

## PART 3b

### Department's Increase in Space

#### 1. DEPARTMENT'S INCREASE ENQUIRY

1.1 The Department's Representative may issue to the PRIME Contractor a notice (a "**Department's Increase Enquiry**") specifying (in respect of a Facility, or by the addition of a new Facility) a Department's Increase in Space.

1.2 Not used.

1.3 A Department's Increase Enquiry must state on its face that it is a Department's Increase Enquiry. A Department's Increase Enquiry shall set out the following matters in a standard format to be agreed between the parties:

- (a) the Location for the additional space (including particular aspects of the Location requirement, such as transport links which are relevant to the definition of the Location);
- (b) the approximate number of Business Square Metres required;
- (c) the approximate number of DWP staff to be housed in the additional space, together with an indication of the nature of the functions which they will be carrying out;
- (d) the FM Services required in respect of the Facility;
- (e) the Business Need(s) of the Facility (and, if such Business Need is Flexible, the Banding for the same) for which the Department requires an assessment of the likely FUP of the Facility;
- (f) the date when it is proposed that the Department's Increase in Space will be implemented;
- (g) the period for which the increased space will or may be required (and in the case where the Facility will be a Flexible Facility or a Flexi-Core Facility, the time after which DWP can vacate without paying compensation), provided that in any case where a new building or extension of an existing building will have to be constructed or acquired and such new building or extension cannot be acquired on a lease, licence or similar arrangement, the period shall be not less than 15 Years from the date when the Property is intended to be available for occupation by DWP;

- (h) the amenities required in respect of the increased space such as those required to be provided for each Facility as set out in the Facility Output Requirements (but not limited to those categories of amenities) together with such additional details which are reasonably considered to be necessary for the PRIME Contractor to operate the procedures and perform the duties described in this Part 3b (such as the intended throughput of any public caller areas, the size of conference rooms required, and the quantity and nature of document storage facilities required); and
  - (i) whether DWP wishes to purchase any Additional Flexi Core Allowance pursuant to clause 17.4A (it being acknowledged that DWP is not obliged to elect at this time).
- 1.4 To avoid doubt, any Business Square Metres to be provided as a result of the Department's Increase in Space shall comply with all the requirements of this Agreement including the Required Accommodation Standards, and the FM Services to be provided in respect of those Business Square Metres shall fulfil the Service Requirements.
- 1.5 Within 10 Business Days of receipt of the Department's Increase Enquiry or, in the event of a reasonable request from PRIME Contractor for further information or details of the type referred to in paragraph 1.3(h) of this Part of this Schedule, receipt of such information or details the PRIME Contractor shall either:
  - (a) give notice to the Department's Representative that it objects to the Department's Increase Enquiry on the basis that the provisions of paragraph 1.3 of this part have not been complied with; or
  - (b) give notice to the Department's Representative stating that it accepts the validity of a Department's Increase Enquiry and that it has started work on the Option Appraisal, and seeking such further information in connection with the contents of the Department's Increase Enquiry as it may reasonably require to enable it to comply with its obligations to produce the Option Appraisal.
- 1.6 DWP may, at its option, request in writing the PRIME Contractor to identify suitable Proposed Sites for Temporary Accommodation (being, for the purposes of this paragraph, accommodation that it wishes to occupy for up to four years and that may be banded Flexible or Flexi-Core), such written request to include the period for which DWP expects to occupy the accommodation. The PRIME Contractor shall on receipt of such request:
  - (a) consult with DWP; and
  - (b) use, and shall ensure that any Relevant Associate uses, its reasonable endeavours to identify such suitable Proposed Site within 20 Business Days. The use of reasonable endeavours shall include where appropriate instructing national

and/or local firms of chartered surveyors to make enquiries and conduct discussions with potential vendors or landlords of appropriate land and/or buildings taking reasonable steps to pursue such enquiries and discussions.

If DWP makes a request under this paragraph, DWP will not enter into discussions with any other person with regard to that person providing the same requirement for temporary accommodation during the 20 Business Day period. If the PRIME Contractor fails to identify a suitable Proposed Site capable of meeting the DWP's Objectives in relation to such Temporary Accommodation within the 20 Business Day period, DWP shall be entitled to seek to have such accommodation requirements fulfilled by any person other than the PRIME Contractor.

1.6A Neither the PRIME Contractor (nor any Relevant Associate) shall be under any obligation to provide accommodation to DWP pursuant to paragraph 1.6 for any period longer than four years and, in the event of accommodation having been provided pursuant to paragraph 1.6, DWP shall:

- (a) on or before the expiry of the period (in this paragraph referred to as the "**relevant period**") referred to in the relevant request made by DWP pursuant thereto (which, to avoid doubt, shall not exceed four years) deliver vacant possession of the same; or
- (b) if it considers that it will not be able to vacate such accommodation in accordance with the provisions of paragraph 1.6A(a) above, issue (without delay) to the PRIME Contractor a Department's Increase Enquiry and the provisions other than paragraph 1.6 of this Part 3b shall then apply, provided that nothing in this paragraph 1.6A shall give DWP any right or entitlement to remain in the accommodation beyond the expiry of the relevant period.

## 2. **GENERAL DUTIES AND CONSULTATION**

### **Nature of Reasonable Endeavours Obligations with regard to land**

2.1 The PRIME Contractor shall use, and shall ensure that any Relevant Associate uses, all reasonable endeavours to perform its obligations under this Part of this Schedule with regard to the identification of Proposed Sites and the acquisition of any interest in land when required in accordance with the obligation to implement an Indicative Implementation Plan and/or the IIP Contract (as defined in paragraph 5.8 below). The use of reasonable endeavours shall include where appropriate instructing national and/or local firms of chartered surveyors to make enquiries and conduct discussions with potential vendors or landlords of appropriate land or buildings and taking reasonable steps to pursue such enquiries and discussions.

2.2 If having used all reasonable endeavours during the periods prescribed below for the preparation of the Option Appraisal or the Feasibility Study (as the case may be), no Proposed Site can be identified by the PRIME Contractor or any Relevant Associate or if there is unreasonable delay on the part of the PRIME Contractor or the Relevant Associate in proceeding with the IIP Contract then the PRIME Contractor shall notify the Department's Representative reporting on the activities in which it and/or any Relevant Associate has been engaged and within 20 Business Days after receiving such notice DWP may:

- (a) withdraw the Department's Increase Enquiry; and/or
- (b) contract with a third person to obtain the accommodation required provided always that where any work is to be carried out at any Works Location (as defined in paragraph 1.4(e) of Part 2 of Schedule 10) such works shall not be carried out save in compliance with paragraph 1.5 to 1.7 of that Part 2, and paragraphs 1.8 to 1.10 of that Part 2 shall apply to such works.

If, notwithstanding the use of reasonable endeavours and compliance with all other duties under this Schedule, the Department's Increase Enquiry is withdrawn under this paragraph such payment (in addition to any payments to be made pursuant to the IIP Contract) will be made [withheld].

### **General Duty of consultation**

2.3 Following the notice referred to in paragraph 1.5(b) the Department's Representative and the PRIME Contractor shall consult and cooperate with each other whilst the provisions of this Part of this Schedule are being operated in such a manner and at such frequencies as shall be necessary or expedient to permit the provisions of this Part of this Schedule to be operated in a manner which is as effective and efficient as the circumstances may permit. In particular, the Department's Representative will provide all information reasonably requested by the PRIME Contractor concerning the status and progress of the process of obtaining internal approvals.

## **3. OPTION APPRAISAL**

3.1 Within 60 Business Days of receipt of the Department's Increase Enquiry or such longer period as the Department's Representatives may agree (acting reasonably) the PRIME Contractor will deliver to the Department's Representative an Option Appraisal.

3.2 The Option Appraisal shall be a report providing the information referred to in this paragraph 3 and such other information (if any) as the PRIME Contractor shall consider to be appropriate in all the circumstances in respect of no more than five options (according to local circumstances and the nature of DWP's requirements) for Proposed Sites, or the

manner in which an existing Site might be extended or reconfigured to accommodate the Department's Increase in Space. The Option Appraisal will make a recommendation, supported with reasoning, as to the recommended option to fulfil DWP's requirements set out in the Department's Increase Enquiry.

3.3 The Option Appraisal will describe how the Proposed Sites fulfil or might be made to fulfil the requirements set out in the Department's Increase Enquiry including at least the following information:

(a) Property Details:

- (i) a location plan at a scale of 1:1250
- (ii) a description of the location;
- (iii) a statement of the number of storeys in the relevant building;
- (iv) the total net internal area and net internal area per floor if the proposed Site is an existing building, otherwise providing an indicative floor plate;
- (v) a description of amenities present - such as lifts, air conditioning, toilets, car parking;
- (vi) photographs of the Proposed Site.

(b) Design Details:

- (i) a site plan at a scale of 1:500;
- (ii) floor plans at a scale of 1:100 of existing buildings otherwise indicative floor plates;
- (iii) planning considerations, such as consents required, and likely constraints on use.

(c) Other matters:

- (i) the nature of the interest or title which the PRIME Contractor (or any Associate of it) has or intends to have in the event that matters proceed;
- (ii) an assessment of the likely FUP of each Proposed Site for each Business Need requested by the Department, with reasonable details of the manner in which the FUP has been assessed;
- (iii) reasonable information in respect of any alterations which may be necessary to any existing building to meet the specific requirements set out in the Department's Increase Enquiry and/or Required Accommodation

Standards, and whether the cost of these alterations have been taken into account in assessing the FUP;

- (iv) in the case of a new build property, an indicative cost to the PRIME Contractor of the development, including site acquisition costs, site clearance, construction and professional fees; and
- (v) the ability of the accommodation to support changing business needs (such as the presence of flexible partitioning and sub-floor ducting).

#### 4. **FEASIBILITY STUDY**

4.1 Within 25 Business Days from the receipt of the Option Appraisal or such longer period as the PRIME Contractor may agree (acting reasonably) the Department's Representative may select by notice to the PRIME Contractor one or two Proposed Sites for further investigation.

4.2 Within 60 Business Days, if one of the Proposed Sites is a new building or extension, or within 30 Business Days, in any other case, of notification of selection (or, in any case, such longer period as the Department's Representative may agree, acting reasonably), the PRIME Contractor will prepare a Feasibility Study in respect of the selected Proposed Sites and deliver it to the Department's Representative. The Feasibility Study must state the PRIME Contractor's view on the feasibility of the Proposed Sites to fulfil DWP's requirements, and the consequences of using the Proposed Sites for that purpose. In particular, the Feasibility Study must seek to confirm the contents of the Option Appraisal in respect of each of the selected Proposed Sites, and additionally should set out:

- (a) in any case:
  - (i) Floor plans to scale 1:50 and elevations and sections to scale 1:100;
  - (ii) indicative space planning layouts;
  - (iii) a firm assessment of the FUP, taking account of, amongst other matters, the matters referred to in part 4c of this Schedule where the Department's Increase in Space is implemented as a Direct Procurement Change, and, where relevant, a financing plan for capital expenditure, an indication of sources of finance and likely terms on which any financing will be made available;
  - (iv) an outline specification of construction and finishes;
  - (v) where relevant, an outline specification of M&E services;

- (b) and in any case where a new building must be constructed, or an existing building extended or reconfigured:
  - (i) the results of consultations with relevant authorities such as planning, building control, fire authorities and such other matters which permit DWP to form the reasonable opinion that all relevant consents will be forthcoming for a scheme substantially in the form outlined in the Feasibility Study;
  - (ii) in any case where the PRIME Contractor proposes to build accommodation which will be occupied in part by DWP and in part by others, an assessment of the impact on the overall programme and risks inherent in the project caused by undertaking a larger project than that necessary to satisfy DWP's needs alone;
  - (iii) an indicative tendering and construction programme;
  - (iv) the nature of the disruption which might affect DWP operations during the period of construction or reconfiguration.

## 5. **DWP ACTION ON RECEIPT OF THE FEASIBILITY STUDY**

5.1 Following receipt of the Feasibility Study the Department's Representative and the PRIME Contractor shall consult together concerning the contents of the Feasibility Study (which consultation may include requests by the Department's Representative for any further details or information in respect of matters which are contained in or referred to in the Feasibility Study to enable the Department's Representative properly to assess the results and recommendations of the Feasibility Study, or to prepare the Indicative Implementation Plan) and use reasonable endeavours to agree within 30 Business Days the Indicative Implementation Plan for the property in question or one of the properties in question.

5.2 The "**Indicative Implementation Plan**" will be comprised of:

- (a) a description of the Proposed Site which will be used to fulfil DWP's requirements;
- (b) the Facilities Output Requirements which will apply in respect of any new Facility (or the amended Facilities Output Requirements where the additional space extends an existing building) which may not subsequently be revised or amended by DWP except to the extent that any Change in Costs resulting therefrom is treated as a Qualifying Change or subject to such other adjustment to the FUP as the PRIME Contractor may agree;

- (c) a programme for implementation of the Department's Increase in Space which is firm, subject only to receipt of Planning Permission by a specified date and the date of receipt of the final DWP internal approvals by a specified date;
- (d) if any works are required, a brief description of the nature of the arrangements proposed to implement the works (which, to the maximum extent reasonably possible, will involve obtaining a construction contract with a fixed price and a firm completion date);
- (e) agreements in principle with regard to all of the matters referred to in paragraph 5.6 which must be the subject of the IIP Contract;
- (f) an agreed form of application for planning permission and any other material consents required by Law;
- (g) the amount of the FUP and all Changes in Costs and the manner in which those Changes in Costs will be used in accordance with the General Procedure and the Qualifying Change Model to calculate the Facility Price (including the reasonable costs incurred by the PRIME Contractor directly arising out of the operation of this Part of this Schedule and the indicative construction and fitting out costs);
- (h) the indicative amount to be paid in accordance with clause 17.4A if DWP has elected at that time to acquire Additional Flexi-Core Allowance in the Contract Year during which the Department's Increase Enquiry is implemented by the addition of the Business Square Metres to be provided by the new Facility, such amount being the number of Business Square Metres multiplied by the Flexi-Core Unit Rate applicable in the relevant quarter; and
- (i) the Regular UACs and Operational UACs for the new Facility determined in accordance with the principle set out in Appendix 8 of Schedule 17 [*Payment Provisions*].

5.3 Each aspect of the Indicative Implementation Plan will be set out in such detail as to enable DWP to monitor the PRIME Contractor's progress. To avoid doubt, once the FUP has been agreed, or, in those cases referred to in paragraph 5.4, determined, in the context of the Indicative Implementation Plan then, notwithstanding the requirement subsequently to enter into the IIP Contract, there shall be no adjustment to the FUP save only in respect of:

- (a) such variations to the works as DWP may reasonably require having first agreed with the PRIME Contractor the effect of any such variation on the Change in Costs attributable to the Department's Increase in Space based on a firm price which the PRIME Contractor shall have obtained from the relevant contractor in accordance

with Good Industry Practice and the relevant contract or any variation necessary as a result of changes to the matters referred to in paragraphs 1.3(b) - (g) inclusive (to the extent that the PRIME Contractor is not otherwise compensated for such change pursuant to paragraph 5.2(b);

- (b) any material Change in Costs suffered by the PRIME Contractor as a consequence of a breach by DWP of a term of the IIP Contract;
- (c) those costs contemplated by Part 4c of this Schedule 10; and
- (d) any delay in the date when the first FUP is payable by DWP in respect of the Proposed Site as a result of:
  - (i) any of the matters described in (a) to (c) above;
  - (ii) any failure on the part of DWP to obtain all final internal approvals referred to in paragraph 5.5 by the last date provided therefor in the Indicative Implementation Plan;

provided that this paragraph (d) shall not be operated unless such delay is a period of at least three months.

5.4 If there is no agreement with regard to the Indicative Implementation Plan within the period of 30 Business Days referred to in paragraph 5.1 then, unless the Department's Increase in Space is one of those cases referred to in paragraph 5.4, DWP shall then be free to make such arrangements as it may choose with any other person for the provision of its accommodation requirements. In this regard DWP shall be free to discuss the possibility of making arrangements with any other person for the provision of its accommodation requirements at any time after it has received the Feasibility Study containing the firm proposal for the FUP referred to in paragraph 4.2(a)(iii), provided that it first notifies the PRIME Contractor that it will commence such discussions. If the PRIME Contractor receives such a notification then, if there is no agreement with regard to the Indicative Implementation Plan within the 30 Business Days referred to in this paragraph, the PRIME Contractor at any time thereafter until the execution of a IPP Contract, if any, may, at its option, give notice to DWP that it will not provide accommodation in question on one or more of the bases set out in the Feasibility Study.

5.5 In any case where a new building is to be constructed, or where there is to be an extension to an existing building which, at the time, is a Site, any aspect of the matters set out in paragraph 5.2 not agreed within the period of 30 Business Days referred to in paragraph 5.1 may be referred to an Expert in accordance with Part 2 of Schedule 20 [*Dispute Resolution Procedure*] to determine a fair and reasonable commercial resolution of the dispute taking account of all relevant facts and matters including any amount to be

included in the calculation of the FUP to reflect the risk which the PRIME Contractor and/or its Associate is undertaking in connection with the implementation of the Departments Increase in Space.

- 5.6 Following agreement or determination of the Indicative Implementation Plan, the Department's Representative will seek necessary final internal approvals to proceed with the implementation of the Increase in Space. If such approvals are not given, and, after a reasonable period has elapsed for consultation to determine whether changes may be agreed to the Indicative Implementation Plan to permit such approvals to be given, the Department's Representative may exercise its right of withdrawal pursuant to paragraph 9 of this Part.

### **Planning**

- 5.7 To avoid doubt, the risk involved in submitting and using all reasonable endeavours to pursue the planning application agreed or determined as part of the Indicative Implementation Plan up to the point at which either planning permission is granted or planning permission is refused by the Planning Authority shall be the PRIME Contractor's risk. For this purpose:

- (a) subject to paragraph (c) below, planning permission shall be deemed to have been refused if the Planning Authority refuses to grant permission for a development to be carried out by the last time provided in the Indicative Implementation Plan substantially in the form of the development which is the subject of the application, or if the Planning Authority will only grant such permission subject to conditions which could have a material adverse effect on the economics or timing of the development.
- (b) Subject to paragraph (c) below, in the event of any such refusal or deemed refusal, provided that the PRIME Contractor has used all reasonable endeavours, unless any contrary provision shall have been agreed in the IIP Contract or any other means is agreed to deal with the refusal, the PRIME Contractor shall be under no further obligation to implement the Department's Increase in Space and such payment (in addition to any payments to be made pursuant to the IIP Contract) will be made [withheld].
- (c) The release of the PRIME Contractor from the obligation to implement the Department's Increase in Space and the provisions for cost sharing in paragraph (b) above shall not apply if the development which is the subject of the application comprises works additional to those which are necessary to implement the Department's Increase, and the reason for the application being refused, or the conditions referred to in paragraph (a), relate solely to those additional works.

## IIP Contract

- 5.8 Following receipt of the internal approvals, the Department's Representative will give notice to the PRIME Contractor and DWP and the PRIME Contractor shall forthwith use all reasonable endeavours to agree and exchange the Indicative Implementation Plan Contract (the "**IIP Contract**")
- 5.9 The IIP Contract shall deal with the following matters to implement the principles agreed in the Indicative Implementation Plan:
- (a) the obligation of the PRIME Contractor (or any Relevant Associate) to acquire any necessary interests in land;
  - (b) the obligation of the PRIME Contractor (or any Relevant Associate) to enter into a construction contract of the type referred to in paragraph 5.2(d) of this Part of this Schedule;
  - (c) the obligation of the PRIME Contractor (or any Relevant Associate) to procure collateral warranty arrangements, where appropriate, with sub-contractors and any professionals;
  - (d) the obligation of the PRIME Contractor (or any Relevant Associate) to obtain, or obtain a variance of, any necessary planning permission, listed building consent, conservation area consent, building regulations consent and all other statutory and/or related permissions and consents necessary for the implementation of the Department's Increase in Space;
  - (e) the obligation of the PRIME Contractor (or any Relevant Associate) to grant, or procure the granting of, and DWP to take, a PRIME Lease together with any necessary amendments;
  - (f) the obligations of the PRIME Contractor (or any Relevant Associate) and/or DWP in relation to funding;
  - (g) the details of the requirements of DWP in relation to area of, the numbers of staff to be employed at and the FM Services to be provided at the building and other like matters and the effects of any changes to those requirements as matters progress;
  - (h) all other matters which are considered by the PRIME Contractor or DWP to be necessary or appropriate for dealing with in the Indicative Implementation Plan; and
  - (i) where the necessary interests in land are to be acquired by a Relevant Associate, an obligation on the PRIME Contractor to ensure that DWP's options as set out in

clause 6 are registered on the titles to the interests in land acquired and/or owned by the Relevant Associate, or failing which, some other form of covenant is entered into by the Relevant Associate directly with DWP entitling DWP (and its successors and permitted assigns) to enforce the options as set out in clause 6 against the Relevant Associate and its successors in title.

5.10 In considering the contents of the IIP Contract in relation to any planning permission, the IIP Contract may, where applicable, contain provisions for dealing with the following matters:-

- (a) consideration as to whether or not public enquiries should be requested;
- (b) consideration as to whether or not any appeal or other litigation process should be pursued;
- (c) consideration as to whether any expert advice should be taken from Queen's Counsel or others; and
- (d) like matters,

provided that if no agreement can be achieved on any such matter these matters may not be referred to the Dispute Resolution Procedure, and the IIP Contract shall not address such matters at all.

5.11 The PRIME Contractor and DWP shall co-operate and consult at all times in good faith to ensure that the IIP Contract is drawn up and exchanged as quickly and efficiently as practicable in all the circumstances and in the event of any dispute as to its terms or any of them, either party may at any time refer such dispute to the Dispute Resolution Procedure.

## 6. **IMPLEMENTATION OF THE DEPARTMENT'S INCREASE IN SPACE**

Where a new building or an extension to or a refurbishment of a building is to be constructed as a Direct Procurement Change each of DWP and the PRIME Contractor will be obliged to comply with Parts 4a and 4b of this Schedule 10.

## 7. **COMPLETION**

7.1 The PRIME Contractor will keep the Department's Representative informed of progress throughout the IIP Contract phase, and will give the Department's Representative at least 25 Business Days firm notice of the date when the new or amended Facility will become Available Business Square Metres.

7.2 The Department's Representative will be entitled to inspect the proposed new or extended Site 20 Business Days after the firm notice referred to in paragraph 7.1:

- (a) to confirm that the Department's Increase in Space has been implemented substantially in accordance with the IIP Contract (subject to such changes as have been agreed by the Department's Representative);
- (b) to identify the matters where there has not been such substantial compliance in which case the Department's Representative will on reasonable prior notice from the PRIME Contractor, undertake such inspections as may be appropriate at such times as are reasonable to ascertain whether any matters so identified have been corrected in which event the Department's Representative will promptly issue confirmation thereof; and
- (c) if confirmation is forthcoming as set out in paragraph (a) to identify any minor matters not affecting the ability of DWP to use the new or amended Site in the nature of snagging, and to agree a reasonable programme for the elimination of such snagging items (which may extend beyond the date when DWP will be granted the PRIME Lease).

7.3 From the last day of the notice period referred to in paragraph 7.1, or when the Department's Representative confirms that any matters identified pursuant to paragraph 7.2(b) have been corrected (if later):

- (a) the Facilities Output Requirements will be deemed to be amended;
- (b) the PRIME Lease in respect of any new Facility or any necessary amendment to a PRIME Lease in respect of an existing Facility will be executed at this time;
- (c) Amendments will be made (as appropriate) to Schedule 6 [*Facility Output Requirements*]; and
- (d) the FUP quoted in the Indicative Implementation Plan (subject to any amendment permitted or required under the terms of the IIP Contract or this Agreement (in each case adjusted pursuant to Part 1 of this Schedule)) shall first be payable in respect of the first Contract Month of the next quarter.

## 8. **FUNDING AVAILABILITY**

8.1 If DWP has accepted the funding proposed by the PRIME Contractor in accordance with paragraph 1 of Part 2 of this Schedule 10 as the basis on which the Department's Increase in Space will be financed, then, subject to paragraph 2.2, 5.3 and 9 DWP shall proceed with the proposed Department's increase in Space Provided that if it becomes clear at a point in time after such acceptance that, despite the exercise of all reasonable endeavours, the PRIME Contractor will not be able to obtain such funding then notice must be given to the Department's Representative to that effect, but this notice cannot be given earlier than delivery of the Option Appraisal.

- 8.2 Upon receipt of such a notice the provisions of paragraphs 1.3 to 1.6 (as applicable) of Part 2 of this Schedule shall apply.
- 8.3 If DWP exercises option 1.4(a) or 1.4(e) of Part 2 of this Schedule either initially or after receipt of a notice referred to in paragraph 8.1 of this Part of this Schedule:
- (a) the capital expenditure funded by DWP and the change in residual value of the property attributable to the relevant capital expenditure will not be treated as part of the Change in Costs for the purpose of the operation of the General Procedure;
  - (b) upon the expiry of the Operating Period, or, if earlier, the termination of the right and obligation of the PRIME Contractor to provide the accommodation in respect of the relevant Facility, the PRIME Contractor will pay to DWP the increase (and DWP will pay to the PRIME Contractor the decrease) in either case arising from the change in residual value of the property attributable to the relevant capital expenditure less in any event any appropriate allowance to cover the liability of the PRIME Contractor to tax on any capital gain associated with such change in residual value;
  - (c) the obligation of the PRIME Contractor in paragraph 8.3(b) will be protected by way of such security as DWP shall consider to be appropriate and as is permitted under the terms of the Funding Agreements (and the PRIME Contractor shall endeavour to agree with the Funders that such permission will be forthcoming).
  - (d) In any such case, DWP will be entitled to require the PRIME Contractor and PRIME Property to enter into such binding contractual arrangements as may be agreed, or in default of agreement as may be determined following a direct reference to an Adjudicator (whose decision shall be final and binding):
    - (i) to provide DWP with such appropriate security; and
    - (ii) in the case of the option at 1.4(a) of Part 2, for the payment of liquidated damages for delay if there is late completion of the Implementation Plan to compensate it for the loss of use of the relevant capital contribution.
- 8.4 In the case of works being procured in the manner described at paragraph 1.4(e) of Part 2 of this Schedule 10 the following provisions shall apply.
- (a) DWP will keep the PRIME Contractor informed of progress throughout the construction phase, including when the works will be completed, and the PRIME Contractor will give the Department's Representative at least 25 Business Days firm notice of the date when the works will be complete and will become Available Business Square Metres.

- (b) The PRIME Contractor will be entitled to inspect the proposed new or extended Site 20 Business Days after the firm notice referred to in paragraph 8.1:
- (i) to confirm that the Department's Increase in Space has been implemented substantially in accordance with the IIP Contract (subject to such changes as have been agreed by the Department's Representative);
  - (ii) to identify the matters where there has not been such substantial compliance; and
  - (iii) if confirmation is forthcoming as set out in paragraph (a) to identify any minor matters not affecting the ability of DWP to use the new or amended Site in the nature of snagging, and to agree a reasonable programme for the elimination of such snagging items (which may extend beyond the date when DWP will be granted the PRIME Lease or amended PRIME Lease).
- (c) From the last day of the notice period referred to in paragraph 8.4(a), or when the Department's Representative confirms that any matters identified pursuant to paragraph 7.2(b) have been corrected (if later):
- (i) the Facilities Output Requirements will be deemed to be amended;
  - (ii) any necessary amendment to a PRIME Lease in respect of an existing Facility will be executed at this time;
  - (iii) Amendments will be made (as appropriate) to Schedule 6 [*Facility Output Requirements*]; and
  - (iv) the FUP adjusted pursuant to Part 1 of this Schedule shall first be payable in respect of the first Contract Month of the next quarter.
- (d) To avoid doubt, no later than the date referred to in (c) DWP shall execute such documents as may be reasonably necessary to ensure that legal and beneficial title in and to such new or extended buildings from which the PRIME Contractor is to satisfy the Facilities Output Requirement in respect of the Department's Increase in Space shall vest in the PRIME Contractor or its nominee for nil (or nominal) consideration, but only to the extent that such vesting does not occur in any event as matter of law, and provided that no such obligation shall exist to the extent that such new or extended buildings have already vested in another person from whom PRIME Property's (or its Associate's) interest in the relevant Site is directly or indirectly derived.

9. **WITHDRAWAL**

In addition to the other provisions for withdrawal specified in this Part, the Department's Representative may withdraw a Department's Increase Enquiry at any point up to the time when the IIP Contract is exchanged. If the right is exercised within 25 Business Days of receipt of the Option Appraisal then such payment will be made [withheld]. If the Department's Representative exercises a right of withdrawal at any time after that, DWP will bear the costs and expenses of the PRIME Contractor directly arising out of the operation of this Part of this Schedule incurred up to the date of the withdrawal and indemnify the PRIME Contractor in relation thereto.

**PART 4a****Direct Procurement Changes - General****1. DEFINITIONS**

Direct Procurement Changes are works which DWP requires to be dealt with as a Direct Procurement Change, and which are necessary to implement a Department's Increase in Space, a Department's Service Change, a Department's Configuration Change or a One-off Item, as the case may be, in respect of which the Department's Representative has given a direction pursuant to clause 17.6 [*Change Procedures*].

**2. CDM REGULATIONS**

Where the implementation of any Direct Procurement Change is subject to the CDM Regulations the provisions of Schedule 5 [*Safety Matters*] shall apply. In paragraph 2 of that Schedule, the time for making the declaration pursuant to CDM Regulation 4 shall be 5 Business Days after the PRIME Contractor becomes obliged to implement the Direct Procurement Change.

**3. If DWP has effected a Direct Procurement Change:**

- (a) to avoid doubt, no later than the date upon which the Facilities Output Requirement is amended to extend to such additional space, DWP shall execute such documents as may be reasonably necessary to ensure that legal and beneficial title in and to such new or extended buildings (but not including the fixtures that are attached to such buildings) from which the PRIME Contractor is to satisfy the Facilities Output Requirement in respect of the Department's Increase in Space shall vest in the PRIME Contractor or its nominee for nil (or nominal) consideration, and
- (b) in respect of any other Change, then no later than the date upon which the Facilities Output Requirement is amended to reflect the obligation of the PRIME Contractor to perform the Operations taking into account such Change, DWP shall procure that legal and beneficial title in and to such property, equipment, fixtures (even if such fixtures are attached to the land or buildings) or furniture as may have been procured pursuant to such Change and in respect of which the PRIME Contractor shall have any liability under clause 17.7 will be transferred to the PRIME Contractor or its nominee for a purchase price equal to the liability of the PRIME Contractor under clause 17.7 in respect of such Change which purchase

price shall be deemed to have been paid if and to the extent that the PRIME Contractor shall have then discharged its obligations under clause 17.7 in respect of such Change;

but DWP shall have an obligation under this paragraph only to the extent that such vesting does not occur in any event as matter of law, and provided that no such obligation shall exist to the extent that such new or extended buildings, or such property, equipment, fixtures or furniture, has already vested in another person from whom PRIME Property's (or its Associate's) interest in the relevant Site is directly or indirectly derived.

**PART 4b****Direct Procurement Changes - the PRIME Contractor's duties****1. PROCUREMENT**

1.1 The PRIME Contractor shall, in accordance with Good Industry Practice and in such a manner as to permit the Direct Procurement Change to be carried out within the time required by DWP and so as to achieve DWP's Objectives, carry out, as applicable to the nature of the Change to be implemented, the duties specified below in relation to the Direct Procurement Change:

- (a) preparing all designs, documents and materials as may be necessary or required by DWP for the purposes of DWP inviting and obtaining tenders for the carrying out of the Direct Procurement Change (or any part thereof) and obtaining DWP's approval to all such designs, documentation and materials;
- (b) inviting of tenders in the case of a Direct Procurement Change, on behalf of DWP for the carrying out of the Direct Procurement Change (or any part thereof) subject to complying with all applicable Laws, including Public Works Contracts Regulations, 1991 (including placing all necessary advertisements in the Official Journal of the European Community) and making recommendations for the selection of contractors.

For the avoidance of doubt DWP shall specify the number of tenders which shall be sought in respect of any Direct Procurement Change which is the subject of this paragraph 1.1(b):

- (c) providing advice and assistance to DWP in the consideration of tenders and in the selection of a tender or tenders for acceptance;
- (d) negotiating on behalf of DWP the terms of a contract or contracts for the carrying out of the Direct Procurement Change (or any part thereof) with each tenderer or other contractor selected by DWP the terms of any such contract (a "**Direct Procurement Change Contract**") with any such contractor (a "**Direct Procurement Change Contractor**") to be subject to the approval of the Department's Representative (such approval not to be unreasonably withheld or delayed) prior to the selection and conclusion of a contract with the successful tenderer;

- (e) providing to any Direct Procurement Change Contractor the documentation which it requires free of charge to enable it to proceed with the Direct Procurement Change (or any part of the Direct Procurement Change) in accordance with the terms of the Direct Procurement Change Contract;
  - (f) the provision to DWP of such copies as they may require of all documents relating to any Direct Procurement Change Contract;
  - (g) following completion of any Direct Procurement Change (or any part of the Direct Procurement Change) the preparation and delivery to DWP of:
    - (i) where appropriate, "as built" drawings in a form acceptable to DWP (but no later than three months after completion); and
    - (ii) any other information which DWP may require in connection with the Direct Procurement Change (or any part of the Direct Procurement Change);
  - (h) in the case of a Department's Configuration Change which is to be implemented as a Direct Procurement Change, those other duties set out in Schedule 27 as may be applicable; and
  - (i) without limiting the foregoing, ensure that the principle of equality of information to, and treatment of, tenderers shall apply at all times.
- 1.2 Without prejudice to the generality of paragraph 1.1, it is acknowledged that Good Industry Practice requires that all Direct Procurement Changes which are constructed within, abut or are in any other way physically connected to a Site, to be properly integrated with, and at least of equivalent quality to, such Site.
- 1.3 All contracts in respect of a Direct Procurement Change (or any part of the Direct Procurement Change) shall be between DWP and the Direct Procurement Change Contractor.
- 1.4 For the avoidance of doubt, the PRIME Contractor and its Associates shall not be disqualified from consideration in respect of any tender or contract referred to in paragraph 1.1 merely by virtue of the existence of the contractual relationship reflected in this Agreement, subject to compliance with all Laws and subject to the existence of such arrangements as DWP reasonably determines to be necessary to avoid any conflict of interest. The PRIME Contractor shall advise DWP if it is aware (or ought to have been aware) that a Connected Person wishes to undertake the Direct Procurement Change a reasonable period prior to DWP entering into, or proposing to enter into, any contract with the Connected Person in respect of the Direct Procurement Change.

- 1.5 During the progress of the Direct Procurement Change (from the outset to completion), the PRIME Contractor shall:
- (a) consult DWP at all appropriate times and keep them informed of all matters connected with the Direct Procurement Change (or any part thereof) at such times and in such manner as DWP may direct;
  - (b) provide DWP with all information or reports in connection with the Direct Procurement Change (or any part thereof) as they shall from time to time require;
  - (c) issue such variations to the works as DWP may reasonably require having first agreed with DWP the effect of any such variation on the Change in Costs attributable to the Department's Increase in Space based on a firm price which the PRIME Contractor shall have obtained from the relevant contractor in accordance with Good Industry Practice and the relevant contract;
  - (d) consult all authorities having statutory powers and any other person or authority having rights which are connected with or affected by the Direct Procurement Change (or any part thereof) and such other authorities as DWP may direct (the **"Interested Parties"**);
  - (e) throughout the duration of the Direct Procurement Change, keep DWP advised as to the requirements of the Interested Parties; and
  - (f) maintain a full audit trail of each Direct Procurement Change and make all such records (including details of all tenders received) available for inspection by DWP and their authorised representatives and nominees (including without limitation the National Audit Office) on reasonable notice from DWP.

## 2. **MANAGEMENT**

Unless and to the extent that DWP shall specify that any duty set out below shall not be carried out, in respect of each Direct Procurement Change, the PRIME Contractor shall:

- (a) manage any Direct Procurement Change Contract subject to such procedures of supervision and review as DWP may reasonably require;
- (b) ensure that all matters are dealt with which are necessary to achieve the successful, timely, efficient and economic completion of the Direct Procurement Change;
- (c) in carrying out its duties with respect to any Direct Procurement Change which is a Department's Configuration Change or the implementation of a One-Off Item, comply with all subsequent instructions of DWP issued in connection with the

Direct Procurement Change (which instructions shall be in writing or, if oral, shall be confirmed in writing within five Business Days).

**3. DISPUTE RESOLUTION PROCEDURES**

- 3.1 Where the PRIME Contractor is implementing the Direct Procurement Procedure, he shall continue to do so notwithstanding that any Dispute may have arisen in relation thereto, unless the Department's Representative directs otherwise, provided that if and to the extent that the Adjudicator finds in favour of the PRIME Contractor, then DWP shall compensate the PRIME Contractor for the costs and/or losses incurred by the PRIME Contractor as a consequence of complying with this paragraph 3.1 to the extent that such costs or losses would not have been incurred by the PRIME Contractor but for the fact that the PRIME Contractor complied with this paragraph 3.1.

**4. RELIEF FROM PROVIDING OPERATIONS**

- 4.1 Subject as provided below, where, as a result of carrying out a Direct Procurement Change involving a Department's Configuration Change, the PRIME Contractor is prevented or inhibited from carrying out the Operations or is able to carry 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 Availability Deduction Amounts shall not have effect in respect of that part of the Site affected by such Direct Procurement Change to the extent that the PRIME Contractor's obligations are so qualified, provided that the PRIME Contractor's entitlement to relief shall be subject to the following conditions:
- (a) the PRIME Contractor must notify DWP of the relief it is seeking for each Site affected by the Direct Procurement Change prior to the commencement of the Direct Procurement Change, and the relief will be as reasonably agreed in writing or determined under the Dispute Resolution Procedure;
  - (b) the PRIME Contractor must notify DWP in writing of any further relief sought in connection with the Direct Procurement Change (additional to the relief notified in accordance with sub-paragraph (a) above) for reasons that were not reasonably foreseeable at the outset of the Direct Procurement Change, and the relief will be as reasonably agreed in writing or determined under the Dispute Resolution Procedure; and
  - (c) any relief granted in respect of a Site shall not continue after the date of practical completion of the Direct Procurement Change performed at that Site.

Following the Date of Practical Completion, the PRIME Contractor shall accept the Direct Procurement Change and deliver the Operations in respect of the Site incorporating the Direct Procurement Change in accordance with this Agreement.

**PART 4c****Direct Procurement Change - the PRIME Contractor's Remuneration**

1. The Change in Costs used to assess the effect under the General Procedure of a Department's Increase in Space, a Department's Service Change which include works as a Direct Procurement Change shall include:
  - (a) the PRIME Contractor's reasonable costs and expenses of performing its duties set out in Part 4b of this Schedule; and
  - (b) the PRIME Contractor's reasonable projected costs of indemnifying DWP pursuant to clause 17.7 [*Change Procedures*] against the payment of the price to be paid by DWP to the Direct Procurement Change Contractor on the assumption that no action by the PRIME Contractor increases those costs beyond the reasonable costs incurred under the Direct Procurement Change Contract;
  - (c) any further Change in Costs arising out of a variation ordered pursuant to paragraph 1.5(c) of Part 4b;
  - (d) any further cost incurred by the PRIME Contractor, not being a cost which was taken into account when setting the adjusted FUP pursuant to this Schedule, which the PRIME Contractor incurs as a result of DWP exercising rights, or omitting to exercise rights or perform any act, under Part 4b in respect of the Direct Procurement Change Contract which cost the PRIME Contractor can demonstrate to be a cost which it could not have reasonably foreseen at the time when the FUP was set, and which it would not have incurred had the relevant Change been implemented otherwise than as a Direct Procurement Change;
  - (e) any financial impact caused by any delay in the date when the first FUP is payable by DWP in respect of the Proposed Site as a result of any of the matters described in (c) or (d) above provided that this paragraph shall not be operated unless such delay is a period of at least three months.

**PART 5****Service Changes****1. DEPARTMENT'S SERVICE CHANGES**

- 1.1 The Department's Representative may request a Department's Service Change by issuing a Department's Service Change Enquiry to the PRIME Contractor at any time. A Department's Service Change Enquiry shall be a document which shall state on its face that it is a Department's Service Change Enquiry and the PRIME Contractor shall not act upon a Department's Service Change Enquiry unless there shall be annexed to it a marked up or amended version of the relevant section of the Required Accommodation Standards and/or the Service Requirements specifying the nature of the Department's Service Change. A Department's Service Change Enquiry may have effect in relation to all Facilities and Minor Occupancies, or only in relation to one or more individual Facilities and/or Minor Occupancies.
- 1.2 Subject to receiving the Department's Service Change Confirmation the PRIME Contractor shall be under a duty to implement a Department's Service Change as soon as it shall be reasonably practical to do so. The PRIME Contractor will not be entitled to any payment for or in respect of Department's Service Change save for the payment to be made in accordance with this Schedule.
- 1.3 Within one month of the date of issue of a Department's Service Change Enquiry the PRIME Contractor shall either:
- (a) give notice to the Department's Representative that it objects to the Department's Service Change Enquiry. The PRIME Contractor may only object on the grounds:
    - (i) that implementation of the Department's Service Change would be unsafe to any personnel or Equipment or any part of the Facilities;
    - (ii) that implementation of the Department's Service Change would infringe any Law or any of the Required Outputs (save for the Required Outputs which DWP is seeking to amend) or would be a material departure from Good Industry Practice;
    - (iii) that the time specified for implementation of the Department's Service Change cannot reasonably be achieved by the PRIME Contractor; or
    - (iv) that finance is not available to the PRIME Contractor to implement the Department's Service Change; or

- (b) give notice to the Department's Representative stating:
    - (i) the steps which the PRIME Contractor proposes to take to implement the Department's Service Change is sufficient detail for the Department's Representative to assess whether the result of those steps will adequately fulfil the requirements set out in the Department's Service Charge Enquiry and to enable the reasonableness of the proposed Change in Costs to be assessed; and
    - (ii) the PRIME Contractor's estimated Change in Costs in respect of the Department's Service Change together with reasonable detail as to how the Change in Costs shall have been assessed.
- 1.4 If the PRIME Contractor shall properly give notice pursuant to paragraph 1.3(a)(iv) then the time table set out in this part for the implementation of the Department's Service Change shall be suspended whilst the provisions of Part 2 of this Schedule are operated. If the operation of that procedure results in finance being available, then immediately upon the finance becoming available the PRIME Contractor shall give a notice pursuant to paragraph 1.3(b) of this Part, and the other provisions of this Part shall come into operation accordingly.
- 1.5 Within 10 Business Days of receipt of the notice referred to in paragraph 1.3 of this part:
- (a) if the contents of the notice under paragraph 1.3(b) of this part shall be to the satisfaction of the Department's Representative he shall give a Department's Service Change Confirmation to the PRIME Contractor; or
  - (b) if any aspect of the notice shall not be to the Department's Representative's satisfaction he shall so notify the PRIME Contractor and shall specify the alterations to the notice which he requires to be so satisfied.
- 1.6 If the Department's Representative has given a notice referred to in paragraph 1.5(b) of this part then, subject to the next sentence of this paragraph, unless agreement has been reached with the PRIME Contractor within a further 10 Business Days (in which case the Department's Representative shall issue a Department's Service Change Confirmation specifying the agreed alteration (if any) to the PRIME Contractor's notice) the outstanding dispute shall be referred to the Dispute Resolution Procedure. If the only objection shall be that the Department's Representative disagrees with the proposed Change in Costs in respect of the Service Change, the Department's Representative may issue a Service Change Confirmation and the issue of whether the proposed Change in Costs is reasonable shall be referred to the Dispute Resolution Procedure. In the meantime, the General Procedure shall be operated to produce an amended FUP on the basis of the Change in Costs proposed by the PRIME Contractor. Once the Change in Costs has

been agreed or determined the FUP for the relevant Facility shall be amended retrospectively as if the amended FUP had been payable from the date of the implementation of the Service Change and any amounts which had been overpaid or underpaid by DWP prior to the time such amended FUP is incorporated into the Facility Payment for such Facility, together with interest at the Default Interest Rate shall be invoiced or credited, as the case may be, to DWP on the next Variable Invoice Date.

- 1.7 In the event of a reference to the Dispute Resolution Procedure pursuant to paragraph 1.6 with regard to the Change in Costs flowing from the Department's Service Charge the Dispute Resolution Procedure shall assess whether the proposed Change in Costs is a reasonable price for the relevant change, on the basis of the PRIME Contractor using Good Industry Practice to minimise any increase in costs, or maximise any saving in costs which it incurs, but disregarding any circumstances specifically referable to any actual Service Contract or any terms of that particular Service Contract. If it is determined that the proposed Change in Costs is not reasonable then the Dispute Resolution Procedure shall determine what would be reasonable, which shall then be the Change in Costs for the relevant Department's Service Charge.
- 1.8 Following the determination of any reference to the Dispute Resolution Procedure pursuant to paragraph 1.6 of this part which has the effect that the Department's Service Change may be implemented (subject to such amendments as may have been incorporated as a result of the determination) the Department's Representative may issue a Department's Service Change Confirmation in respect of the Department's Service Change reflecting such determination.
- 1.9 If one month shall elapse from the date of issue of a Department's Service Change Enquiry and no notice is delivered in accordance with paragraph 1.3 of this part then the Department's Representative may issue a Department's Service Change Confirmation requiring the implementation of the Department's Service Change in the time required by the Department's Service Change Enquiry, and specifying the Department's Representative's bona fide estimate of the Change in Costs which shall be used to calculate the effect of the Qualifying Change. The estimate shall be conclusive and binding on the PRIME Contractor (notwithstanding anything to the contrary in the Dispute Resolution Procedure) and the PRIME Contractor shall be obliged to implement the Department's Service Change.
- 1.10 After a Department's Service Change Confirmation shall have been issued:
  - (a) the relevant Required Accommodation Standards and/or the Service Requirements as the case may be, shall be deemed to have been amended to incorporate the Department's Service Change Order as part of the Service Requirements;

- (b) any relevant Generic Method Statement shall be deemed to have been amended to incorporate the notice under paragraph 1.3 of this part (subject to any amendments agreed or applied by the Dispute Resolution Procedure) as part of the Generic Method Statement; and
- (c) the Department's Service Change shall be a Qualifying Change for the purpose of the General Procedure in Part 1 of this Schedule.

## 2. **VALUATION OF DEPARTMENT'S SERVICE CHANGE**

The Change in Costs used to assess the effect of the Qualifying Change under the General Procedure shall be the change in costs which the PRIME Contractor is likely to incur and for this purpose the amount of the Change in Costs shall be (subject where applicable to paragraph 7):

- (a) the PRIME Contractor's estimated Change in Costs specified in the PRIME Contractor's notice under paragraph 1.3(b) of this Part; or
- (b) the corresponding sum which was agreed by the Department's Representative or determined pursuant to the Dispute Resolution Procedure; or
- (c) if the PRIME Contractor has failed to give notice under paragraph 1.3(b) of this part, the bona fide estimate of the Department's Representative pursuant to paragraph 1.9 of this Part.

## 3. **PAYMENT CONSEQUENCES OF DEPARTMENT'S SERVICE CHANGE**

3.1 The FUP adjusted pursuant to Part 1 of this Schedule shall first be payable in respect of the first Contract Month of the Quarter following the implementation of the Department's Service Change in accordance with this Part of this Schedule.

3.2 If DWP exercises its right to vacate a Flexible Facility or a Flexi-Core Facility vacated pursuant to clause 17.1F(a) following the implementation of a Department's Service Change the Department's Representative shall give notice prior to such exercise that it will either:

- (a) pay the Flexible Compensation Sum 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 right to vacate is exercised will include the Flexible Compensation Sum as the Unavoidable Costs Amount; or
- (b) pay amounts in respect of a Capital Payment Stream calculated in accordance with Part 1 in which case the Variable Amount Invoice in respect of the Facility submitted during the first Contract Month after the Contract Month in which the Flexible Compensation Sum would have been payable, and each subsequent

Contract Month will include the result of that calculation as the Capital Payment Stream.

3.3 In any case where DWP exercises a right to vacate part only of a Flexible Facility or a Flexi-Core Facility following the implementation of a Department's Service Change paragraph 3.2 shall apply, but the Flexible Compensation Sum payable or convertible into an obligation to pay a Capital Payment Stream shall be that part of the Flexible Compensation Sum immediately prior to the vacation taking effect which is the same proportion of the whole of the Flexible Compensation Sum as:

(a) the total number of Business Square Metres at the Facility prior to the vacation taking effect less the  $BSM_n + CP_n$  (as those latter two terms are defined in clause 17.1B)

is a proportion of

(b) the total number of Business Square Metres at the Facility prior to the vacation taking effect.

The Flexible Compensation Sum for the Facility thereafter shall be the remainder of the Flexible Compensation Sum prior to the vacation taking effect.

3.4 Paragraph 2.2 of Part 3a shall apply to the adjustment of Flexible Compensation Sums as if the references in that paragraph to Unavoidable Costs, and the components of Unavoidable Costs were a reference to Flexible Compensation Sums and the components of Flexible Compensation Sums.

#### 4. **WITHDRAWAL**

The Department's Representative may withdraw a Department's Service Change Enquiry at any time prior to the issue of a Department's Service Change Confirmation. In this event DWP will pay the reasonable costs of the PRIME Contractor incurred by reason of the Department's Service Change Enquiry provided that the PRIME Contractor shall have given notice pursuant to paragraph 1.3(b) of this part of Schedule 10.

#### 5. **THIRD PARTY SERVICE CHANGES**

5.1 A Third Party Service Change is a Service Change which was not reasonably foreseeable by either party at the date of this Agreement and which the PRIME Contractor must implement to comply with the provisions of this Agreement solely as a result of a Qualifying Change in Law.

5.2 If in the opinion of the PRIME Contractor a Third Party Service Change shall have occurred then the PRIME Contractor shall give notice to that effect to the Department's Representative specifying precisely the manner in which the PRIME Contractor proposes

to change the FM Services and the PRIME Contractor's estimated Change in Costs in respect of the Third Party Service Change.

- 5.3 Within one month of receipt of the notice referred to in paragraph 5.2 of this part:
- (a) if the Department's Representative shall agree with contents of the notice he shall give a Third Party Service Change Confirmation to the PRIME Contractor; or
  - (b) if the Department's Representative's shall not agree with any aspect of the notice he shall so notify the PRIME Contractor and shall specify the alterations to the notice which he requires to be so satisfied.
- 5.4 If the Department's Representative has given a notice referred to in paragraph 5.3(b) of this part then unless agreement has been reached with the PRIME Contractor (in which case the Department's Representative shall issue a Third Party Service Change Confirmation specifying the agreed alteration (if any) to the PRIME Contractor's notice) within a further 10 Business Days the outstanding dispute shall be referred to the Dispute Resolution Procedure.
- 5.5 After a Third Party Service Change Confirmation shall have been issued, or any dispute in relation to the relevant Service Change shall have been resolved:
- (a) the Required Accommodation Standards and/or the relevant Service Requirements shall be deemed to have been amended to incorporate the notice under paragraph 4.2 of this Part (as amended by agreement or as adjusted to reflect any determination under the Dispute Resolution Procedure) as part of the Service Requirements; and
  - (b) the Third Party Service Change shall be a Qualifying Change for the purpose of the General Procedure in Part 1 of this Schedule which shall be operated as if the Third Party Service Change was a Department's Service Change.
6. If DWP seeks to procure property, equipment, fixtures or furniture from any person other than the PRIME Contractor in connection with any Service Change and/or to engage any person other than the PRIME Contractor to install such items at a Site:
- (a) if such change affects any Works Location (as defined in Part 2 of Schedule 10) such of Part change shall not be carried out save in accordance with paragraphs 1.5 - 1.7 of Part 2 and paragraphs 1.8 to 1.10 shall apply to such change; and
  - (b) no later than the date upon which the Facilities Output Requirement is amended to reflect the obligation of the PRIME Contractor to perform the Operations taking into account such Change, DWP shall procure that legal and beneficial title in and to such property, equipment, fixtures (even if such fixtures are attached to the land

or buildings) or furniture as may have been procured pursuant to such Change will be transferred to the PRIME Contractor or its nominee for a nil or nominal consideration but DWP shall have an obligation under this paragraph only to the extent that such vesting does not occur in any event as matter of law, and provided that no such obligation shall exist to the extent that such new or extended buildings, or such property, equipment, fixtures or furniture, has already vested in another person from whom PRIME Property's (or its Associate's) interest in the relevant Site is directly or indirectly derived.

## 7. CHANGES IN HOURS

7.1 This paragraph 7 applies to a Department's Service Change that is either solely a request for a Change in Hours or, if a Department's Service Change contains a request for a Service Change other than a Change in Hours in addition to the request for a Change in Hours, only to the request for a Change in Hours contained therein. To avoid doubt, unless the context requires otherwise, a reference to a Facility in this paragraph 7 shall include reference to a Minor Occupancy (as the case may be), and a reference to a FUP shall include reference to a MOFUP (as the case may be).

7.2 Notwithstanding anything to the contrary expressed or implied in this Agreement, in relation to each Facility affected by a Change in Hours:

- (a) the provisions of paragraphs 1.3(a)(iv) and 1.4 of Part 5 of Schedule 10 shall not apply to any Change in Hours;
- (b) the only Changes in Costs that either party may claim in relation to a Change in NW Hours will be those agreed or determined pursuant to paragraphs 7.4 to 7.9, together, in each case, with the amount described in paragraph 4.2(e)(i) of Part 1 of Schedule 10 which shall be applied to the Change in Costs determined pursuant to paragraph 7.4 to 7.9 (as applicable);
- (c) the only Change in Costs that either party may claim in relation to a Change in PO Hours will be that agreed or determined pursuant to paragraph 7.6, together, in each case, with the amount described in paragraph 4.2(e)(i) of Part 1 of Schedule 10 which shall be applied to the Change in Costs determined pursuant to paragraph 7.6; and
- (d) for the avoidance of doubt, a Change in Hours in respect of any Facility:
  - (i) shall not constitute or give rise to any other Change or entitlement on the part of either party to claim any other Change in Costs or other compensation; and

- (ii) save as provided in paragraph 7.4 in relation to catering, the PRIME Contractor will deliver all FM Services to the relevant Facility (as specified in Schedule 6) throughout the revised Normal Working Hours in accordance with this Agreement.

7.3 The PRIME Contractor shall at all time take all reasonable steps in accordance with Good Industry Practice to mitigate any increase in costs (including additional costs and increases in the number of Security Officer Hours and Customer Care Officer Hours) and to maximise any reductions in costs that result from any Change in Hours.

7.3A Prior to inputting any Change in Costs in respect of a Change in Hours into the Qualifying Change Model, those amounts set out in Tables A to D in this paragraph 7 (adjusted up to the date of the Change in Hours) shall, in respect of each quarter, be adjusted to take account of the projected efficiencies in the quarter to which the calculation relates by applying the Regular Efficiency Factor in accordance with paragraph 4 of Part 1 of Schedule 17 [*Payment Provisions*].

#### **Catering Services**

7.4 If a Department's Service Change requests a Change in NW Hours at a Facility and the catering FM Service is specified in, and delivered pursuant to, Schedule 6 [*Facility Output Requirements*] for such Facility:

- (a) the PRIME Contractor shall, within the time period specified in the relevant Department's Service Change Enquiry, provide DWP with a proposal for a reasonable adjustment to the catering subsidy (if any) to provide the catering services during the revised Normal Working Hours (always having regard to the PRIME Contractor's obligation to use reasonable endeavours to reduce the catering subsidy to nil);
- (b) if DWP is not satisfied (at its absolute discretion) with the adjustment proposed by the PRIME Contractor pursuant to paragraph 7.4(a) above, DWP may propose that either:
  - (i) the catering services not be provided during the additional hours of the extended Normal Working Hours, in which case the PRIME Contractor shall not be entitled to claim any Change in Costs; or
  - (ii) reduced or otherwise modified catering services be provided during the additional hours of the extended Normal Working Hours, in which case the PRIME Contractor shall propose a reasonable adjustment to the catering subsidy (if any) to provide the modified catering service during the additional hours of the extended Normal Working Hours,

and implement the change to the catering services once such adjustment to the catering subsidy (if any) is agreed or determined; and

- (c) any such adjustment to the catering subsidy must be a direct result of the Change in NW Hours and, once agreed or determined, shall be the Change in Costs that either party may claim pursuant to this paragraph 7.4.

### **Internal Cleaning**

7.5 If a Department's Service Change requests a Change in NW Hours at a Facility, and the internal cleaning FM Service is specified in, and delivered pursuant to, Schedule 6 [*Facility Output Requirements*] for such Facility, either party shall be entitled to claim the actual Change in Costs relating to internal cleaning resulting from such Change in NW Hours, provided that:

- (a) the PRIME Contractor shall not be entitled to claim any Change in Costs if the Change in NW Hours does not cause the Normal Working Hours at the Facility on a week day (Monday to Friday), a Saturday or a Sunday (respectively) to exceed the Baseline Operating Band by more than one hour; and
- (b) the Change in Costs that either party may claim pursuant to this paragraph 7.5 (calculated on a quarterly basis) shall not exceed the amount determined by multiplying the area of such Facility (being the Business Square Metres for the affected Facility or affected Minor Occupancy (as the case may be)) by the rates set out in Table A below, and dividing by 4.

### **TABLE A**

[withheld]

The rates set out in Table A above will be indexed up to the date of the Change in Hours using the FM Basket Index in accordance with Part 1 of Schedule 17 [*Payment Provisions*] and shall have applied to them up to the date of the Change in Hours the Regular Efficiency Factor in accordance with paragraph 4 of Part 1 of Schedule 17 [*Payment Provisions*].

To avoid doubt, the rates set out in Table A above are applied per Business Square Metre per annum, and not per hour regardless of the number of hours changed.

### **Security**

7.6 If a Department's Service Change requests a Change in Hours at a Facility and the security FM Service is specified in, and delivered pursuant to, Schedule 6 [*Facility Output Requirements*] for such Facility, the PRIME Contractor shall, within the time period

specified in the relevant Department's Service Change Enquiry, carry out a security risk assessment in accordance with paragraph 13.1(f) of Part 2 of Schedule 8 at such Facility to determine whether there should be, in the case of a Change in NW Hours, an increase or decrease in the number of Security Officer Hours or, in the case of a Change in PO Hours, an increase or decrease in the number of Security Officer Hours and/or Customer Care Officer Hours at such Facility solely as a consequence of the proposed Change in Hours, and either party shall be entitled to claim the Change in Costs for security (calculated on a quarterly basis) shall be determined in accordance with the following formulae:

- (a) in the case of a Change In NW Hours, the product of the increase or decrease in the number of Security Officer Hours per quarter required at such Facility determined in accordance with this paragraph 7.6 multiplied by the security officer hourly rate set out at Table B below; and
- (b) in the case of a Change in PO Hours, the sum of:
  - (i) the product of the increase or decrease in the number of Security Officer Hours per quarter required at such Facility determined in accordance with this paragraph 7.6 multiplied by the security officer hourly rate set out at Table B below; and
  - (ii) the product of the increase or decrease in the number of Customer Care Officer Hours per quarter required at such Facility determined in accordance with this paragraph 7.6 multiplied by the customer care officer hourly rate set out at Table C below.

The hourly rate for each security officer shall be determined in accordance with the figures set out in table B below.

**TABLE B**

[withheld]

The hourly rate for customer care officers shall be determined in accordance with the figures set out in table C below.

**TABLE C**

[withheld]

The rates set out in Table B and Table C above shall be indexed up to the date of the Change in Hours using the FM Basket Index in accordance with Part 1 of Schedule 17 [*Payment Provisions*] and shall have applied to them up to the date of the Change in Hours the Regular Efficiency Factor in accordance with paragraph 4 of Part 1 of

Schedule 17 [*Payment Provisions*] (provided that all references therein to the Regular FM component shall be taken to refer to the hourly rates set out in Tables B and C above).

### **Building Maintenance**

7.7 If a Department's Service Change requests a Change in Hours at a Facility and the internal building maintenance FM Service is specified in, and delivered pursuant to, Schedule 6 [*Facility Output Requirements*] for such Facility, either party shall be entitled to claim the Change in Costs relating to building maintenance resulting from such Change in NW Hours determined in accordance with paragraph 7.8, provided that:

- (a) the PRIME Contractor shall not be entitled to claim any Change in Costs if the Change in NW Hours does not cause the Normal Working Hours at the Facility on a week day (Monday to Friday), a Saturday or a Sunday (respectively) to exceed the Baseline Operating Band for such Facility by more than two hours; and
- (b) neither party shall be entitled to claim a Change in Costs if the Change in NW Hours does not result in the Normal Working Hours for the Facility falling outside the Current Operating Band which applied immediately prior to the Change in NW Hours.

7.8

- (a) The Change in Costs (per Business Square Metre) (calculated on a quarterly basis) that either party may claim pursuant to paragraph 7.7 above shall be determined as follows:

$$CIC = \frac{[B - A] \times C}{4}$$

Where:

- CIC = the Change in Costs (per Business Square Metre) (calculated on a quarterly basis) that either party may claim pursuant to paragraph 7.7;
- A = the rate as set out in Table D below for the Current Operating Band applicable immediately prior to the Change in NW Hours determined in accordance with paragraph 7.8(b) of this Part 5;
- B = the rate as set out in Table D below for the Current Operating Band applicable immediately after the Change in NW Hours determined in accordance with paragraph 7.8(b) of this Part 5; and

C = the number of Business Square Metres at the affected Facility or Minor Occupancy (as the case may be).

- (b) The Current Operating Band for each Facility at the Contract Expansion Date is the Baseline Operating Band shown in Part 6 of Schedule 6. If DWP requests a Change in NW Hours which results in the Normal Working Hours for a Facility falling outside the Current Operating Band applicable immediately prior to the Change in NW Hours, the Current Operating Band after the Change in NW Hours for that Facility shall be the Operating Band in table D below in which the new Normal Working hours fall. To avoid doubt, thereafter neither party will be entitled to claim any Change in Costs pursuant to clause 7.7 (and no further adjustment will be made to the FUP in relation to any Change In Hours at the facility) until DWP requests a further Change in NW Hours that takes the Normal Working Hours outside the then applicable Current Operating Band.
- (c) For the avoidance of doubt, if DWP request a reduction in Normal Working Hours resulting in the Normal Working Hours falling below the lower of the Current Operating Band at the Contract Expansion Date or the Monday - Friday 7:00 - 19:00 Operating Band, then to the extent that the reduced Normal Working Hours are below such Operating Band, the Change in NW Hours in relation to the Building Maintenance FM Service will be the actual Change in Cost of performing the Building Maintenance FM Service as a consequence of the Change in NW Hours below such Operating Band.

7.9 For the avoidance of doubt:

- (a) the FUP for each Facility as at the Contract Expansion Date includes the Baseline Operating Band or Monday - Friday 7:00 - 19:00, whichever is the longer;
- (b) DWP may by a Department's Service Change Enquiry request, and the PRIME Contractor shall implement, one or more additional permanent increases in Normal Working Hours at any Facility and the PRIME Contractor shall not be entitled to claim any Change in Costs in respect of such request provided the Normal Working Hours remain within the Current Operating Band applicable to the relevant Facility immediately prior to such Department's Service Change Enquiry;
- (c) if DWP by a Department's Service Change Enquiry requests a reduction in the number of Normal Working Hours that results in a change in the Current Operating Band, the Change in Costs shall be determined in accordance with paragraph 7.8 above and the parties acknowledge that where the Change in Costs is negative Part 1 of this Schedule 10 shall operate to effect a reduction in the FUP for such Facility; and

- (d) the rates set out in Table D apply on a per Business Square Metre basis for Facilities and Minor Occupancies regardless of the number of hours and not on an hourly basis; once DWP has paid that rate it may operate at the relevant Facility any Normal Working Hours within the then applicable Current Operating Band as set out in Table D below without paying any additional amount in relation to the building maintenance FM Service.

**TABLE D**

[withheld]

The rates set out in Table D above will be indexed up to the date of the Change in Hours using the FM Basket Index in accordance with Part 1 of Schedule 17 [*Payment Provisions*] and shall have applied to them up to the date of the Change in Hours the Regular Efficiency Factor in accordance with paragraph 4 of Part 1 of Schedule 17 [*Payment Provisions*].

The examples set out in Annex 1 to this Part 5 demonstrate the intended manner in which the Change in Costs that either party may claim pursuant to paragraph 7.7 of this Part 5 will operate. Regard shall be had to such examples in the event of any dispute as to what Changes in Costs either party may claim thereunder.

**8. MAJOR PROJECT CHANGE**

**8.1 A Major Project Change is:**

- (a) a material change to the mechanical and electrical equipment at a Site as part of a Jobcentre Plus Project except for any such changes at any Sites provided from Former ES Estate Properties which had already “gone live” (as that term is used in Appendix 3 of Schedule 27) at 16 August 2003: in ascertaining whether a change is material the parties will have regard to the mechanical and electrical equipment at the Site before the Jobcentre Plus Project and after; or
- (b) a change to the physical characteristics of a Site as a result of the implementation of a Large Scale Programme.

**8.2 If the PRIME Contractor considers that a Major Project Change within paragraph 8.1(a) has arisen or will arise then the PRIME Contractor shall give notice to the Department's Representative stating:**

- (a) the manner in which the change in the mechanical and electrical equipment at the relevant Site has given rise to, or will give rise to, a Change in Costs; and

- (b) the PRIME Contractor's estimated Change in Costs in respect of the mechanical and electrical equipment together with reasonable detail as to how the Change in Costs shall have been assessed (and, to avoid doubt, the Change in Costs taken into account under this paragraph shall exclude any Change in Costs arising as a consequence of any Department's Service Change proposed by DWP at the relevant Site concurrently with the occurrence of the Major Project Change).

### 8.3

- (a) If the PRIME Contractor considers that a Major Project Change within paragraph 8.1(b) is likely to arise as a result of a Large Scale Programme then the PRIME Contractor shall give notice to the Department's Representative stating:
  - (i) the manner in which the change in the physical characteristics at the relevant Site has given rise to, or will give rise to, a Change in Costs; and
  - (ii) the PRIME Contractor's estimated Change in Costs as a consequence of the change to the physical characteristics of the Site as a result of the implementation of the Large Scale Programme together with reasonable detail as to how the Change in Costs shall have been assessed (and, to avoid doubt, the Change in Costs taken into account under this paragraph shall exclude any Change in Costs arising as a consequence of any Department's Service Change proposed by DWP at the relevant Site concurrently with the occurrence of the Major Project Change).
- (b) A notice under this paragraph may not be given after the later of:
  - (i) the date specified for the submission by the PRIME Contractor of a Large Scale Programme Proposal under paragraph 2.4 of Appendix 4 to Schedule 27 [*Procedure for Procuring Department's Configuration Changes*] or the last date for a claim to be made under paragraph 3.3 of Appendix 4 to Schedule 27 [*Procedure for Procuring Department's Configuration Changes*] (depending upon which of such paragraphs applies to the relevant Large Scale Programme); and
  - (ii) 20 Business Days after it is aware, or ought to have been aware acting in accordance with Good Industry Practice, that a Change in Costs is likely to arise as a result of a Large Scale Programme.

- 8.4 If the PRIME Contractor does not inform DWP of any fact or matter which should have been notified in accordance with paragraphs 8.3(a) and 8.3(b) it shall not be entitled to an adjustment to the Facility Prices as a consequence of any Change in Costs which arises in respect of any such fact or matter.

8.5 The procedure for adjusting Facility Prices as a consequence of Major Project Changes shall be as follows:

- (a) within 10 Business Days of receipt of the notice referred to in paragraph 8.2 or 8.3 of this part:
  - (i) if the contents of the notice shall be to the satisfaction of the Department's Representative he shall confirm that to the PRIME Contractor; or
  - (ii) if any aspect of the notice shall not be to the Department's Representative's satisfaction he shall so notify the PRIME Contractor and shall specify the alterations to the notice which he requires to be so satisfied.
- (b) if the Department's Representative has given a notice referred to in paragraph 8.5(a)(ii) of this part then unless agreement has been reached with the PRIME Contractor within a further 10 Business Days (in which case the Department's Representative shall confirm such agreement specifying the agreed alteration (if any) to the PRIME Contractor's notice) the outstanding dispute shall be referred to the Dispute Resolution Procedure. If the only objection shall be that the Department's Representative disagrees with the proposed Change in Costs, the Department's Representative may confirm its agreement in principle that a Major Project Change has come about and the issue of whether the proposed Change in Costs is reasonable shall be referred to the Dispute Resolution Procedure. In the meantime, if the date of completion of the relevant works at the relevant Site has passed, the General Procedure shall be operated to produce an amended Facility Price on the basis of the Change in Costs proposed by the PRIME Contractor. Once the Change in Costs has been agreed or determined the Facility Price for the relevant Facility shall be amended retrospectively as if the amended Facility Price had been payable from the date of the completion of the relevant works at the relevant Site and any amounts which had been overpaid or underpaid by DWP prior to the time such amended Facility Price for such Facility, together with interest at the Default Interest Rate shall be invoiced or credited, as the case may be, to DWP on the next Variable Invoice Date.
- (c) the Major Project Change shall be a Qualifying Change for the purpose of the General Procedure in Part 1 of this Schedule.
- (d) the Change in Costs used to assess the effect of the Qualifying Change under the General Procedure shall be the change in costs which the PRIME Contractor is likely to incur and for this purpose the amount of the Change in Costs shall be:

- (i) the PRIME Contractor's estimated Change in Costs specified in the PRIME Contractor's notice under paragraph 8.5(a)(ii) of this Part; or
- (ii) the corresponding sum which was agreed by the Department's Representative or determined pursuant to the Dispute Resolution Procedure.

## Annex 1

### Examples (by way of illustration, and not limitation)

#### Notes to apply to examples in this Annex 1:

- (1) The examples in this Annex 1 are by way of illustration only of the operation of the Change in Costs relating to building maintenance as set out in paragraphs 7.7 to 7.9 (inclusive) of this Part 5 and do not relate to the provisions of paragraphs 7.4 to 7.6 (inclusive). Accordingly, all references to Change in Costs in these examples are references to the Change in Costs relating to building maintenance.
- (2) In the examples in this Annex 1, references to a commensurate adjustment, decrease or increase (as the case may be) in the FUP for a Facility mean an adjustment to the FUP for that Facility in accordance with Part 1 of this Schedule 10.
- (3) The Changes in Costs in the examples in this Annex 1 are expressed on an annual basis and will prior to being inputted into the Qualifying Change Model need to be adjusted *inter alia* to a quarterly basis.

#### Examples

1. Disregard other examples: If the Normal Working Hours set out in Schedule 6 as at the Contract Expansion Date for a Facility are Monday to Friday 7:00-19:30, and there is one or more Changes in NW Hours to not later than 7:00 - 20:30 of each occasion, there would be no entitlement to claim any Change in Costs and no adjustment will be made to the FUP for that Facility in respect of building services pursuant to paragraphs 7.7.
2. Disregard other examples: If the Normal Working Hours set out in Schedule 6 as at the Contract Expansion Date for a Facility was 7:00 - 19:00, and there is a Change in NW Hours to 7:00 - 21:30, the PRIME Contractor would be entitled to claim Changes in Cost for building maintenance of £[withheld] per Business Square Metre (being the new rate of £[withheld] less the old rate of £[withheld]). Therefore, if a Facility had 1,000 bsm, the Changes in Cost for building Maintenance would be £[withheld] (being (£[withheld]) x 1,000 bsm = £[withheld]), and the PRIME Contractor would be entitled to a commensurate increase in the FUP for that Facility. Thereafter the operating band for such Facility would be 7:00-23:00.
3. Assume example 2 has occurred (therefore, the Normal Working Hours at the relevant Facility are 7:00 - 21:30 and the Current Operating Band for the Facility is 7:00-23:00): If there is a further Change in NW Hours increasing the hours to 7:00-22:30, the operating band would remain 7:00-23:00, and there would be no entitlement to claim any Change in Costs and no adjustment would be made to the FUP for that Facility.

4. Assume example 2 has occurred (therefore, the Normal Working Hours at the relevant Facility are 7:00 - 21:30 and the Current Operating Band for the Facility is 7:00-23:00): If there is a further Change in NW Hours to 7:00-23:30, the operating band would become 7:00-7:00, and there would be an entitlement to claim Change in Costs of the difference between the rate for the new operating band (being £[withheld] per bsm) and the rate for the operating band immediately prior to the change (being £[withheld] per bsm), and the new operating band would be 7:00-7:00. Therefore, if the Facility had 1,000 bsm, the Change in Costs would be £[withheld] (being (£[withheld]) x 1,000 bsm = £[withheld]), and the PRIME Contractor would be entitled to a commensurate increase in the FUP for that Facility.
5. Assume example 4 has occurred (therefore, the Normal Working Hours at the relevant Facility are 7:00 - 23:30 and the Current Operating Band for the Facility is 7:00-7:00): If there is a further Change in NW Hours at the same Facility reducing the hours to 7:00-19:00, the Change in Costs would be £[withheld] (being (£[withheld]) x 1,000 bsm), and DWP would be entitled to a commensurate reduction in the FUP for that Facility.
6. Disregard other examples: Assume the Normal Working Hours set out in Schedule 6 as at the Contract Expansion Date for a Facility are Monday to Friday 7:00-19:30. If there is a Change in NW Hours ("change 1") to extend the Normal Working Hours at that Facility to include Saturday morning, the rate for the new operating band would be £[withheld]. Therefore, if the Facility had 1,000 bsm, the Change in Costs would be £[withheld] (being £[withheld] x 1,000 bsm = £[withheld]). If there is a further Change in NW Hours ("change 2") after change 1 to include Saturday afternoon, the Change in Costs would be £[withheld] (being £[withheld]). Therefore, if the Facility had 1,000 bsm, the Change in Costs for change 2 would be £[withheld] (being (£[withheld]) x 1,000 bsm = £[withheld]), and the PRIME Contractor would be entitled to a commensurate increase in the FUP for that Facility.
7. Disregard other examples: Assume the Normal Working Hours set out in Schedule 6 as at the Contract Expansion Date for a Facility are Monday to Friday 7:00-19:30. If there is a Change in NW Hours to extend the Normal Working Hours at that Facility to include Saturday all day and Sunday morning, the rate for the new operating band would be £[withheld]. Therefore, if the Facility had 1,000 bsm, the Change in Costs would be £[withheld] (being (£[withheld]) x 1,000 bsm = £[withheld]), and the PRIME Contractor would be entitled to a commensurate increase in the FUP for that Facility.
8. Assume example 6 change 2 has occurred: If there is a further Change in NW Hours to reduce the Normal Working Hours at the Facility to Monday to Friday 7:00-19:30 and Saturday all day (7:00-18:00), the Change in Costs would be £[withheld] (being £[withheld]). Therefore, if the Facility had 1,000 bsm, the Change in Costs would be

£[withheld] (being (£[withheld]) x 1,000 bsm = £[withheld]), and DWP would be entitled to a commensurate reduction in the FUP for that Facility.

9. Disregard other examples: If the Normal Working Hours set out in Schedule 6 as at the Contract Expansion Date for a Facility are Monday to Friday 7:00-19:30. If there is a Change in NW Hours to extend the Normal Working Hours at that Facility to 24 hours a day, 7 days a week, the rate for the new operating band would be £[withheld]. Therefore, if the Facility had 1,000 bsm, the Change in Costs would be £[withheld] (being £[withheld] x 1,000 bsm = £[withheld]), and the PRIME Contractor would be entitled to a commensurate increase in the FUP for that Facility.

**PART 6****Additional Services**

1. If DWP wishes the PRIME Contractor to provide a service for which there is no Service Requirement (an "**Additional Service**") then DWP may notify the PRIME Contractor of its requirements in respect of that service provided that the PRIME Contractor shall have no right to require DWP to give it an opportunity to provide any such service apart from any right which the PRIME Contractor shall have pursuant to Law.
2. In response to the notice referred to in paragraph 1 the PRIME Contractor shall make a proposal to DWP to carry out the service on the basis of the provisions of this Agreement subject to the minimum amendments which the PRIME Contractor considers to be necessary.
3. Following receipt of the PRIME Contractor's response DWP shall negotiate in good faith to agree the terms on which the service will be provided and any amendments which are necessary to this Agreement.

**PART 7****Contractor's Facilities Change**

In the case of a Contractor's Facilities Change the Change in Costs used as the basis of inputs for the General Procedure will be that Change in Costs identified in the PRIME Contractor's submission document which demonstrates that the Department's Representative is not entitled to make a comment under paragraphs 3.1(e)(iii) and (iv) of Schedule 13 [*Review Procedure*] or as DWP may otherwise agree.

## PART 8

### Avoidable Costs for Part Vacation of Core Facilities

In this Part 8, all references to "**Core Facility**", or "**Core Facilities**" shall include references to those parts of Flexi-Core Facilities to be vacated and compensation calculated pursuant to clause 17.1F(b), as appropriate.

1. If a Qualifying Change is a Type V Qualifying Change, the PRIME Contractor shall determine the Avoidable Costs relating to such partial vacation of a Core Facility in accordance with this Part.
2. Following notification of a Department's Reduction in Core Space affecting only some of the Business Square Metres at a Facility, the PRIME Contractor shall, in respect of such Facility, perform the calculations set out in paragraphs 3 and 4 below and shall, as soon as reasonably practicable (and in any event not later than the Statement Date next following the end of the Contract Month in which the Department's Reduction in Core Space occurred) notify the Department's Representative of all such calculations setting out in reasonable detail the background thereto. The notification from the PRIME Contractor shall be signed by an officer of the PRIME Contractor.
3. The avoidable costs for any Core Facility referred to in paragraph 2 above shall be the aggregate of the Avoidable Costs for each of the Cost Items listed in the column headed "Cost Item" below. In this paragraph, "**Avoidable Costs**" means the costs calculated in accordance with the following formula:

$$\text{Avoidable Costs} = \text{CP} \times \text{P} \times \text{BSM} \times \text{IF}$$

where:

CP is:

in the case of all Items ((a) to (e) below), the amount set out in the Cost Plan in respect of the Cost Item listed in the column headed "Cost Item" in respect of such Facility;

P is the percentage set out in the column headed "% of Cost Avoidable" opposite the Cost Item listed in the column headed "Cost Item".

BSM is the number of Business Square Metres in respect of such Facility which DWP has vacated pursuant to the Department's Reduction in Core Space.

IF is the indexation factor to be applied in order to inflate the amount from the Commencement Date to the date of vacation using the FM Basket Index, but, in the case of Items (a), (b), (e) and (f), such indexation factor shall be reduced to take into account the effect of the Regular Efficiency Factors in the manner described in paragraph 4 of Part 1 of Schedule 17.

ITEM	COST ITEM	% OF COST AVOIDABLE
(a)	Building Maintenance	[withheld]
(b)	Internal Cleaning	[withheld]
(c)	LCCE	[withheld]
(d)	Equipment Maintenance	[withheld]
(e)	Waste Management	[withheld]

4. Following completion of the calculations in paragraph 3 above:
  - (a) the aggregate of the Avoidable Costs determined in accordance with paragraph 3, less the cost of empty rates for such Facility, shall be subtracted from the amount which is the product of the FUP for that Facility multiplied by the number of Business Square Metres at that Facility (immediately prior to such part-vacation); (the Interim FP);
  - (b) the result in (a) will be divided by the sum of the number of Business Square Metres at that Facility (immediately prior to such part-vacation) less the number of Business Square Metres vacated by DWP in accordance with clause 17.2 to obtain a revised FUP for such Facility (the Interim FUP).
5. Subject to paragraph 6 below, for as long as DWP remains in occupation of the remainder of the Facility, the FUP for that Facility shall be deemed to be the Interim FUP.
6. If DWP subsequently vacates part only of the remainder of the Facility, the procedure described in this Part will be performed with such changes as are necessary to produce a revised Interim FUP consistent with the intention of this Part.
7. For the avoidance of doubt, the provisions of clauses 15.25 to 15.29 of the Project Agreement will not be affected by the part-vacation of a Core Facility, [withheld].

**PART 9****Surplus Property FUPs**

1. Each Former ES Estate Surplus Space shall be deemed to be a Facility in respect of which DWP shall be obliged to pay a Facilities Payment in accordance with clause 15 and, for the purposes of calculating such Facilities Payments the table included at Part 4a of Schedule 17 shall be amended by adding an additional row for each such Former ES Estate Surplus Space.
2. For each Former ES Estate Surplus Space the PRIME Contractor shall set out in the column having the heading listed below the property information set out opposite such column heading:

<b>Column Heading</b>	<b>Insertion</b>
Business Need	The designation "Surplus"
Facility Number	The property number for such Former ES Estate Surplus Space set out in Schedule 2 of the Second Supplemental Agreement.
Address	The address for such Former ES Estate Surplus Space
[PRIME] Bid Area (m2)	The number of square metres for such Former ES Estate Surplus Property or Former ES Estate Surplus Area shown in the column headed "Surplus NIA" in Schedule 2 of the Second Supplemental Agreement
Unindexed component (£/m2)	Nil
Unindexed component (£)	Nil

3. For each Former ES Estate Surplus Space the PRIME Contractor shall determine a Facility Unit Price in accordance with paragraph 4 of this Part. For each Former ES Estate Surplus Space:
  - (a) such Facility Unit Price shall be set out under the column headed "Total FUP (£)" in the table included at Part 4a of Schedule 17; and

- (b) such Facility Unit Price shall be divided by the relevant area of such Former ES Estate Surplus Space and shall then be set out under the column headed "Total FUP (£/m<sup>2</sup>) in the table included at Part 4 of Schedule 17.

4. The Facility Price for any Former ES Estate Surplus Space shall be the sum of:

- (a) (i) if the Former ES Estate Surplus Space is a Former ES Estate Surplus Property, an amount equal to the sum of the amounts in respect of such Former ES Estate Surplus Property set out in the Cost Plans multiplied by the relevant area of such Former ES Estate Surplus Property; or
- (ii) if the Former ES Estate Surplus Space is a Former ES Estate Surplus Area, an amount equal to the amounts in respect of the Facility of which such Former ES Estate Surplus Area forms part set out in the Cost Plans multiplied by the relevant area for such Former ES Estate Surplus Area (provided that where the Former ES Estate Surplus Area is a car park, the amount to be included in the sum of the amounts set out in the FM Cost Table in respect of security shall be deemed to be £[withheld]);
- (iii) provided that if the amount in the Cost Plans for any FM Service which DWP require to be provided to the building is zero, the Cost Plan amount shall be replaced with the reasonable cost of providing that service to that property.
- (b) (i) if the Former ES Estate Surplus Space is a Former ES Estate Surplus Property, an amount equal to the year one rent for such Former ES Estate Surplus Property set out on the "A Property Data" sheet in the column headed 'Passing Rent £pa in the TIES Bid Model'; or
- (ii) if the Former ES Estate Surplus Space is a Former ES Estate Surplus Area, an amount equal to the year one rent for the entire Property of which the Former ES Estate Surplus Area forms part set out in the Bid Model divided by the relevant area of the Property and multiplied by the relevant area of such Former ES Estate Surplus Area

provided that in the case of any Former ES Estate Property which is a Former ES Estate Freehold Property or a Former ES Estate Property which is not a rack-rent lease, the rent for such Former ES Estate Property shall be a sum agreed by the parties (or determined by the Dispute Resolution Procedure in default of agreement) to be equivalent to the current market rent at the time of determination.

- (c) an amount equal to the sum of:

- (i) £[withheld] multiplied by the relevant area of such Former ES Estate Surplus Space (provided that the FP and FUP calculated in accordance with this Schedule shall be recalculated with effect from one year after the Contract Expansion Date if the relevant Former ES Estate Surplus Space has not then been vacated and in such recalculation the figure used shall be £[withheld] in the place of £[withheld]); and
  - (ii) an amount equal to £[withheld] multiplied by the relevant area of the such Former ES Estate Surplus Space;
- (d) an amount equal to £[withheld] multiplied by the relevant area of such Former ES Estate Surplus Space multiplied by [withheld];
  - (e) an amount equal to [withheld]% of the amount calculated in paragraph (a) above;
  - (f) an amount equal to £[withheld] multiplied by the relevant area of such Former ES Estate Surplus Space;
  - (g) an amount equal to £[withheld] multiplied by the relevant area of such Former ES Estate Surplus Space;
  - (h) an amount equal to [withheld]% of the sum of the amounts in paragraphs (a) to (g) above; and
  - (i) an amount equal to [withheld]% of the sum of the amounts in paragraphs (a) to (f) above.
5. The amount calculated in accordance with paragraph 4 above shall not include any amount in respect of dilapidations unless clause 7.23 operates to convert such Former ES Estate Surplus Space into a Flexi-Core Facility in which case there will be an appropriate allowance as agreed between the Parties, or failing agreement to be determined in accordance with the Dispute Resolution Procedure.
6. For each Former ES Estate Surplus Space the PRIME Contractor shall also determine the property component and the FM component of the Facility Unit Price in accordance with paragraphs 7 and 8 of this Part. For each Former ES Estate Surplus Space:
- (a) such amounts shall be set out under the columns headed "Property component (£)" and "FM component (£)", respectively in the table included at Part 4a of Schedule 17; and
  - (b) such amounts shall be divided by the relevant area of such Former ES Estate Surplus Space and shall then be set out under the columns headed "Property component (£/m<sup>2</sup>)" and "FM component (£/m<sup>2</sup>)", respectively in the table included at Part 4a of Schedule 17.

7. The property component for any Former ES Estate Surplus Space shall be the sum of:
  - (a) an amount equal to sum of the amounts in paragraphs 4(b) and 4(g) above; and
  - (b) an amount equal to the product of the amount in paragraph 4(h) above multiplied by a fraction, the numerator of which is the amount calculated in paragraph (a) above and the denominator of which is the sum of the amounts in paragraphs 4(a) to 4(g) above.
  
8. The FM component for any Former ES Estate Surplus Space shall be the sum of:
  - (a) an amount equal to sum of the amounts in paragraphs 4(a), 4(c), 4(d), 4(e), 4(f) and 4(i) above; and
  - (b) an amount equal to the product of the amount in paragraph 4(h) above multiplied by a fraction, the numerator of which is the amount calculated in paragraph (a) above and the denominator of which is the sum of the amounts in paragraphs 4(a) to 4(g) above.
  
9. The PRIME Contractor shall deliver the results of the calculations performed pursuant to this Part 9 as soon as practicable following the Contract Expansion Date.

## **PART 10**

### **Major Changes**

#### **1. INITIATION**

- 1.1 If in the opinion of DWP a major change will take place to its business it may initiate the procedures in this part 10.
- 1.2 DWP shall serve the PRIME Contractor with notice in writing at least 18 months before a Major Change Date setting out:
- (a) the Contract Changes which it wishes to introduce; and
  - (b) the date of the proposed Major Change Date, which shall not be less than 18 months after the date of the service of the notice.

#### **2. PRIME CONTRACTOR AND THE GUARANTOR RESPONSE**

Following the serving of a notice pursuant to paragraph 1.2 of this Part 10 the PRIME Contractor and the Guarantor shall serve a written notice on DWP at least 12 months before the Major Change Date, setting out:

- (a) its response to the terms of the proposed Contract Changes; and
- (b) the level of Facilities Prices and/or MOFP Prices which it proposes in relation to any new Facilities or Minor Occupancies which it is required to provide in relation to the Contract Changes and/or the adjustment to existing Facilities Prices and/or MOFP Prices which it proposes for efficient and economic performance in accordance with Good Industry Practice of the Contract Changes from the Major Change Date.

#### **3. DISCUSSIONS AND EFFECTIVENESS OF CONTRACT CHANGES**

- 3.1 The parties agree to discuss their respective notices with one another in good faith with the objective of agreeing the level of Facility Prices and MOFP Prices which will apply as a consequence of the Contract Changes after the Major Change Date.
- 3.2 The Contract Changes, subject to such changes as may be agreed between the parties, shall have effect between the parties after the Contract Changes have been agreed, and after the Facilities Prices and/or MOFP Prices have been agreed, on:
- (a) the Major Change Date; or

(b) such other date as may be agreed between the Parties.

**PART 11****Jobcentre Plus Project security requirements changes**

1. This Part 11 applies only to Former ES Estate Properties.
2. DWP shall notify the PRIME Contractor not less than three Contract Months before the date when the Jobcentre Plus Business will commence at a Facility or Minor Occupancy. During this period the PRIME Contractor shall conduct a Jobcentre Plus Security Risk Assessment at that Facility or Minor Occupancy. If as a result of that Jobcentre Plus Security Risk Assessment, the number of Security Officer Hours and/or Customer Care Officer Hours (if any) per quarter required changes solely as a result of the implementation of the Jobcentre Plus Business at that Facility or Minor Occupancy, there shall be an adjustment to the relevant FUP calculated in accordance with Part 1 of this Schedule 10 as though it were a Type I Qualifying Change and for the purposes of such adjustment the Change in Costs (calculated on a quarterly basis) shall be as determined in accordance with the following formula:

$$\text{Change in Costs} = \left[ \frac{A - B}{C} \right]$$

Where

A = the sum of:

(i) Number of Security Officer Hours per quarter required as determined by the Jobcentre Plus Security Risk Assessment x security officer hourly rate set out at Table A below; and

(ii) Number of Customer Care Officer Hours per quarter required as determined by the Jobcentre Plus Security Risk Assessment x customer care officer hourly rate set out at Table B below

B = the sum of:

(i) Number of Security Officer Hours per quarter required as determined by the most recent Standard Security Risk Assessment prior to the Jobcentre Plus Security Risk Assessment x security officer hourly rate set out at Table B below

(ii) Any other costs (on a quarterly basis) that are no longer incurred as a result of the new guarding arrangements (which may include without limitation lock/unlock costs)

$C$  = the number of Business Square Metres at the relevant Facility.

3. The only Change in Costs that will be applied for the purposes of this Part 11 will be as determined pursuant to paragraph 2 above, together, in each case, with the amount described in paragraph 4.2(e)(i) of Part 1 of Schedule 10 which shall be applicable to the Change in Costs determined under this Part 11.
4. Prior to inputting any Change in Costs determined in accordance with this Part 11 into the Qualifying Change Model, those amounts set out in Tables A and B of this Part 11 shall in respect of each quarter be adjusted to take account of the projected efficiencies in the quarter to which the calculation relates by applying the Regular Efficiency Factor in accordance with paragraph 4 of Part 1 of Schedule 17 [*Payment Provisions*].
5. For the avoidance of doubt, notwithstanding paragraph 2 above, the change in security requirements referred to in this Part 11 does not constitute or give rise to any Service Change entitling the PRIME Contractor to claim any Change in Costs or other compensation otherwise than as provided in this Part 11 and Part 5 of this Schedule 10 shall not apply.
6. Notwithstanding anything to the contrary in this Agreement, the PRIME Contractor shall not in connection with any change resulting from a Jobcentre Plus Security Risk Assessment be compensated more than once for the same costs.

### Rates for Security

The hourly rate for each security officer shall be determined in accordance with the figures set out in table A below.

**TABLE A**

<b>GOR</b>	<b>Hourly rate per security officer</b>
GOR1 Scot	[withheld]
GOR2 NE	[withheld]
GOR3 NW	[withheld]
GOR4 Yorks	[withheld]
GOR5 E Mids	[withheld]

GOR6 W Mids	[withheld]
GOR7 East	[withheld]
GOR8 Wales	[withheld]
GOR9 SE	[withheld]
GOR10 London	[withheld]
GOR11 SW	[withheld]

The hourly rate for customer care officers shall be determined in accordance with the figures set out in table B below.

**TABLE B**

<b>GOR</b>	<b>Hourly rate per customer care officer</b>
GOR1 Scot	[withheld]
GOR2 NE	[withheld]
GOR3 NW	[withheld]
GOR4 Yorks	[withheld]
GOR5 E Mids	[withheld]
GOR6 W Mids	[withheld]
GOR7 East	[withheld]
GOR8 Wales	[withheld]
GOR9 SE	[withheld]
GOR10 London	[withheld]
GOR11 SW	[withheld]

The rates set out in Table A and Table B above shall be indexed up to the date of the adjustment using the FM Basket Index in accordance with Part 1 of Schedule 17 [*Payment Provisions*]. For the avoidance of doubt, no Efficiency Factors shall be applied.