

**SCHEDULE 10**

This is Schedule 10 comprising the Change Procedure 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**

**PART 1****General Procedure****1. QUALIFYING CHANGE MODEL (QCM)**

1.1 The Parties have agreed an operating spreadsheet computer model (the "**Qualifying Change Model**") (two copies of which on CD ROM shall be dated and initialled by the parties for the purposes of identification) written using "Microsoft Excel" Version 5.0 software, and associated documentation such as operating manuals and worked examples (the "**QCM Documentation**"). The Qualifying Change Model and the QCM Documentation need to be updated to reflect the changes to this Agreement set out in the Expanded PRIME Contract, such updates to be agreed by the Parties (acting reasonably) as soon as practicable following the Contract Expansion Date. The overall purpose of the Qualifying Change Model shall be:

- (a) to calculate (or to be used as the basis for calculation of) FUPs as adjusted as a result of a Qualifying Change in accordance with this Schedule, or
- (b) to calculate the annual amount of a Capital Payment Stream where conversion of a capital sum to a Capital Payment Stream is to be carried out in accordance with this Agreement

in the case of the adjusted FUPs so that the alteration in the NPV of the FUPs payable over the remainder of the Operating Period (which may be positive or negative) is equal to the NPV of the Change in Costs arising out of the Qualifying Change, and in the case of the Capital Payment Stream so that the NPV of the Capital Payment Stream is equal to the NPV of the lump sum from which the Capital Payment Stream is derived.

1.2 The inputs which the Qualifying Change Model shall accept shall be as follows:

- (a) Facility Number of the Facility where the Qualifying Change occurred;
- (b) description of the Qualifying Change;
- (c) whether the Qualifying Change occurred at a Core Facility, a Flexible Facility or a Flexi-Core Facility;
- (d) whether the Qualifying Change is a Type I, Type II, Type IV or Type VI Qualifying Change;
- (e) the date of the Qualifying Change (being the date on which LST first starts to incur costs associated with the Qualifying Change or, in the case of a conversion of a lump sum to a Capital Payment Stream, the date on which the lump sum would otherwise be payable);

- (f) the date on which the FP adjusted as a result of the Qualifying Change will be payable, or is projected to be payable in accordance with this Schedule;
- (g) the amounts set out under the columns headed, "Total FP (£)", "Property Component (£)", "FM Component (£)" and "Unindexed Component (£)", respectively (the latter three referred to in this Schedule as, respectively, the "**Property Component**", the "**FM Component**", and the "**Unindexed Component**"), in the tables included at Part 4a or Part 4b of Schedule 17 as at the date on which the Qualifying Change Model is to be operated (i.e. prior to the Qualifying Change being implemented, and prior to, or at the same time as, the first Change in Costs occurs or is projected to occur) (in each case converted from annual to quarterly sums);
- (h) the Change in Costs as a result of the Qualifying Change for each quarter of each Contract Year from the time when the first Change in Costs is incurred or is projected to be incurred to the expiry of the Operating Period, to be input after the Change in Costs has been broken down into costs relevant to the FM Component and the Property Component, respectively;
- (i) the projected change in the residual value at the end of the Operating Period of the interest of the PRIME Contractor and/or any relevant Associate of it in a property which has been the subject of a Department's Increase in Space which is due to such Department's Increase in Space (taking account of all relevant facts and matters including the expected effect of the deterioration in value of any relevant works over the period but taking no account of any projected market movement over the period), and, to avoid doubt, all references to the residual value of property in this Part of this Schedule shall be construed in a like manner;
- (j) the risk premium percentage agreed in accordance with paragraph 4.2(d) of this Part 1;
- (k) the lump sum that is to be converted into a Capital Payment Stream;
- (l) whether the lump sum to be converted into a Capital Payment Stream is a UAC payment; and
- (m) the Business Square Metres relating to the Qualifying Change including, where appropriate, any additional Business Square Metres coming into existence or any reduction in Business Square Metres as a result of the Qualifying Change.

Where the inputs referred to above are in the nature of projected cashflows then the Qualifying Change Model shall accept them on a quarterly basis, in real terms as at the date of the Qualifying Change.

1.3 When making the NPV calculations, in addition to the rules set out in the definition of the term "Net Present Value":

- (a) the discount rate used shall be:
  - (i) in the case of a UAC payment, a real quarterly discount rate of [withheld]% (being the quarterly equivalent of the UAC Spreading Discount Rate); or
  - (ii) in all other cases, a real quarterly discount rate of [withheld]%; and
- (b) the efficiency factors applied to Facility Payment income will be the Expansion Efficiency Factor applicable in the relevant Contract Year (as defined in Part 1 of Schedule 17 [*Payment Provisions*]) if the relevant Facility is set out in Part 4b of Schedule 17 [*Payment Provisions*], and the Regular Efficiency Factor applicable in the relevant Contract Year (as defined in Part 1 of Schedule 17 [*Payment Provisions*]) in all other cases.

1.4 For the purpose of producing adjusted FUPs, the Qualifying Change Model shall be developed and agreed to carry out the calculations and operations described in this paragraph (and in the order set out in this paragraph) on the basis that the logic underlying the calculations which it will make will be as follows:

- (a) The NPV of the Change in Costs shall be calculated separately for elements of the Change in Costs related to the FM Component and the Property Component on the basis of the assumptions referred to below:
  - (i) the Change in Costs (or the future cashflow representing a stream of Changes in Costs) after allowing for any expected efficiency savings for FM Services shall be discounted to the date of the Qualifying Change. The date of the Qualifying Change shall be assumed to be the date on which the PRIME Contractor first incurs or is projected to incur a Change in Costs;
  - (ii) the discounting calculation shall be made assuming the whole of a Change in Costs which occurs in a quarter occurred in the middle of that quarter;
  - (iii) in the quarter of the Contract Year in which Qualifying Change takes place, the Change in Costs is assumed to take place evenly between the time of the Qualifying Change and the end of that quarter;

and the manual inputs in relation to Changes in Costs whenever the Qualifying Change Model is to be operated shall be such inputs as will permit the calculations described in this sub-paragraph (a) to be made using the logic and assumptions referred to above.

- (b) In addition to other inputs referred to in this paragraph 1, the Qualifying Change Model shall accept two manual trial inputs which are estimates of the change in value of the first quarterly equivalent of the FM Component and/or the Property Component which represent the outputs referred to in sub-paragraph (c)(i). The Qualifying Change Model will then adjust and use these manual inputs:
- (i) in the case of a Department's Increase in Space, by application of the risk premium percentage referred to in paragraph 1.2(j) above;
  - (ii) by projection into a stream of changes in cashflow until the end of the Operating Period, which stream is adjusted only in the case of the FM Component by being reduced in value at the end of each Contract Year by the relevant efficiency factor referred to in paragraph 1.3.
- (c) Following acceptance of the manual inputs described in sub-paragraphs (a) and (b):
- (i) the Qualifying Change Model will use a goal seek function to determine, as an output, the change in value (on a quarterly basis) of the FM Component and/or the Property Component (in each case payable at the time when the adjusted FUP is projected to first be payable in accordance with this Schedule) which will have the result that, after the Qualifying Change Model has operated, the NPV of the element of the Change in Costs attributable to the FM Component and/or the Property Component is equal to the NPV of the change in the FM Component or the Property Component as the case may be (in each case, in the case of a Department's Increase in Space, by seeking equality in the corresponding NPV calculations after adjusting the FM Component and the Property Component to take account of the application of the risk premium percentage; and
  - (ii) the output from the operation described in sub-paragraph (c)(i) shall be multiplied by four to produce an annual figure and added to or subtracted from the FM Component or the Property Component as the case may be, and the Qualifying Change Model shall produce as final outputs:
    - (aa) the adjusted FM Component and the adjusted Property Component;
    - (bb) the FP after being adjusted so that it is the sum of the Unindexed Component, the adjusted FM Component and the adjusted Property Component;
    - (cc) the FUP corresponding to the FP after such adjustment (taking account, where appropriate of any additional Business Square

Metres coming into existence or any reduction in Business Square Metres as a result of a Qualifying Change).

1.5 For the purpose of converting lump sums into Type 1 Capital Payment Streams, the Qualifying Change Model shall be developed to produce a monthly sum in respect of the Capital Payment Stream payable in respect of the Contract Month after the date when the lump sum would otherwise have been payable and each Contract Month thereafter during the Operating Period so that the NPV of the Capital Payment Stream using the discount rate referred to in paragraph 1.3(a) is equal to the lump sum in question.

1.5A For the purpose of converting lump sums into Type 2 Capital Payment Streams, the Qualifying Change Model shall be developed to produce a final payment date and final payment amount such that the NPV of the sum of :

(a) 75% of the amount of the Facility Payment payable in respect of the relevant Facility immediately prior to the Department's Reduction in Core Space (the "**Base FP Amount**") payable in each Contract Month after the date on which the lump sum would otherwise have been payable until the Contract Month immediately prior to the final payment date; and

(b) the final payment amount payable on the final payment date, provided that such final payment amount shall be less than or equal to 75% of the Base FP Amount,

(both such amounts to be discounted at the appropriate rate set out in paragraph 1.3(a) of this Part 1) is equal to the amount of the relevant lump sum.

1.6 If:

(a) the parties do not agree the updates to the Qualifying Change Model and the QCM Documentation referred to in paragraph 1.1 of this Part 1 within 6 months of the Contract Expansion Date; or

(b) at any time during the 20 Business Days after the end of the first Contract Year either party does not consider that the Qualifying Change Model is operating in appropriate manner in accordance with the provisions of this paragraph 1 having regard to the purposes for which the Qualifying Change Model will be used then it shall so notify the other party and set out its proposals for alterations to the Qualifying Change Model and the QCM Documentation. If, after consultation has occurred over a period of not less than 20 Business Days after such notification, there has been no resolution of the matter;

either party may refer the matter directly to an Adjudicator for a final decision. In any such reference the Adjudicator shall only have the power to choose which of the proposals in respect of the Qualifying Change Model or the QCM Documentation (as the case may be)

made by one of the parties most closely accords with the provisions of this paragraph 1 having regard to the purposes for which the Qualifying Change Model will be used.

1.7 Where it is agreed, or the Adjudicator has determined that alterations are required to the Qualifying Change Model for the reasons set out in paragraph 1.6, any alteration to a FP on account of a Qualifying Change which has been implemented using the Qualifying Change Model prior to such alteration shall be reassessed using the Qualifying Change Model after such alteration. If the result of such reassessment is that the adjusted FP using the altered Qualifying Change Model differs from that previously in force all amounts calculated by reference to the FP prior to such reassessment shall similarly be adjusted and any overpayment or underpayment previously made by DWP to the PRIME Contractor determined by the PRIME Contractor to have occurred as a result of such calculations shall be included as an Other Amount on the Variable Amount Statement submitted on the Statement Date next following determination by the PRIME Contractor of such overpayment or underpayment.

## 2. **GENERAL**

2.1 The party who wishes to cause the General Procedure to operate is referred to in this Schedule as the "**Claimant**" and the other party is referred to as the "**other party**".

2.2 The Claimant will notify the other party if it considers that a Qualifying Change has occurred or will occur. Such notice shall identify the Qualifying Change with reasonable accuracy.

2.3 The Claimant shall with its notice provide such evidence as it relies upon to support the conclusion that a Qualifying Change has occurred or will occur.

2.4 Within 20 Business Days of receipt of the Claimant's notice and evidence the other party shall give notice to the Claimant stating whether or not it accepts that there has been or will be a Qualifying Change. If the other party does not accept that there has been or will be a Qualifying Change then the matter may be referred by the Claimant to the Dispute Resolution Procedure.

2.5 If it is agreed or determined that a Qualifying Change has occurred or will occur then the remainder of this procedure shall apply.

2.6 Qualifying Changes may occur in respect of Facilities and in respect of Minor Occupancies. Accordingly a reference in this Part to:

(a) a "**Facility**" shall include a reference to a Minor Occupancy;

(b) a "**FP**" or a "**Facilities Price**" shall include a reference to a MOFP Price after multiplying such MOFP Price by the number of Business Square metres at the relevant Minor Occupancy; and

a reference to Part 4 of Schedule 17, and any amount described therein shall in the case of a Minor Occupancy be deemed to be a reference to Part 5 of Schedule 17 and the corresponding amount (if any) described in that Part of that Schedule.

2.7 The term "**quarter**" as used in this Schedule shall mean a period of three Contract Months commencing on an Indexation Date referred to in Schedule 17 [*Payment Provisions*].

2.8 Any cost incurred by the PRIME Contractor, PRIME Property or any Associate of either of them which is or amounts to the repayment of a capital sum borrowed to finance expenditure in respect of a Qualifying Change, or any interest payment or any other payment in the nature of repayment of, and servicing of, financing shall not be a Change in Costs for the purposes of this Agreement.

### 3. **CLASSIFICATION OF QUALIFYING CHANGES (QUALIFYING CHANGES)**

3.1 Qualifying Changes may be classified into six types (each, a Type). These are:

- (a) Type I: a Qualifying Change affecting the delivery of FM Services, or the standard of the provision of accommodation, or, in the case of a Department's Increase in Space, the quantity of accommodation, at only one Facility which affects costs or revenues (or categories of costs or revenues) experienced by the PRIME Contractor, which are related to FM Services and/or property and/or to capital expenditure only in respect of that Facility;
- (b) Type II: a Qualifying Change affecting the delivery of FM Services, or the standard of the provision of accommodation, or, in the case of a Department's Increase in Space, the quantity of accommodation, at only one Facility which, in addition to the effect (if any) which it might have on categories of cost or revenues referred to in paragraph 3.1(a) affects categories of costs or revenues which might be expected to be borne by more than one Facility (e.g. a significant change in the level of FM Services at a large Facility might require a change in the number of personnel required to manage the provision of FM Services notwithstanding that the tasks of that category of supervisory personnel prior to the implementation of the Qualifying Change related to more than one Facility);
- (c) Type III: a Qualifying Change affecting the delivery of FM Services, or the quantity or standard of the provision of accommodation, at more than one Facility;
- (d) Type IV: a change of a lump sum into a Type 1 Capital Payment Stream;
- (e) Type V: a Department's Reduction of Core Space affecting less than the whole (or less than the whole remaining after previous vacations) of (1) a Core Facility or (2) a Flexi-Core Facility being vacated and compensation calculated pursuant to clause 17.1F(b); and

- (f) Type VI: a change of a lump sum into a Type 2 Capital Payment Stream
- 3.2 Following notification of circumstances which could give rise to of a Qualifying Change, the parties shall use all reasonable endeavours to agree the classification of any particular Qualifying Change into a Type. If the parties are unable to agree such classification or agree that such Qualifying Change must be divided into more than one Type of Qualifying Change, the parties shall use all reasonable endeavours to agree any such division, failing which either party may refer the matter to the Dispute Resolution Procedure.
- 3.3 For a Qualifying Change of Type I the following shall apply:
- (a) If the Qualifying Change is in respect of a Core Facility then the FP for that Core Facility shall be changed in accordance with paragraph 4 below;
  - (b) If the Qualifying Change has occurred in respect of a Flexible Facility or a Flexi-Core Facility then the FP for that Flexible Facility or Flexi-Core Facility shall be changed in accordance with paragraph 4 below but assuming that such Flexible Facility or Flexi-Core Facility shall remain occupied for the remainder of the Operating Period; and
  - (c) the provisions of paragraph 7 below shall apply.
- 3.4 For a Qualifying Change of Type II the provisions relating to a Qualifying Change of Type I shall apply, provided that:
- (a) the Change in Costs shall be deemed to include the whole of the change in costs arising as a result of the Qualifying Change notwithstanding that some categories of costs might otherwise have been attributed by the PRIME Contractor to more than the one Facility; and
  - (b) nothing in this paragraph 3.4 shall entitle the PRIME Contractor to claim any costs attributable to another Facility where such costs are in respect of the matters and functions referred to in paragraph 4.2(e).
- 3.5 For a Qualifying Change of Type III, the financial consequences of such Qualifying Change shall be agreed between the parties in accordance with paragraph 6.1 below.
- 3.6 For a Qualifying Change of Type IV, the lump sum shall be converted into a Type 1 Capital Payment Stream payable by DWP until the expiry of the Operating Period in accordance with 3.1(b) (ii) of Part 3a to this Schedule 10. A Capital Payment Stream shall be an Indexed Amount for the purposes of Part 1 of Schedule 17 [*Payment Provisions*] and be indexed using RPI.

- 3.7 For a Qualifying Change of Type V, the FP for the relevant Core Facility, and Flexi-Core Facility being vacated and compensation calculated pursuant to clause 17.1F(b), shall be calculated and shall be replaced in accordance with Part 8 of this Schedule.
- 3.8 For a Qualifying Change of Type VI, the lump sum shall be converted into a Type 2 Capital Payment Stream payable by DWP in accordance with paragraph 3.1 (b) (iii) of Part 3a of this Schedule 10. A Capital Payment Stream shall be an Indexed Amount for the purposes of Part 1 of Schedule 17 [*Payment Provisions*] and be indexed using RPI.

4. **CHANGES PROCESSED THROUGH THE QUALIFYING CHANGE MODEL**

- 4.1 By operating the Qualifying Change Model at or prior to the quarter in which a Change in Costs as a result of a Qualifying Change of Type I or Type II occurs or is projected to occur, or in the Contract Month in which a lump sum giving rise to a Qualifying Change of Type IV or Type VI is due to be paid:
- (a) subject to paragraph 3.2, if the Qualifying Change is a Type I or Type II Qualifying Change, the PRIME Contractor shall determine the new FP for the relevant Facility by operating the Qualifying Change Model in accordance with the QCM Documentation having prepared the necessary inputs as described in paragraph 4.2;
  - (b) if the Qualifying Change is a Type IV or Type VI Qualifying Change, the PRIME Contractor shall determine a Capital Payment Stream by operating the Qualifying Change Model in accordance with the QCM Documentation having prepared the necessary inputs as described in paragraph 4.3 or 4.3A (if applicable).

The PRIME Contractor shall deliver the output from the Qualifying Change Model to the Department's Representative as soon as possible following completion of such calculations and shall deliver a statement setting out the inputs made into the Qualifying Change Model together with such explanation of the manner in which the inputs have been prepared as may be reasonable in the circumstances.

- 4.2 The inputs in respect of a Type I or Type II Qualifying Change shall be prepared as follows:
- (a) If not already agreed or determined pursuant to the other provisions of this Agreement, all relevant Changes in Costs (to avoid doubt, including any relevant change in the residual value of a property which has been or is to be the subject of a Department's Increase in Space which is due to such Department's Increase in Space) shall be agreed by the Parties and if not agreed either party may refer the matter to the Dispute Resolution Procedure;
  - (b) all elements of all Changes in Costs shall be allocated as costs relevant to either the FM Component or the Property Component;

- (c) the Change in Costs in respect of the FM Component and/or the Property Component for each quarter of each Contract Year from and including the date of the Qualifying Change (including any costs of a capital nature) shall be expressed as a projected cashflow in each quarter of each Contract Year on the basis on which all cashflow projections are to be made for all NPV calculations under this Agreement, disregarding all indexation and inflation after the date when the Qualifying Change Model is to be operated;
- (d) a reasonable risk premium percentage assessed to take account of the risk of unavailability of the Business Square Metres in respect of the Facility; and
- (e) the amount to be included in the Change in Costs to cover (and compensate for) the Corporate Overhead Costs of the PRIME Contractor and any Project Associate in relation to the provision of FM Services, shall be the percentage of the FM Services Cost Base (prior to including the amount determined pursuant to this paragraph) as follows:
  - (i) [withheld]% in the case of a Department's Service Change, or an adjustment to the FUP in accordance with Part 11 of this Schedule 10, requested on or after 1 September 2003; or
  - (ii) [withheld]% in the case of a Department's Increase in Space requested on or after 1 September 2003.

4.3 The inputs in respect of a Type IV Qualifying Change shall be the amount of the lump sum which is being converted to a Type 1 Capital Payment Stream and the date when the relevant lump sum would otherwise have been payable.

4.3A The inputs in respect of a Type VI Qualifying Change shall be the amount of the lump sum which is being converted to a Type 2 Capital Payment Stream, the date when the relevant lump sum would otherwise have been payable and the Base FP Amount.

4.4 In the case:

- (a) of a Qualifying Change of Type I or Type II on the last Business Day of the quarter during which the Qualifying Change occurred the number set out under the column headed "Total FP (£)" in the table included at Part 4a or Part 4b of Schedule 17 (as appropriate) for Facility where the Qualifying Change occurred shall be replaced with the number which is equal to the FP determined as a result of the operation of the Qualifying Change Model. At the same time as the FP is adjusted in the table included at Part 4a or Part 4b of Schedule 17 (as appropriate) the FM Component and the Property Component shown on that table shall also be adjusted to show the FM Component and/or the Property Component produced as a result of the operation of the Qualifying Change Model; and

- (b) of a Qualifying Change of Type IV or Type VI on the last Business Day of the month during which the Qualifying Change occurred, a new row shall be added to the table included at Part 4a or Part 4b of Schedule 17 (as appropriate) showing the Capital Payment Stream and for the avoidance of doubt in the case of a Type VI Qualifying Change, this will include the Base FP Amount, the final payment date and the final payment amount.

If the results of the operation of the Qualifying Change Model have not been agreed or determined before the last Business Day of the quarter during which the Qualifying Change occurred, the FP for the relevant Facility shall be amended as noted above retrospectively to such last Business Day and any amounts which had been overpaid or underpaid by DWP prior to the time such amended FP is incorporated into the Facility Payment for such Facility, or such Capital Payment Stream is entered onto the table at Part 4a or Part 4b of Schedule 17 shall be invoiced or credited, as the case may be, to DWP on the next Variable Invoice Date.

## 5. **WORKED EXAMPLES**

The Qualifying Change examples set out in Part 1 of Schedule 10 of the original PRIME Contract dated 27 March 1998 analysing out the operation of the Qualifying Change model shall apply to this Part 1 of Schedule 10 of the Expanded PRIME Contract and demonstrate the intended manner in which the Qualifying Change Model will operate. Regard shall be had to such examples in the event of any dispute as to the development and agreement of the Qualifying Change Model pursuant to paragraph 1 and the intended manner of processing the Qualifying Changes referred to in paragraph 4.

## 6. **QUALIFYING CHANGES OUTSIDE THE QCM**

- 6.1 The appropriate steps to be taken to adjust payments for Qualifying Changes not addressed in paragraph 4 of this Part, including any Type III Qualifying Change, shall be agreed by the parties in accordance with this paragraph, or determined by the Dispute Resolution Procedure following a reference by either party, in such manner as will best achieve a fair and reasonable adjustment to the relevant FPs or MOFPs in accordance with the following principles:

- (a) the objective shall be to achieve an adjustment so that the NPV of the Change in Costs is equal to the NPV of the adjustment to the FPs or MOFPs, in each case calculating the NPVs on a quarterly basis using the discount rate referred to in paragraph 1, and, where appropriate, taking due account of the efficiency factors referred to in paragraph 1 and taking account of the NPV of any relevant change in the residual value of a property which has been or is to be the subject of a Department's Increase in Space which is due to such Department's Increase in Space;

- (b) where it is fair and reasonable to do so, the logic and assumptions embodied in the Qualifying Change Model shall be used for the calculations or as the basis of the calculations; and
- (c) when calculating the impact of a Qualifying Change requiring capital expenditure, the PRIME Contractor and DWP will take into account the availability risk which the PRIME Contractor is taking. Therefore, the cash flow required to reimburse the PRIME Contractor for the capital expended should be enhanced by a reasonable risk premium to reflect anticipated reductions in payment when Business Square Metres are not Available Business Square Metres.

If the parties are unable to agree appropriate steps to be taken to account for Qualifying Changes not addressed in this Part, either Party may refer the matter to the Dispute Resolution Procedure with the objective of determining a fair and reasonable assessment of reflecting the change having regard to the manner in which this Part operates.

## **7. ADJUSTING UNAVOIDABLE COSTS AND CREATING FLEXIBLE COMPENSATION SUMS**

- 7.1 In any case where a Qualifying Change (other than a Change in Hours) affects a Core Facility, or a Flexi-Core Facility being vacated and compensation calculated pursuant to clause 17.1F(b), the parties shall use all reasonable endeavours to agree a change in the Regular UACs and Operational UACs for that Core Facility or Flexi-Core Facility for the year of the Qualifying Change and for all subsequent years applying the principles set out in Part 8 of Schedule 17 [*Payment Provisions*] to the consequences of the implementation of the Qualifying Change failing which either Party may refer the matter to the Dispute Resolution Procedure. For the avoidance of doubt, where such Qualifying Change is a Change in Hours, there shall be no change in the Unavoidable Costs for that Facility as a result thereof.
- 7.2 In any case where a Qualifying Change (other than a Change in Hours) affects a Flexible Facility, or a Flexi-Core Facility being vacated and compensation calculated pursuant to clause 17.1F(a) the parties shall use all reasonable endeavours to agree for each Contract Year from the Vacation Date for that Facility a Flexible Compensation Sum. The Flexible Compensation Sum will be assessed applying the principles set out in Part 8 of Schedule 17 [*Payment Provisions*] to the consequences of the implementation of the Qualifying Change (and indexed as contemplated by paragraph 2.2 of Part 3a) as if there were an adjustment to an Unavoidable Cost, and the Flexible Compensation Sum shall be the sum of a property component, an FM component and an unindexed component (any of which components may be zero). In default of agreement, either Party may refer the matter to the Dispute Resolution Procedure. Upon agreement or determination of the Flexible Compensation Sums, a new row will be added to the relevant table of Unavoidable Costs in Schedule 32 [*Unavoidable Costs*] to record the results of such

agreement or determination. For the avoidance of doubt, where such Qualifying Change is a Change in Hours, no Flexible Compensation Sum shall be payable.

## 8. IMPLEMENTATION OF THE NEW FP OR MOFP

8.1 At the time when any operation is performed under this Agreement which affects any of the matters referred to in Schedule 16 or Schedule 17, and in the case of any operation performed under this Schedule to produce an adjusted FP and FUP, on the last day of the quarter before the adjusted FP and FUP first become payable in accordance with this Schedule (and then subject to paragraph 8.2 below), the PRIME Contractor shall produce:

- (a) revised tables in the format set out in Parts 4a, 4b and 5 of Schedule 17 (as appropriate);
- (b) a revision of the tables set out as Schedule 16 [*Cost Plans*] and Appendix 2 to Schedule 14 [*Performance Measuring System*] to take account of the Changes in Costs;
- (c) a revision of Schedule 32 [*Unavoidable Costs*]; and
- (d) where appropriate a revision of the Three Year Plans, Schedule of Life Cycle Works and Schedule of Maintenance Works (and, to avoid doubt, the provisions of clause 10.12 [*Deferral of Life Cycle Works in a Three Year Plan*] shall apply).

8.2 In any case where an adjustment to a FP and a FUP is produced by operation of this Schedule as at any time before the quarter immediately before the adjusted FP and FUP first become payable, the relevant adjustments shall not be made to Parts 4a, 4b and/or 5 of Schedule 17 until that quarter, but the adjusted Property Component and the adjusted FM Component as at the date when the adjustment is made shall be Indexed Amounts as if the relevant changes had been made to Parts 4a, 4b and/or 5 of Schedule 17, and the amounts substituted into Schedule 17 shall be the amounts as so adjusted for indexation.

8.3 When, pursuant to a Department's Increase in Space, a new FP or FUP is determined in accordance with this Schedule 10, such new FP or FUP shall be added to the table set out at Part 4a of Schedule 17.

## 9. MITIGATION PRINCIPLE

9.1 The PRIME Contractor shall in relation to each Change:

- (a) at all times, take all reasonable steps in accordance with Good Industry Practice, to mitigate any increase in costs (including any increase in existing costs or any additional costs), and to maximise any reductions in costs, having regard to DWP's Objectives in respect of such Change; and

- (b) provide reasonable evidence of the steps taken by the PRIME Contractor to comply with paragraph 9.1(a) on request,

consequent upon such Change.

## 10. **MISCELLANEOUS**

10.1 The PRIME Contractor shall not be entitled to charge any overheads, margins, risk premia, contingencies or similar amounts as part of a Change in Costs, save for the amount referred to in paragraph 4.2(d). Notwithstanding the foregoing, the PRIME Contractor shall be entitled to claim as a Change in Costs any overhead, margin, risk premium, contingency or similar amount charged by an Associate of the PRIME Contractor in connection with a Change:

- (a) in relation to the provision of FM Services as part of the Changes described in paragraph 4.2(e), the amounts determined in accordance with that paragraph; and
- (b) in all other instances, such amounts as are reasonable in the context of the Change, having regard to the amounts that might be charged by a third party service provider in similar circumstances.

10.2 Notwithstanding anything to the contrary in this Agreement, the PRIME Contractor shall not in connection with any Change be compensated more than once for the same costs.

## PART 2

### Procuring Finance in respect of Changes

#### 1. FUNDING SHORTFALLS

- 1.1 The PRIME Contractor shall wherever possible obtain finance for any capital expenditure required in respect of a Qualifying Change from such funds, if any, as are available to be used for such purpose under the Funding Agreements.
- 1.2 If the PRIME Contractor cannot obtain finance for all or any part of capital expenditure required in respect of a Change (the "**Funding Shortfall**") from the sources referred to in paragraph 1.1 then the PRIME Contractor shall, and shall procure that any Relevant Associate (the term "**Relevant Associate**" as used in this Schedule meaning an Associate of the PRIME Contractor reasonably selected by it having regard to the purpose of the provision where the term is used) shall use all reasonable endeavours to procure such finance on the basis that the weighted average cost of capital (based on a gearing ratio of senior debt to equity and quasi equity of 4:1) which is required by the providers of new capital will be no higher than 7.317% per annum, as reflected by the adjustment to the revenue of the PRIME Contractor pursuant to Part 1 of this Schedule expressed as a real cost of capital (i.e. a rate of cost of capital disregarding the future effects of inflation or indexation).
- 1.3 The use of reasonable endeavours shall include the preparation of an appropriate business plan in respect of the business of the PRIME Contractor and/or any Relevant Associate as affected by the Qualifying Change to demonstrate the ability of the PRIME Contractor and/or any Relevant Associate to service and retire debt, and, if necessary equity, finance in respect of the Funding Shortfall. The preparation of the business plan shall have regard to all relevant facts and matters of which the PRIME Contractor and/or any Relevant Associate is aware.
- 1.4 If having used reasonable endeavours for a period of no less than 60 Business Days after the determination of the amount of the Funding Shortfall (or, in the case of a Department's Increase in Space, for the period referred to in paragraph 8 of Part 3b) the PRIME Contractor or the Relevant Associate cannot obtain such finance then the PRIME Contractor shall notify the Department's Representative reporting on the activities which it and/or any Relevant Associate has or have engaged in seeking finance, and notifying the Department's Representative of such finance short of the Funding Shortfall as it may have been able to obtain. Within 20 Business Days after receiving such notice DWP may:
  - (a) undertake to the PRIME Contractor to make payments to the PRIME Contractor in respect of the Funding Shortfall as the requirement for capital arises;

- (b) procure funding in respect of the Funding Shortfall at a cost of capital which shall be no higher than that referred to in paragraph 1.2 of this Part by means such as the provision of guarantees or other appropriate support to the PRIME Contractor or any Relevant Associate;
- (c) proceed with the Change on such other basis as the parties may reasonably agree;
- (d) where the Qualifying Change is a Department's Service Change withdraw the requirement for the PRIME Contractor to implement the relevant Qualifying Change in accordance with the provisions of part 5 of this Schedule; and/or
- (e) contract with a third person to undertake the work required or obtain the accommodation, as the case may be, provided always that where any work is to be carried out at any of the Properties or at any of the Excluded Properties or at any other property in which the PRIME Contractor or any Associate of it has any interest or title (the "**Works Location**") such work shall not be carried out save in compliance with the remaining paragraphs of this Part of this Schedule.

1.5 DWP shall not commence or allow to commence the works in question without having first:

- (a) obtained all necessary Third Party Landlord and other, including statutory, permissions and consents; and
- (b) where the Construction (Design and Management) Regulations 1994 as from time to time amended supplemented or replaced (the "**CDM Regulations**") apply, notwithstanding any other provisions of this Agreement which shall be deemed amended accordingly, made and served a declaration to the Health and Safety Executive to the effect that DWP shall act as the sole client in respect of the works in question for the purposes of the CDM Regulations and supplied a copy of the declaration to the PRIME Contractor.

1.6 In carrying out the works in question, DWP shall:

- (a) procure that the same are carried out to the reasonable satisfaction of the PRIME Contractor and in accordance with all consents and permissions and the Law and Statutory Requirements;
- (b) procure that the same are carried out in accordance with Good Industry Practice;
- (c) where the CDM Regulations apply to the works in question:
  - (i) act as the sole client in respect of the same for the purposes of the CDM Regulations and comply with the obligations imposed upon a client by the CDM Regulations and procure that DWP's contractors, designers and

planning supervisor (appointed under the CDM Regulations) shall comply in all aspects with the CDM Regulations;

- (ii) on completion, supply to the PRIME Contractor a full and complete copy of the health and safety file for the works in question prepared in accordance with the CDM Regulations and any code of practice or other guidance issued by any competent authority;
- (d) permit the PRIME Contractor to enter upon the Works Location at all reasonable times to inspect the state and progress of the works and the materials used or intended for use therein and provide to the PRIME Contractor such information and documents in connection with the works as it may be reasonably required; and
- (e) forthwith at the expense of DWP make good all damage caused to any premises adjoining or near to the Works Location or suffered by the owners or occupiers thereof or any one or more of them arising out of or incidental to the works.

1.7 DWP will indemnify the PRIME Contractor and any Relevant Associate and will keep each of them fully and effectively indemnified against:

- (a) any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever or any injury or damage whatsoever to any property real or personal arising out of or in the course of or caused by the carrying out of the works in question;
- (b) any tax, charge or levy whatsoever to which the PRIME Contractor and/or any Relevant Associate may become liable arising or leviable directly or indirectly from, or as a result of, DWP carrying out the works save that this indemnity shall not apply;
  - (i) where the PRIME Contractor and/or the Relevant Associate makes a capital gain as a result of the works, nor
  - (ii) to any liability to Corporation Tax (or any like tax on revenue) in respect of any increase in the revenue of the PRIME Contractor as a result of the relevant Change;
- (c) any liability, loss, claim or proceedings whatsoever or increase in cost of repair of or compliance with any obligations (whether arising by statute or to DWP or other tenants or occupiers thereof) in respect of the building of which Works Location forms part or other property of the PRIME Contractor or any Associate of it arising out of or caused by the carrying out of the works;

(d) any increased or extra premium payable in respect of any policy or policies of insurance of the Works Location or of any adjoining or neighbouring premises by reason of the carrying out of the works only to the extent that such increase or extra premiums were not reasonably foreseeable at the time when the Changes in Costs were finally assessed for the purpose of the operation of Part 1 of this Schedule; and

(e) [withheld].

1.8 Where, as a result of the carrying out of the works at a Works Location, the PRIME Contractor is prevented or inhibited from carrying out the Operations or is able to carry out the Operations in a limited manner only, the PRIME Contractor's obligations under this Agreement and the Project Documents shall be qualified to the extent of such prevention, inhibition or limitation and, for the avoidance of doubt, the Performance Measuring System and the provisions of Schedule 17 relating to the application of Availability Deduction Amounts shall not have effect in respect of such Works Location to the extent that the PRIME Contractor's obligations are so qualified until such time as the prevention, inhibition or limitation referred to above is no longer extant.

1.9 Where, as a result of or in connection with the carrying out of the works at a Works Location, it becomes necessary to move the staff of DWP, any OGD, ISB or any DWP Contractor into alternative accommodation, DWP shall provide such accommodation and shall make appropriate arrangements for the de-canting and re-canting of staff of DWP, OGD, ISB or any DWP Contractor affected, all at its cost.

1.10 To avoid doubt, the provisions of Part 3b shall continue to operate in respect of a Department's Increase in Space, and the provisions of Part 5 shall continue to apply in respect of a Department's Service Change, which has been or is to be implemented in whole or in part by the carrying out or completion of works at a Works Location. If, in any such case, there has been a Change in Costs to the PRIME Contractor in connection with the fulfilment of its obligations to carry out the Operations at such Site, such Change in Costs shall be taken into account in the assessment of the effect of the Qualifying Change and the provisions of Part 1 of this Schedule shall apply.

## PART 3a

### Department's Reduction in Core Space

In this Part 3a, all references to "**Core Space**" shall include reference to those parts of Core Facilities and/or Flexi-Core Facilities to be vacated and compensation calculated pursuant to clause 17.1F(b), as appropriate.

#### 1. CORE REDUCTION NOTICE

1.1 Subject to paragraph 1.2 the Department's Representative may issue to the PRIME Contractor a notice (a "**Core Reduction Notice**") specifying, in respect of a Facility, a Department's Reduction in Core Space. A Core Reduction Notice shall be a document which states on its face that it is a Core Reduction Notice and which specifies the relevant Department's Reduction in Core Space and the date when it is proposed that the Department's Reduction in Core Space will be implemented. If the Core Reduction Notice is in respect of part only of any relevant Site, then the part shall be specified by reference to a plan of the Site.

1.2 A Core Reduction Notice may not be issued

- (a) unless the proviso to clause 17.2(a) does not apply;
- (b) unless the general nature of the Department's Reduction in Core Space has been the subject of consultation pursuant to clause 9.6 in respect of the Estates Strategy for the Facility issued immediately prior to the relevant Core Reduction Enquiry; or
- (c) in any case, less than 12 months prior to the intended date for its implementation.

1.3 Following receipt of issue of a Core Reduction Notice the PRIME Contractor may give notice to the Department's Representative that it objects to the Core Reduction Enquiry on the basis that the provisions of paragraph 1.2 of this Part of this Schedule have not been complied with or accepting the Core Reduction Notice in which latter event the PRIME Contractor shall be under a duty to implement a Department's Reduction in Core Space which is the subject of the Core Reduction Notice.

1.4 Where DWP vacates Core Space, and DWP is obliged to pay Unavoidable Costs pursuant to this Part 3a, DWP may (at its discretion), in respect of each Business Square Metre of Core Space so vacated, elect to pay either:

- (a) Operational UACs (at the per Business Square Metre rate), provided that the number of Business Square Metres in respect of which DWP may elect to pay

Operational UACs may not exceed the Operational UAC Allowance which applies from time to time; or

- (b) where the Operational UACs for that Facility are greater than the Regular UACs or to the extent that the Operational UAC Allowance applicable at the relevant time is less than the total number of Business Square Metres so vacated, the Regular UACs (at the per Business Square Metre rate),

it being acknowledged that DWP may, in respect of any Core Space at a Core Facility or Flexi-Core Facility vacated and compensation paid pursuant to clause 17.1F(b), elect in accordance with the provisions of this paragraph to pay Regular UACs for some Business Square Metres and Operational UACs for other Business Square Meters but will not be obliged to pay both Regular UACs and Operational UACs for the same Business Square Metre.

## 2. **UNAVOIDABLE COSTS AND INDEXATION**

2.1 Unavoidable Costs shall be adjusted in accordance with this paragraph.

2.2 Each Regular UAC is the sum of the amounts identified in Part 1 of Schedule 32 as property components, FM components, and unindexed components of the relevant Regular UAC ("**UAC Property Components**", "**UAC FM Components**" and "**UAC Unindexed Components**" respectively) or, if such sum is negative, the Regular UAC shall be zero. The UAC Property Components and UAC FM Components shall be Indexed Amounts and shall be adjusted in accordance with Part 1 of Schedule 17 [*Payment Provisions*] using RPI and the FM Basket Index, respectively, and each Regular UAC shall be subject to the corresponding adjustment, subject to the proviso that a Regular UAC may never be a negative number. Unless the contrary is indicated from the context, all references in this Agreement to a Regular UAC shall be construed as a reference to the Regular UAC as so adjusted.

2.3 Each Operational UAC is the sum of the UAC Property Component, the UAC Unindexed Component of the relevant Regular UAC and the amounts identified in Part 2 of Schedule 32 as FM components ("**Operational UAC FM Components**") of the relevant Operational UAC or, if such sum is negative, the Operational UAC shall be zero. The UAC Property Components and Operational UAC FM Components shall be Indexed Amounts and shall be adjusted in accordance with Part 1 of Schedule 17 [*Payment Provisions*] using RPI and the FM Basket Index, respectively, and each Regular UAC shall be subject to the corresponding adjustment, subject to the proviso that an Operational UAC may never be a negative number. Unless the contrary is indicated from the context, all references in this Agreement to an Operational UAC shall be construed as a reference to the Operational UAC as so adjusted.

3. **PAYMENT CONSEQUENCES OF DEPARTMENT'S REDUCTION IN CORE SPACE**

3.1 If the Department's Reduction in Core Space applies to the whole of a Facility:

- (a) clause 17.2(b)(i) shall apply;
- (b) the Department's Representative shall give notice prior to the implementation of the Department's Reduction in Core Space as to whether it wishes to either:
  - (i) pay the Unavoidable Cost for that Facility in a single lump sum in which case the Variable Amount Invoice in respect of the Facility submitted during the Contract Month immediately after the Department's Reduction of Core Space is implemented will include the Unavoidable Cost as the Unavoidable Costs Amount; or
  - (ii) pay the Unavoidable Cost as a Type 1 Capital Payment Stream calculated in accordance with Part 1 (noting that the discount rate used shall be the UAC Spreading Discount Rate), in which case DWP shall be obliged to pay the relevant Capital Payment Stream from and after the first Contract Month after the Contract Month in which the Department's Reduction in Core Space is implemented and such Capital Payment Stream shall be an Indexed Amount for the purposes of Part 1 of Schedule 17 [*Payment Provisions*] and be indexed using RPI; or
  - (iii) on each Basic Payment Date, pay the Unavoidable Cost as a Type 2 Capital Payment Stream, being 75% of the Base FP Amount for such period of time ("**Payment Period**") as is determined in accordance with Part 1 (noting that the discount rate used shall be the UAC Spreading Discount Rate), such Capital Payment Stream shall be an Indexed Amount for the purposes of Part 1 of Schedule 17 [*Change Procedure*] and be indexed using RPI, and on the final payment date the final payment amount determined in accordance with Part 1, provided that DWP may not select the option contained in this sub-paragraph (b)(iii) if the Payment Period would exceed the duration of the remainder of the Contract Period.

3.2 If the Department's Reduction in Core Space applies to less than the whole (or less than the whole remaining after previous vacations) of a Facility:

- (a) clause 17.2(b)(i) shall apply; and
- (b) a Type V Qualifying Change will be implemented.

**Annex 1**

[withheld]

## Annex 2

[withheld]

## Annex 3

[withheld]