

SCHEDULE 1

This is Schedule 1 comprising Definitions referred to in the Project Agreement for the PRIME Project

BETWEEN

The Secretary of State for Work and Pensions

- and -

The First Secretary of State

- and -

Trillium (PRIME) Limited

- and -

Trillium (PRIME) Property GP Limited

**dated 27 March 1998
as Expanded and Restated on 15 December 2003**

CONFORMED COPY

PART A

DEFINITIONS

"**Acceptance Notice**" has the meaning given to it in paragraph 24.4 of Section A of Part 1 of Schedule 4 [*Land Matters*] to this Agreement, and in paragraph 23.4 of Section A of Part 1 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"**Actual Life Cycle Expenditure**" means the actual costs and expenses (after deducting all discounts in cash or other form) listed below which the PRIME Contractor has reasonably and properly incurred in carrying out Life Cycle Works in respect of Facilities and Minor Occupancies in any Reconciliation Period paid by the PRIME Contractor or its Associates to a third party contractor properly engaged by the PRIME Contractor or its Associates in the ordinary course of business in accordance with Good Industry Practice and on an arm's length basis for undertaking and completing such Life Cycle Works:

- (a) the cost of any labour and materials, external consultants, surveyors and project managers (which in relation to external consultants surveyors and project managers shall not exceed [withheld]% of the Actual Life Cycle Expenditure in the relevant Reconciliation Period), contractors preliminaries, additional security costs associated with the Life Cycle Works, moving furniture, and obtaining landlords' and other third party consents, statutory fees; and
- (b) Service Charges insofar as they relate to Life Cycle Works paid by the PRIME Contractor or its Associates to a Third Party Landlord in respect of Type A Service Charge Properties,

but (to avoid doubt) excludes:

- (c) items of Maintenance Works;
- (d) internal costs and overheads;
- (e) all costs and expenses in respect of PRIME Contractor insurance;
- (f) amounts paid which are recoverable from any third party tenant or would be recoverable if such a tenant was in occupation of any area which was capable of letting outside the Facility but within the Site or from any other third party under any insurance policy warranty or indemnity;
- (g) PRIME Contractor's CAPEX Contributions;
- (h) any margin, fee, contingency, overhead or similar amount charged by an Associate of the PRIME Contractor; and
- (i) any actual expenditure in connection with Life Cycle Works in respect of a Type B Service Charge Property and Type C Service Charge Property and all Former DSS Estate Properties and other properties listed in Part 4a of Schedule 17 [*Payments Provisions*] which are SCPs (as defined in clause 15.27) including all Service Charges in connection with these properties.

For the avoidance of doubt:

- (i) the Actual Life Cycle Expenditure for the Reconciliation Period ending 31 March 2007 shall include Actual Life Cycle Expenditure incurred in relation to Life Cycle Works at Former ES Estate Properties for the period between the Contract Expansion Date and 31 March 2004; and

- (ii) the PRIME Contractor shall not be entitled to claim the same actual costs as Actual Life Cycle Expenditure more than once;

"Ad Hoc Opening Price Abatement" means the price abatement relating to the ad hoc opening of Facilities described in paragraph 1 of Part 7 of Schedule 6 [*Facility Output Requirements*] determined in accordance with paragraph 14 of Appendix 2 to Part 7 of Schedule 6 [*Facility Output Requirements*];

"Addition Notice" has the meaning given to it in paragraph 24.1 of Section A of Part 1 of Schedule 4 [*Land Matters*] to this Agreement, and in paragraph 23.1 of Section A of Part 1 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"Additional Auditable Obligations" means the PRIME Contractor's and DWP's respective obligations and entitlements:

- (a) in relation to any LCCE Reconciliation and Interim LCCE Reconciliation;
- (b) in relation to any Change in Costs;
- (c) in relation to the Terminal Value Reconciliation Mechanism set out in Schedule 37;
- (d) under clauses 15.18 to 15.21 [*Business Rates*];
- (e) under clauses 15.25 to 15.29 [*Service Charges*];
- (f) under clause 17 [*Change Procedures*] including to avoid doubt under clause 17.20 [*Department sub-letting*];
- (g) under clause 27 [*Non-default Termination*];
- (h) under clause 8 [*Former ES Estate Data*] of the Second Supplemental Agreement;
- (i) under the provisions of Schedule 22 [*Development Gains*];
- (j) under the provisions of Schedule 29 [*Windfall Profits and Gains*];
- (k) under the provisions of Schedule 35 [*Refinancing Gains*]; and
- (l) under the provisions of Schedule 36 [*Lease Gains*];

"Additional Flexi-Core Allowance" has the meaning given in clause 17.4A [*Department's Increase in Space*];

"Additional Property" has the meaning given in paragraph 24.1 of Section A of Part 1 of Schedule 4 [*Land Matters*] to this Agreement, and in paragraph 23.1 of Section A of Part 1 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"Additional Revenue" means the revenue generated by the PRIME Contractor in entering into a contract with a third party for the occupation or use of land in relation to a Site that is occupied by DWP;

"Additional Service" has the meaning given in paragraph 1 of Part 6 of Schedule 10 [*Change Procedures*];

"Adjudicator" means any person qualified in the appropriate discipline relevant to the dispute in question appointed as such from time to time under and subject to the provisions of Schedule 20 [*Disputes Resolution Procedure*];

"Adjusted Monthly Facilities Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Adjusted Monthly MOFP Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Adjustment Statement" means a statement prepared in accordance with Part 8 of Schedule 4 [*Land Matters*] to this Agreement to deal with any apportionment of monies following the Commencement Date and in accordance with Part 3 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement to deal with any apportionment of monies following the Contract Expansion Date;

"Affected Party" has the meaning given in clause 22 [*Force Majeure*] and clause 22A [*Relief Events*], as appropriate;

"Aggregate Flexi-Core Allowance Acquisitions" means the sum of the Additional Flexi-Core Allowance acquired under the provisions of clause 17.4A [*Department's Increase in Space*];

"Aggregate Flexi-Core Allowance" means the sum of the Annual Flexi-Core Allowance for the Contract Year during which a notice is given under Clause 17.1E [*Changes: Vacation of Flexi-Core Facilities*] and all preceding Contract Years plus all Aggregate Flexi-Core Allowance Acquisitions less the aggregate of all the Business Square Metres in respect of which notice to vacate has already been given under the provisions of Clause 17.1E [*Changes: Vacation of Flexi-Core Facilities*];

"Aggregate Flexibility Allowance" means the sum of the Annual Flexibility Allowance for the Contract Year during which a notice is given under clause 17.1A [*Changes: Vacation of Flexible Facilities*] and all preceding Contract Years less the aggregate of all of the Business Square Metres in respect of which notice to vacate has already been given under the provisions of clause 17.1A [*Changes: Vacation of Flexible Facilities*];

"Agreement" means this Agreement made between DWP, the SS1, the PRIME Contractor and PRIME Property and shall include all Schedules, appendices, annexes, plans and drawings attached hereto together with any supplemental agreement amendments made in accordance with clause 37 [*Amendments*], including the Second Supplemental Agreement;

"Allowable Savings" has the meaning given in clause 15.15 [*Utilities*];

"Amended PRIME Contract" means the form of the Initial PRIME Contract incorporating amendments from the Supplemental Agreement dated 6 June 2000;

"Annual Facilities Charge Adjustment Amount" has the meaning given in clause 15.32; [*Initial Arrangements*]

"Annual Flexi-Core Allowance" means 15,000 Business Square Metres in the Contract Year in which the Contract Expansion Date falls, 85,000 Business Square Metres in the Contract Year in which the first anniversary of the Contract Expansion Date falls, 80,000 Business Square Metres in the Contract Year in which the second anniversary of the Contract Expansion Date falls and 48,000 Business Square Metres in the Contract Year in which the third anniversary of the Contract Expansion Date falls and zero in all other Contract Years (without prejudice to unused Annual Flexi-Core Allowance being carried forward);

"Annual Flexibility Allowance" means 32,888 Business Square Metres for each of the first 15 Contract Years;

"Annual Monthly MOFP Charge Adjustment Amount" has the meaning given in clause 15.31 [*Set-Off*];

"Appraisal" means a technical appraisal and in respect of a proposed Department's Configuration Change setting out the costs, timing, and options for completing the proposed Configuration Works in a manner which achieves the DWP's Objectives, such appraisal to be in an appropriate level of detail in the circumstances (having regard to Good Industry Practice, and the scope and complexity of the proposed Configuration Works) including without limiting the generality of the foregoing, providing details in respect of the following:

- (a) design options;
- (b) construction methods and materials;
- (c) procurement methods;
- (d) the likely utilities consumption and environmental impact;
- (e) the extent to which the proposed Department's Configuration Change will cause Maintenance Works and/or Life Cycle Works to be delayed or no longer required.

"Assignment" means the form of assignment of a Leasehold Property in the terms of Part 4, Section A of Schedule 4 [*Land Matters*] and an assignation of a Leasehold Property situated in Scotland in the terms of Section B of Part 4 of Schedule 4 [*Land Matters*];

"Associate" means:

- (a) in respect of a relevant company:
 - (i) any company which is a Subsidiary, a Holding Company or a company which is a Subsidiary of a Holding Company;
 - (ii) any partnership
 - (1) which, by its partners, holds or controls the majority of voting rights in or has the right to appoint or remove a majority of directors of the company or any other company exercising such control over the relevant company over which such partnership, by its partners, has such ownership or control; or
 - (2) in which the relevant company holds or controls the majority of voting rights or capital, or (in the case of a limited partnership) in which the relevant company is the general partner;
 - (iii) any partner, or Holding Company of a partner, in a partnership referred to in (ii) above; or
 - (iv) any company with respect to which one or more partners of a partnership referred to in (ii) holds or controls the majority of voting rights or has the right to appoint or remove a majority of directors,
- (b) in respect of a relevant partnership:
 - (i) any company in respect of which the partnership is an Associate pursuant to paragraph (a) of this definition;
 - (ii) any partner, or Holding Company of a partner, in the relevant partnership;

- (iii) if the partners in the relevant partnership entered into that partnership by means of one of more other partnerships, that other partnership or those other partnerships

save that, except where it is used in the definition of "Funders" below, the term "Associate" in respect of a relevant company or partnership shall not extend to any entity or person who owns or controls an interest in or rights over the Sponsors or any entity which would only be an Associate if such entity or person who owns or controls an interest in or rights over the Sponsors were to be deemed by paragraphs (a) or (b) of this definition to be an Associate;

"Available Business Square Metres" has the meaning given in Schedule 17 [*Payment Provisions*];

"Band 1 UAC Premium Percentage" [withheld]

"Band 2 UAC Premium Percentage" [withheld]

"Bank Direct Agreement" means an agreement substantially in the form shown in Part 1 of Schedule 19 [*Form of Direct Agreement*] or such other form acceptable to DWP;

"Baseline Operating Band" means for each Facility and Minor Occupancy the band of hours set out in Part 2 and Section B of Part 5 respectively of Schedule 6 [*Facility Output Requirements*] under the column headed "Baseline Operating Band";

"Base Value" has the meaning given to it in Schedule 22;

"Basic Amount Invoice" means the invoice described in clause 15.3; [*Basic Amounts*]

"Basic Invoice Date" means the 11th day of each Contract Month;

"Basic Monthly Facilities Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Basic Monthly MOFP Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Basic Payment Date" means the first day of each Contract Month, from and after the second Contract Month;

"Basic Utilities Amount" has the meaning given in clause 15.16 [*Utilities*];

"Building Costs Index" means:

- (a) the General Building Cost Index produced on a quarterly basis by the Royal Institution of Chartered Surveyors Building Cost Information Service; or
- (b) if there is a material change in the basis of such index or such index ceases to be quoted, such other index as DWP and the PRIME Contractor may determine to be appropriate in the circumstances or is determined to be appropriate in accordance with the Disputes Resolution Procedure;

"Business Day" means in relation to Operations at, or the calculation of Available Business Square Metre Days with regard to, Sites in Scotland, a day other than a Saturday, Sunday or a local holiday in Scotland and in relation to all other matters under this Agreement, a day other than a Saturday, Sunday or bank holiday in England;

"Business Need" means the designation ascribed to a Facility as set out in Part 1 of Schedule 6 [*Factory Output Requirements*]. The designations are Flexible Facilities, Flexi-Core Facilities or Core Facilities;

"Business Rates" means the Uniform Business Rate imposed on non-domestic premises pursuant to the LGFA or, in the case of a property situated in Scotland, non-domestic rates pursuant to the Local Government (Scotland) Act 1975, the Local Government Finance Act 1992 and the Local Government Etc (Scotland) Act 1994;

"Business Rates Amount" has the meaning given in clause 15.18 [*Business Rates*];

"Business Rates Payable" means the rateable value of a Facility multiplied by the Uniform Business Rate reflecting any transitional or other adjustment granted by the relevant authority;

"Business Rates Remittance Request" means the remittance request described in clause 15.21 [*Business Rates*];

"Business Rates Savings" means the reductions in Business Rates Payable for a Facility in relation to the Former DSS Estate Properties and/or for the Former ES Estate Properties, as the case may be;

"Business Rates Year" means any twelve month (or such other) period in respect of which Business Rates charges are determined;

"Business Square Metres" means the number of square metres required by DWP or any OGD or ISB at a Facility or a Minor Occupancy, as the case may be, stated in the Facility Output Requirements or, where it is being measured, the number measured in accordance with:

- (a) in relation to the Former DSS Estate Properties, Definition 3 of the "Code of Measuring Practice" issued by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers Fourth Edition (November 1993);
- (b) in relation to the Former ES Estate Properties, Definition 3 of the "Code of Measuring Practice" issued by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers Fifth Edition (2001); and
- (c) otherwise in relation to Department's Increase Enquiries after the Contract Expansion Date, in accordance with the Code,

as amended from time to time in accordance with this Agreement;

"Call-off Contract" means a contract between DWP and an Existing Consultant identified in Schedule 23 [*Existing Consultant's Call Off Contracts*];

"Capital Payment Stream" means a Type 1 Capital Payment Stream and/or a Type 2 Capital Payment Stream, as the case may be;

"Carried CAPEX Contribution" means any PRIME Contractor's CAPEX Contribution from a prior Contract Year which has not been paid and is carried forward as contemplated by clause 17.23 [*Contractor's CAPEX Contribution Cap*];

"Carried Savings" means the balance of any savings paid to DWP pursuant to clause 10.30(a) at the expiry of the Reconciliation Period Before Last which were not paid to the PRIME Contractor pursuant to clause 10.30(b) at the expiry of the Last Reconciliation Period as a result of costs overruns in the Last Reconciliation Period;

"Catering Subsidy Amount" means £3,792,825.95;

"CDM Regulations" means the Construction (Design and Management) Regulations 1994 as from time to time amended, supplemented or replaced;

"**CCO**" means a Customer Care Officer;

"**Certificate of Commencement**" means the certificate to be issued by the Department's Representative pursuant to clause 2.8 [*Conditions Precedent*] of the Second Supplemental Agreement;

"**Certificate of Title**" means:

- (a) for the Former DSS Estate Properties, any certificate of title prepared and issued prior to 27 March 1998 in respect of the Former DSS Estate Freehold Properties, Former DSS Estate Leasehold Properties and Former DSS Estate Excluded Properties by a Local Property Lawyer; and
- (b) for the Former ES Estate Properties, any certificate of title prepared and issued as of the date of the Second Supplemental Agreement in respect of the Former ES Estate Freehold Properties, Former ES Estate Leasehold Properties and Former ES Estate Excluded Properties by DWP's Solicitors;

"**Certificated Properties**" means any Property or any Excluded Property in respect of which DWP has procured (for the purposes of this Agreement) the provision of either a Certificate of Title or Lease Summary;

"**Challenge Amount**" means the amount which is the difference between:

- (a) the amount, as determined by the Expert, which DWP should have paid in respect of the amount (or part thereof) specified on a Variable Amount Statement, which specified amount was the subject of a dispute which was referred to the Expedited Dispute Resolution Procedure in accordance with clause 15; and
- (b) the amount, if any, which DWP actually paid in respect of the amount referred to in paragraph (a) above;

"**Challenge Notice**" means a notice delivered by DWP to the PRIME Contractor pursuant to clauses 15.7 and any Manifest Error Notice;

"**Challenge Period**" means the period from the day of submission of a Variable Amount Invoice to and including the 90th day thereafter;

"**Change**" means a Department's Reduction in Core Space, a Department's Increase in Space, a Service Change, a Direct Procurement Change, a Contractor's Facilities Change, a Major Project Change or a Department's Configuration Change (as the case may be);

"**Change in Costs**" means in respect of each Facility or Minor Occupancy (as the case may be) the increase or decrease in cost to the PRIME Contractor to the extent it arises or is projected to arise out of accommodating a Department's Increase in Space, a Department's Service Change, a Third Party Service Change, a Contractor's Facilities Change, a Major Projects Change or a Direct Procurement Change, including any costs of a capital nature and to the extent it arises or is projected to arise out of accommodating such a Change any increase or decrease in revenue earned or projected to be earned or other amount recovered or projected to be recovered by the PRIME Contractor (apart from revenue earned pursuant to this Agreement) and, in the case of costs, for which the PRIME Contractor is not otherwise compensated;

"**Change in Hours**" means a Change in NW Hours and/or a Change in PO Hours (as the contexts requires);

"**Change in NW Hours**" means a permanent change to the Normal Working Hours (from time to time) requested by DWP (in writing) at one or more Facilities and/or Minor Occupancies which is not, and which goes beyond, a request for ad hoc opening as either

expressly acknowledged by DWP in a Department's Service Change Enquiry or as agreed or determined pursuant to Part 7 of Schedule 6 [*Facility Output Requirements*];

"Change in PO Hours" means a permanent change to the Public Opening Hours (from time to time) requested by DWP (in writing) at one or more Facilities and/or Minor Occupancies;

"Change of Control" means:

- (a) any sale or other disposal of any legal or beneficial interest in at least 25% of the equity share capital of a corporation (including the control over the exercise of voting rights of the equity share capital) or any material change in the powers of its directors or the freedom of the directors to exercise their powers as they consider appropriate which has the effect of materially altering the control of the management, business or affairs of the corporation as between the holders of at least 25% of the equity share capital of that corporation; or
- (b) any sale or other disposal of any legal or beneficial interest in at least 25% of the partnership assets of a partnership or any material change in the rights of its partners or the freedom of the partners to exercise those rights as they consider appropriate which has the effect of materially altering the control of the management, business or affairs of the partnership as between the holders of at least 25% of the capital of that partnership;

"Cleaning Standards" means the cleaning standards set out in Appendix 8 of Schedule 8 [*Required Accommodation Standards*] measured in accordance with Appendix 1 and Appendix 4 of Part 1 to Schedule 14 [*Performance Measuring System*];

"Code" means The Royal Institution of Chartered Surveyors' Code of Measuring Practice for the time being in force;

"Combined PRIME/TIES Bid Model" means the Excel projected operating cashflow computer model relating to the PRIME Contractor including all expenditure, revenues and financing of the Operations in relation to both the Former ES and Former DSS Estate Properties from and after the Contract Expansion Date, three copies of the initial version of which on CD ROM have each been dated and initialled by the parties for the purposes of identification, or such replacement for that Excel projected cashflow computer model as may be agreed by the parties or determined pursuant to the terms of this Agreement;

"Commencement Certificate" means a certificate in the form set out in Part 1 of Schedule 21 [*Certificates*];

"Commencement Date" means 1 April 1998 [*Conditions Precedent*];

"Commercial Tenancy" means any lease, licence or tenancy by which a Third Party Tenant has an interest in a Site;

"Completion Statement" means a statement prepared in accordance with Part 8 of Schedule 4 to this Agreement dealing with any apportionment of monies at the Commencement Date, and in accordance with Part 3 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement to deal with any apportionment of monies at the Contract Expansion Date;

"Conditions Precedent" means the conditions referred to in Schedule 2 [*Conditions Precedent*];

"Configuration Change Implementation Plan" has the meaning given in paragraph 1.9 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"Configuration Works" means all or any works (including plant, materials and equipment) comprised in, and executed pursuant to, a Department's Configuration Change in respect of which the PRIME Contractor is acting as agent or contractor pursuant to Schedule 27 [*Procedure for Procuring Department's Configuration Change*], and to avoid doubt excludes works performed by a DWP Contractor or by a third party contractor engaged by DWP to carry out DWP's Configuration Works;

"Connected Person" means the PRIME Contractor, PRIME Property or any of the shareholder in the PRIME Contractor or PRIME Property (so long as it retains an interest in the equity share capital of the PRIME Contractor) or any Associate of any of them provided that a person shall not be a Connected Person where the PRIME Contractor did not know, could not reasonably have known and had taken all reasonable precautions to ascertain whether such person was an Associate;

"Consent" means a consent, permit, permission, licence or authorisation or approval, whether required from a Third Party Landlord, adjoining owner or occupier, or otherwise;

"Consultancy Services" means consultancy services other than the Project Management Services in respect of a Department's Configuration Change which DWP requires, or which DWP and the PRIME Contractor agree are required for completion of a relevant Department's Configuration Change;

"Consultant" means any suitably qualified professional consultant engaged or to be engaged to provide Consultancy Services, including but not limited to designers, planning supervisors and quantity surveyors;

"Contract Expansion Date" means 15 December 2003;

"Contract Expansion Year" means the period commencing 15 December 2003 and ending 31 March 2004;

"Contract Month" means a calendar month during the Operating Period;

"Contract Payment Statement" has the meaning given in clause 15.2 [*Payment*];

"Contract Year" means a period of 12 months starting on 1 April, save for:

- (a) the **"first Contract Year"**, which shall be the period of time commencing on the Commencement Date and ending on 31 March 1999; and
- (b) the **"last Contract Year"** which shall be:
 - (i) subject to (ii), the period between the 1 April preceding the expiry of the Operating Period and the date on which the Operating Period expires; or
 - (ii) if this Agreement is terminated before the expiry of the Operating Period, the period between the 1 April preceding the date on which this Agreement is terminated and the date of termination;

"Contracting Associate" means any Service Provider and any Associate of the PRIME Contractor which performs any function in connection with this Agreement or the Operations;

"Contractor's Facilities Change" means a Change in the manner in which the PRIME Contractor will fulfil the Facilities Output Requirements at a particular Location proposed by the PRIME Contractor pursuant to clause 17.8 [*Contractor's Facilities Change*];

"Contractor's Scheme" means the Retirement Benefit Scheme referred to in clause 11.7 and 11.10 of this Agreement;

"Contractor's Service Change" means a Change in the quality of the services or the method of service delivery specified in the Generic Method Statement proposed by the Contractor pursuant to clause 17.13 [*Contractor's Service Change*];

"Controlled Waters" has the meaning set out in s.104 of the Water Resources Act 1991;

"Core Facilities" means those Facilities identified with a "CORE" in the column headed "Business Need" in Part 1 of Schedule 6 [*Facilities Requirements*] as amended by clause 17.2 [*Vacation of Core Facilities*];

"Core Property" means any Property and/or any Excluded Property which is, or is anticipated at the Commencement Date, to provide the Site for a Core Facility;

"Core Reduction Enquiry" has the meaning given in Part 3a of Schedule 10 [*Change Procedure*];

"Corporate Overhead Costs" means the costs associated with:

- (a) accommodation;
- (b) the procurement team;
- (c) the finance team;
- (d) the investment strategy group;
- (e) human resources;
- (f) chief executive officer and chief operating officer offices;
- (g) information services - infrastructure / projects / developments; and
- (h) margin;

"Corrective Action Notice" has the meaning given in clause 13.2 [*Measuring of Performance*];

"Cost Plan" subject to clause 1.19 [*Interpretation*] the plans set out in the tables included in Part 1 and Part 2 of Schedule 16 [*Cost Plans*], save in the case of clause 15.27 the plans set out in the tables included in Part 2 and Part 3 of Schedule 16 [*Cost Plans*];

"Critical Aspects of Service Requirements" means the aspects of Service Requirements listed in Schedule 15 [*Critical Aspects of Service Requirements*];

"Critical Data" has the meaning given to it in clause 18.2 [*DWP Data*];

"Customer Care Officer Hours" means the number of hours per quarter or per annum as the case may be that a customer care officer is required to work at a Facility or Minor Occupancy as determined in accordance with a risk assessment for that Facility or Minor Occupancy carried out in accordance with paragraph 13.1(f) of Part 2 of Schedule 8 [*Required Accommodation Standards*];

"Customer Service Centre" or **"CSC"** means the service centre facility to be provided by the PRIME Contractor for the receipt of and co-ordination of responses to complaints from DWP, any OGD or ISB or DWP Contractor regarding the FM Services;

"Current Business Rates Year" means the Business Rates Year in which the calculation of Business Rates Savings is being performed;

"Current Operating Band" means the current Operating Band into which the Normal Working Hours for a Facility and/or Minor Occupancy from time to time fall;

"Data Protection Act" means the Data Protection Act 1984;

"Data Room Schedule" has the meaning given to it in clause 18.2 [*DWP Data*];

"Date of Initial Occupation and Use" has the meaning given in paragraph 2.2 of Part 4 of Schedule 6 [*Facility Output Requirements*];

"Day to Day Management Procedures" means the manual of procedures to be drawn up by the PRIME Contractor describing the manner in which the relationship between DWP and the PRIME Contractor will function on a day to day basis nationally, regionally and locally;

"Default Interest Rate" means a rate of interest per annum equivalent to 3 month LIBOR (tererate P3750) plus 1% the date upon which the amount bearing interest first became due (such interest to accrue daily on the basis of a 365 day year and to be compounded at six monthly intervals). In the event of any variation in such lending rates being announced while such amount remains outstanding, the interest payable shall be correspondingly varied from the date of each such variation;

"Department" means DWP, which, for the avoidance of doubt, includes (but is not limited to) the officers and employees of, and secondees to, DWP who provide administrative and functional support to permit DWP to carry out, or to carry out on behalf of DWP, the functions assigned to it from time to time by H.M. Government;

"Department's Configuration Change" means a change in the configuration of accommodation at a Facility which does not involve a change in the number of Business Square Metres at the Facility or any change in any of the other Required Outputs for the Facility, but may involve the reshaping of offices, corridors, caller areas, provision for the laying of cabling or similar minor physical changes to the accommodation provided at the Facility;

"Department's Configuration Change Enquiry" means a document stating on its face that it is a Department's Configuration Change Enquiry indicating that DWP wishes to undertake a Department's Configuration Change at one or more Sites and describing in such level of detail as DWP considers appropriate the proposed Configuration Works, including:

- (a) the nature and scope of the relevant Configuration Works;
- (b) the Site(s) at which they are to be performed;
- (c) the timing of the proposed Department's Configuration Change; and
- (d) any issues DWP would like the PRIME Contractor to address in connection with the proposed Department's Configuration Change;

"Department's Increase in Space" means additional Available Business Square Metres in respect of a Facility or the addition of a new Facility at a Location requested by DWP in writing;

"Department's Increase Enquiry" has the meaning given in Part 3b of Schedule 10 [*Change Procedure*];

"Department's Reduction in Core Space" means a vacation of a Core Facility or part of a Core Facility prior to the end of the Operating Period requested by DWP;

"Department's Representative" means [withheld], Director of DWP Estates, or such other person as is appointed from time to time by DWP in accordance with clause 4. [Representatives];

"Department's Service Change" means a Service Change and/or a Change in Hours, proposed by DWP;

"Department's Service Change Confirmation" means the document referred to in paragraph 1 of Part 5 of Schedule 10 [Change Procedures];

"Department's Service Change Enquiry" has the meaning set out in paragraph 1 of Part 5 of Schedule 10 [Change Procedures];

"Determination Notice" means a notice delivered by the PRIME Contractor to DWP pursuant to clauses 15.9 or 15.30;

"Development Gain" has the meaning set out in Schedule 22 [Development Gains];

"Development Gain Credit" has the meaning set out in Schedule 22 [Development Gains];

"Direct Agreement" means a Bank Direct Agreement and/or a Services Provider Direct Agreement;

"Direct Procurement Changes" means a change designated as a Direct Procurement Change pursuant to clause 17.6 [Direct Procurement Changes];

"Disclosed Data" has the meaning given in clause 18.2 [DWP Data];

"Display Screen Assessment" means the display screen assessment carried out in accordance with Appendix 10 of Schedule 8 [Required Accommodation Standards];

"Disputed Monthly Facilities Charge Adjustment Amount" has the meaning given in clause 15.9;

"Disputed Monthly MOFP Charge Adjustment Amount" has the meaning given in clause 15.9;

"Dispute Referral Deadline" has the meaning given in paragraph 1.8 of Part 1 Schedule 20 [Disputes Resolution Procedure];

"Dispute Resolution Procedure" means the procedure referred to in clause 35 and set out in Part 1 of Schedule 20 [Disputes Resolution Procedure];

"DWP's Brief" means a document describing DWP's requirements in respect of a proposed Department's Configuration Change prepared by DWP, at DWP's discretion, and in such form and detail as DWP consider appropriate after consultation with the PRIME Contractor;

"DWP Business" means any of DWP's businesses to be carried out at the Facilities, but excluding the Operations;

"DWP's Contract Management Team" means the project team referred to in clause 4.11 [Representatives];

"DWP Contractor" means any person with whom DWP has contracted for the provision of services, goods and/or works which are part of or necessary for the services delivered by DWP to the public other than the PRIME Contractor or a Third Party Contractor engaged to perform Configuration Works pursuant to Schedule 27;

"DWP Contractor Leases" means the leases, licences or other arrangements existing at 27 March 1998 in favour of DWP Contractors as are more particularly set out in Part 9 of Schedule 4;

"DWP Equipment" means the Former DSS Equipment and the Former ES Equipment;

"DWP Furniture" means the Former DSS Furniture and the Former ES Furniture;

"DWP's Objectives" means achieving the following:

- (a) value for money;
- (b) compliance with the Required Accommodation Standards and the Service Requirements and the Agreement (save to the extent that DWP grants relief);
- (c) the proper and uninterrupted performance of DWP's Business (save to the extent DWP waives this requirement in writing);
- (d) compliance with Law; and/or
- (e) any other aims and objectives communicated to the PRIME Contractor by DWP from time to time;

"DWP's Scottish Solicitors" means in the case of the Former DSS Estate Properties the firm of Burness of 50 Lothian Road, Festival Square, Edinburgh and in the case of the Former ES Estate Properties the firm of Fyfe Ireland of Orchard Brae House, 30 Queensferry Road, Edinburgh EH5 2HG or such other firm of solicitors in Scotland as may be appointed by DWP for the purposes of this Agreement;

"DWP's Solicitors" means the solicitors acting for DWP and SS1 in connection with the Former ES Estate Properties, being Lovells of Atlantic House, Holborn Viaduct, London EC1A 2FG for England and Wales, and Fyfe Ireland for Scotland;

"Employees" means the Former DSS Employees and the Former ES Employees;

"Empty Space" means a Facility which has been vacated by DWP for which the PRIME Contractor continues to receive a Facilities Payment;

"Environmental Action" means any Remediation undertaken by, or required by, a regulatory authority (including but not limited to the Environment Agency or a local authority) acting under any Laws relating to environmental contamination, in relation to any Hazardous Substance present in the soil and/or Controlled Waters at the Former ES Estate Properties as at the Contract Expansion Date;

"Equipment" means the Plant, the PRIME Contractor's computers, equipment, furniture and other assets at any Site from time to time (other than any part or parts thereof occupied by the PRIME Contractor or any Associate of it) provided by the PRIME Contractor to enable it to perform its obligations under this Agreement and, to the extent that any of it still exists at any relevant time and is situated at any such Site, DWP Equipment and DWP Furniture;

"Equipment Leases" means the equipment leases listed in Part 2 of Schedule 4 to the Second Supplemental Agreement and other equipment leases or licences or other informal arrangements in the nature of leases or licences in existence at the Contract Expansion Date and which relate to Former ES Equipment;

"Estate" means the portfolio of Properties and Excluded Properties and Additional Properties as a whole;

"Estates Strategies" means the documents entitled "Estates Strategies" issued pursuant to clause 9.6 [*Estates Strategies and Lease Renewals*] including DWP's views on the likely present and future need for Facilities at Locations and the Three Year Plans;

"Event" means events, circumstances, incidents, requests or enquiries;

"Event of Default" means any of the events set out in clause 25 [*Events of Default*];

"Excluded Properties" means together the Former DSS Estate Excluded Properties and the Former ES Estate Excluded Properties;

"Existing Consultants" means the consultants listed under the column headed "Consultants" in Schedule 23 [*Existing Consultants' Call Off Contracts*];

"Existing DSS Sites" means those Sites set out in Schedule 11 and at which there is one or more Core Properties, Flexible Properties and/or Surplus Properties;

"Existing ES Sites" means those Sites set out in the column headed "Property Code" in Part 4 of Schedule 1 to the Second Supplemental Agreement [and at which there is one or more Core Properties and Flexi-Core Properties];

"Existing FUP Table" has the meaning given in clause 15.33(a) [*Reallocation of FUPs*];

"Existing Services" means those of the FM Services provided to DWP under an Existing Service Contract;

"Existing Service Contracts" means the Former DSS Existing Service Contracts and the Former ES Existing Service Contracts;

"Existing Service Provider" means the Former DSS Existing Service Provider and the Former ES Existing Service Provider;

"Existing Service Provider Amount" has the meaning given in clause 15.22 [*Existing Service Contracts*];

"Existing Sites" means Existing DSS Sites and Existing ES Sites;

"Existing UAC Table" has the meaning given in clause 15.38(a) [*Reallocation of Unavoidable Costs*];

"Expanded PRIME Contract" means the expanded PRIME Contract as shown in its amended and restated form in Schedule 7 of the Second Supplemental Agreement;

"Expedited Dispute Resolution Procedure" means the procedure referred to in clause 35 and set out in Part 2 of Schedule 20 [*Disputes Resolution Procedure*];

"Expert" has the meaning given in paragraph 1 of Part 2 of Schedule 20 [*Disputes Resolution Procedure*];

"Expiry Certificate" means a certificate in the form set out in Part 2 of Schedule 21 [*Certificates*];

"Expiry Date" means the expiry of the Operating Period;

"Expiry Requirements" means the requirements that the Facilities then occupied by DWP, and/or any OGD, ISB or DWP Contractor and the Equipment used to provide the FM Services at such Facilities shall at the Expiry Date comply with all of the requirements of this Agreement, as modified by clause 8.1A, including (without limitation) the Required Accommodation Standards, the Service Requirements, the Generic Method Statement, the Schedule of Maintenance Works and the Statutory Requirements;

"External Service Provider" means any person engaged by the PRIME Contractor or any Project Associate of the PRIME Contractor to provide any aspect of the FM Services but does not include Third Party Landlords or any Associate of the PRIME Contractor;

"External Service Provider Direct Agreement" means a direct agreement substantially in the form set out in Part 2a of Schedule 19 [*Form of Direct Agreement*];

"Facilities Cost Plan" subject to the provisions of clause 1.19 [*Interpretation*] means the tables set out in Appendix 2 to Schedule 14 [*Performance Measuring System*];

"Facilities Cost Plan Price Elements" means the parts of the Facilities Payment treated as earned by the PRIME Contractor by performance of FM Services at a Facility or Minor Occupancy as set out in the Facilities Cost Plan;

"Facilities Payment" means in respect of a Contract Month the payment in respect of the provision of a Facility and the FM Services provided to that Facility calculated in accordance with the provisions of clause 15 [*Payment*] and Schedule 17 [*Payment Provisions*];

"Facility" means one set of those facilities which the PRIME Contractor is required to provide to fulfil the Facility Output Requirements which set of facilities is identified in Part 1 of Schedule 6 [*Facility Output Requirements*] by reference to a single number in the Facility Number column in that Schedule, and includes a Core Facility, a Flexible Facility and a Flexi-Core Facility;

"Facility Number" means the number assigned to a Facility in Part 1 of Schedule 6 [*Facilities Output Requirements*];

"Facility Output Requirements" means the requirements of space, amenities and other features required by DWP at each Facility (set out in Part 1 Schedule 6 [*Facility Output Requirements*]) as amended from time to time in accordance with clause 17 [*Change Procedures*];

"Facility Price" or **"FP"** means in respect of each particular Facility the number set out under the column headed "Total FP(£)" in the table included at (prior to the Contract Expansion Date) Part 4a and (from the Contract Expansion Date) Part 4b of Schedule 17 [*Payment Provisions*] as the same may be amended and replaced from time to time in accordance with this Agreement;

"Facility Service Provider Replacement Notice Number" a number equal to one twelfth of the relevant Facility Warning Notice Number from time to time;

"Facility Warning Notice Number" means a number set on the first day of each Contract Year equal to 12 multiplied by the sum of:

- (i) the aggregate of the number of FM Services to be provided at the relevant Facility or Minor Occupancy (as the case may be), all as set out in the current version of Schedule 6; and
- (ii) four;

"Facility Unit Price" or **"FUP"** means in respect of each particular Facility the number set out under the column headed "Total FUP(£)/m²" in the table included at (prior to the Contract Expansion Date) Part 4a and (from the Contract Expansion Date) Part 4b of Schedule 17 [*Payment Provisions*] as the same may be amended and replaced from time to time in accordance with this Agreement;

"Feasibility Study" comprises that information stated in paragraph 4 of Part 3b of Schedule 10;

"Final LCCE Reconciliation" has the meaning given in clause 10.37;

"Final Proposal" means the PRIME Contractor's final proposal in respect of a proposed Department's Configuration Change setting out such information and detail as is appropriate in the circumstances (having regard to Good Industry Practice, DWP's Objectives and the scope and complexity of the proposed Department's Configuration Change) and including the particulars set out in Stage D in Appendix 2 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"Finance Date" has the meaning given to it in clause 12.1 of the Second Supplemental Agreement;

"First Charge" means the charge or charges granted or to be granted by PRIME Property in favour of DWP over the Specified Properties (or in respect of the Specified Properties situated in Scotland a standard security) in the forms set out in Part 1 of Schedule 30 [*Charges*];

"First Charges Ratio" means the ratio which, from time to time, the total value of the Specified Properties (after allowing for the substitution of other Properties in accordance with clause 7.7) determined on an open market basis (assuming an arms length sale by a willing seller to a willing buyer and assuming vacant possession, whether or not this is the case) determined in accordance with the provisions for determining market value of properties in the Red Book bears to £40,000,000 as at the date the ratio is calculated;

"First Supplemental Agreement" means a supplemental agreement dated 6 June 2000 made between the Secretary of State for Social Security (now DWP) (1), The Secretary of State for the Environment, Transport and the Regions (now SS1) (2), the PRIME Contractor (3) and PRIME Property (4);

"Flexi-Core Allowance" means Business Square Meters at Flexi-Core Facilities which DWP may vacate pursuant to clause 17.1F(a) without payment of compensation;

"Flexi-Core Amount" means that sum of money to be paid in relation to the sale by DWP of any Aggregate Flexi-Core Allowance pursuant to clause 17.19 [*Sale by DWP of unused Flexi-Core Allowance*];

"Flexi-Core Facilities" means those Facilities identified with an "FLEXI-CORE" in the column headed "Business Need", in Part 1 of Schedule 6 [*Facility Output Requirements*];

"Flexi-Core Unit Rate" means the rates set out in the table in Annex 2 of Part 3a of Schedule 10 [*Change Procedure*];

"Flexi-Core Property" means any Property and/or Excluded Property which is, or is anticipated at the Contract Expansion Date, to provide a Flexi-Core Facility;

"Flexible Compensation Sum" means in respect of a Contract Year in which a Flexible Facility is vacated in its entirety following the exercise by DWP of its rights under clause 17.1A [*Vacation of Flexible Facilities*] or clause 17.1E [*Vacation of Flexi-Core Facilities*] the sum (if any) calculated in respect of that Facility for that Contract Year in accordance with paragraph 7.2 of Part 1 of Schedule 10 [*Change Procedures*];

"Flexible Facilities" means those Facilities identified with an "FLEX" in the column headed "Business Need", in Part 1 of Schedule 6 [*Facility Output Requirements*] subject to changes in accordance with clauses 17.2A to L;

"Flexible Property" means any Property and/or Excluded Property which is, or is anticipated at the Commencement Date to provide the Site for a Flexible Facility;

"Floating Charge" means the floating charge granted or to be granted by the PRIME Contractor in favour of DWP over Former ES Equipment and Former ES Furniture in the form set out in Part 3 of Schedule 30 [*Charges*];

"FM Basket Index" has the meaning given in Schedule 17 [*Payment Provisions*];

"FM Component" has the meaning given in Schedule 17 [*Payment Provisions*];

"FM Services" means those services listed in paragraphs 1 to 15 of Part 2 of Schedule 8 [*Required Accommodation Standards, Service Requirements and Generic Method Statement*] as subsequently amended or adjusted as a result of any Service Change;

"FM Services Cost Base" means that portion of any Change in Costs relating to the delivery of the FM Services, being:

- (a) all of the reference services (including, to avoid doubt, OBM costs, CSC costs and service representatives costs);
- (b) Furniture; and
- (c) Service Charges (excluding, to avoid doubt, Landlord's works elements of Service Charges);

"Following January" has the meaning given in clause 10.29;

"Force Majeure" has the meaning given in clause 22 [*Force Majeure*];

"Former DSS Employees" means those mobile and non-mobile, industrial and non-industrial civil servants whose names are notified in writing by DWP to the PRIME Contractor three months prior to any relevant Service Commencement Date, and the term "Former DSS Employee" shall be interpreted accordingly;

"Former DSS Equipment" means the equipment at the Former DSS Estate Properties of the types described in Schedule 7 to this Agreement [*DWP Equipment and Furniture*];

"Former DSS Estate Excluded Properties" means, in relation to England and Wales, the following:

1. Oxford, Harcourt House (0233872);
2. Havant Crown Building, Emleigh Road (0323903);
3. LDN Neasden Chancel House (0240130.1);
4. LDN Neasden Chancel House (0240130.2);
5. Ashford International House (0344784);
6. Liverpool Port of Liverpool Building 2 (0813668.2);
7. Hemsworth Low Hall (1039330);
8. Dudley Waterbabies (5022895);
9. 442 Voreda House Penrith (0833073);
10. Exchange House Watford (0205772);
11. Molineux House Wolverhampton (0642383); and
12. Quay Road Bridlington (1020991);

and in relation to Scotland, the following:

1. Buchanan House, Livingston (6014470);
2. Wellington House, Glasgow (8019844);
3. Traill House, Orlig Street, Thurso (1220021); and
4. Blantyre DIRC (1323021);

"Former DSS Estate Freehold Properties" means the properties or part of properties identified with an "F" in the column headed "Freehold or Leasehold" in Schedule 11 except for any which is a Former DSS Estate Excluded Property save to the extent that the parties agree otherwise;

"Former DSS Estate Leasehold Properties" means the properties or parts of properties identified with an "L" in the column headed "Freehold or Leasehold" in Schedule 11 except for any which is an Excluded Property save to the extent that the parties agree otherwise;

"Former DSS Estate OGD Property" means any Former DSS Estate Property or Former DSS Estate Excluded Property where the title of the Property is nominally in the name of an OGD rather than the SS1;

"Former DSS Estate Properties" means the Former DSS Estate Freehold Properties, the Former DSS Estate Leasehold Properties and the Former DSS Estate Excluded Properties;

"Former DSS Estate Surplus Area" means the area of a Core Property or a Flexible Property being that part of a Core Property or a Flexible Property which is shown, in square metres in the column headed "Surplus NIA" in Schedule 18 and, where relevant, as shown on the relevant plan forming part of Schedule 9 provided that the same is capable of being relet and capable of independent occupation (as those terms get more fully explained in Schedule 28);

"Former DSS Estate Surplus Property" means each of those Former DSS Estate Properties which is not a Core Property or a Flexible Property;

"Former DSS Estate Surplus Space" means any Former DSS Estate Surplus Property or Former DSS Estate Surplus Area, in respect of the whole or any part of which either:

- (a) DWP gives notice that it does not intend to vacate at the Commencement Date pursuant to clause 7.14; or
- (b) DWP is in breach of its obligations to vacate or procure vacation of such area under Section A, Part 1 of Schedule 4 [*Land Matters*];

"Former DSS Estate Transfer Price" means the sum of £250 million to be paid by PRIME Property to DWP in accordance with clauses 7.3 and 7.3A which shall be inclusive of any VAT properly chargeable thereon as a result of any election to waive the exemption from VAT under the provisions of Schedule 10 to the Value Added Tax Act 1994 but exclusive of any VAT properly chargeable thereon otherwise than as a result of such an election;

"Former DSS Existing Service Contracts" means the contracts listed in Part 1 of Schedule 25 [*Existing Service Contracts*];

"Former DSS Existing Service Provider" means a person providing services to the DWP pursuant to a Former DSS Existing Service Contract as at 28 March 1998;

"Former DSS Furniture" means furniture owned by DWP to be transferred to the PRIME Contractor in accordance with this Agreement the categories of which are set out in Schedule 7 [*DWP Equipment and Furniture*];

"Former ES Equipment" means the equipment at the Former ES Estate Properties of the types described in Schedule 7 [*DWP Equipment and Furniture*] to this Agreement;

"Former ES Estate Data" has the meaning given to it in clause 8.2 of the Second Supplemental Agreement;

"Former ES Estate English and Welsh Properties" means those of the Former ES Estate Properties that are situate in England or Wales;

"Former ES Estate Excluded Properties" means, in relation to England and Wales, the following:

- (a) 280/281 High Street Lincoln, Lincolnshire, LN2 1LL (13990062);
- (b) 8 St Johns Road Wembley, Middlesex, HA9 7JD (14990146);
- (c) 3 Park Street, Maidenhead, SL6 1SP (14990247);
- (d) 67 Upper Tooting Road, London SW17 7TN (14995144);
- (e) Premises at B.S.A Industrial Park Small Heath Birmingham (17990139);
- (f) Tile Hill, Torrington Avenue, Coventry, CV4 9GR (17990191); and
- (g) 150 Parthenon Drive Norris Green Liverpool Merseyside L11 5BN (18990231)

and in relation to Scotland , the following:

- (h) Regent House, The Gore, Basildon, Essex SS14 2EE (14990107);
- (i) Park Road, Riverside, Pontypool N14 6NZ (16990181);
- (j) Subjects at Upper Houndlaw Eyemouth Borders TD14 5BS (19990041);
- (k) 3&5 Postgate Glenrothes Fife KY7 5LL (19990053);
- (l) County House 2 Great King Street Dumfries DG1 1HQ (19990170); and
- (m) Livingston Job Centre Ochil House Beveridge Square Livingston West Lothian EH54 6PW (19990215).

"Former ES Estate Freehold Properties" means the properties or part of properties identified by "F/H" in the column headed "Tenure" in Schedule 2 of the Second Supplemental Agreement [*Former ES Estate Properties*] save to the extent that the parties agree otherwise;

"Former ES Estate Leasehold Properties" means properties or parts of properties identified by "L/H" in the column headed "Tenure" in Schedule 2 of the Second Supplemental Agreement [*Former ES Estate Properties*] save to the extent that the parties agree otherwise;

"Former ES Estate OGD Property" means any Former ES Estate Property or Former ES Estate Excluded Property where the title of the Former ES Estate Property is nominally in the name of an OGD rather than the SS1;

"Former ES Estate Properties" means the Former ES Estate Freehold Properties, the Former ES Estate Leasehold Properties and the Former ES Estate Excluded Properties, the Former ES Estate Surplus Properties and the Former ES Estate Additional Properties;

"Former ES Estate Scottish Properties" means those of the Former ES Estate Properties that are situate in Scotland;

"Former ES Estate Surveys" means the surveys of Former ES Estate Properties carried out by the Measurement Surveyor pursuant to the Survey Appointment (to avoid doubt including the Measurement Surveys but excluding any output in respect of the Jobcentre Plus Programme);

"Former ES Estate Surplus Property" means each of those Former ES Estate Properties which is not a Core Property, a Flexi-Core Property or a Flexible Property;

"Former ES Estate Surplus Space" means any Former ES Estate Surplus Property, in respect of the whole or part of which either:

- (a) DWP gives notice that it does not intend to vacate at the Contract Expansion Date pursuant to clause 7.20; or
- (b) DWP is in breach of its obligations to vacate or procure vacation of such area under Section A, Part 1 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"Former ES Estate Transfer Price" has the meaning given to it in clause 4.2(a) of the Second Supplemental Agreement;

"Former ES Existing Service Contracts" means the service contracts set out in Schedule 4 of the Second Supplemental Agreement;

"Former ES Existing Service Provider" means the service provider providing services to DWP pursuant to a Former ES Existing Service Contract;

"Former ES Furniture" means furniture owned by DWP to be transferred to the PRIME Contractor in accordance with the Second Supplemental Agreement the categories of which are set out in Schedule 7 [*DWP Equipment and Furniture*] to this Agreement;

"FP Adjustment Procedure" means the procedure set out in Part 1 of Schedule 10 [*Change Procedures*];

"Freehold Properties" means together the Former DSS Estate Freehold Properties and the Former ES Estate Freehold Properties;

"Funders" means all or any of the persons apart from the Sponsors or any Associate of any of the Sponsors who provide financing or funding under the Funding Agreements and/or who is a party in a capacity as agent, security trustee, issuer, arranger or otherwise including, where the context so permits, prospective financiers or funders and rating agencies and monoline insurers;

"Funding Agreements" means all or any of the agreements or instruments to be entered into by the PRIME Contractor or any Project Associates with any Funder relating to the financing of, inter alia, the acquisition of the Properties and the Operations and any agreements or instruments to be entered into by the PRIME Contractor or any of its Associates with any Funder relating to the rescheduling of their indebtedness or the refinancing of the Operations including, without limitation, the Security Interests in favour of the Funders, the Inter-Creditor Agreement and the Direct Agreement;

"Funding Shortfall" has the meaning given in paragraph 1.2 of Part 2 of Schedule 10 [*Change Procedures*];

"Furniture" means the Former DSS Furniture and the Former ES Furniture;

"General Procedure" means the procedure set out in Part 1 of Schedule 10 [*Change Procedures*];

"Generic Method Statement" means a description of how the PRIME Contractor delivers the Operations, prepared in accordance with Good Industry Practice and structured to follow the Service Requirements in a form set out in Section 2 of Part 4 to Schedule 8, as developed, enhanced or amended from time to time pursuant to this Agreement;

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking;

"GOR" means a government office region, as published from time to time by HM Government;

"Guarantee" means the Parent Guarantee and the PRIME Property Guarantee;

"Handover Period" means the period of 12 months immediately preceding a Relevant Transfer Date or once notice has been given to terminate this contract or any part thereof;

"Hazardous Substance" means any waste, pollutant, contaminant or other hazardous, toxic, radioactive, noxious, flammable, corrosive or caustic matter (whether in solid, liquid or gaseous form or any combination thereof) which is capable of causing significant harm to human health, property or the environment;

"Holding Company" has the meaning given in Part XXVI of the Companies Act 1985;

"Implementation Plan" means the plan for the implementation of the Operations agreed between DWP and the PRIME Contractor;

"Incoming Contractor" means any firm, person or company who successfully tenders for any services which are substantially the same as all or any part of the Operations and is engaged by DWP to provide such services after the termination of this contract or any part thereof for any reason;

"Indemnity Amount" is the amount determined in accordance with clause 6.21;

"Indexation Factor" has the meaning given to that term in Schedule 17 [*Payment Provisions*];

"Indicative Implementation Plan" comprises that information stated in paragraph 5 of Part 3b of Schedule 10 [*Change Procedures*];

"Information" has the meaning given to it in paragraph 7 of Part 7 of Schedule 4 and in paragraph 7 of Part 2 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"Initial Adjusted Facilities Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Initial Adjusted MOFP Charge" has the meaning given in Schedule 17 [*Payment Provisions*];

"Initial Funding Agreements" means the first Funding Agreements to be entered into by the PRIME Contractor or PRIME Property;

"Insurance Premiums" has, in relation to the Former DSS Estate Properties, the meaning given in paragraph 29.1 of Schedule 4 and, in relation to the Former ES Estate Properties, the meaning given in paragraph 28.1 of Schedule 1 [*Land Matters*] to the Second Supplemental Agreement;

"Intellectual Property Rights" means all registered or unregistered trade marks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, confidential information, know-how or other intellectual property rights subsisting in or relating to the Facilities and the Equipment or used by the PRIME Contractor to provide the FM Services and which are necessary for the efficient performance of the Operations including (without limitation) the Software;

"Inter-Creditor Agreement" means any agreement to be entered into between DWP, PRIME Property and the Funders in the form set out in Part 1 of Schedule 10 to the Second Supplemental Agreement or such other form acceptable to DWP;

"Interested Parties" has the meaning given in paragraph 1.5(d) of Part 4b of Schedule 10, [*Change Procedure*];

"Interim LCCE Reconciliation" means the reconciliation to be carried out pursuant to clauses 10.26A.1 to 10.26A.7;

"Interim Reconciliation Period" means the Reconciliation Period covering the period from 1 April 2001 to 31 March 2004;

"IP Disaster Procedures" has the meaning given in clause 32.5;

"ISB" means a person (whether that person is an officer or employee of DWP or of an OGD or any other officer appointed by the crown or another person having a legal personality separate from DWP whether or not such person exists at the date of this Agreement) who fulfils a function specified by Law associated or connected with DWP Business who has functional independence of DWP;

"ISB Basic Amount Invoice" means an Invoice for the amounts in respect of Business Square Metres occupied by an ISB as set out in clause 15.24;

"ISB Variable Amount Invoice" means an Invoice for the amounts in respect of Business Square Metres occupied by an ISB as set out in clause 15.24;

"Jobcentre Plus Agreements" means the framework agreement entered into between DWP Trillium Property Services Limited and various constructors and any subsequent agreements in connection with the Jobcentre Plus Programme;

"Jobcentre Plus Business" means the business initiative undertaken by DWP (known as Jobcentre Plus) at a Site after the completion of a Jobcentre Plus Project at that Site;

"Jobcentre Plus Project" means each of the projects comprising the Jobcentre Plus Programme;

"Jobcentre Plus Programme" means the programme of redesign, refurbishment and rebranding of approximately 775 Jobcentre Plus offices during the period approximately from April 2003 to March 2006 referred to in paragraph 1 of Appendix 3 to Schedule 27 [*Procedure for Department's Configuration Change*];

"Jobcentre Plus Security Risk Assessment" means a security risk assessment carried out at a public area before the commencement of a Jobcentre Plus Business at a Facility

in accordance with paragraph 13.1(f) of Part 2 of Schedule 8 [*Required Accommodation Standards*];

"Large Scale Programme" means a defined rolling programme of works with planned start and end dates to deliver a business initiative by means of a single design brief that is consistently applied across multiple Sites and at a minimum total cost (excluding fees, VAT and data/voice cabling costs) of £[withheld] (indexed using the Building Costs Index);

"Large Scale Programme Enquiry" has the meaning given to it in paragraph 2.3 of Appendix 4 of Schedule 27 [*Procedure for Department's Configuration Change*];

"Large Scale Programme Proposal" has the meaning given to it in paragraph 2.3 of Appendix 4 of Schedule 27 [*Procedure for Department's Configuration Change*];

"Last Reconciliation Period" means the Reconciliation Period immediately prior to the relevant Reconciliation Period;

"Law" means any applicable law, statute, proclamation, by-law, directive, decision, regulation, authorisation, rule, order, notice, rule of court or delegated or subordinated legislation including directions or guidance issued pursuant to any legislation;

"LCCE Cost Plan" means the LCCE Cost Plans set out in the table included in Part 4 and Part 5 of Schedule 16 [*Cost Plans*];

"LCCE Dispute" has the meaning given in paragraph 2.38 of Part 1 of Schedule 20 [*Disputes Resolution Procedure*];

"LCCE Performance Indicators" means the aspects of FM Services identified as LCCE Performance Indicators in Appendix 1 to Schedule 14 [*Performance Measuring System*];

"LCCE Performance Score" means a performance score calculated in accordance with this Part I of this Schedule 14 in respect of the performance of an LCCE Performance Indicator during a Contract Month;

"LCCE Reconciliation" means the reconciliation performed pursuant to clauses 10.26 to 10.35;

"LC Referral Date" has the meaning given in paragraph 1.6 of Part 1 of Schedule 20 [*Disputes Resolution Procedure*];

"Lease Summary" means:

- (a) for the Former DSS Estate Properties, any summary of a lease, licence or other arrangement prepared and issued prior to 27 March 1998 in respect of the Former DSS Estate Leasehold Properties and Former DSS Estate Excluded Properties by a Local Property Lawyer; and
- (b) for the Former ES Estate Properties, any summary of a lease, licence or other arrangement prepared and issued as of the date of the Second Supplemental Agreement in respect of the Former ES Estate Leasehold Properties and Former ES Estate Excluded Properties by DWP's Solicitors;

"Lease Termination Costs" means all costs and expenses reasonably and properly incurred or payable by PRIME Property, the PRIME Contractor or any of its Associates in connection with:

- (a) the assignment to DWP; or (failing such assignment)
- (b) the surrender to the relevant Third Party Landlord; or (failing such surrender)

(c) the disposal to any third party

(each, a “**Disposal**”) of all Leasehold Properties title to which is vested in PRIME Property, the PRIME Contractor or any of its Associates at the Termination Date,

such costs and expenses to include, but not be limited to, the cost of obtaining any Third Party Landlord’s consent to such Disposal (in such form as the Third Party Landlord may lawfully require) and the cost of negotiating and completing such Disposal (including any reverse premium payable) together with the reasonable and proper costs of owning and managing such Leasehold Properties during the period from and including the Termination Date until and including the date of completion of such Disposal (to the extent not already otherwise paid or reimbursed by DWP) and also including any costs and expenses properly incurred by PRIME Property, the PRIME Contractor and/or the relevant Associate(s) (as the case may be) in connection with any authorised guarantee agreement given by it in order to effect to such Disposal, and for the avoidance of doubt, if the PRIME Contractor or any relevant Project Associate is unable to assign, surrender or otherwise dispose of any such Leasehold Properties, the ongoing costs payable to such Third Party Landlord, provided in each case that such amount shall be reduced to the extent that the PRIME Contractor or the Project Associates (where relevant) or any of their Associates fails to use all reasonable endeavours to mitigate such amount, less any revenue or other amount paid or payable to the PRIME Contractor and/or the PRIME Property and/or any of their Associates in connection with any such Disposal or in connection such Leasehold Properties prior to the Disposal or in connection with any such other arrangements.

"Leasehold Properties" means together the Former DSS Estate Leasehold Properties and the Former ES Estate Leasehold Properties;

"LGFA" means the Local Government Finance Act 1988;

"Liaison Committee" means the committee referred to in clause 5.1 [*Liaison*];

"Life Cycle Maintenance Plans" means the plans for carrying out Life Cycle Works at Existing DSS Sites agreed by the DWP in accordance with the provisions set out in clause 10 of the Project Agreement in existence prior to the Contract Expansion Date;

"Life Cycle Plans" means the plans in respect of each Site and Minor Occupancy setting out the anticipated Life Cycle Works for each Site and Minor Occupancy as agreed between DWP and the PRIME Contractor and identified as such;

"Life Cycle Works" means the maintenance, renewal repair and/or replacement works in respect of a Site and/or Minor Occupancy (including the replacement of a component of a building or any Plant but excluding any other Equipment) in the nature of the works set out in the Template set out in Schedule 24, Part C, the Life Cycle Maintenance Plan (but without limiting it to those specific works), and not in the nature of the works set out in the Pre-Completion Expansion Schedules of Maintenance Works, and that:

- (a) are necessary for the PRIME Contractor to meet its obligations under this Agreement;
- (b) are not Maintenance Works which have been performed, or are to be performed, pursuant to a Schedule of Maintenance Works or otherwise; and
- (c) includes works on the Former ES Estate undertaken before 31 March 2004 that are in the nature of backlog maintenance works up to a maximum of £2.25 million, and statutory compliance works, and in each case which were required at or before the Contract Expansion Date;

"Local Property Lawyer" means in relation to:

- (a) the Former DSS Estate Properties and Former DSS Estate Excluded Properties located in England and Wales one of the following firms namely Knight & Sons, Maples Teesdale, Pannones, Paris Smith Randall and Ward Hadaway and in relation to the Former DSS Estate Properties and Former DSS Excluded Properties located in Scotland means Burness;
- (b) the Former ES Estate Properties and Former ES Estate Excluded Properties located in England and Wales one of the following firms namely Cripps Harris Hall, Ward Hadaway, Knight & Sons and Pinsents (formerly Pinsent Curtis Biddle), and in relation to the Former ES Estate Properties and Former ES Estate Excluded Properties located in Scotland means Fyfe Ireland;

"Location" means the geographic area in which DWP requires Facilities as identified in the Facility Output Requirements;

"Losses" means fines, penalties, costs, liabilities, losses, damages, payments and/or expenses (including reasonable legal and other professional expenses);

"LovellsView" means the electronic data room maintained by Lovells and containing the Certificates of Title, Lease Summaries, Surveys and other information relating to the Former ES Estate Properties;

"LSP Appraisal" means a technical appraisal and in respect of a proposed Large Scale Programme setting out the costs, timing, and options for completing the proposed Large Scale Programme in a manner which achieves the Department's Objectives, such appraisal to be in an appropriate level of detail in the circumstances (having regard to Good Industry Practice, and the scope and complexity of the proposed Large Scale Programme) including without limiting the generality of the foregoing, providing details in respect of the following:

- (a) design options;
- (b) construction methods and materials;
- (c) procurement methods;
- (d) the likely utilities consumption and environmental impact;
- (e) the extent to which the proposed Large Scale Programme will cause Maintenance Works and/or Life Cycle Works to be delayed or no longer required;

"LSP Consultancy Services" means consultancy services other than the LSP Project Management Services in respect of a Large Scale Programme which DWP requires, or which DWP and the PRIME Contractor agree are required for completion of a relevant Large Scale Programme;

"LSP Consultant" means any suitably qualified professional LSP Consultant engaged or to be engaged to provide LSP Consultancy Services, including but not limited to designers, planning supervisors and quantity surveyors;

"LSP Project Management Services" means the planning, costing and overall management of the works, together with the generic consultancy services set out in paragraph 1.1(j) of Appendix 4 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*] to be provided by the PRIME Contractor in connection with a Large Scale Programme;

"LSP Project Manager" means the person or persons employed or engaged by the PRIME Contractor to provide the LSP Project Management Services, as relevant;

"LSP Works Manager" means a programme manager appointed to oversee the procurement and delivery of a Large Scale Programme and perform such other services as DWP may direct;

"LSP Works Management" means the management of the procurement and delivery of a Large Scale Programme;

"Maintenance Works" means any works for the maintenance, replacement, renewal and/or repair of a Site and/or Minor Occupancy (including without limitation planned preventative maintenance, compliance works, the renewal or replacement of Plant, and redecoration) that is necessary for the PRIME Contractor to meet its obligations under this Agreement throughout the Operating Period;

"Major Project Change" has the meaning given to it in paragraph 8 of Part 5 of Schedule 10;

"Major Occupier" means a department or agency of HM Government which occupies a building or land, and which bears the responsibility for the management and operation of the building or land, where the building or land is occupied in part by another department or agency of HM Government;

"Manifest Error Notice" means a notice delivered by DWP to the PRIME Contractor pursuant to clause 15.7A;

"Manifest Error Period" means the period from the day of submission of a Variable Amount Statement to and including the 10th day thereafter;

"Maximum Service Provider Replacement Notice Number" a number equal to one twelfth of the Maximum Warning Notice Number from time to time;

"Maximum Warning Notice Number" means a number set on the first day of each Contract Year equal to 12 multiplied by the sum of (i) the aggregate of the number of FM Services to be provided at all of the Facilities and Minor Occupancies and (ii) four multiplied by the number of Facilities, all as set out in the current version of Schedule 6;

"Measurement Survey" has the meaning given to it in clause 8.2(g) of the Second Supplemental Agreement;

"Measurement Surveyor" has the meaning given to it in clause 8.2(i) of the Second Supplemental Agreement;

"Minor Occupancy" means the area of a building or land occupied by DWP as a Minor Occupier as set out in Part 5a of Schedule 6 [*Facility Output Requirements*], as amended from time to time in accordance with clause 11.36;

"Minor Occupier" means a department or agency of HM Government which is in occupation of a building or land where another department or agency of HM Government also occupies the building or the land and that other department or agency of HM Government is the Major Occupier;

"Mixed Use Flexi-Core Facility" means the Facilities set out in Annex 3 of Part 3a of Schedule 10 [*Change Procedures*];

"MOFP Payment" means in respect of a Contract Month the payment in respect of the provision of FM Services at a Minor Occupancy which payment is calculated in

accordance with the provisions of clause 15 [*Payment*] and Schedule 17 [*Payment Procedures*];

"MOFP Price" means in respect of each particular Minor Occupancy the number set out under the column headed "MOFUP (£/m²)" in the table included as Part 5 (a) and (b) of Schedule 17 as the same may be amended or replaced from time to time in accordance with this Agreement;

"Monthly CSC Deduction" means the amount determined for every Contract Month in accordance with paragraph 4.2A of Part 1 of Schedule 14 [*Performance Measuring System*];

"Monthly Facilities Charge Adjustment Amount" has the meaning given in clause 15.5;

"Monthly MOFP Charge Adjustment Amount" has the meaning given in clause 15.5;

"Monthly Service Earnings Shortfall" means for each Contract Month and in relation to each FM Service delivered at each Facility [and Minor Occupancy], the amount referred to in paragraph 4.2 of Part 1 of Schedule 14 [*Performance Measuring System*] as determined in each Contract Month by operation of the Performance Measurement System;

"MOTO" means the Memorandum of Terms of Occupation entered into or to be entered into by DWP and an OGD pursuant to the terms of the Departmental Estate Occupancy Agreement which regulates the occupation of space by the OGD in property owned or deemed to be held by DWP or any other form of agreement or memorandum replacing or modifying such memorandum or agreement;

"National Utilities Efficiency Manager" means the individual appointed pursuant to clause 12.16 [*Quality Assurance and Efficiency*];

"Net Present Value" or **"NPV"** means the net present value of any stream of cashflows calculated at a given date by:

- (a) discounting all such cashflows arising after the given date by the rate specified in the relevant provision; and
- (b) inflating all such cashflows arising before the given date by the rate specified in the relevant provision;

All such calculations shall be carried out using prices and other amounts assessed in accordance with this Agreement taking account of the indexation and other provisions of this Agreement up to the date when the calculation is carried out:

- (i) if cashflows being discounted are expressed in real terms (i.e. using amounts which would be the amount of such costs if the expenditure or liability was to be incurred at the date of the calculation and disregarding the future effect of inflation or indexation or similar provisions relating to the future value of money in any other agreement) then a real discount rate should be applied; or
- (ii) if cashflows being discounted are expressed in nominal terms then a nominal discount rate should be applied by converting the real rate into a reasonable nominal equivalent rate;

"New Premises" means the land and buildings which are identified by DWP in the notice given under clause 6.4 or, if different, as otherwise provided under clause 6;

"New Site" means any Site other than an Existing Site;

"New Site Three Year Plan" means a Three Year Plan detailing Life Cycle Works to be carried out at a New Site over the first three years after DWP first takes occupation of a Facility provided from that New Site;

"New Site Schedule of Life Cycle Works" means a Schedule of Life Cycle Works detailing Life Cycle Works to be carried out at a New Site over the first year after DWP first takes occupation of a Facility provided from that New Site;

"New Site Schedule of Maintenance Works" means a Schedule of Maintenance Works detailing Maintenance Works to be carried out at a New Site over the first year after DWP first takes occupation of a Facility provided from that New Site;

"Non LCCE Performance Indicators" means the aspects of FM Services identified as Non LCCE Performance Indicators in Appendix 1 of Schedule 14 [*Performance Measuring System*];

"Non LCCE Performance Score" means a performance score calculated in accordance with this Part of this Schedule in respect of the performance of a Non LCCE Performance Indicator during a Contract Month;

"Normal Working Hours" means the working hours for each Facility and Minor Occupancy as set out in Part 2 and Section B of Part 5 of Schedule 6 [*Facility Output Requirements*] as subsequently amended or adjusted as a result of any Department's Service Change;

"Notice to Proceed" means a notice issued by the Department's Representative to the PRIME Contractor pursuant to Schedule 27 [*Procedure for Procuring Department's Configuration Change*] in which the Department's Representative requests that the PRIME Contractor proceeds with certain Configuration Works described in the notice in accordance with the Final Proposal and the Configuration Change Implementation Plan and the final tenders agreed between the Parties;

"Notice to Suspend" means a notice issued by the Department's Representative to the PRIME Contractor pursuant to paragraph 7 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*] requesting that the PRIME Contractor ceases to carry out any further work in respect of a Department's Configuration Change;

"Notice to Withdraw" means a notice issued by the Department's Representative to the PRIME Contractor pursuant to paragraph 6 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*] advising the PRIME Contractor that DWP wishes to withdraw from a Department's Configuration Change;

"October 31 Data Room" has the meaning given to it in paragraph 1.1(a) in Part 7 of Schedule 4 [*Land Matters*];

"Offshore Entity" means a company which is registered or tax resident in one of the countries appearing in:

- (a) the List of Unco-operative Tax Havens as drawn up and constantly revised by the Organisation for Economic Co-operation and Development ("**OECD**") from time to time, such list as at the Contract Expansion Date being as set out at Part 3 of Schedule 39 [*Corporate Structure*]; or
- (b) the OECD's 2000 Progress Report as jurisdictions which met the OECD criteria for being considered a tax haven, whether or not those countries have since made a commitment to the OECD to co-operate with them in addressing harmful tax

practices from time to time, such list as at the Contract Expansion Date being as set out at Part 4 of Schedule 39 [*Corporate Structure*]; or

- (c) if both such lists referred to in (a) and (b) above cease to be published, such other equivalent list as DWP and the PRIME Contractor agree to be appropriate in the circumstances or is determined to be appropriate in accordance with the Dispute Resolution Procedure,

unless the company is tax resident in a territory that does not fall within (a), (b) or (c) above whether by legislation or election;

"Offshore Entities Policy" means the Government's policy as at the Contract Expansion Date relating to the use of Offshore Entities by parties to procurement contracts entered into by Government departments (in contemplation and furtherance of which both parties acknowledge that clause 9.7 was agreed) as reflected in the DAO letter disclosed to the PRIME Contractor and PRIME Property (on a confidential basis) on or about 10 December 2003;

"OGD" means a department or agency of HM Government other than DWP;

"OGD Basic Amount Invoice" means an Invoice for the amounts in respect of Business Square Metres occupied by an OGD as set out in clause 15.24;

"OGD Business Rate Remittance Request" means a remittance request for the amounts in respect of Business Square Metres occupied by an OGD as set out in clause 15.24;

"OGD Contractor" means any person with whom an OGD has contracted for the provision of services, goods and/or works which are part of or necessary for the services delivered by that OGD;

"OGD Contractor Lease" means the leases, licences or other arrangements of all or part of the area occupied by an OGD in a Former ES Estate Property existing at the Contract Expansion Date in favour of an OGD Contractor;

"OGD Property" means a Former DSS Estate OGD Property and a Former ES Estate OGD Property;

"OGD Utilities Remittance Request" means the request described in clause 15.24;

"OGD Utilities Invoice" means an Invoice for the amounts in respect of Business Square Metres occupied by an OGD as set out in clause 15.24;

"OGD Variable Amount Invoice" means an Invoice for the amounts in respect of Business Square Metres occupied by an OGD as set out in clause 15.24;

"One-off Item" means an item of works required to be carried out at an Existing Site to comply with the Required Accommodation Standards and which is either:

- (a) not contained within the Three Year Plans; or
- (b) is contained within the Three Year Plans but in respect of which DWP has granted a RAS Relief;

"Ongoing LCCE Project" has the meaning given in clause 10.29;

"Operating Band" means the bands of time set out in the column headed "Operating Bands" in Table D under paragraph 7.8 of Part 5 of Schedule 10 [*Change Procedure*];

"Operating Period" means the period of 20 years from and including the Commencement Date;

"Operational UACs" means in respect of a Facility the sum calculated in accordance with Part 2 of Schedule 32 for the quarter of the Contract Year in which:

- (a) a Core Facility is vacated; or
- (b) a Flexi-Core Facility is vacated and compensation is calculated pursuant to clause 17.1F(b),

in its entirety following a Department's Reduction in Core Space, or such other sum as shall be set out in the then-current version of that table following amendment as a result of the implementation of a Qualifying Change indexation pursuant to paragraph 2.2 of Part 3a [*Department's Reduction in Core Space*] of Schedule 10, recalculation pursuant to paragraph 12 of Schedule 36 [*Lease Gains*] or as a result of the operation of clause 17.2L [*Substitution of Core Facilities*];

"Operational UAC Allowance" means the sum of the Business Square Metres in respect of which notice to acquire has been given under clause 17.4 after the Contract Expansion Date and in respect of which DWP has not elected to acquire any additional Annual Flexi-Core Allowance under clause 17.4A **less** the aggregate of all the Business Square Metres at all Core Facilities and Flexi-Core Facilities vacated as Core Facilities in respect of which a notice to vacate has been given under clause 17.2 and in respect of which DWP has elected to pay Operational UACs pursuant to paragraph 1.4 of Part 3a of Schedule 10;

"Operations" means the delivery, execution, performance or provision (as appropriate) in accordance with this Agreement of:

- (a) the Facilities;
- (b) the FM Services;

"Option Appraisal" means a report delivered by the PRIME Contractor in accordance with paragraph 3 of Part 3b of Schedule 10;

"Other Amount" means any amount payable by DWP to the PRIME Contractor in the way of a payment for accommodation, goods or the provision of FM Services, but excluding claims under indemnities or by way of damages, which is made under this Agreement which is not specifically referred to in either the Basic Amount Invoice or the Variable Amount Invoice, including, without limitation, a Capital Payment Stream, the Service Charge Compensation, the Flexi-Core Amount, the Flexible Compensation, any amount payable in respect of Department's Configuration Changes, any costs to be paid by one Party to another Party as determined by the Expert pursuant to Part 2 of Schedule 20 and the amounts payable or creditable by one Party to another Party pursuant to [this Agreement];

"Other Party" has the meaning given in clause 22 [*Force Majeure*] and clause 22A [*Relief Events*], as appropriate;

"Outline Proposal" means an outline proposal in respect of a proposed Department's Configuration Change setting out such information and detail as is appropriate in the circumstances (having regard to Good Industry Practice, DWP's Objectives and the scope and complexity of the proposed Department's Configuration Change) and including the particulars set out in Stage C in Appendix 2 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"Parent" means Land Securities Group PLC;

"Parent Guarantee" means the guarantee to be granted by Land Securities Group PLC or a substitute permitted in accordance with the guarantee in the form set out in Part 1 of Schedule 6 to the Second Supplemental Agreement;

"Parent Guarantor" means the company giving the Parent Guarantee;

"Payment Accounts" means one or more accounts specified by the PRIME Contractor for receipt of all payments due to it from DWP under this Agreement;

"Payment Agreement" means the agreement to be entered into between amongst others DWP, the PRIME Contractor and PRIME Property;

"Payments Trustee" means the payments trustee appointed pursuant to the Payments Agreements;

"PCSPS" means the Principal Civil Service Pension Scheme;

"Performance Indicator Score" means the score attributed to the performance of a Performance Indicator during a Contract Month in accordance with this Part;

"Performance Indicators" means Non LCCE Performance Indicators and LCCE Performance Indicators;

"Performance Measuring System" or "PMS" means the procedures for monitoring the performance of the FM Services by the PRIME Contractor set out in Schedule 14 [*Performance Measuring System*];

"Performance Report" means a report delivered by the PRIME Contractor in accordance with paragraph 2 of Part 1 of Schedule 14 [*Performance Measuring System*];

"Performance Score" means Non LCCE Performance Scores and LCCE Performance Scores;

"Permitted Waivers" means the matters identified in Appendix 1 to Schedule 14 [*Performance Measuring System*] which have the result that performance which could otherwise be inadequate will not impact on the Performance Indicator Score;

"Perpetuity Period" has the meaning given in clause 30A;

"Planning Authority" means the local council or councils or such other body responsible for exercising the functions of a local planning authority for the purposes of the Town & Country Planning Act 1996 (or in the case of a Property situated in Scotland the Town and Country Planning (Scotland) Act 1997) in respect of the Department's Increase in Space or Department's Configuration Change in question and which expression shall where the context means that it would be appropriate (and which may include a situation where an application has been called in for determination by the Secretary of State or the Scottish Ministers as the case may be) mean the First Secretary of State (or in the case of a Property situated in Scotland the Scottish Ministers);

"Planning Permission" means any and all planning permissions which term shall include listed building consents and conservation area consents required for the carrying out of a Department's Configuration Change as applicable;

"Plant" means machinery, apparatus, equipment and the like forming part of the Facilities, including without limitation all maintenance equipment;

"PMS Deduction Amount" means for any Facility or Minor Occupancy for a Contract Month, the amount determined in accordance with paragraphs 4.3 and 4.4 of Part 1 of Schedule 14 [*Performance Measuring System*];

"Powers" means the Powers of Attorney set out in Part 6 of Schedule 4 of this Agreement in relation to each of the Properties and the Excluded Properties which are to be the subject of a Virtual Assignment or a Scottish Property Agreement and to be delivered pursuant to clause 7.3(f) of this Agreement or clause 4.2(f) of the Second Supplemental Agreement;

"Practical Completion" means, in respect of any Configuration Works, that point in time when:

- (a) the Configuration Works are complete in all respects other than minor defects which do not affect DWP's ability to use the relevant space to conduct DWP Business without disruption or inconvenience;
- (b) the Configuration Works have passed any tests on completion and have been satisfactorily commissioned (as appropriate); and
- (c) DWP has been recanted into the relevant space,

provided that DWP may at its sole option waive any one or more of the above requirements for Practical Completion in respect of any Configuration Works in writing (without prejudice to its right to require full compliance on any other occasion);

"Pre-Completion Searches" has the meaning given to it in clause 11.1 of the Second Supplemental Agreement;

"Pre-Expansion Schedules of Maintenance Works" means the most recent Schedules of Maintenance Works for carrying out Maintenance Works at Existing DSS Sites agreed by DWP in accordance with the provisions set out in clause 10 of the Project Agreement in existence prior to the Contract Expansion Date;

"PRIME Bid Model" means the combination of the Access Data Base, Excel and operating cash flow computer model relating to the PRIME Contractor including all expenditure, revenues and financing of the Operations in relation to the Former DSS Estate Properties, three copies of which on CD ROM have each been dated on or about the Commencement Date and initialled by the parties for the purposes of identification or such replacement for that initial Bid Model as may be agreed by the Parties or determined pursuant to the terms of this Agreement;

"PRIME Contractor Staff" means the employees employed by the PRIME Contractor or any PRIME Service Provider who are wholly or partly engaged in proving all or part of the Operations at any time following 0001 hours on the Contract Expansion Date;

"PRIME Contractor Termination Events" has the meaning given in clause 26.1 [*Termination by the PRIME Contractor*];

"PRIME Contractor's CAPEX Contribution" means in each Contract Year, the sum of the PRIME Contractor's DCC Contribution, the PRIME Contractor's JCP Contribution, and the PRIME Contractor's LSP Contribution for that Contract Year;

"PRIME Contractor's CAPEX Contribution Cap" means £[withheld] per Contract Year (indexed using the FM Basket);

"PRIME Contractor's DCC Contribution" means any or all PRIME Contractor's Department's Configuration Change contribution as described in paragraph 9.1 of Schedule 27 [*Procedure for Procuring Department's Configuration Changes*];

"PRIME Contractor's Facilities Management Team" means the PRIME Contractor's team referred to in clause 4.10 [*Representatives*];

"PRIME Contractor's Interim Contribution Cap" means £5 million in aggregate;

"PRIME Contractor's Interim Contributions" has the meaning give to it in clause 17.25(a);

"PRIME Contractor's LSP Contribution" means any or all PRIME Contractor's Large Scale Programme contribution as described in paragraph 4.1 of Appendix 4 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"PRIME Contractor's JCP Contribution" means any or all PRIME Contractor's Jobcentre Plus contribution as described in paragraph 6.1 of Appendix 3 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"PRIME Contractor's Representative" means [withheld] or such replacement as may be appointed by the PRIME Contractor from time to time to represent the PRIME Contractor in accordance with clause 4.6 [*Representatives*];

"PRIME Contractor's Solicitors" means the solicitors acting for both the PRIME Contractor and PRIME Property in connection with this transaction, being Freshfields Bruckhaus Deringer in England and Wales and Brodies in Scotland;

"PRIME Discount Rate" [withheld]

"PRIME Leases" means the leases in the form set out in Part 2 of Schedule 4 [*Land Matters*] of certain of the Freehold Properties and certain of the Leasehold Properties entered into or to be entered into between PRIME Property as landlord and DWP as tenant;

"PRIME Property Guarantee" means the guarantee dated on or about the date of the Second Supplemental Agreement granted by PRIME Property in favour of DWP and SS1 in the form set out in Part 2 of Schedule 6 to the Second Supplemental Agreement and any subsequent guarantee (if any) granted by PRIME Property in favour of DWP and/or SS1;]

"PRIME Property's Nominee" means any person nominated in writing by PRIME Property to accept a Transfer or Assignment of any Surplus Property;

"PRIME Property's Scottish Solicitors" means the firm of Brodies WS of 15 Atholl Crescent, Edinburgh or such other firm of solicitors in Scotland as may be appointed by the PRIME Contractor for the purposes of the relevant aspect(s) of the Agreement;

"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 but excludes Third Party Landlords;

"Priority 1(a)" means the alarm response time in respect of a Facility or Minor Occupancy;

"Priority 1(b)" means an Event that constitutes an immediate threat to the health and safety of any person and/or the continuous business of DWP and/or the security of DWP or its personnel or property;

"Priority 2" means an Event that adversely affects, DWP's ability to undertake DWP Business, or may cause rapid deterioration of a Facility or FM Service or which may be potentially dangerous or injurious to health;

"Priority 3" means an Event which affects the amenity of users or may cause a loss of use of the Facilities, Equipment or any FM Services but which does not directly interrupt

DWP Business continuity (but has the potential to do so) or a response to a request by DWP for quotes to carry out a specific task;

"Priority 4(a)" means work to prevent a service failure which would not affect amenity of users, and is not critical to DWP Business and does not constitute a Priority 1a, Priority 1b, Priority 2 or Priority 3;

"Priority 4(b)" means 'Churn' moves;

"Priority 5" means the replacement or procurement of furniture and equipment not held in stock (subject to clause 11.31);

"Priority Framework" has the meaning give to it in paragraph A(vi)(1) of Part 2 of Schedule 8 of this Agreement;

"Programme of Works" means a group of related Department's Configuration Changes affecting more than one Site which are intended to be carried out as part of a programme of works undertaken to deliver benefits to DWP;

"Programme Works Manager" means a programme manager appointed to oversee the procurement and delivery of a Programme of Work and perform such other services as DWP may direct;

"Programme Works Management" means the management of the procurement and delivery of the Department's Configuration Change;

"Project Agreement" 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;

"Project Associate" means:

- (a) as at the Contract Expansion Date, LST (PRIME) Limited, the PRIME Contractor, PRIME Property, Trillium Estates Limited, Trillium (PRIME) Furniture Limited, Trillium (PRIME) Property GP Limited, Trillium (PRIME) Property Limited Partnership, Trillium Property Limited, Trillium Property Services (PRIME) Limited, Trillium (PRIME) Trading Limited; and
- (b) thereafter, any other Associate of the PRIME Contractor or PRIME Property that performs all or any part of the functions (or similar functions) performed at the Contract Expansion Date by any of the companies listed in (a) above in connection with this Agreement or the Operations, as those functions evolve to meet any Changes;

"Project Associate Service Direct Agreement" means a direct agreement substantially in the form set out in Part 2b of Schedule 19 [*Form of Direct Agreement*];

"Project Documents" means the documents listed in Schedule 26;

"Project Implementation Agreement" means the agreement bearing that name made between all of the Parties on 24 December 1997;

"Project Management Services" means the planning, costing and overall management of the works, together with the generic consultancy services set out in paragraph 5.11, and stages A to G in Appendix 2, of Schedule 27 [*Procedure for Procuring Department's*

Configuration Change] to be provided by the PRIME Contractor in connection with each Department's Configuration Change;

"Project Manager" means the person or persons employed or engaged by the PRIME Contractor to provide the Project Management Services;

"Property" means, in relation to each property the postal address of which is set out in Part 1 of Schedule 11 and Schedule 2 of Second Supplemental Agreement, the estate or interest therein as described in the Certificate of Title or the Lease Summary relating to that property or in the absence of a Certificate of Title or Lease Summary or in the event of an absence of conclusive data therein the estate or interest therein described by reference to the Critical Data for that property together with each of the Additional Properties provided that, subject to the provisions of clause 7.10 and 7.10A, none of the Excluded Properties shall be a Property save to the extent that the parties otherwise agree; and "Properties" shall be construed accordingly;

"Property Interest" means the PRIME Contractor's and/or PRIME Property's right title and interest in any one or more of the Retained Properties;

"Proposed New Cost Plan Table" has the meaning given in clause 15.43(a);

"Proposed New FUP Table" has the meaning given in clause 15.33(a);

"Proposed New UAC Table" has the meaning given in clause 15.38(a);

"Proposed Site" means land and/or buildings and/or other improvements, which could be the Site for a new Facility;

"Proposed Substitution Date" has the meaning given in clause 17.2B(f);

"Purchasing Service" has the meaning given in paragraph 15.1 of Part 2 of Schedule 8;

"Public Opening Hours" means the public opening hours for each Facility and Minor Occupancy as set out in Part 2 and Section B of Part 5 of Schedule 6 [*Facility Output Requirements*] as subsequently amended or adjusted as a result of a Department's Service Change;

"QCM Documentation" has the meaning given in Part 1 of Schedule 10;

"Qualifying Change" means a Change to be valued in accordance with the General Change Procedure in Part 1 of Schedule 10 [*Change Procedures*];

"Qualifying Change in Law" shall occur if the European Union, the Government of the United Kingdom (including any department, branch or agency of the Government), or the Secretary of State or, in relation to matters within its jurisdiction, any Parliament or other legislative body of any part of the United Kingdom takes action by the introduction, application or amendment of any law or fails to carry out its obligations as prescribed by Law, and such action directly discriminates against the PRIME Contractor or the PRIME Contractor and any other persons providing infrastructure and services to the Government of the United Kingdom save that:

- (a) such action shall not be a Qualifying Change in Law where it is in response to any act or omission on the part of the PRIME Contractor which is illegal (other than an act or omission rendered illegal by virtue of the Qualifying Change in Law itself);
- (b) such action shall not be deemed to be discriminatory solely on the basis that its effect on the PRIME Contractor is greater than its effect on other companies, and a change in taxes or the introduction of a tax affecting companies generally shall be deemed not to be discriminatory in any circumstances;

"Qualifying Change Model" means the spreadsheet computer model referred to in Part 1 of Schedule 10 [*Change Procedures*] three copies of which on CD ROM have each been dated and initialled by the parties for the purposes of identification;

"Quality Audit Questionnaire" means an audit questionnaire issued by DWP in connection with an audit conducted by DWP pursuant to clause 12.11(a) to be developed from the existing regime by DWP and the PRIME Contractor as soon as practicable following the Contract Expansion Date and if not agreed by 31 January 2004, as determined through the Dispute Resolution Procedure;

"Quality Management Plans" means plans drawn up by the PRIME Contractor relating to the quality of the delivery of FM Services by its subcontractors but excluding FM Services provided by Existing Service Providers;

"Quality Manager" means the project quality manager appointed pursuant to clause 12.10 [*Quality Assurance and Efficiency*];

"Quality Plans" means the plans to be developed by the PRIME Contractor pursuant to clauses 12.1 and 12.2 which shall include the Quality Management Plans [*Quality Assurance and Efficiency*];

"RAS Relief" means a relief from the obligation of the PRIME Contractor to comply with an aspect of the Required Accommodation Standards as determined in accordance with Part 3 of Schedule 8 [*Required Accommodation Standards, Service Requirements and Generic Method Statement*];

"Ratings List" means the rating list maintained by the Valuation Office pursuant to the LGFA;

"Reconciliation Period" means the reconciliation periods set out in Part B of Schedule 24 [*LCCE Reconciliation*] (or any one of them);

"Reconciliation Period Before Last" means the Reconciliation Period immediately prior to the Last Reconciliation Period;

"Red Book" means the Appraisal and Valuation Manual issued by the Royal Institution of Chartered Surveyors as amended from time to time together with any Guidance Notes issued from time to time by that Institution, and, if there is no such manual current at any relevant time, on such basis as DWP and PRIME Property shall at that time agree or, in the case of dispute, as an Adjudicator appointed under the Dispute Resolution Procedure shall determine;

"Redundancy Payments" means:

- (a) redundancy payments and other termination payments (including, without limit, any entitlement to notice, payment in lieu of notice or payment in lieu of accrued holiday) which are required under Law, contract or relevant collective agreement to be made to employees of PRIME Contractor or any of the Project Associates or any third party who are wholly or mainly engaged by any of them to perform functions in relation to this Agreement; and
- (b) the cost of employing any such employees (including, without limit, salary, cost of benefits, bonus, commission, pension contributions), after the termination of this Agreement under clause 27.3, where (i) the sole reason for the continuation of the employment is compliance by PRIME Contractor, any Project Associate or other third party of its obligation to collectively consult in accordance with Section 188 Trade Union and Labour Relations (Consolidation) Act 1992; and (ii) any such continuation is only for as long as necessary, in the relevant employer's reasonable opinion, to so comply;

which are reasonably and properly incurred by such party and arise as a direct result of DWP terminating this Agreement **PROVIDED ALWAYS** that in calculating such amount no account shall be taken of any payments, liabilities or obligations to the extent that:

- (i) they arise from a failure by the PRIME Contractor and/or the Project Associates (where relevant) or any of their Associates to use all reasonable endeavours to mitigate its loss and minimise the amount of any such payments liabilities and obligations;
- (ii) the DWP is already obliged to reimburse the amount of the payment, liability or obligation under clause 11.11 of this Agreement or clauses 7.6 to 7.26 of the Second Supplemental Agreement;
- (iii) they arise out of contracts of employment or other agreements or arrangements entered into by the relevant parties to the extent that such contracts of employment or arrangements:
 - (1) were not entered into in the ordinary course of business and on commercial arm's length terms; or
 - (2) did not otherwise exist as legally binding obligations prior to the date on which DWP has given notice;

"Refinancing" has the meaning given to it in Schedule 35;

"Region" means a geographical area specified by DWP as such from time to time for the purposes of this Agreement;

"Regional Service Provider Replacement Notice Number" means a number equal to one twelfth of the Regional Warning Notice Number from time to time;

"Regional Warning Notice Number" means, in respect of a Region, a number set on the first day of each Contract Year equal to 12 multiplied by the sum of (i) the aggregate of the number of FM Services to be provided all of the Facilities and Minor Occupancies in the Region and (ii) four multiplied by the number of Facilities in the Region, all as set out in the current version of Schedule 6;

"Registry" means, as appropriate, any or all of HM Land Registry, the Land Charges Department, the Land Register of Scotland or the Register of Sasines;

"Regular UACs" means in respect of a Facility the sum set out in respect of that Facility in the table headed **"Total"** included in Part 1 of Schedule 32 for the quarter of the Contract Year in which:

- (a) a Core Facility is vacated; or
- (b) a Flexi-Core Facility is vacated and compensation is calculated pursuant to clause 17.1F(b),

in its entirety following a Department's Reduction in Core Space, or such other sum as shall be set out in the then-current version of that table produced following amendment as a result of the implementation of a Qualifying Change, indexation pursuant to paragraph 2.2 of Part 3a [*Department's Reduction in Core Space*] of Schedule 10 [*Payment Provisions*], recalculation pursuant to paragraph 12 of Schedule 36 [*Lease Gains*], or as a result of the operation of clause 17.2L [*Substitution of Core Facilities*];

"Relevant Authority" means any entity that has a statutory right to enter a Site or whose authority is or may be required for the carrying out of all or part of the Operations;

"Relevant Cash Flow to Equity" has the meaning given in Schedule 29;

"Relevant Service" has the meaning given in clause 15.27;

"Relevant Transfer Date" means the date on which the employment of any member of the PRIME Contractor Staff transfers to DWP or an Incoming Service Provider under the Transfer Regulations in accordance with clause 11.11C;

"Relief Event" has the meaning given in clause 22A [*Relief Events*];

"Remedial Period" has the meaning given in clause 13 [*Measuring of Performance*];

"Remediation" means any act in order to inspect, investigate, assess, sample, abate, treat, remove, remediate, monitor, control or contain the presence, effect or potential effect of any Hazardous Substance;

"Renewal Amount" has the meaning given in clause 14 [*Expiry Requirements*];

"Renewal Programme" has the meaning given in clause 14 [*Expiry Requirements*];

"Renewal Works" has the meaning given in clause 14 [*Expiry Requirements*];

"Reorganisation" means the corporate reorganisation involving, inter alia, the Partnership, PRIME Property and LST (PRIME) Limited, the details of which are set out in a letter dated 4 November 2003 from [withheld] of Land Securities Trillium to [withheld] of DWP and in the draft of the exchange application dated 3 November 2003 which accompanied that letter, which reorganisation includes the following:

- (a) the transfer of any Properties from the Partnership to PRIME Property;
- (b) the novation of any Virtual Assignment and/or any Scottish Property Agreement from the Partnership to PRIME Property;
- (c) the incorporation of LST (PRIME) Limited;
- (d) the transfer of Land Securities Trillium Limited's 99.9% interest in the Partnership to LST (PRIME) Ltd in exchange for an issue of shares as a result of which, PRIME Property will hold more than 25% of the ordinary share capital of the PRIME Contractor indirectly through the Partnership;
- (e) the issue of shares by LST (PRIME) Limited to Land Securities Trillium;
- (f) the acquisitions by LST (PRIME) Limited of PRIME Property and Trillium Property Limited; and/or
- (g) the dissolution of the Partnership in due course;

"Required Accommodation Standards" means the standards, specifications, procedures and other requirements for the provision of the Facilities set out in Part 1 of Schedule 8 [*Required Accommodation Standards, Service Requirements and Generic Method Statement*];

"Required Outputs" means the Facility Output Requirements, the Required Accommodation Standards and the Service Requirements;

"Residual Leasehold Property" has the meaning ascribed to in clause 6.16;

"Response Times" means the response and resolution times set out in Appendix 9 to Part 2 of Schedule 8;

"Restated Tender" means the tender document submitted by the PRIME Contractor dated 30 May 1997;

"Retained Properties" has the meaning given to it in clause 6.15B(a), as substituted from time to time in accordance with clause 6.15H;

"Retirement Benefit Scheme" shall have the meaning it has under section 611 of the Income and Corporation Taxes Act 1988;

"Review Procedure" means the procedure set out in Schedule 13 [*Review Procedure*];

"Risk Sharing Factor" means ten per cent;

"Satisfactory Score" means, in relation to each Quality Audit Questionnaire, that 95% or more of the responses or findings in connection with the matters raised in the Quality Audit Questionnaire are satisfactory to DWP determined with reference to an evaluation system to be developed jointly by DWP and the PRIME Contractor from the existing regime following the Contract Expansion Date and if not agreed by 31 January 2004, as determined through the Dispute Resolution Procedure;

"SCP" has the meaning given in clause 15.27;

"Schedule of Dilapidations" means the schedule referred to in clause 14 [*Expiry Requirements*] as revised or updated from time to time;

"Schedule of Life Cycle Works" means a schedule setting out the Life Cycle Works (and costs and programme for such works) necessary to be performed in respect of each Site and Minor Occupancy in the Contract Year immediately following the date upon which the relevant schedule is due to be prepared and submitted in draft form (in the form and manner required by this Agreement);

"Schedule of Maintenance Works" means a schedule setting out the Maintenance Works necessary to be performed in respect of each Site and Minor Occupancy during the Contract Year immediately following the date upon which the relevant schedule is due to be prepared and submitted in draft form (in the form and manner required by this Agreement);

"Scottish Property Agreement" means an agreement in relation to Scotland (only) to be entered into either (a) among the SS1, DWP and PRIME Property, or (b) between DWP and PRIME Property, in either case in the terms of Part 5 Section B of Schedule 4 [*Land Matters*];

"Second Charge" means the charge or charges granted or to be granted by PRIME Property in favour of DWP over the Retained Properties (or in respect of the Retained Properties situated in Scotland a standard security) in the forms set out in Part 2 of Schedule 30 [*Charges*];

"Second Supplemental Agreement" means the supplemental agreement entered into by DWP, SS1, Trillium (PRIME) Limited and Trillium (PRIME) Property GP Limited dated 10 December 2003;

"Secretary of State" means the Secretary of State for Work and Pensions from time to time;

"Security Guard" means a Security Officer (SO) or a Customer Care Officer (CCO);

"Security Interest" means any security interest of any nature whatsoever, including any mortgage, charge, standard security, pledge, lien, or an assignment or other encumbrance by way of security;

"Security Officer Hours" means the number of hours per quarter or per annum as the case may be that a security officer is required to work at a Facility or Minor Occupancy as

determined in accordance with a risk assessment for that Facility or Minor Occupancy carried out in accordance with paragraph 13.1(f) of Part 2 of Schedule 8;

"Service Change" means any change in the quality of the Facilities or the FM Services specified in the Required Accommodation Standards and/or the Service Requirements save that a change in quality which is necessary as a result of the obligation of the PRIME Contractor to comply with Good Industry Practice shall not be a Service Change;

"Service Charges" has, in relation to the Former DSS Estate Properties, the meaning given in paragraph 29.1 of Schedule 4 and, in relation to the Former ES Estate Properties, the meaning given in paragraph 28.1 of Schedule 1 to the Second Supplemental Agreement;

"Service Commencement Date" means the date on which the PRIME Contractor or a Service Provider commences the provision of the FM Services or the assumption of the Existing Services or any of them;

"Service Contracts" means the contracts entered into with the External Service Providers by which each of the PRIME Contractor and Trillium Property Services (PRIME) Limited respectively will procure the performance of the FM Services but does not include any leases in respect of Leasehold Properties;

"Service Performance Incentive Amount" means the amount (if any) in respect of each FM Service which the PRIME Contractor is entitled to claim pursuant to paragraph 4.7 of Part 1 of Schedule 14 [*Performance Measurement System*];

"Service Provider" means any person (including any Associates of the PRIME Contractor and External Service Providers) engaged by the PRIME Contractor or any Associate of the PRIME Contractor to provide any aspect of the FM Services but does not include Third Party Landlords;

"Service Provider Direct Agreement" means a direct agreement substantially in the form set out in Part 2 of Schedule 19 [*Form of Direct Agreements*];

"Service Provider Replacement Notice" has the meaning given in clause 13.6;

"Service Provider Replacement Notice Number" means a number equal to one twelfth of the relevant Service Warning Notice Number from time to time;

"Service Regional Service Provider Replacement Notice Number" means a number equal to one twelfth of the relevant Service Regional Warning Notice Number from time to time;

"Service Regional Warning Notice Number" means in respect of each FM Service a number set on the first day of each Contract Year equal to 12 multiplied by the sum of the number of Facilities and Minor Occupancies in the Region where the PRIME Contractor is required to provide the relevant FM Service all as set out in the current version of Schedule 6;

"Service Requirements" means the requirements of DWP set out or identified in Part 2 of Schedule 8 [*Required Accommodation Standards, Service Requirements and Generic Method Statement*];

"Service Warning Notice Number" means in respect of each FM Service a number set on the first day of each Contract Year equal to 12 multiplied by the sum of the number of Facilities and Minor Occupancies where the PRIME Contractor is required to provide the relevant FM Service all as set out in the current version of Schedule 6;

"Set-off Amount" means a sum which has finally and conclusively been determined in accordance with the Dispute Resolution Procedure to be due from the PRIME Contractor or PRIME Property to DWP under or pursuant to any term of any Project Document or for breach of any duty owed by either the PRIME Contractor or PRIME Property to DWP, or is otherwise agreed by the PRIME Contractor or PRIME Property (as the case may be) to be so due and which is then unpaid;

"Site" means a plot of land together with one or more buildings erected thereon or a specified part of a building in each case together with all rights appertaining to the land or buildings but subject to such rights of Third Party Landlords or any other person as may be imposed on the land or building under and in accordance with the Title Deeds, which is identified in Part 1 of Schedule 6 [*Basic Property Data*] (as amended as a result of any relevant Change) as the place within a Location at which a Facility will be provided to fulfil the Facility Output Requirements;

"SO" means a Security Officer;

"Software" means all of the software owned by the PRIME Contractor or its Contracting Associates used by the PRIME Contractor to provide the FM Services and necessary for the efficient performance of the Operations.

"Specified Properties" means the Properties identified in Part 3 of Schedule 11, as varied from time to time in accordance with clause 7.7;

"Split Site" means in the case of the Former DSS Estate Properties each of the Properties listed below which, at the Commencement Date, forms with other land a parcel of land or title all owned or held by the SS1, DWP or any other Secretary of State and with each part thereof being held for the same estate, interest or title prior to division or separation pursuant to the provisions of Schedule 4 to this Agreement;

1. Beaver House, Bricket Road, St Albans (0203765);
2. Brickdale House, Danestrete, Stevenage (0225732);
3. Crown Buildings, Dartford (0315147);
4. Collyer Court, Collyer Place, Peckham (0303337);
5. Nutwood House, Canterbury, Kent (0323626);
6. Cofa Court, Cheylesmore, Coventry (0619795);
7. Vinovium House, Saddler Street, Bishop Auckland (1128897);
8. Walton House, Victoria Road, Leven (1317290);
9. Polish Home, Ilford Park, Newton Abbott (7022897);
10. Bishopsbriggs, Crosshill, Glasgow (7799952);
11. Raynesway, Alvaston, Derbyshire (7711819);
12. Ellis Block (Hightown Barracks), Wrexham (0744708);
13. Benbecula Druim Na H'Airdes (1245999);
14. Crown Hill Court, Crownhill Plymouth (0410234);

and in the case of the Former ES Estate Properties each of the Properties listed below which, at the Contract Expansion Date, forms with other land a parcel of land or title

owned or held by the SS1, DWP or another Secretary of State and with each part thereof being held for the same estate, interest or title prior to division or separation pursuant to Schedule 1 to the Second Supplemental Agreement:

1. Regent House, The Gore, Basildon, Essex SS14 2EE (14990107); and
2. Park Road, Riverside, Pontypool NP4 6NZ (16990181);

"Sponsor Funding Agreement" means if applicable, any agreement which would have been within the definition of the term "Funding Agreement" were it not for the fact that an Associate of the PRIME Contractor is the lender and such lender has agreed with DWP that the interests of the lender under such agreement are subordinated to the interests of DWP under the Project Documents on terms acceptable to DWP, acting reasonably;

"Sponsors" means Land Securities Trillium Limited;

"SS1" means The First Secretary of State from time to time and includes, where the context so admits or allows, its predecessors in title;

"Stage" means a stage of works or services to be performed and delivered by the PRIME Contractor as set out in Appendix 2 of Schedule 27 [*Procedure for Procuring Department's Configuration Change*];

"Standard Security Risk Assessments" means a security risk assessment carried out at a Facility in accordance with paragraph 13.1(f) of Part 2 of Schedule 8;

"Stamp Duty Land Tax" means the tax known as stamp duty land tax introduced by the Finance Act 2003, as modified from time to time, and any tax which is introduced to supplement or replace that tax;

"Statement Date" has the meaning given in clause 15.4;

"Statutory Requirement" means the requirement of any United Kingdom or European Law or of any Law, requirement, authorisation or demand of any Relevant Authority which has jurisdiction with regard to the Facilities or the Operations;

"Sub-contractor Losses" means the amounts reasonably and properly payable by the PRIME Contractor or any of the Project Associates to any third party under their respective contracts with the PRIME Contractor or any of the Project Associates (as the case may be) in relation to implementation of any aspect of the Operations as a direct result of the termination of this Agreement and for the avoidance of doubt, if the PRIME Contractor or any relevant Project Associate is unable to terminate such contract, may include the ongoing costs payable to such third party, provided in each case that such amount shall be reduced to the extent that the PRIME Contractor or the Project Associates (where relevant) or any of their Associates fails to use all reasonable endeavours to mitigate such amount, provided also that no account should be taken of any liabilities or obligations of the PRIME Contractor or the Project Associates (where relevant) arising out of:

- (a) agreements or arrangements entered into by the PRIME Contractor or the Project Associates to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Operations; or
- (b) agreements or arrangements entered into by the PRIME Contractor or the Project Associates to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms;

"Subordination Agreement" means the form of agreement set out in Part 2 of Schedule 12 to the Second Supplemental Agreement or such other form acceptable to DWP;

"Subsidiary" has the meaning given in Part XXVI of the Companies Act 1985;

"Surveys" means the surveys of the Existing Sites completed by the PRIME Contractor two copies of which on CD Rom have been dated and initialled by the parties for the purposes of identification;

"Target Life Cycle Expenditure" means the agreed target expenditure to be incurred by the PRIME Contractor in undertaking and completing Life Cycle Works in respect of the Sites and Minor Occupancies in each Reconciliation Period as set out in Part B Schedule 24 [*LCCE Reconciliation*], as adjusted pursuant to clause 10.35;

"Termination Date" means the date on which the right and obligation of the PRIME Contractor to implement Operations in accordance with clause 8.1 terminates following the issue of a notice of voluntary termination by DWP pursuant to clause 27.3;

"Third Party Landlord" means any person apart from the PRIME Contractor or any Associate of it for the time being holding any interest in reversion of any Leasehold Property or any Site or in respect of any Leasehold Property situated in Scotland holding the interest of the Landlord;

"Third Party Service Change" has the meaning set out at paragraph 5 of Part 5 of Schedule 10 [*Change Procedures*];

"Third Party Service Change Confirmation" means the document referred to as such in paragraph 5 of Part 5 of Schedule 10 [*Change Procedures*];

"Third Party Tenant" means a tenant or licensee (other than any OGD or ISB or DWP Contractor) of all or any part of a Property as identified in the column headed "Commercial subtenants" in [Part 1 of] Schedule 11 or in a Certificate of Title or Lease Summary or a tenant under any lease granted by the PRIME Contractor or its Associates of all or part of a Site;

"Three Year Plan" means a plan setting out the Life Cycle Works necessary to be performed in respect of each Site and Minor Occupancy over a period of three successive Contract Years from the beginning of the next Contract Year immediately following the date the relevant Three Year Plan is due to be prepared and submitted in draft form (as required by this Agreement);

"TIES Bid Model" means the Excel projected operating cashflow computer model relating to the PRIME Contractor including all expenditure, revenues and financing of the Operations in relation to the Former ES Estate Properties from and after the Contract Expansion Date, three copies of the initial version of which on CD ROM have each been dated and initialled by the parties for the purposes of identification, or such replacement for that Excel projected cashflow computer model as may be agreed by the parties or determined pursuant to the terms of this Agreement;

"Title Deeds" means the title deeds for the Properties and Excluded Properties or any Site and includes all entries in any register for the Properties and Excluded Properties or Site at H M Land Registry or the Land Register of Scotland;

"Total Debt Amount" means:

- (a) all actual liabilities in respect of principal incurred and outstanding at the Termination Date (to avoid doubt, excluding any contingent liabilities), together with all interest accrued and unpaid as at that date, from PRIME Property, the PRIME Contractor or any of its Associates to the Funders under the Funding Agreements and the LS Internal Financing Agreement (and for the purposes of clause 27.4 only, "Funders" shall include the lender under the LS Internal Financing Agreement); and

- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by PRIME Property, the PRIME Contractor or any of its Associates to the Funders and the counterparties to the LS Internal Financing Agreement as a result of a prepayment under the Funding Agreements and the LS Internal Financing Agreement respectively, subject to PRIME Property, the PRIME Contractor, their Associates (where relevant), the Sponsors and the Funders mitigating all such costs to the extent reasonably possible (unless the amount or formula for determining the amount of such costs are fixed in advance under the terms of the Funding Agreements and the LS Internal Financing Agreement) less all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Funders to PRIME Property, the PRIME Contractor or any of its Associates as a result of prepayment of amounts outstanding under the Funding Agreements and LS Internal Financing Agreement respectively; but
- (c) excludes any amount due to the Funders as a result of any default by the PRIME Contractor or the Project Associates (where relevant) or any of their Associates save to the extent that such default was caused by a default by DWP under any Project Document;

"Total Floor Area" means 2,478,698m²;

"Transfer" means a transfer of a Freehold Property situated in England and Wales in the terms of Part 3 Section A of Schedule 4 and a disposition of a Freehold Property situated in Scotland in the terms of Part 3 Section B of Schedule 4 [*Land Matters*];

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 1981, as amended;

"Type 1 Capital Payment Stream" means the stream of monthly payments as described in paragraphs 1.5 and 3.6 of Part 1 of Schedule 10 and determined in accordance with paragraph 4.1(b) of Part 1 of Schedule 10;

"Type 2 Capital Payment Stream" means the stream of monthly payments as described in paragraphs 1.5A and 3.8 of Part 1 of Schedule 10 and determined in accordance with paragraph 4.1(b) of Part 1 of Schedule 10;

"Type A Service Charge Properties" has the meaning given to it in clause 15.25(a);

"Type B Service Charge Properties" has the meaning given to it in clause 15.25(b);

"Type C Service Charge Properties" has the meaning given to it in clause 15.25(c);

"UAC Spreading Discount Rate" [withheld]

"Unavoidable Costs" means in respect of a Facility the Regular UACs and/or Operational UACs as DWP elects, in accordance with Paragraph 1.4 of Part 3a of Schedule 10 [*Change Procedure*] or otherwise, from time to time;

"Unavoidable Costs Amount" means in respect of each Core Facility the amount determined in accordance with Part 3a of Schedule 10 [*Change Procedures*];

"Uniform Business Rates" means the most recent non-domestic rate as published by the national authorities;

"United Kingdom or European Law" means any Law applicable to the United Kingdom or any part thereof or to the European Union;

"Unreasonable Amendment" has the meaning given in clause 10.13;

"Unreasonable Omission" has the meaning given in clause 10.13;

"Utilities" means energy, fuel, water and sewage, or any one or more of them;

"Utilities Adjustment Amount" has the meaning given in clause 15.16;

"Utilities Agency Fee" has the meaning given in clause 15.15;

"Utilities Remittance Request" means the invoice described in clause 15.17;

"Utility Providers" means suppliers of Utilities to the Facilities;

"Utilities Year" means the twelve month period commencing on 1 October in the one year and ending on 30 September in the next year;

"Vacation Date" means for each Flexible Facility the earliest date upon which DWP may vacate such Flexible Facility determined by reference to the column headed **"Band"** in Part 1 of Schedule 6 [*Facility Output Requirements*] or any date specified as such pursuant to clause 17.2G;

"Valuable Leasehold" means those former DSS Estate Leasehold Properties listed in Part 7 of Schedule 11 to this Agreement and the Former ES Estate Leasehold Properties the tenure of which is described as "V L/H" in Schedule 2 to the Second Supplemental Agreement;

"Value Added Tax" and **"VAT"** means the tax charged by the Value Added Tax Act 1994 and shall be taken to include any replacement therefor that is charged on sales, turnover or added value or any similar measure;

"Variable Amount Invoice" means VAT Invoice or VAT credit note for the sum of the amounts set out in clause 15.6;

"Variable Amount Statement" means the statement described in clause 15.5;

"Variable Invoice Date" means the 29th day of each Contract Month;

"Variable Payment Date" means the 16th day of each Contract Month;

"Virtual Assignment" means an agreement in relation to England and Wales (only) to be entered into between the SS1, DWP and PRIME Property in the terms of Part 5 Section A of Schedule 4 [*Land Matters*];

"Warning Notice" has the meaning given in clause 13 [*Measuring of Performance*].

"Works Location" means a Site or part of a Site, in respect of which DWP has engaged a third party contractor to implement a Department's Configuration Change under paragraph 4 of Schedule 27, or where DWP has instructed a third party to carry out a Large Scale Programme in accordance with clause 17.22 or other work in accordance with paragraph 1.4(e) of Part 2 of Schedule 10.

PART B

SCOTTISH DEFINITIONS AND INTERPRETATION

By way of supplement to the definitions appearing in Part A of this Schedule, insofar as the following terms are used in or incorporated by reference into the Agreement, and whether or not the first letter thereof shall be in upper case, they shall be construed in relation to such of the Properties as are situated in Scotland, (so as to give business efficacy to the terms of the Agreement as applied thereto and in the absence of express Scottish provisions relating to any given subject matter), as follows:

"assignment" means, in the context of a lease, deed or document, assignment;

"assigns" means, when used as a noun, assignees;

"assurance" means an assignment, in the context of a lease, and a disposition, in the context of a freehold;

"completion" means settlement of a transaction in relation to any one or more of the Properties and "completed" shall be construed accordingly;

"covenants" means undertakings and/or obligations (as appropriate), when used as a noun, and **"undertakes"** and/or **"obliges"** itself, when used as a verb;

"declaration" means declarator;

"deduced" means evidenced by delivery or exhibition in the form of principal documentation, official extracts or office copy land certificates in relation to deeds within the prescriptive period and otherwise in the form of office or certified copies;

"demise" means the subjects of lease;

"easements and quasi easements" each mean servitudes and/or wayleaves;

"execute" means in relation to any document, that such document is subscribed so that it shall be presumed to have been subscribed by the grantor and/or other parties thereto for the purposes of s 3 and/or 7 of, and/or Schedule 2 to, the Requirements of Writing (Scotland) Act 1995;

"forfeit" means irritate and "forfeiture" means irritancy;

"freehold" means feudal or other form of heritable title not being a lease;

"frustration" or **"frustrated"** encompasses *rei interitus*;

"full title guarantee" means absolute warrandice;

"issue any proceeding" or like phrase means raise any action;

"leasehold" means a property held under a lease or sub-lease;

"leasehold owner" means the current tenant under the relevant lease;

"licence" means licence or consent depending upon the context;

"local land charges" means a charge acquired by a local authority or water authority that is binding upon successive owners of the land affected, a prohibition or use on the use of land either imposed by a local authority, including one embodied in a condition attached to a consent, approval or licence granted by a local authority or enforceable by a local authority under an undertaking which in either case is binding upon successive owners of

the land affected; any prohibition or restriction on the use of land either imposed by a Minister of the Crown or Government Department including one embodied in a condition attached to a consent, approval or licence granted by such a Minister or Department under any undertaking or agreement given to or made with him or it, and which in either case is binding on successive owners of the land affected, or any positive obligation affecting land enforceable by a Minister of the Crown, Government Department or local authority under any undertaking or agreement entered into, and which is binding upon successive owners of the land affected;

"the President of the Law Society" means the President or Senior Office Holder for the time being of the Law Society of Scotland;

"the President of The Royal Institution of Chartered Surveyors" means the Chairman or Senior Office Holder for the time being of the Scottish Branch of The Royal Institution of Chartered Surveyors;

"the Register of Title" means the Title Sheet;

"reversioner" means any person from whom the party vested in the tenant's part of any lease derives its interest whether immediately or more remotely, and/or whose consent is required for an assignation or sub-letting thereof;

"tort" means delict;

"underlease" means sub-lease;

"underletting" means sub-letting; and

"undertenant" means sub-tenant.

By way of supplement to the interpretation provisions set out in clause 1 of this Agreement, a reference to any of the Properties shall, where applicable, be construed as a reference to the interest of the party in question under the relevant lease in the case of Leasehold Properties and the heritable interest of the party in question in the case of Freehold Properties.

/s/ [withheld]

/s/ [withheld]

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For the Secretary of State for Work and Pensions

.....
For the First Secretary of State

/s/ [withheld]

/s/ [withheld]

.....
For Trillium (PRIME) Limited

.....
Trillium (PRIME) Property GP Limited