service Provider to Securitas on the Contract Expansion Date under the Transfer Regulations ("**Actual Number of Security Officers**") is more or less than the Assumed Number of Security Officers; or

- (iii) the actual number of customer care officers engaged in providing the Security Services who transfer from DWP or an Existing Service Provider to Securitas on the Contract Expansion Date under the Transfer Regulations ("**Actual Number of Customer Care Officers**") is more or less than the Assumed Number of customer care officers;

the parties shall, within the 12 months following of the Contract Expansion Date, consult in good faith with a view to agreeing the effect on the Security Costs (whether in the favour of DWP or the PRIME Contractor) having regard to:

- (1) the number by which the Assumed Number of Security Officers is different from the Actual Number of Security Officers;
 - (2) the number by which the Assumed Number of Customer Care Officers is different from the Actual Number of Customer Care Officers;
 - (3) the number of Securitas Employees whose status has changed from security officer to customer care officer between 16 August 2003 and the Contract Expansion Date;
 - (4) the rates for customer care officers and security officers set out in Schedule 10, Part 5 paragraph 7.6, Tables B and C of the Expanded PRIME Contract; and
 - (5) the hours worked by the relevant security officers and customer care officers during the period leading up to the Contract Expansion Date.
- (d) The PRIME Contractor shall provide such information and documentation as DWP may reasonably require covering the changes listed in sub-clause (c) above so that it can consult in good faith with a view to agreeing the change to the Security Cost for each affected facility in accordance with sub-clause (c) in a timely manner.
 - (e) Once the effect on the Security Costs has been agreed in accordance with clause 7.25(c), the PRIME Contractor shall operate the Change Mechanism for a Type I change for each of the Facilities where the costs have changed as identified by sub-clause (c) above, and in each case the Change in Costs shall be the amounts determined in accordance with the sub-clause (c) above, plus the amount set out in clause 4.2(e) of Part 1 of Schedule 10 of the Expanded PRIME Contract as if the changes were Departments Service Changes.

Contractor staff clause

7.26 Save as provided in clause 7.10 and save in respect of all costs arising in connection with past service pension benefits accrued up to the Contract Expansion Date in respect of all the SP Transferring Employees and/or Transferring Employees (both as defined in clause 7.27) details of which are contained in the Employment Data, the following provisions shall apply in the event that the PRIME Contractor or any Service Providers incurs any costs, losses, liabilities, expenses or demands as a result of any act or omission of any Existing Service Provider which may give rise to a claim by any SP Employee or SP PRIME Employee (or any trade union or employee representative representing any such employee) during the period up to and including the Contract Expansion Date:

- (a) PRIME Contractor, as soon as is reasonably practicable, on its own behalf and on behalf of any PRIME Service Provider:
 - (i) inform DWP in writing that such cost, loss, liability, expense or demand has arisen in relation to any SP Employee or SP PRIME Employee;
 - (ii) provide written details of the alleged cause of and circumstances giving rise to the relevant cost, loss, liability, expense or demand; and
 - (iii) identify (in writing) the Existing Service Provider which is allegedly responsible for the act or omission.

The PRIME Contractor shall provide (or shall procure that the relevant PRIME Service Provider shall provide) such additional information and documentation relating to the alleged act or omission as DWP may reasonably require.

- (b) DWP shall, as soon as is reasonably practicable, inform the PRIME Contractor whether the contract for services between DWP and the relevant Existing Service Provider (the "**Contract for Services**") contains any indemnity against which such cost, loss, liability, expense or demand, as identified under sub-clause (a) above, may be claimed by DWP ("**ESP Indemnity**"). On receipt of such information, it shall be for PRIME Contractor to decide whether further action should be taken in relation to the ESP Indemnity or not. Any such decision will be taken in a timely manner. The provisions of sub-clauses (c) to (g) (inclusive) will only apply if the PRIME Contractor decides that it requires further action to be taken.
- (c) DWP will, following consultation with the PRIME Contractor:

- (i) write to the relevant Existing Service Provider requesting settlement of the claim made by the PRIME Contractor under the relevant ESP Indemnity, provided always that there are reasonable grounds and evidence to substantiate any claims; and/or
- (ii) follow any relevant procedure contained in the Contract for Services for that purpose, provided that any costs and expenses incurred by DWP in following such a procedure shall be borne by the PRIME Contractor and DWP in equal shares.

Any resultant sums paid by the Existing Service Provider to DWP further to such action will be paid by DWP, as soon as practicable after receipt, to the PRIME Contractor.

- (d) If no sums, or inadequate sums (in the opinion of both DWP and the PRIME Contractor, acting reasonably after having consulted in good faith), are received from the Existing Service Provider further to sub-clause (c) above, DWP and PRIME Contractor shall consult in good faith about whether proceedings shall be issued by DWP to enforce the ESP Indemnity against the relevant Existing Service Provider. Such consultation shall include (but shall not be limited to) consideration of the potential cost of pursuing a claim, the potential value of any claim and its potential chance of success.
- (e) If agreement is not reached under sub-clause (d), the parties agree to seek the opinion of an appropriately qualified Counsel to determine whether the claim is more likely to succeed than not. Counsel will be identified and instructed on a joint basis with the parties acting reasonably having consulted in good faith. The parties shall share the costs and expenses incurred in instructing Counsel and procuring his opinion. Counsel's opinion will be final. If Counsel's opinion is that the claim would be more likely to succeed than not, then the provisions set out in sub-clause (f) shall apply. If Counsel's opinion is that the claim only stands a 50% chance of success or would be more likely to fail than succeed, then no proceedings shall be commenced and no further action shall be taken in relation to the alleged act or omission.
- (f) The parties agree that any proceedings brought further to clause 7.26(e) above shall be conducted in accordance with the Dispute Resolution Procedure. However, DWP and PRIME Contractor shall consult in good faith in relation to such conduct of the proceedings and DWP shall co-operate fully with any reasonable instructions of the PRIME Contractor. For the avoidance of doubt, instructions by the PRIME Contractor shall not be reasonable if, in the reasonable opinion of DWP, they are likely to give rise to costs and/or expenses being incurred unnecessarily or unreasonably.

- (g) DWP and PRIME Contractor shall each bear 50% of all costs, liabilities, expenses and demands associated with and/or related to the conduct of any proceedings in accordance with sub-clause (f).

Pensions

7.27 For the purposes of this clause 7.27 and clauses 7.28 to 7.37, the definitions set out at clause 7.6 shall apply and the following terms shall have the following meanings:

"Appointed Actuary" means an actuary appointed by DWP for the purposes of clauses 7.28 to 7.37;

"DWP Employees" means all those ES Employees who immediately before 00.01 hours on the Contract Expansion Date are members of the Restructured PCSPS;

"Existing Service Provider's Scheme" means the pension scheme or schemes (or that part thereof) operated by the Existing Service Provider of which a certificate had previously been issued by the Appointed Actuary confirming its or their broad comparability with the PCSPS and of which certain of the SP Employees are members;

"Government Actuary's Department Certificate" means the certificate issued by the Government Actuary's Department in respect of the LST Plan or the Service Provider's Plan confirming the broad comparability of the LST Plan or the Service Provider's Plan to the Restructured PCSPS or the PCSPS;

"LST Plan" means the pension scheme or schemes established or nominated by the PRIME Contractor for the purposes of clause 7.28 and which satisfies the conditions as set out at clause 7.29;

"LST Plan's Actuary" means the actuary from time to time appointed to the LST Plan in accordance with section 47 of the Pensions Act 1995 and regulations made thereunder;

"PCSPS" means the Principal Civil Service Pension Scheme in force immediately before 1 October 2002 or, if the context so requires, immediately before the date on which an SP Employee or SP PRIME Employee ceased to be a member, if earlier;

"Restructured PCSPS" means the Principal Civil Service Pension Scheme as re-structured on 1 October 2002 (including if applicable the partnership option) and in force as at the date of this Agreement;

"Service Provider's Plan" means the pension scheme or schemes established or nominated by the Service Provider for the purposes of clause 7.28 and which satisfies the conditions as set out at clause 7.29;

"Service Provider's Plan's Actuary" means the actuary from time to time appointed to the Service Provider's Plan in accordance with section 47 of the Pensions Act 1995 and regulations made thereunder;

"SP Pension Employees" means all those SP Employees and SP PRIME Employees who immediately before they became employed by an Existing Service Provider were members of the PCSPS and who immediately before the Contract Expansion Date were members of the Existing Service Provider's Scheme;

"SP Transferring Employees" means all SP Pension Employees who transfer to a Service Provider on and with effect from the Contract Expansion Date;

"Transferring Employees" means all SP Pension Employees who transfer to LST on and with effect from the Contract Expansion Date.

7.28 The PRIME Contractor:

- (a) undertakes that subsequent to the Contract Expansion Date all Transferring Employees who immediately before the Contract Expansion Date are members of an Existing Service Provider's Scheme are offered membership of the LST Plan on and from the Contract Expansion Date and, if they consent, to join and (except in the case of any Transferring Employee who opts out of membership of the LST Plan in writing) remain members of the LST Plan throughout the period of their employment in connection with the Operations; and
- (b) will procure that subsequent to the Contract Expansion Date all DWP Employees and all SP Transferring Employees who immediately before the Contract Expansion Date are members of the Restructured PCSPS or an Existing Service Provider's Scheme are offered membership of the Service Provider's Plan on and from the Contract Expansion Date and, if they consent, to join and (except in the case of any DWP Employee or SP Transferring Employee who opts out of membership of the Service Provider's Plan in writing) remain members of the Service Provider's Plan throughout the period of their employment in connection with the Operations.

7.29 The PRIME Contractor undertakes that the LST Plan, and will procure that the Service Provider's Plan, shall be:

- (a) an exempt approved scheme for the purposes of Chapter I Part XIV of the Income and Corporation Taxes Act 1988;

- (b) a scheme which is certified by the Government Actuary's Department as a broadly comparable scheme to the Restructured PCSPS or the PCSPS (as the case may be); and
- (c) a scheme which is capable of receiving a bulk transfer from the Restructured PCSPS or the Existing Service Provider's Scheme.

7.30 The PRIME Contractor undertakes that it will, and procures that the Service Provider will submit such documents and information as DWP may reasonably require to enable it to satisfy itself that the LST Plan and the Service Provider's Plan comply with the requirements of clause 7.29 and deliver a Government Actuary's Department Certificate to DWP no earlier than three months, and no later than 7 days before the Contract Expansion Date.

7.31 The PRIME Contractor will:

- (a) use best endeavours to procure that the LST Plan accepts a bulk transfer from the trustees or administrators of the Existing Service Provider's Scheme in respect of all Transferring Employees who become members of the LST Plan and request the trustees or administrators of the Existing Service Provider's Scheme to make such a transfer in respect of them; and use best endeavours to procure that the terms of any such bulk transfer will comply fully with the requirements set out in the Statement of Practice in respect of Staff Transfers in the Public Sector, issued by the Cabinet Office in January 2000;
- (b) procure that the Service Provider's Plan accepts a bulk transfer from the trustees or administrators of the Restructured PCSPS in respect of all DWP Employees who become members of the Service Provider's Plan and request the trustees or administrators of the Restructured PCSPS to make such a transfer in respect of them. Notwithstanding any other provision in this Agreement, the terms of any such bulk transfer will comply fully with the requirements set out in the Statement of Practice in respect of Staff Transfers in the Public Sector, issued by the Cabinet Office in January 2000; and
- (c) use reasonable endeavours to procure that the Service Provider's Plan accepts a bulk transfer from the trustees or administrators of the Existing Service Provider's Scheme in respect of all SP Transferring Employees who become members of the Service Provider's Plan and request the trustees or administrators of the Existing Service Provider's Scheme to make such a transfer in respect of them; and use best endeavours to procure that the terms of any such bulk transfer will comply fully with the requirements set out in the Statement of Practice in respect

of Staff Transfers in the Public Sector, issued by the Cabinet Office in January 2000.

7.32 The PRIME Contractor will :

- (a) use best endeavours to procure that, subject to clause 7.34, in all cases of Transferring Employees in respect of whom a transfer is made to the LST Plan in accordance with clause 7.31(a) the bulk transfer value (except in the case of money purchase benefits as defined in section 181 of the Pension Schemes Act 1993) in respect of pensionable service before the Contract Expansion Date are calculated in accordance with the actuarial principles set out in the Appointed Actuary's statement in Part 1 of Schedule 11;
- (b) procure that in all cases of DWP Employees in respect of whom a transfer is made to the Service Provider's Plan in accordance with clause 7.31(b) the benefits (except in the case of money purchase benefits as defined in section 181 of the Pension Schemes Act 1993) which are granted to such DWP Employees under the Service Provider's Plan in respect of pensionable service before the Contract Expansion Date are calculated in accordance with the actuarial methods and assumptions set out in the particular Appointed Actuary's letter in Part 2, 3 or 4 of Schedule 11 which specifically relates to the identity of the Service Provider's Plan; and
- (c) use reasonable endeavours to procure that, subject to clause 7.34, in all cases of SP Transferring Employees in respect of whom a transfer is made to the Service Provider's Plan in accordance with clause 7.31(c) the bulk transfer value (except in the case of money purchase benefits as defined in section 181 of the Pension Schemes Act 1993) in respect of pensionable service before the Contract Expansion Date are calculated in accordance with the actuarial principles set out in the Appointed Actuary's statement in Part 1 of Schedule 11.

7.33 The value of the benefits granted under the Service Provider's Plan in accordance with clauses 7.31(b) and 7.32(b) will be assessed by the Service Provider's Plan's Actuary, and agreed by the Appointed Actuary, in accordance with the requirements of the Statement of Practice in respect of Staff Transfers in the Public Sector issued by the Cabinet Office in January 2000 (or failing agreement shall be determined in accordance with clause 7.36).

7.34 The obligations on the PRIME Contractor in clauses 7.32(a) and 7.32(c) shall apply only if bulk transfers (calculated as required under clauses 7.32(a) and 7.32(c) as applicable) have been paid in full in accordance with clauses 7.31(a) and 7.31(c). For the avoidance of doubt, the obligations on the PRIME Contractor under clauses 7.32(a) and 7.32(c) shall

not apply to the extent that in doing so would be financially detrimental (specifically in relation to costs arising directly from the bulk transfers envisaged under clauses 7.31(a) and 7.31(c)) to the PRIME Contractor or any member of its group.

- 7.35 In the event of any DWP Employee, SP Transferring Employee or Transferring Employee being subsequently transferred to an Incoming Contractor during the period of their employment in connection with the FM Services, the PRIME Contractor will, and will procure that the transferring Service Provider will, ensure that any such Incoming Contractor will offer membership of a pension plan in accordance with the requirements set out in clause 7.29 above and, where the context so requires and as applicable, clauses 7.31 and 7.32 above.
- 7.36 Any disputes between the Appointed Actuary and the LST Plan's Actuary or the Service Provider's Plan's Actuary in relation to the actuarial basis, the calculation of the amount of the bulk transfer or the value of the benefits as envisaged by clauses 7.31 and 7.32, shall in the absence of agreement between them and upon written notification by one party to this Agreement to the other, be referred to an independent actuary agreed by DWP and the PRIME Contractor or such person or entity as may be nominated by the PRIME Contractor for this purpose. Failing such agreement, an independent actuary shall be appointed by the President for the time being of the Institute of Actuaries. The independent actuary so appointed under this clause 7.36 shall act as an expert and not as an arbitrator. The decision of the independent actuary as to the relevant provision of this clause 7.36 shall be final and binding and any costs incurred including his expenses shall be borne equally by DWP and the PRIME Contractor or such person or entity nominated by the PRIME Contractor for the purposes of this clause 7.36.
- 7.37 DWP will indemnify the PRIME Contractor (for itself and the Service Providers) in respect of all costs incurred as a result of any shortfall arising from the relevant bulk transfer amount referred to at clause 7.31(b) being insufficient to enable the trustees or administrators of the applicable Service Providers' Plan to provide benefits in respect of pensionable service before the Contract Expansion Date on the basis set out in clause 7.32(b).

8. **FORMER ES ESTATE DATA**

- 8.1 Save as expressly provided or allowed in clauses 4, 8.3 and 8.4 of this Second Supplemental Agreement, and notwithstanding anything to the contrary in any other provisions of the Project Documents, neither the PRIME Contractor nor PRIME Property shall seek to recover from DWP, and DWP (and its officers and staff) gives no warranty and shall not be liable to the PRIME Contractor or PRIME Property or any other person for, any losses or damages which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Former ES Estate Data by or on behalf of the

PRIME Contractor, PRIME Property, any of their Associates, any Contracting Associate or any other person for whom the PRIME Contractor or PRIME Property is responsible in the Operations provided that nothing in this clause 8 shall affect the provisions of Schedule 1 to this Second Supplemental Agreement, nor the title guarantees nor grants of warrandice to be given in the Transfers or the Assignments.

Definitions

8.2 In this clause 8:

- (a) an obligation to take "**all reasonable steps**" in pursuing an objective means doing all that a reasonable person would reasonably do in the circumstances to achieve the stated objective, disregarding any constraints imposed by the particular circumstances of the person with the obligation to pursue the objective, including, without limitation:
 - (i) expending any sum of money that a reasonable person of sufficient resources to fund such expenditure would so expend in pursuit of the stated objective; and
 - (ii) commencing any litigation, relevant administrative proceedings or appeal proceedings if such action either itself has, or forms part of an overall strategy that, taken as a whole, has a reasonable prospect of achieving the stated objective;
- (b) "**DWP Area Information**" means any and all information, data and documents provided to the Measurement Surveyor by, or on behalf of, DWP for the purpose of describing:
 - (i) the Facility to be occupied by DWP and/or an OGD;
 - (ii) any vacant floor space; and/or
 - (iii) any floor space sublet to commercial third parties;so as to enable the Measurement Surveyor to measure such area;
- (c) "**DWP Warranted Property Information**" means:
 - (i) the information set out in Part 1 of Schedule 3;
 - (ii) the information in any Certificates of Title or Lease Summaries in respect of the Former ES Estate Properties where the certificates or summaries indicate that the persons who prepared such Former ES Estate Data have relied on documentation or information provided to them by DWP, or it is

evident from the certificates or summaries that such persons have relied upon documentation or information provided to them by DWP; and

- (iii) the replies to the enquiries raised on behalf of PRIME Property by the PRIME Contractor's Solicitors on 18 September 2003 as provided to PRIME Property and contained in Part 2 of Schedule 3.
- (d) **"Former ES Estate Data"** means any and all information, data and documents (including, to avoid doubt, DWP Warranted Property Information, the Former ES Estate Surveys, the Former ES Estate Valuations and any other information, data and documents concerning the title to the Former ES Estate Properties and/or the rights of any other person in respect of the Former ES Estate Properties) made available or issued to any of the persons referred to in clause 8.1 or its representatives in connection with this Second Supplemental Agreement, the Expanded PRIME Contract and/or the Operations by or on behalf of DWP whether before or after the execution of this Second Supplemental Agreement;
- (e) **"Former ES Estate Valuations"** means the valuations of the Former ES Estate Properties produced by CB Richard Ellis and GVA Grimley pursuant to the Valuer's Appointments.
- (f) **"Interim Management Provisions"** means the provisions set out in Part 7 of Schedule 4;
- (g) **"Measurement Survey"** means the measurement survey or surveys produced by the Measurement Surveyor pursuant to the Survey appointment;
- (h) **"Measurement Survey Warranty"** means the deed of warranty dated December 2003 given by the Measurement Surveyor in favour of DWP or the deed of warranty dated December 2003 given by the Measurement Surveyor in favour of the PRIME Contractor and PRIME Property;
- (i) **"Measurement Surveyor"** means Drivers Jonas of 6 Grosvenor Street, London W1K 4DJ;
- (j) **"Net Internal Area"** or **"NIA"** means the area measured in square metres on a net internal area basis in accordance with the terms of the Royal Institution of Chartered Surveyors' Code of Measuring Practice prevailing on the date of the Survey appointment;
- (k) **"party"** means any of the PRIME Contractor, PRIME Property or DWP and **"parties"** shall be construed accordingly;
- (l) **"Price Sensitive Data"** means one or more of the following:

(i) in relation to any claim made under clause 8.3, or allowance given pursuant to clause 8.5, any data or information relating to any one or more of:

- (1) the lease start date;
- (2) the lease expiry date;
- (3) the next rent review date;
- (4) the rent review frequency;
- (5) the passing rent;
- (6) the rent review basis;
- (7) the estimated rental value, determined in accordance with the Valuers' Appointments (the "**ERV**");
- (8) the break dates;
- (9) the terms of any sublease, being the matters described in sub-clauses 8.2(l)(i)(1)-(8) above;
- (10) the vacant possession value, determined in accordance with the terms of the Valuers' Appointments; and/or
- (11) tenure,

in relation to the Former ES Estate Properties as shown in the TIES Bid Model and referred to below as the "**Property Price Sensitive Data**"; and

(ii) in relation to any claim made under clause 8.4, or allowance given pursuant to clause 8.5, below, any data or information relating to any one or more of:

- (1) the NIA of the Facility to be occupied by DWP and/or an OGD;
- (2) the NIA of any vacant floor space; and/or
- (3) the NIA of any floor space sublet to commercial third parties;

in relation to the Former ES Estate Properties as shown in the TIES Bid Model and referred to below as the "**Measurement Price Sensitive Data**";

(m) "**Relevant Lawyer**" means Lovells and Fyfe Ireland;

- (n) **"Survey appointment"** means the contract dated 14 February 2002 made between DWP (1) and the Measurement Surveyor (2) in relation to the Former ES Estate Properties;
- (o) **"Valuer"** means CB Richard Ellis and GVA Grimley;
- (p) **"Valuers' Appointments"** means the appointments of CB Richard Ellis and GVA Grimley by Trillium Property Services Limited dated 30 June 2003 and 5 December 2003 respectively.

Property Information Warranty and claims by the PRIME Contractor and PRIME Property

8.3 Subject as provided in this clause 8.3 and subject to the provisions of clause 8.15, DWP warrants to the PRIME Contractor and PRIME Property that:

- (A) since 20 October 2003 it has complied with the Interim Management Provisions;
- and
- (B) DWP Warranted Property Information is accurate as at 20 October 2003 or (in the case of DWP spreadsheet dated 24 October 2003) as at 24 October 2003 save as otherwise disclosed by DWP under the Interim Management Provisions with the intent that the PRIME Contractor and PRIME Property shall be entitled to claim compensation from DWP for each inaccuracy to the extent that such inaccuracy is, or relates to, the Property Price Sensitive Data, provided that:
 - (a) sub-clauses (b) and (c) apply to claims in respect of an inaccuracy in a Certificate of Title or Lease Summary;
 - (b) no claim may be made under this clause 8.3 in respect of an inaccuracy in a Certificate of Title or Lease Summary unless:
 - (i) the PRIME Contractor and/or PRIME Property is able to demonstrate that they projected the cost base for a Facility provided from a Former ES Estate Property in reliance on a Certificate of Title or Lease Summary that contains inaccurate Former ES Estate Data; and
 - (ii) the PRIME Contractor or PRIME Property has taken all reasonable steps to recover any losses or damages from the Relevant Lawyer under the Certificate of Title or Lease Summary and either:
 - (1) there is no reasonable prospect of establishing liability of the Relevant Lawyer in relation to such losses or damages; or
 - (2) the claim has been unsuccessful

because it is reasonably apparent, or it is established (as the case may be) that that the Relevant Lawyer was acting in accordance with the standard of care imposed on him in relation to the preparation of the Certificate of Title or Lease Summary,

- (c) references to "inaccurate" information, "inaccuracy" and cognate expressions refer to information which was inaccurate or incomplete when supplied by or on behalf of DWP in response to requests made by the Relevant Lawyer, acting in accordance with the standard of care imposed on him.
- (d) any warranty claim under this clause 8.3 shall be limited to claims in respect only of inaccuracies in DWP Warranted Property Information provided by DWP where the difference in the NPVs calculated in accordance with clause 8.7(b) in respect of each such claim is not less than £30,000 per Former ES Estate Property;
- (e) the maximum liability of DWP (taken over the full term of the Operating Period) for breach of the warranty contained in this clause 8.3 in relation to each relevant Former ES Estate Property which is listed in Part 3 of Schedule 22 [*Development Gains*] shall be limited to the un-indexed Base Value attributable to the particular Former ES Estate Property set out in Part 3 of Schedule 22 [*Development Gains*];
- (f) any warranty claim under this clause 8.3 can only be brought if written notice of such claim has been given by the PRIME Contractor or PRIME Property to DWP within 18 months of the Contract Expansion Date and the PRIME Contractor setting out such reasonable details as are available at the time of such claim;
- (g) to avoid doubt the pre-condition imposed by sub-clause 8.3(f) that a warranty claim may only be brought if notice has been given within 18 months of the Contract Expansion Date will still apply in cases where the PRIME Contractor and/or PRIME Property have not finished taking reasonable steps to recover losses or damages from the Relevant Lawyer and/or relevant Valuer, but the notice of the claim (and the claim itself) will be contingent upon the outcome of the reasonable steps when such steps have been completed;
- (h) in making any claim against DWP under this clause 8.3 the PRIME Contractor and PRIME Property shall first calculate in accordance with clause 8.5 and give credit to DWP for any allowance due to it under clause 8.5 as a result of any inaccuracies in or relating to the Property Price Sensitive Data; and
- (i) without delay after the expiry of the period of 18 months described in sub-clause 8.3(f) or the completion of the reasonable steps referred to in sub-clause 8.3(f) the PRIME Contractor and PRIME Property shall undertake a reconciliation of all such

claims and allowances so as to give full effect to the spirit and intent of sub-clause 8.3(h).

Measurement Warranty and claims by the PRIME Contractor and PRIME Property

8.4 Subject as provided in this clause 8.4 and subject to the provisions of clause 8.15, DWP warrants to the PRIME Contractor and PRIME Property the accuracy of DWP Area Information with the intent that the PRIME Contractor and PRIME Property shall be entitled to claim compensation from DWP for each inaccuracy, provided that:

(a) no claim may be made under this clause 8.4 unless the PRIME Contractor and/or PRIME Property is able to demonstrate that they projected the cost base for a Facility provided from a Former ES Estate Property in reliance on a Measurement Survey that records an incorrect area for a Former ES Estate Property, and

(i) the PRIME Contractor or PRIME Property has taken all reasonable steps to recover any losses or damages from the Measurement Surveyor under the Measurement Survey Warranty and either

(1) there is no reasonable prospect of establishing liability of the Measurement Surveyor in relation to such losses or damages; or

(2) the claim has been unsuccessful

because it is reasonably apparent, or it is established (as the case may be) that the Measurement Surveyor was acting in accordance with the standard of care imposed on him in relation to the preparation of the survey;

(b) references to "inaccurate" information, "inaccuracy" and cognate expressions refer to information which was inaccurate or incomplete when supplied by or on behalf of DWP in response to requests made by the Measurement Surveyor, acting in accordance with the standard of care imposed on him;

(c) no claim may be made under this clause 8.4 unless the inaccuracy which forms the basis of the relevant claim in accordance with clause 8.4(a) has resulted in a difference between the Net Internal Area for the relevant Former ES Estate Property set out in the TIES Bid Model and the actual Net Internal Area for the relevant Former ES Estate Property (as agreed or determined) which is:

(i) at least 5% where the Net Internal Area for the relevant Former ES Estate Property set out in the TIES Bid Model is greater than 1,000 sqm; or

- (ii) at least 10% where the Net Internal Area for the relevant Former ES Estate Property set out in the TIES Bid Model is 1,000 sqm or less;
- (d) any warranty claim under this clause 8.4 can only be brought if written notice of such claim has been given by the PRIME Contractor or PRIME Property to DWP within 18 months of the Contract Expansion Date and the PRIME Contractor setting out such reasonable details as are available at the time of such claim;
- (e) to avoid doubt the pre-condition imposed by sub-clause 8.4(d) that a warranty claim may only be brought if notice has been given within 18 months of the Contract Expansion Date will still apply in cases where the PRIME Contractor and/or PRIME Property have not finished taking reasonable steps to recover losses or damages from the Measurement Surveyor and/or the relevant Valuer, but the notice of the claim (and the claim itself) will be contingent upon the outcome of the reasonable steps when such steps have been completed;
- (f) in making any claim against DWP under this clause 8.4 the PRIME Contractor and PRIME Property shall first calculate in accordance with clause 8.5 and give credit to DWP for any allowance due to it under clause 8.5 as a result of any inaccuracies in or relating to the Measurement Price Sensitive Data; and
- (g) without delay after the expiry of the period of 18 months referred to in sub-clause 8.4(d) or the completion of the reasonable steps referred to in sub-clause 8.4(e) the PRIME Contractor and PRIME Property shall undertake a reconciliation of all such claims and allowances so as to give full effect to the spirit and intent of sub-clause 8.4(f).

Warranty claims in relation to information relied upon in Former ES Estate Valuations

8.4A This clause applies to claims in respect of an inaccuracy in a Former ES Estate Valuation in relation to information warranted pursuant to clauses 8.3 and 8.4.

- (a) No claim may be made under clause 8.3 or 8.4 as the case may be in respect of an inaccuracy in a Former ES Estate Valuation unless:
 - (i) the PRIME Contractor and/or PRIME Property is able to demonstrate that they projected the cost base for a Facility provided from a Former ES Estate Property in reliance on a Former ES Estate Valuation that is inaccurate (and the parties acknowledge that the valuations were adjusted to give an aggregate value of the Former ES Estate Properties of £139.735 million); and

(ii) the PRIME Contractor or PRIME Property has taken all reasonable steps to recover any losses or damages from the relevant Valuer under the relevant Valuers' Appointment and either:

- (1) there is no reasonable prospect of establishing liability of the Valuer in relation to such losses or damages; or
- (2) the claim has been unsuccessful

because it is reasonably apparent, or it is established (as the case may be) that the Valuer was acting in accordance with the standard of care imposed on him in relation to the Valuers' Appointments;

(b) it is acknowledged by the parties that the Valuers have relied upon:

- (i) the DWP Warranted Property Information in paragraphs (i) and (iii) of the definition of DWP Warranted Property Information;
- (ii) the DWP Warranted Property Information on which the Relevant Lawyers have relied in preparing the Certificates of Title and Lease Summaries; and
- (iii) the DWP Area Information on which the Measurement Surveyor has relied in preparing the Measurement Survey

therefore references in paragraph 8.4A(a) to "inaccurate" information, "inaccuracy" and cognate expressions shall mean a reference to information within paragraph (i) and (iii) of the definition of DWP Warranted Property Information which is inaccurate, or in all other cases shall have the meaning set out in clauses 8.3(c) or 8.4(b) as the case may be.

Principles for determining allowances due to DWP under sub-clauses 8.3(f) and 8.4(f)

8.5

- (a) Subject to sub-clauses 8.5(c) to 8.5 (e), the allowances which are due to DWP pursuant to sub-clauses 8.3(f) or 8.4(f) shall be the NPV (using the PRIME Discount Rate) at the Contract Expansion Date of all reductions in the projected cost bases for the Facilities calculated in accordance with clause 8.7(b) which have accrued in favour of the PRIME Contractor and PRIME Property as a result of in the case of sub-clause 8.3(f) any inaccuracy in, or relating to, the Property Price Sensitive Data or in the case of sub-clause 8.4(f) any inaccuracy in, or relating to, the Measurement Price Sensitive Data.

- (b) The aggregate of all such allowances to DWP shall be calculated in accordance with clause 8.7(b) and shall be deducted from the aggregate difference in NPVs calculated in accordance with clause 8.7(b). To the extent that the aggregate of such allowances exceeds the aggregate of such NPVs, and if the excess is greater than £500,000, the PRIME Contractor shall pay the whole of the excess to DWP with interest at the Default Interest Rate from the Contract Expansion Date down to the date of payment.
- (c) No allowance shall be given to DWP under sub-clause 8.3(f) in relation to an individual Former ES Estate Property unless the NPV of that allowance (calculated in accordance with clause 8.5(a)) is greater than £30,000.
- (d) No allowance shall be given to DWP under sub-clause 8.4(f) in respect of an individual Former ES Property unless:
 - (i) the parties agree, or it is determined, that the PRIME Contractor and PRIME Property projected the cost base for a Facility provided from a Former ES Estate Property in reliance on a Measurement Survey that records an incorrect area for a Former ES Estate Property; and
 - (ii) the difference between the Net Internal Area for the relevant Former ES Property set out in the TIES Bid Model and the actual Net Internal Area for the relevant Former ES Property (as agreed or determined) is:
 - (1) at least 5% where the Net Internal Area for the relevant Former ES Property set out in the TIES Bid Model is greater than 1,000 sqm; or
 - (2) at least 10% where the Net Internal Area for the relevant Former ES Property set out in the TIES Bid Model is 1,000 sqm or less,as a result of an inaccuracy in the Measurement Survey for the Former ES Estate Property from which the Facility is provided resulting from information given by DWP.
- (e) Any allowance to be given to DWP pursuant to sub-clauses 8.3(h) or 8.4(f) shall only be taken into account if within 18 months of the Contract Expansion Date the details of the same are notified, or are otherwise reasonably apparent and available, to the PRIME Contractor and PRIME Property.

8.6 The PRIME Contractor and PRIME Property shall give, and DWP may claim, all allowances properly due to DWP in accordance with the provisions of clause 8.5.

General

8.7

- (a) The PRIME Contractor's and PRIME Property's sole remedy for breach of any warranty given by DWP and their sole entitlement under this clause 8 shall be as set out in this clause 8.7.
- (b) As soon as reasonably practicable after the expiry of 18 months from the Contract Expansion Date in relation to each claim the parties will calculate the difference between the NPVs (using the PRIME Discount Rate) at the Contract Expansion Date of:
 - (i) the aggregate of all the projected cost bases for all Facilities which were used to determine the Facility Prices actually in force at the Contract Expansion Date; and
 - (ii) the aggregate of the cost bases for all Facilities which would have been projected in the manner referred to in clause 8.7(d) at the Contract Expansion Date if the relevant item of DWP Warranted Property Information or DWP Area Information, as the case may be, had been accurate.
- (c) DWP shall on the next following Variable Payment Date either:
 - (i) pay the difference calculated pursuant to clause 8.7(b) to the PRIME Contractor with interest at the Default Interest Rate from the Contract Expansion Date down to the date of payment; or
 - (ii) convert the amount referred to in paragraph (i) to a Capital Payment Stream or such other payment profile as the parties may reasonably agree taking into account the profile of the PRIME Contractor's loss and the general principles set out in Schedule 10 [*Change Procedures*].
- (d) The NPVs referred to in clause 8.7 shall be calculated using the TIES Bid Model and applying the same pricing methodology and assumptions (but for the avoidance of doubt discounting such assumptions as were made on the basis of incorrect data resulting in the loss) actually employed by the PRIME Contractor in projecting the cost bases for all of the Facilities in order to determine the Facility Prices which came into force at the Contract Expansion Date. In the case of the NPV at clause 8.7(b)(i) this shall be the figure shown in the TIES Bid Model at cell T82 on sheet C_UC. In the case of the NPV at clause 8.7(b)(ii) this shall be the figure shown in the same cell after the TIES Bid Model has been run with the relevant item of accurate data, subject to the next sentence. If there is some reason why the relevant item of accurate data cannot be input into the TIES Bid

Model without making other changes or adjustments to that model (for example, if the accurate data involves a rent review pattern not otherwise found in the TIES Bid Model or if the data can be input but the result is manifestly incorrect) then the parties will seek acting reasonably to agree either appropriate changes or adjustments to the TIES Bid Model or such supplemental mechanism as to give effect to the intention of the parties in this clause, failing which the changes or adjustments shall be determined in accordance with the Dispute Resolution Procedure.

- 8.8 Notwithstanding any other provision in this clause 8, in the event of any inaccuracy in DWP Warranted Property Information, or in DWP Area Information, being identified by any party, the parties shall use all reasonable endeavours to agree the appropriate adjustment to, or calculation of, the relevant Unavoidable Costs in accordance with the generic methodology described in Part 8 of Schedule 17 to the Expanded PRIME Contract.
- 8.9 Any claim or allowance in relation to any Former ES Estate Property, whether pursuant to clauses 8.3, 8.4 or 8.5 or Schedule 1 to this Second Supplemental Agreement, shall not preclude any other claim or allowance in relation to the same property, any other Former ES Estate Property or otherwise (provided that the same loss or allowance may not be recovered more than once).
- 8.10 No party shall be entitled to claim rescission of this Second Supplemental Agreement (or any other related agreement) as a result of (in the case of the PRIME Contractor and PRIME Property) any breach of the warranties contained in clauses 8.3 or 8.4 or (in the case of DWP) any allowances due pursuant to clause 8.5.
- 8.11 Notwithstanding the provisions of clauses 8.3, 8.4 and 8.5 neither the PRIME Contractor nor PRIME Property shall be entitled to make a claim under clauses 8.3 or 8.4 unless the aggregate of the differences in the NPVs calculated in accordance with clause 8.7(b) in respect of each such claim (net of any allowances due to DWP pursuant to clause 8.5) would exceed £500,000 in which case the entire aggregate of the differences (having netted such allowances) may be claimed.
- 8.12 Subject to clause 8.16(b) and save as provided, expressly or impliedly, in clauses 4, 7, 8.3 or 8.4 or Schedule 1 to this Second Supplemental Agreement, DWP gives no warranty or undertaking that the Former ES Estate Data represents all of the information in their possession or power (either during the tender for the Operations to be implemented in respect of the Former ES Estate, or at the time of execution of this Second Supplemental Agreement) relevant or material to the implementation of the Operations in relation to the Former ES Estate or the obligations to be undertaken by the PRIME Contractor or PRIME Property under the Expanded PRIME Contract.

8.13 Subject to clause 8.16(b) and save as provided, expressly or impliedly, in clauses 4, 7, 8.3 or 8.4 of or Schedule 1 to this Second Supplemental Agreement, no party shall be liable to another in respect of any failure to disclose or make available (whether before, on or after the execution of this Second Supplemental Agreement) any information, documents or data, nor to keep the Former ES Estate Data up to date, nor to inform any party (whether before, on or after execution of this Second Supplemental Agreement) of any inaccuracy, error, omission, unfitness for purpose, defects or inadequacy in the Former ES Estate Data.

8.14 The PRIME Contractor and PRIME Property acknowledges and confirms that it shall inform each of its Associates and other persons to whom it provides the Former ES Estate Data that DWP accepts no liability to such persons (other than the PRIME Contractor or PRIME Property) in respect of the Former ES Estate Data.

Mitigation

8.15 The PRIME Contractor and PRIME Property will take all reasonable steps to minimise the amount of any claim arising under clauses 8.3 and 8.4 (including procuring, where appropriate, that its Associates and any Contracting Associates also take such steps), and DWP will take all reasonable steps to minimise the amount of any allowance arising under clause 8.5, without delay upon each of them becoming aware that a potential claim may be brought or an allowance be due.

No duty to carry out due diligence

8.16

(a) Nothing in this clause 8 shall imply any duty on the part of any party to carry out any particular degree of due diligence in relation to potential claims or allowances in favour of any party pursuant to clauses 8.3, 8.4 or 8.5 or otherwise and to the extent that any party elects to carry out any due diligence, it shall be at its own cost.

Notwithstanding the provisions of clause 8.16(a), to the extent that any party does elect to carry out its own due diligence, or otherwise becomes aware of any inaccuracies in the Former ES Estate Data, it shall notify the other parties of the same without delay and make the results of such due diligence, or further information, fully available for review by each of the other parties, provided that the costs of any such review (including, but not limited to, copying the results of the due diligence) shall be borne by the reviewing party.

29-31 Chapel Street, Llandudno

8.17 [withheld]

9. **WARRANTIES, UNDERTAKINGS AND INDEMNITIES**

9.1 The PRIME Contractor and PRIME Property (jointly and severally) warrant to DWP as at the date of this Second Supplemental Agreement and shall be deemed to warrant to DWP on the Contract Expansion Date that:

- (a) the Generic Method Statement incorporates fully, and is consistent to the extent expressed therein with the Required Accommodation Standards and the Service Requirements;
- (b) to the best of the PRIME Contractor's and PRIME Property's knowledge, all information, representations and other matters of fact communicated in writing to DWP or its agents or employees in connection with the PRIME Contractor's and PRIME Property's response to the invitation to tender in respect of the Operations or in the course of the subsequent negotiations and correspondence in respect of this Second Supplemental Agreement (including details of their corporate structure and funding arrangements) were true, complete and accurate in all material respects at the time communicated to DWP or its agents or employees;
- (c) they are limited liability companies, duly incorporated and validly existing under the laws of the jurisdiction of their incorporation and that PRIME Property is the general partner of the Partnership and that the Partnership is duly formed and validly existing under the jurisdiction of its formation;
- (d) they have full power and authority to enter into this Second Supplemental Agreement and to carry out the Operations and this Second Supplemental Agreement is executed by their duly authorised representatives;
- (e) the entry into and performance by them of this Second Supplemental Agreement do not and will not:
 - (i) conflict with their constitutional documents or those of the Partnership;
 - (ii) conflict with any document which is binding upon them, PRIME Property or the Partnership or any of their assets or the assets of the Partnership to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the PRIME Contractor or PRIME Property to perform their obligations under this Second Supplemental Agreement;
 - (iii) infringe the Intellectual Property Rights of any third party save that this warranty shall not extend to the Intellectual Property Rights included in the Former ES Estate Data; and

- (f) each of the Project Documents entered into as of the dates this warranty is given is in full force and effect and constitutes valid, binding and enforceable obligations of the parties to the Project Documents subject to general equitable principles and laws affecting creditors' rights, the copies of the Project Documents which the PRIME Contractor has delivered to DWP are true and complete copies of such documents, and subject to those contemplated by clause 18.1 of this Second Supplemental Agreement and any waiver provided by the Funders pursuant to the Funding Agreements in place as at the date of this Agreement that are necessary to ensure that the PRIME Contractor and/or PRIME Property are not in breach of such Funding Agreements as a result of signing this Second Supplemental Agreement there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents.

10. **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

10.1 Neither the PRIME Contractor nor PRIME Property shall do and each warrants that in entering this Second Supplemental Agreement it has not done, any of the following (hereafter referred to as "**prohibited acts**"):

- (a) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Second Supplemental Agreement or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown; or
- (b) enter into this Second Supplemental Agreement or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the relevant contract is made particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to DWP.

PART 5 - MISCELLANEOUS

11. PRE-COMPLETION SEARCHES

- 11.1 By no later than 10 Business Days prior to the date that the parties agree (acting reasonably) is likely to be the Contract Expansion Date, DWP shall procure, at a cost to be borne equally between PRIME Property and DWP, that DWP's Solicitors (or the relevant Local Property Lawyers, as appropriate) shall carry out and complete pre-completion Land Registry and Land Charge searches (or the Scottish equivalent) in relation to each of the Former ES Estate Properties (other than the Former ES Estate Excluded Properties, the Former ES Leasehold Properties that are to be the subject of a Virtual Assignment or a Scottish Property Agreement and/or any other Former ES Estate Leasehold Property situated in Scotland for which there is no Certificate of Title) (such searches to be known as the "**Pre-Completion Searches**")
- 11.2 By no later than 5 Business Days prior to the date that the parties agree (acting reasonably) is likely to be the Contract Expansion Date, DWP shall procure, at the cost of DWP, that DWP's Solicitors (or the relevant Local Property Lawyers, as appropriate) shall fully report on the results of the Pre-Completion Searches to the PRIME Contractor and PRIME Property.
- 11.3 To the extent that any adverse matter in relation to any of the Former ES Estate Properties described in clause 11.1 is revealed by a Pre-Completion Search (which was not previously disclosed in the Certificates of Title and the Lease Summaries), the parties shall endeavour to agree (acting reasonably) whether such matter is, or is not, likely to prevent the transfer of the title to that Former ES Estate Property to PRIME Property, or PRIME Property's Nominee, in accordance with the sale and purchase provisions contained in clause 4 (other than clause 4.9) and the following provisions shall apply:
- (a) in the event that the parties agree that the sale and purchase provisions contained in clause 4 (other than clause 4.9) should still apply to such Former ES Estate Property, the title to the property will be transferred to PRIME Property, or PRIME Property's Nominee, in accordance with the provisions of clause 4.3; or
 - (b) in the event that the parties agree that the sale and purchase provisions contained in clause 4 should not apply to such Former ES Estate Property as a result of the adverse matter revealed (or cannot agree whether they should apply), the parties will treat the property as if it were a Former ES Estate Excluded Property, and the provisions of clause 4.9 shall apply accordingly.
- 11.4 Notwithstanding the provisions of clause 4.9, in the event that any Former Estate Property is to be treated as a Former ES Estate Excluded Property in accordance with clause

11.3(b), or the relevant ES Properties transferred pursuant to clause 11.3(a) subject to the adverse matter in question, each of the parties shall without delay use reasonable endeavours, at the cost of DWP, to ensure that the adverse matter is removed from the title to that property (or otherwise dealt with to the reasonable satisfaction of PRIME Property or PRIME Property's Nominee), in order (where clause 11.3(b) applies) that the sale and purchase provisions contained in clause 4 may apply as soon as reasonably practicable, such endeavours to include (without limitation) on the part of DWP:

- (a) procuring the performance of such acts as are necessary from the relevant OGD; and
- (b) assisting fully in all dealings with the relevant Registry.

11.5 Where the parties cannot reach agreement in accordance with clause 11.3 above, the matter shall be referred to the Dispute Resolution Procedure and pending resolution the Property will be treated as a Former ES Estate Excluded Property in accordance with clause 4.9.

12. **Funding Pre-Completion Searches**

12.1 By no later than 10 Business Days (or such other period as the parties may agree) prior to the date that the parties agree (acting reasonably) is likely to be the completion date for financing to be put in place (within 6 months of this Agreement) by the PRIME Contractor (the "**Finance Date**"), DWP shall procure, at the cost of PRIME Property, that DWP's Solicitors and DWP's Scottish Solicitors (or the relevant Local Property Lawyers, as appropriate) shall carry out and complete such pre-completion Land Registry and Land Charges searches (or the Scottish equivalent) in relation to each of the Former ES Estate Properties (other than the Former ES Estate Excluded Properties that are the subject of a Virtual Assignment or a Scottish Property Agreement and/or any other Former ES Leasehold Property situated in Scotland for which there is no Certificate of Title) (such searches to be known "**Funding Pre-Completion Searches**") the same to be made in favour of or priority granted to the Funders.

12.2 By no later than 5 Business Days prior to the Finance Date DWP shall procure, at the cost of PRIME Property, that DWP's Solicitors and DWP's Scottish Solicitors (or the relevant Local Property Lawyers, as appropriate) shall fully report on the results of the Funding Pre-Completion Searches to the PRIME Contractor, PRIME Property and the Funders.

13. **NOT USED**

14. **CONFIDENTIALITY**

14.1 No party shall, without the prior consent in writing of the other parties (such consent not to be unreasonably withheld or delayed):

- (a) communicate with representatives of the general or technical press, radio, television or other communication media on any aspect of this Second Supplemental Agreement; or
- (b) photograph or film the Facilities, the Former ES Sites or the Former ES Estate Properties or the staff of any such other party.

To avoid doubt:

- (c) it shall not be unreasonable for DWP to withhold its consent pursuant to this clause 14.1 for security purposes or if the communication, photographing or filming may, in the opinion of DWP, affect the ability of DWP to transact its business at any Facility or affect the standing of DWP or its staff in the eyes of the public;
- (d) sub-clause (b) shall not apply to:
 - (i) any Former ES Estate Properties no longer occupied by DWP; or
 - (ii) the taking of any photographs or filming of the Facilities, the Sites or, the Former ES Estate Properties by or on behalf of the PRIME Contractor for marketing and management purposes, subject to the PRIME Contractor complying with and ensuring that any person taking photographs or filming on its behalf complies with, such reasonable regulations as DWP may impose with regard to such activities; and
- (e) nothing in this clause shall entitle the PRIME Contractor or any other person acting on behalf of the PRIME Contractor to film or photograph DWP staff or customers without their prior consent other than for the purposes of security.

14.2 Each party shall hold in confidence the contents of this Second Supplemental Agreement and all documents and other information whether technical or commercial supplied by or on behalf of the other parties (including without limitation all documents and information supplied in the course of proceedings under the Dispute Resolution Procedure) or otherwise in relation to the Operations and shall not publish or otherwise disclose the same otherwise than for the purposes contemplated by, and to the extent necessary for

compliance with, this Second Supplemental Agreement, save (subject to the provisions of clause 33.1):

- (a) with the other parties' written consent;
- (b) as may necessarily be required by any Law, any relevant stock exchange or other competent regulatory authority (but only to the extent so required);
- (c) as either DWP or the PRIME Contractor may require for the purpose of the operation, maintenance, enhancement or improvement of the Facilities, the Equipment or any other Operations;
- (d) as DWP may consider reasonably necessary when seeking tenders from potential contractors to fulfil any of the functions provided by the PRIME Contractor or PRIME Property save in respect of information provided to DWP in connection with the calculation of the amount referred to in clause 27.4; or
- (e) which is in or enters the public domain other than as a result of a breach of the obligations imposed by this clause 14.2,

provided that the provisions of this clause 14.2 shall not restrict any party from passing such information to its professional advisers and Associates and that the PRIME Contractor or PRIME Property may, subject to making such persons aware of the PRIME Contractor's or PRIME Property's obligations under this clause and obtaining confidentiality restrictions which are acceptable to DWP:

- (i) pass to the Funders such documents and other information as is reasonably required by the Funders and their professional advisers in connection with the raising of finance for the Operations or which the PRIME Contractor or PRIME Property is obliged to supply by the terms of the Funding Agreements; and
- (ii) pass to a Former ES Existing Service Provider documents and other information which is necessary for the PRIME Contractor's performance of this Second Supplemental Agreement.

14.3 The PRIME Contractor and PRIME Property shall comply and shall ensure that their Contracting Associates comply with the confidentiality provisions contained in the Social Security Administration Act 1992, and in particular, the provisions of section 123 of that Act.

14.4 The PRIME Contractor and PRIME Property shall procure that their agents and contractors including without limitation any Contracting Associate complies with the obligations of the PRIME Contractor and PRIME Property under this clause and the

PRIME Contractor or PRIME Property (as the case may be) shall be responsible for any act or omission of any such person and its or their officers, employees, workmen, contractors and sub-contractors of any tier in accordance with the provisions of clause 20.1 [*Responsibility of PRIME Contractor*] of the Expanded PRIME Contract.

- 14.5 Any specifications, plans, drawings or other documents, data or material issued by or on behalf of DWP for the purposes of this Second Supplemental Agreement which, for the avoidance of doubt, shall not include any such specifications, plans, drawings or other documents, data or material prepared on behalf of the PRIME Contractor or PRIME Property, remain the property of DWP and shall be returned to DWP on termination of the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clause 8.1 for any reason (including by expiry of the Operating Period) in accordance with clause 28 [*Effect of Termination or Expiry*] of the Expanded PRIME Contract.
- 14.6 This clause shall survive the termination of this Second Supplemental Agreement irrespective of the reason for termination.

15. **DISPUTE RESOLUTION PROCEDURE**

Except where expressly provided to the contrary, any dispute arising out of or in connection with this Second Supplemental Agreement, and whether between DWP and the PRIME Contractor or PRIME Property, or the Department's Representative and the PRIME Contractor or PRIME Property, shall be resolved in accordance with the procedure set out in Schedule 20 [*Disputes Resolution Procedure*] to the Expanded PRIME Contract.

16. **CONFLICT OF AGREEMENTS**

In the event of a conflict between this Second Supplemental Agreement and any of the Project Documents, then, save as provided in clause 9 of the Virtual Assignments and clause 9 of the Scottish Property Agreements, the provisions of this Second Supplemental Agreement will prevail.

17. **FURTHER ASSURANCE**

Without prejudice to the terms of any specific further assurance provisions contained elsewhere in this Second Supplemental Agreement, each of the parties shall from time to time, on being requested to do so by any other party, now or at any time while this Second Supplemental Agreement or any provision hereof is still in force do or perform all such further acts and things (or procure that the same are done or performed) and/or execute and deliver all such further deeds, documents or instruments (or procure that the same are executed and delivered) in a manner and form reasonably satisfactory to the

requesting party, as such requesting party may reasonably consider necessary or expedient for implementing or giving full effect to the provisions of this Second Supplemental Agreement and/or any of the acts, things, transactions and documents contemplated or envisaged hereby and/or to give business efficacy to this Second Supplemental Agreement and other acts, things, transactions and documents as aforesaid.

18. ENTIRE AGREEMENT

18.1 It is hereby acknowledged that this Second Supplemental Agreement and the Project Documents (and any other documents entered into in furtherance of the Expanded PRIME Contract) (with the incorporation of any such additional conditions or variations) constitutes the entire agreement between DWP, the SS1, the PRIME Contractor and PRIME Property, save that the parties acknowledge that nothing in this clause 18.1 is intended to affect any agreement, arrangement or understanding (whether binding or non-binding) which may exist in respect of the PRIME Contract and entered into prior to the date hereof unless that agreement, arrangement or understanding (whether binding or non-binding) is superseded by the express provisions of this Second Supplemental Agreement or the Expanded PRIME Contract, in which case, with effect from the Contract Expansion Date this Second Supplemental Agreement and the Expanded PRIME Contract will take precedence.

18.2 Each of the SS1, DWP, the PRIME Contractor and PRIME Property acknowledges that:

- (a) it does not enter into this Second Supplemental Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Second Supplemental Agreement or not) except those expressly repeated or referred to in this Second Supplemental Agreement or in any of the Project Documents and, subject to, and without prejudice to DWP's rights under clause 9 [*Warranties and Indemnities*] the only remedy or remedies available in respect of any misrepresentation or untrue statement made to them shall be a claim for breach of contract under this Second Supplemental Agreement; and
- (b) this clause 18.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Second Supplemental Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Second Supplemental Agreement.

19. **WAIVER**

Failure by a party at any time to enforce any provision of this Second Supplemental Agreement or to require performance by another party of any of the provisions of this Second Supplemental Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Agreement or any part of the Agreement or create any estoppel or in any other way affect the right of such party to enforce any provision in accordance with its terms.

20. **SEVERABILITY**

The invalidity in whole or in part of any of these terms shall not affect the validity of any other provision and all remedies available to each party for breach of contract are cumulative and may be exercised concurrently or separately.

21. **NOTICES**

21.1 All notices under this Second Supplemental Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Second Supplemental Agreement shall be served by sending the same by prepaid first class post, facsimile or leaving the same at:

If to the PRIME Contractor
140 London Wall
London EC2Y 5DN

Fax No: [withheld]

Attention: [withheld]

If to PRIME Property
140 London Wall
London EC2Y 5DN

Fax No: [withheld]

Attention: [withheld]

If to DWP

Department for Work and Pensions

PRIME Project Team

4th Floor, Tavis House

London WC1H 9NB

Fax No:

[withheld]

Attention: [withheld]

If to the SS1

c/o Department for Work and Pensions

PRIME Project Team

4th Floor, Tavis House

London WC1H 9NB

Fax No:

[withheld]

Attention: [withheld]

(copied in each case to the Department's Representative).

- 21.2 A party to this Second Supplemental Agreement may change its nominated address, facsimile number or person for whose attention a notice is to be directed by prior notice to the other parties.
- 21.3 Notices sent by first class post shall be deemed to have been delivered on the fifth Business Day after posting.
- 21.4 Notices given by facsimile shall be deemed to have been delivered where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (a) within two hours after sending, if sent on a Business Day between the hours of 9.00 am and 4.00 pm; or
 - (b) by 11.00 am on the next following Business Day, if sent after 4.00 pm, on a Business Day but before 9.00 am on that next following Business Day.

22. **GOVERNING LAW AND JURISDICTION**

- 22.1 Subject to the provisions of clauses 22.3 and 22.4, this Second Supplemental Agreement shall be governed by and construed in accordance with the laws of England.

- 22.2 Subject to the provisions of clause 15 [*Dispute Resolution Procedure*] and to clause 22.3 and clause 22.4, the parties submit to the non-exclusive jurisdiction of the Courts of England as regards any claim or matter arising in relation to this Second Supplemental Agreement.
- 22.3 Transfers of Former ES Estate Freehold Properties situated in Scotland, Assignments of Former ES Estate Leasehold Properties situated in Scotland, Scottish Property Agreements in respect of Former ES Estate Properties situated in Scotland, PRIME Leases of Former ES Estate Properties situated in Scotland and licences to occupy Former ES Estate Properties situated in Scotland, the interpretation of the terms of any lease of Former ES Estate Properties situated in Scotland, any matters of conveyancing law and practice relating to any Former ES Estate Properties situated in Scotland, any matters of landlord and tenant law and practice relating to any Former ES Estate Properties situated in Scotland, any matters which themselves are subject to the exclusive jurisdiction rules of the *lex situs* on account of the fact that they relate to immovable property situated in Scotland and, without limiting the foregoing generality, the provisions of Schedule 1 [*Land Matters*], and Schedule 30 [*Charges*] and Schedule 34 [*Use of Sites*] of the Expanded PRIME Contract to the extent that they apply to Former ES Estate Properties situated in Scotland, will be governed by and construed in accordance with the law of Scotland.
- 22.4 Subject to the provisions of clause 15 [*Dispute Resolution Procedure*], the parties submit to the jurisdiction of the Court of Session in Scotland as regards any claim or matter arising in relation to the items specified in clause 22.3.
- 22.5 No person may enforce any term of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

The Corporate Seal of the First
Secretary of State hereunto
affixed is authenticated by:

"seal of the First Secretary of State"

/s/ [withheld]

Authorised by the First Secretary
of State

Witnessed by /s/

[withheld]

Solicitor
65 Fleet Street
London EC4Y 1HS

EXECUTED AND DELIVERED) /s/ [withheld]
as a deed by **Trillium**
(PRIME) Limited) /s/ [withheld]
acting by)

Director /s/ [withheld]
Witness (Signature)

Signatory Full Name [withheld]
Witness (Full Name)
65 Fleet Street, London EC4Y 1HS
Witness (Full Address)

Secretary /s/ [withheld]
Witness (Signature)

Signatory Full Name [withheld]
Witness (Full Name)
65 Fleet Street, London EC4Y 1HS
Witness (Full Address)

EXECUTED AND DELIVERED) /s/ [withheld]
as a deed by **Trillium (PRIME)**)
Property GP Limited) /s/ [withheld]

Director /s/ [withheld]
Witness (Signature)

Signatory Full Name [withheld]
Ian David Ellis Witness (Full Name)
65 Fleet Street, London EC4Y 1HS
Witness (Full Address)

Secretary /s/ [withheld]
Witness (Signature)

Signatory Full Name [withheld]
[withheld] Witness (Full Name)
65 Fleet Street, London EC4Y 1HS
Witness (Full Address)

SCHEDULE 8

Not used.

CONTENTS

Clause	Page no.
1. INTERPRETATION	3
2. CONDITIONS PRECEDENT	4
3. APPLICATION OF SPECIFIC PROVISIONS OF EXPANDED PRIME CONTRACT	5
4. TRANSFER OF THE FORMER ES ESTATE PROPERTIES AND FORMER ES EQUIPMENT AND FURNITURE	6
5. COMING INTO FORCE OF THE EXPANDED PRIME CONTRACT	19
5A IMPLEMENTATION	19
5B. INTERIM PAYMENT ARRANGEMENTS	24
6. MAINTENANCE AND UP-GRADING OF FACILITIES AND EQUIPMENT	26
7. FM SERVICES	27
8. FORMER ES ESTATE DATA	55
9. WARRANTIES, UNDERTAKINGS AND INDEMNITIES	68
10. CORRUPT GIFTS AND PAYMENT OF COMMISSION	69
11. PRE-COMPLETION SEARCHES	70
12. Funding Pre-Completion Searches	71
13. NOT USED.	72
14. CONFIDENTIALITY	72
15. DISPUTE RESOLUTION PROCEDURE	74
16. CONFLICT OF AGREEMENTS	74
17. FURTHER ASSURANCE	74
18. ENTIRE AGREEMENT	75
19. WAIVER	76
20. SEVERABILITY	76
21. NOTICES	76
22. GOVERNING LAW AND JURISDICTION	77
SCHEDULE 1 - LAND MATTERS	

SCHEDULE 2 - FORMER ES ESTATE PROPERTIES

SCHEDULE 3 - FORMER ES ESTATE DATA INFORMATION

SCHEDULE 4 - FORMER ES EXISTING SERVICE CONTRACTS

SCHEDULE 5 - CONDITIONS PRECEDENT

SCHEDULE 6 - FORMS OF GUARANTEE

SCHEDULE 7 - THE EXPANDED PRIME CONTRACT

SCHEDULE 8 - NOT USED

SCHEDULE 9 - WHITE FOLDER (HELD IN ESCROW)

SCHEDULE 10 - SCHEDULE OF TRANSFERRING EMPLOYEES

SCHEDULE 11 - PENSIONS ACTUARIAL INFORMATION

SCHEDULE 12 - INTER-CREDITOR AGREEMENT AND SUBORDINATION AGREEMENT

DATED 10 DECEMBER 2003

THE SECRETARY OF STATE FOR WORK AND PENSIONS

- and -

THE FIRST SECRETARY OF STATE

- and -

TRILLIUM (PRIME) LIMITED

- and -

TRILLIUM (PRIME) PROPERTY GP LIMITED

SECOND SUPPLEMENTAL AGREEMENT

RELATING TO

EXPANDED PRIME PROJECT

Lovells