

SCHEDULE 27

This is Schedule 27 comprising the Procedure for Procuring Department's Configuration Changes referred to in the Project Agreement for the PRIME Project

BETWEEN

The Secretary of State for Work and Pensions

- and -

The First Secretary of State

- and -

Trillium (PRIME) Limited

- and -

Trillium (PRIME) Property GP Limited

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

PROCEDURE FOR PROCURING DEPARTMENT'S CONFIGURATION CHANGES**1. GENERALLY**

- 1.1 This Schedule details the methodology for managing, valuing and performing works carried out as a result of procuring a Department's Configuration Change. In this Schedule (and the defined terms used in this Schedule), a reference to a Department's Configuration Change shall include a reference to Configuration Works or a Programme of Works required to complete the Department's Configuration Change, and a reference to Configuration Works shall include a reference to all Configuration Works required to complete a Programme of Works.
- 1.1A For the avoidance of doubt, the PRIME Contractor shall not be entitled to require DWP to instigate a Department's Service Change nor to claim that a Department's Service Change has arisen solely as a result of a Department's Configuration Change, unless, in conjunction with the Department's Configuration Change, DWP requests a Service Change.
- 1.2 Unless otherwise agreed by the PRIME Contractor and DWP, the proposed rates and prices contained in the Schedule of Rates (as defined in paragraph 2.1) shall apply in relation to any construction works which arise from time to time and which are not covered in this Schedule.
- 1.3 For the purposes of managing, valuing and performing:
- (a) works associated with a Department's Configuration Change, the following alternative processes may be used at the request of DWP:
 - (i) for works (including any Programme of Works) with a value up to and including £186,500, DWP may order that they are valued in accordance with the Schedule of Rates and the process described in paragraph 2 shall apply to this category of Department's Configuration Change; or
 - (ii) for any works (including any Programme of Works) DWP may order that the Department's Configuration Change is processed through a competitive or negotiated tender procedure by issuing a Department's Configuration Change Enquiry to this effect and the process described in paragraph 3 shall apply to this category of Department's Configuration Change; or
 - (b) Large Scale Programmes, the process as set out in Appendix 4 shall apply.

- 1.3A The Jobcentre Plus Programme special terms are set out in Appendix 3.
- 1.4 All references in this Schedule to any sum of money shall be treated as a reference to that sum of money indexed in accordance with Part 1 of Schedule 17 [*Payment Provisions*] using the Building Costs Index.
- 1.5 In relation to every Department's Configuration Change, the PRIME Contractor shall comply with its duties in clause 17.15(a) and without limiting clause 17.15, the PRIME Contractor shall in addition:
- (a) manage any such change in accordance with 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 change;
 - (c) take all reasonable steps necessary to limit and mitigate the extent to which:
 - (i) the PRIME Contractor and/or any of its Associates (as appropriate) is prevented or inhibited from carrying on the Operations; and
 - (ii) DWP is disrupted,as a consequence of the Department's Configuration Change; and
 - (d) comply with all reasonable directions of DWP issued from time to time in connection with the Department's Configuration Change (which directions shall be in writing or, if oral, shall be confirmed in writing within five Business Days),
- unless and to the extent that DWP may specify in writing that any duty set out in (a) to (d) above shall not be carried out.
- 1.6 Despite anything to the contrary express or implied in this Agreement (but subject to paragraph 1.7), DWP may, at its option, alter the procurement procedures in this Schedule 27 or require that the PRIME Contractor procures a Department's Configuration Change using an alternative (or partly alternative) procurement procedure to the procedures set out in this Schedule 27, and the PRIME Contractor shall follow such altered or alternative procurement procedure and shall not be entitled to dispute DWP's decision.
- 1.7 Where DWP instructs the PRIME Contractor pursuant to paragraph 1.6 to adopt procurement procedures which differ from the procurement procedures in this Schedule 27 (other than in a minor respect), and the different procurement procedures result in the PRIME Contractor incurring additional external procurement costs beyond those that would have been incurred by the PRIME Contractor had the procurement procedures in this Schedule 27 been followed and for which the PRIME Contractor is not otherwise

compensated, DWP shall reimburse the PRIME Contractor for such reasonable additional external procurement costs which are agreed by DWP in advance (provided, to avoid doubt, that the PRIME Contractor shall not be reimbursed twice for the same cost) and incurred by the PRIME Contractor in following the different procurement procedures. If it becomes apparent through circumstances that the PRIME Contractor could not reasonably have foreseen that the PRIME Contractor will incur external procurement costs in addition to those agreed by DWP, the PRIME Contractor shall notify DWP of such further external procurement costs and DWP shall reimburse the PRIME Contractor for such reasonable further external procurement costs agreed by DWP before they are incurred.

Interpretation and Definitions

1.8 Where the PRIME Contractor is required to do any act or thing "as soon as reasonably practicable", this means as soon as reasonably practicable without regard to the PRIME Contractor's actual level of resources, and assuming the PRIME Contractor is always properly resourced having regard to historical and forecast volumes of Configuration Works required by DWP.

1.9 In this Schedule:

"Affected Area" means all Business Square Metres at a Site or Sites affected by the Configuration Works which cannot be used in the ordinary course of DWP's business or do not meet DWP's business objectives (including any area which is not reasonably accessible due to the Configuration Works);

"Completion Date" means the date by which the Configuration Works must achieve Practical Completion, as adjusted under this Schedule;

"Configuration Change Implementation Plan" means the plan for the implementation of configuration changes to be prepared by the PRIME Contractor as part of the Stage D Services set out in Appendix 2 and agreed by DWP which may include the items referred to in paragraph 3.3 of Appendix 1;

"Date of Practical Completion" means the date that Practical Completion is certified under paragraph 8.9;

"DWP's Configuration Works" means works carried out (or to be carried out) by third parties engaged directly by DWP without the involvement of the PRIME Contractor or any of its Associates as contemplated in paragraph 4 below;

"Early Completion Date" means the earliest date agreed by the parties by which the Configuration Works could achieve Practical Completion which the PRIME Contractor and the Third Party Contractor will use their reasonable endeavours to achieve, as adjusted under this Schedule 27;

"Latent Conditions" means physical conditions on the Site, including artificial things, but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the PRIME Contractor or by a reasonably experienced contractor carrying out works of a similar nature and scope to the Configuration Works;

"Liquidated Damages" means a genuine pre-estimate of DWP's losses consequent on delay in achieving Practical Completion as agreed in writing by DWP;

"Third Party Contractor" means the contractor or contractors appointed to carry out Configuration Works by the PRIME Contractor (where the PRIME Contractor is acting as contractor under paragraph 3.3) or by DWP (where the PRIME Contractor is acting as DWP's agent), but, for the avoidance of doubt, excludes a DWP Contractor.

2. **WORKS WITH A VALUE UP TO AND INCLUDING £186,500**

2.1 Where the procedures in this paragraph 2 apply, DWP and the PRIME Contractor will use the following schedules of rates published by DOE PSA Specialist Services (HMSO) London for valuing works up to and including £186,500:

- (a) Schedule of Rates for Buildings Work;
- (b) Schedule of Rates for Mechanical Services; and
- (c) Schedule of Rates for Electrical Services,

together referred to as the **"Schedule of Rates"**.

2.2 Where DWP requests a Department's Configuration Change to be completed pursuant to the Schedule of Rates, the PRIME Contractor will as soon as reasonably practicable, commence and, save as directed in writing by DWP to do otherwise, complete the Department's Configuration Change in accordance with this Agreement, save that paragraph 3 and Appendix 1 of this Schedule 27 shall not apply, and Appendix 2 of this Schedule 27 shall not apply to any Department's Configuration Change under a value of £6,220.

2.3 The PRIME Contractor will appoint sub-contractors to undertake works of this nature under term contracts. Works up to £6,220 may be undertaken by the PRIME Contractor's building maintenance contractors at the tendered term contract rates. The PRIME Contractor will pass any direct contract costs (derived from the most recent Schedule of Rates) through to DWP without any additions except the percentage additions detailed in paragraph 2.5. The PRIME Contractor will appoint sub-contractors through a competitive tender process approved by DWP, acting reasonably, whereby adjustments are provided against the Schedule of Rates based on value categories. Any sub-contractors appointed by the PRIME Contractor will also be required to propose percentage rates for dayworks

to allow valuation of any dayworks which may arise under the term contract. Such percentages shall be in accordance with the most recent RICS definition of prime costs of daywork.

The PRIME Contractor will let such term contracts for a three year period with a two year extension.

When requesting tenders for such term contracts, the PRIME Contractor will utilise the most recent Schedule of Rates, except where agreed with DWP. The term contracts will be subject to annual indexation based on the Building Costs Index.

2.4 The PRIME Contractor will agree with DWP the methodology for attaining value adjustment percentages from the market and DWP agrees to assist in determining the anticipated annual expenditure.

2.5 Subject to paragraphs 2.6 and 5.13, in addition to the PRIME Contractor's costs of works determined pursuant to paragraph 2.3, the PRIME Contractor will charge the following percentage additions by way of fees (calculated against the final cost of the Configuration Works in accordance with the Schedule of Rates) to cover all appropriate professional services including any design, estimating, specifying, Project Management Services, programme management services (to manage Programmes of Works), managing and performing the PRIME Contractor's duties under this Schedule 27 (including stages A to G in Appendix 2), site supervision, planning supervision (CDM), measurement and all other Consultancy Services required, and a contribution to cover the PRIME Contractor's overhead, profit and disbursements:

Final Cost of Configuration Works	% Fee
[withheld]	[withheld]
[withheld]	[withheld]
[withheld]	[withheld]
[withheld]	[withheld]

2.6 If DWP has requested a Programme of Works, the value of the Configuration Works for the purposes of calculating the fees shall be the final cost of all Configuration Works undertaken (or to be undertaken) as part of the Programme of Works.

2.7 Subject to paragraph 9, and save as agreed in writing between the parties from time to time in relation to particular Configuration Works, all Configuration Works up to a final cost of £93,250 and all fees due in respect thereof pursuant to paragraph 2.5 will be included in the next Variable Amount Statement issued following Practical Completion of the

Configuration Works (or Programme of Works as applicable), and paid when that invoice is due.

2.8 The parties shall, in relation to each Department's Configuration Change with a final cost of between £93,250 and £186,500, agree reasonable interim or staged payments for the fees referred to above (acting reasonably and having regard to Good Industry Practice). Such payment arrangements shall provide for final accounts to be presented not later than 150 days after the Date of Practical Completion of the relevant Configuration Works.

3. **WORKS WITH A VALUE OVER £186,500 OR TO BE PROCURED THROUGH A COMPETITIVE OR NEGOTIATED TENDER PROCEDURE DWP'S REQUEST**

3.1 DWP may request the PRIME Contractor to implement a proposed Department's Configuration Change at one or more Sites using the procedures referred to in this paragraph 3 by issuing a Department's Configuration Change Enquiry.

3.2 Upon receipt of a Department's Configuration Change Enquiry pursuant to paragraph 3.1, the PRIME Contractor will carry out its obligations in respect of the relevant Department's Configuration Change as set out in this Schedule 27, including Appendix 1 and Appendix 2, but excluding paragraph 2, as soon as reasonably practicable in accordance with this Agreement, and in such a manner as achieves DWP's Objectives.

3.3 DWP may (from time to time) issue a written instruction to the PRIME Contractor requiring it to act as the contractor and not as agent in relation to Configuration Works.

3.4 The parties agree that if DWP issues an instruction under paragraph 3.3, the PRIME Contractor will:

(a) enter into:

(i) a building contract with DWP (on terms to be agreed by the parties, acting reasonably, which shall be consistent with Good Industry Practice for works of a similar nature and scope to the Configuration Works); and

(ii) a sub-contract with a Third Party Contractor;

(b) carry out its obligations in respect of the relevant Department's Configuration Change as described in paragraph 3.2 *mutatis mutandis*, save that:

(i) DWP's involvement in the engagement of the Third Party Contractor appointed by the PRIME Contractor shall be limited to the extent necessary for DWP to be satisfied that the proposed sub-contract with the Third Party Contractor is capable of meeting DWP's Objectives, and DWP shall not otherwise be involved in the negotiation of the terms and conditions of the sub-contract with the Third Party Contractor; and

- (ii) the PRIME Contractor shall, so far as reasonably possible, be responsible for performance by the Third Party Contractor of the Configuration Works.

3.5 To avoid doubt, the total amount paid by DWP to the PRIME Contractor for undertaking a Department's Configuration Change where the PRIME Contractor acts as contractor under paragraph 3.3 should be no greater than the amount that would have been paid if the PRIME Contractor had acted as agent.

4. DWP'S RIGHT TO ENGAGE A THIRD PARTY TO IMPLEMENT DEPARTMENT'S CONFIGURATION CHANGE

4.1 DWP shall be entitled to engage a third party to implement all or any part of a Department's Configuration Change without involving the PRIME Contractor or any of its Associates, including all or any part of the related Project Management Services, in place of the PRIME Contractor (or any person engaged by or through the PRIME Contractor), if the PRIME Contractor has, in relation to past Department's Configuration Changes either:

- (a) failed to act in a prompt or competent manner; or
- (b) failed to deliver or procure delivery of a Department's Configuration Change on time or in accordance with DWP's requirements,

assessed, in each case, in accordance with the prevailing performance reporting regime applied by the parties or if none then such other mechanism for measuring performance recognised by Good Industry Practice.

4.2 Subject as provided below, DWP shall not commence or allow DWP's Configuration Works at a Works Location to be carried out without having first obtained all necessary Consents (save for the consent of the PRIME Contractor and its Associate which owns the Works Location which shall be deemed to be given notwithstanding the provisions of the PRIME Lease), and shall procure that DWP's Configuration Works are carried out in accordance with all applicable Consents, Laws and Statutory Requirements.

4.3 In carrying out DWP's Configuration Works in question at a Works Location, DWP shall:

- (a) submit reasonable particulars of the proposed DWP's Configuration Works to the PRIME Contractor;
- (b) procure that DWP's Configuration Works are carried out in accordance with Good Industry Practice and in accordance with the relevant Required Accommodation Standards (save to the extent that DWP has agreed in writing to grant relief in respect of such requirements);
- (c) procure that DWP's Configuration Works are carried out to the reasonable satisfaction of the PRIME Contractor provided that the PRIME Contractor shall

only be entitled to object on the grounds that DWP are in breach of paragraphs 4.2 or 4.3(b) of this Schedule 27;

- (d) forthwith at the expense of DWP make good all damage caused to any premises adjoining or near to the Works Location or suffered by the owners or occupiers thereof or any one or more of them arising out of or incidental to DWP's Configuration Works;
- (e) keep the PRIME Contractor informed of progress throughout the construction phase, and give the PRIME Contractor at least 20 Business Days firm notice of the date when DWP's Configuration Works will achieve practical completion; and
- (f) where the CDM Regulations apply to DWP's Configuration Works in question:
 - (i) notwithstanding any other provisions of this Agreement (and, for the avoidance of doubt, regardless of whether the PRIME Contractor is carrying out works at the relevant Site), act as the sole client in respect of DWP's Configuration Works for the purposes of the CDM Regulations and comply with the obligations imposed upon a client by the CDM Regulations and procure that DWP's Contractors, designers and planning supervisor shall comply in all aspects with the CDM Regulations; and
 - (ii) on the date of practical completion, supply to the PRIME Contractor a full and complete copy of the health and safety file for DWP's Configuration Works in question prepared in accordance with the CDM Regulations; and
 - (iii) not later than three months after the date of practical completion, supply the PRIME Contractor with operation and maintenance manuals and as built drawings.

4.4 If the PRIME Contractor is not carrying out any works at the Works Location, DWP shall permit the PRIME Contractor to enter upon the Works Location at all reasonable times (and upon reasonable notice) to inspect the state and progress of DWP's Configuration Works and the materials used or intended for use therein and provide to the PRIME Contractor such information and documents in connection with DWP's Configuration Works as it may reasonably require.

4.5 If the PRIME Contractor is carrying out any works at the Works Location:

- (a) DWP shall procure that any third party engaged by DWP to perform DWP's Configuration Works shall liaise, coordinate and cooperate with the PRIME Contractor and the PRIME Contractor's contractors and consultants as far as practicable; and

- (b) the PRIME Contractor shall (and shall procure that its consultants, contractors and its Associates shall) liaise, coordinate and cooperate with any third party engaged by DWP to perform DWP's Configuration Works as far as practicable,

provided that if there is a conflict between the PRIME Contractor (or its contractor or consultant) and the third party engaged by DWP to perform DWP's Configuration Works for access or services to perform their respective works, so long as the party who commenced their works first at the site acts reasonably, that party's requirements for access and services shall take priority.

4.6 The PRIME Contractor will be entitled to inspect DWP's Configuration Works at any time up to 10 Business Days after practical completion of the same:

- (a) to confirm that DWP's Configuration Works have been implemented substantially in accordance with paragraphs 4.2 and 4.3(b) (subject to such changes as have been agreed by the Department's Representative); or
- (b) to identify the matters where there has not been such substantial compliance accordance with paragraphs 4.2 or 4.3(b) (it being acknowledged that DWP's Configuration Works shall not achieve practical completion until such matters are remedied or DWP has granted the PRIME Contractor relief as contemplated by paragraph 4.7); 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 rectification of such snagging items (which may extend beyond the date when DWP will be granted the PRIME Lease or amended PRIME Lease).

4.7 If the matters identified by the PRIME Contractor constitute non-compliance with the Required Accommodation Standards and/or Good Industry Practice, DWP may at its option either:

- (a) remedy the defect so that it complies with the Required Accommodation Standards and Good Industry Practice; or
- (b) grant the PRIME Contractor relief under the Agreement to the extent that the PRIME Contractor is unable to deliver the Operations in accordance with this Agreement as a direct result of the defect, such relief to be agreed between the parties, or failing agreement, determined under the Dispute Resolution Procedure.

4.8 DWP will, in respect of any DWP's Configuration Works undertaken by a third party engaged by DWP in the circumstances contemplated by paragraph 4.1, indemnify the PRIME Contractor and any Associate of the PRIME Contractor that owns the Works Location, and will keep them fully and effectively indemnified against:

- (a) any liability, loss, expense, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever or any injury or damage whatsoever to any property real or personal arising out of or in the course of or caused by the carrying out of such DWP's Configuration Works;
- (b) any tax, charge or levy whatsoever to which the PRIME Contractor and its Associate that owns the Works Location may become liable arising or leviable directly or indirectly from, or as a result of, DWP carrying out such DWP's Configuration Works save that this indemnity shall not apply:
 - (i) where the PRIME Contractor and its Associates which owns the Works Location makes a capital gain as a result of such DWP's Configuration Works, nor
 - (ii) to any liability to Corporation Tax (or any like tax on revenue) in respect of any increase in the revenue of the PRIME Contractor and its Associate which owns the Works Location as a result of such DWP's Configuration Works;
- (c) any external expense consequent upon a claim being made against the PRIME Contractor, liability, loss, claim or proceedings whatsoever in respect of the building of which the Works Location forms part or other property of the PRIME Contractor and its Associate that owns the Works Location arising out of or caused by the carrying out of such DWP's Configuration Works;
- (d) any increased or extra premium payable in respect of any policy or policies of insurance of the Works Location or of any adjoining or neighbouring premises by reason of the carrying out of such DWP's Configuration Works; and
- (e) [withheld],

PROVIDED FURTHER THAT the PRIME Contractor and its Associate that owns the Works Location (as the case may be) have taken all reasonable steps to mitigate such loss, costs, expense or other liability.

4.9 Where, as a result of or in connection with DWP (or its third party contractors) carrying out DWP's Configuration Works at a Works Location, it becomes necessary to move the staff of DWP, any OGD, ISB or any of DWP's Contractor into alternative accommodation, DWP shall provide such accommodation whether at another Site or otherwise and shall make appropriate arrangements for the decanting and re-canting of staff of DWP's, OGD, ISB or any of DWP's Contractors affected, all at its cost.

4.10 To avoid doubt, where the consent or approval of the PRIME Contractor and its Associates is sought in respect of any matter concerning any DWP's Configuration Works

or where the PRIME Contractor inspects DWP's Configuration Works, such consent, approval or inspection shall not relieve DWP of any of its obligations under this paragraph 4.

- 4.11 Subject as provided below, where, as a result of a DWP engaging a third party to carry out DWP's Configuration Works at a Works Location, the PRIME Contractor is prevented or inhibited from carrying out the Operations or is able to carry out the Operations in a limited manner only, the PRIME Contractor's obligations under this Agreement and the Project Documents shall be qualified to the extent of such prevention, inhibition or limitations and, for the avoidance of doubt, the Performance Measuring System and the provisions of Schedule 17 relating to the application of Availability Deduction Amounts shall not have effect in respect of such Works Location to the extent that the PRIME Contractor's obligations are so qualified until such time as the prevention, inhibition or limitation referred to above is no longer extant.
- 4.12 The PRIME Contractor will (and will procure that any of its Associates that owns the Works Location) co-operate with DWP and its contractors and agents in the performance of DWP's Configuration Works, including providing access at the Site as reasonably required. If such co-operation requires the PRIME Contractor to perform services over and above the services it is required to perform under this Agreement or incur additional costs for which the PRIME Contractor would not otherwise be compensated under this Agreement, DWP shall reimburse the PRIME Contractor for such reasonable additional costs which are agreed by DWP in advance (provided, to avoid doubt, that the PRIME Contractor shall not be reimbursed twice for the same cost) and incurred by the PRIME Contractor in co-operating with DWP and its contractors and agents in the performance of DWP's Configuration Works. If it becomes apparent through circumstances that the PRIME Contractor could not reasonably have foreseen that the PRIME Contractor will incur costs in addition to those agreed by DWP, the PRIME Contractor shall notify DWP of such further costs and DWP shall reimburse the PRIME Contractor for such reasonable further costs agreed by DWP before they are incurred.

5. **PROJECT MANAGEMENT SERVICES**

- 5.1 The PRIME Contractor will allocate a Project Manager or team of Project Managers (as required by Good Industry Practice) either from its staff or as an external appointment (at the PRIME Contractor's cost) to manage all Department's Configuration Changes and perform the services pursuant to this Schedule 27.
- 5.2 The PRIME Contractor shall ensure that all persons appointed to perform the Project Management Services (and other services pursuant to paragraph 2.5) are suitably qualified, trained, experienced and competent to perform the Project Management Services and other services. To avoid doubt, if the PRIME Contractor does not have such persons as part of its staff, it will engage external consultants at its cost.

- 5.3 The PRIME Contractor will appoint the appropriate Programme Works Manager(s) which DWP (at its discretion) requires in writing, provided (to avoid doubt) that no such Programme Works Manager(s) appointed under this paragraph shall perform, nor be appointed to perform, any Project Management Services.
- 5.4 The PRIME Contractor will appoint the appropriate Consultants in connection with projects with a value over £186,500 which are either proposed by the PRIME Contractor and agreed with DWP as reasonably required, or which DWP reasonably requires in writing, provided (to avoid doubt) that no such Consultant and/or Programme Works Manager(s) appointed under this paragraph shall perform, nor be appointed to perform, any Project Management Services.
- 5.5 Subject to the PRIME Contractor's obligations under clause 11.6, the Programme Works Manager(s) and/or Consultants referred to in paragraphs 5.3 and 5.4 (respectively) will be appointed through a competitive tender procedure approved by DWP. DWP and the PRIME Contractor will agree jointly a separate fee rate and roles and responsibilities of the Consultants and/or the Programme Works Manager(s), or at DWP's option, the costs and terms for the Consultancy Services and the Programme Works Management shall be as determined through a competitive tender procedure approved by DWP. The separate fee rate will be expressed as an hourly, daily or fixed term rate. In relation to Department's Configuration Changes over £186,500, the cost of the services of such Consultants and/or Programme Works Manager(s) will be invoiced directly to DWP without any additions, provided the Consultant and/or the Programme Works Manager(s) has not performed any Project Management Services. DWP must act reasonably when approving the tender procedure.
- 5.6 The PRIME Contractor shall procure that each Consultant and/or the Programme Works Manager appointed by it executes a collateral warranty in favour of DWP in a form acceptable to DWP (acting reasonably).
- 5.7 The PRIME Contractor shall not vary the scope of services performed by any Consultant and/or the Programme Works Manager in a material respect, or the timing or amount of payment or liability of the Consultant and/or the Programme Works Manager under the relevant contract without DWP's written consent, such consent not to be unreasonably withheld.
- 5.8 Subject to paragraph 5.13, in addition to such Consultant's and/or the Programme Works Manager's fees payable pursuant to paragraph 5.5, the PRIME Contractor will charge the following percentage additions by way of fees, which are inclusive of disbursements overhead and profit, for undertaking the Project Management Services and performing the PRIME Contractor's duties under this Schedule 27 (including Appendix 1 and Appendix 2) in relation to Configuration Works over £186,500:

Final Cost of Configuration Works	% Fee
[withheld]	[withheld]
[withheld]	[withheld]
[withheld]	[withheld]

These percentage additions will be applied to the final cost of the Configuration Works paid to the Third Party Contractor and, for the avoidance of doubt, will not be applied to the cost of professional fees or obtaining Consents. If DWP has requested a Programme of Works, the value of the Configuration Works for the purposes of calculating the fees shall be the final cost of all Configuration Works undertaken (or to be undertaken) as part of the Programme of Works. The parties shall, in relation to each Department's Configuration Change, agree reasonable interim or staged payments for the fees referred to above (acting reasonably and having regard to Good Industry Practice). Such payment arrangements shall provide for final accounts to be presented not later than 150 days after the Date of Practical Completion of the relevant Configuration Works.

- 5.9 Where the PRIME Contractor appoints an external Project Manager(s) (rather than a member of its staff) to manage the works, the PRIME Contractor shall, however, retain overall responsibility for the necessary consultation and liaison between DWP, the PRIME Contractor and the professional advisers appointed by the PRIME Contractor.
- 5.10 In respect of works covered by this paragraph 5, the cost to the PRIME Contractor of the Department's Configuration Change referred to in clause 17.15(c) will be the percentage additions referred to in this paragraph 5.
- 5.11 The generic roles and responsibilities of the Project Manager shall include:
- (a) obtaining a full understanding of the needs of DWP and interpreting these as necessary, including co-ordinating the performance by the PRIME Contractor of its obligations under this Schedule 27 and operating the procurement procedure as required in relation to the relevant Department's Configuration Change;
 - (b) ensuring that all necessary documentation for authorisation is available for the Department's Representative;
 - (c) preparing the Appraisal, and any churn related feasibility studies with budget costings for discussion and agreement with the Department's Representative (including costings for alternative courses of action if appropriate). The preparation of a feasibility study will not involve the exploration of the business process of DWP. Costings will be supported with outline specifications of works

where the churn project includes building works. The number of principal options to be explored in any feasibility study will be no more than three per project;

- (d) employing such Consultants and/or Programme Works Manager as necessary (as agreed or required) (such fees will be reimbursed separately in accordance with paragraph 5.5 of this Schedule 27) and overseeing and co-ordinating the services of the Consultants and/or Programme Works Manager;
- (e) on receipt of the Department's Representative's approval to proceed, managing and co-ordinating through the employment of Consultants and Programme Works Managers as necessary, the design, cost management, planning, specifying and procuring processes through to selection and award of contracts and delivery of the agreed output of the project;
- (f) procuring, either directly or through others, contractors and consultants and managing contractors, consultants and PRIME Contractor's staff as appropriate;
- (g) identifying and setting out roles and responsibilities of all parties including DWP and all contractors and consultants as appropriate;
- (h) managing and co-ordinating all aspects of the project;
- (i) preparing detailed plan of action with method statements describing who does what, where and when;
- (j) agreeing work programme with Department's Representative (and IT service providers if appropriate) to ensure the minimum of disruption to DWP;
- (k) conducting a risk assessment relating to the move, associated works and revised layout including health and safety issues;
- (l) setting up, attending and taking minutes of all project meetings and circulating the minutes;
- (m) ensuring the Schedule of Maintenance Works, the Schedule of Life Cycle Works and Three Years Plan for the relevant Facility are amended if necessary and changes are agreed with the Department's Representative;
- (n) providing information to allow amendment of space plans by the PRIME Contractor as necessary;
- (o) conducting a post move audit and obtaining acceptance of the change by the Department's Representative;

- (p) liaising with DWP through appropriate media (for example notice boards, circulars) as part of a communication programme as agreed with the Department's Representative; and
- (q) liaising with the Department's Representative to ensure DWP is fully appraised of the timetable, works, responsibilities, impact of works on Available Business Square Metres and FM Services and any other information necessary to ensure the smooth and effective operation of the churn works.

5.12 If, in relation to a Department's Configuration Change, DWP does not require the PRIME Contractor to carry out any one or more of the roles and responsibilities set out in paragraph 2.5 or paragraph 5.11 or Appendix 2, or it is agreed or determined that it is not reasonably necessary for the PRIME Contractor (or any Project Manager appointed by the PRIME Contractor) to perform such roles and responsibilities, or the services have been performed previously in relation to a prior Department's Configuration Change and are capable of being re-used without amendment (save in minor respects), DWP and the PRIME Contractor will agree an appropriate and reasonable reduction to the percentage additions set out in paragraph 2.5 or paragraph 5.8 (as the case may be). In the event that DWP and the PRIME Contractor are unable to agree such reduction, the matter will be referred to the Adjudicator under the Dispute Resolution Procedure.

5.13 If DWP withdraws from a Department's Configuration Change ("**Aborted Project**"), pays any abortive fees, and subsequently requests a Department's Configuration Change which is substantially the same works as the Aborted Project in respect of the same Site or Sites ("**Revived Project**") and the services for which the abortive fees were paid can be substantially re-used, DWP shall be entitled to a reduction in the fees payable on the Revived Project equal to [withheld]% of the abortive fees paid on the Aborted Project ("**Abortive Fee Credit**"). If the PRIME Contractor disputes the validity of any Abortive Fee Credit, it shall be applied pending a resolution of that dispute by the Adjudicator under the Dispute Resolution Procedure. DWP shall pay the PRIME Contractor any additional amounts determined by the Adjudicator under the Dispute Resolution Procedure.

6. **WITHDRAWAL**

6.1 DWP may, at any time, withdraw from any Department's Configuration Change by issuing a Notice to Withdraw.

6.2 DWP shall not be liable to pay the PRIME Contractor any project fees or abortive fees if DWP issues a Notice to Withdraw in respect of:

- (a) Configuration Works below a cost of £6,220; or
- (b) a Department's Configuration Change prior to commencement of Stage C.

6.3 If DWP issues a Notice to Withdraw at the end of the Stage identified on the left in the Table of Abortive Fees below, DWP will be liable to pay the abortive fees equal to the lower of the following:

- (a) the percentage of the amount payable by the PRIME Contractor to any external consultant engaged by the PRIME Contractor to perform the Project Management Services as identified on the right opposite the Stage when withdrawal occurred in the Table of Abortive Fees below; or
- (b) the percentage of the Project Fee that would otherwise have been payable (based on the final cost of the Configuration Works) as identified on the right opposite the Stage when withdrawal occurred in the Table of Abortive Fees below:

Table of Abortive Fees

Stage	Percentage (%) of External Costs or Project Fee (whichever is lower)
A	[withheld]
B	[withheld]
C	[withheld]
D	[withheld]
E	[withheld]
F & G	[withheld]

6.4 In relation to Department's Configuration Changes valued over £186,500, if DWP issues a Notice to Withdraw, DWP shall also be liable to reimburse the PRIME Contractor's reasonable external costs and expenses properly and directly payable to any Programme Works Manager(s) and Consultants engaged pursuant to paragraphs 5.3 and 5.4 (respectively) in relation to services from Stage C onwards in respect of the relevant Department's Configuration Change. The PRIME Contractor will procure that the amount payable to any such Consultants and/or Programme Works Manager(s) shall not exceed the percentage of their total fees set out in the Table of Abortive Fees (above) for each Stage, and shall otherwise take all reasonable steps in accordance with Good Industry Practice to keep the costs which DWP may be required to reimburse pursuant to this paragraph 6 to a minimum.

6.5 Save as expressly provided in paragraphs 6.3 and 6.4, DWP shall have no other liability to the PRIME Contractor as a result of withdrawing from a Department's Configuration Change.

7. SUSPENSION

7.1 DWP may, at any time, suspend any Department's Configuration Change by issuing a Notice to Suspend to the PRIME Contractor. DWP shall be entitled to suspend any Department's Configuration Change for a cumulative period of up to six months without the need to pay any abortive fees for any part of the suspension period.

7.2 If DWP has suspended a Department's Configuration Change for a cumulative period of six months, DWP must either proceed with the relevant Department's Configuration Change, or issue a Notice to Withdraw in respect of the same, failing which DWP will be deemed to have issued a Notice to Withdraw.

8. MISCELLANEOUS

8.1 The PRIME Contractor will:

- (a) keep DWP informed of the progress of the Configuration Works; and
- (b) give DWP reasonable notice of when the Configuration Works will be completed, and if DWP's staff will need to be recanted at the end of the works, then give DWP at least 30 Business Days' notice of any acceleration of the Configuration Works.

8.2 Neither the PRIME Contractor nor any of its Associates shall be entitled to claim any payment or compensation in respect of a Department's Configuration Change save as expressly permitted by this Schedule 27.

8.3 Save in respect of DWP's Configuration Works, the PRIME Contractor will use its reasonable endeavours to obtain all Consents (other than DWP's internal consents) required for the completion of a Department's Configuration Change. The cost of obtaining such Consents shall be at DWP's cost subject to the PRIME Contractor:

- (a) providing DWP with an estimate of the costs of obtaining such Consents in Stage C;
- (b) notifying DWP prior to exceeding the estimate if it appears that the actual costs of obtaining such Consents are likely to exceed the estimate;
- (c) following any reasonable directions given by the DWP in relation to the obtaining of such Consents; and
- (d) at all times taking all reasonable steps in accordance with Good Industry Practice to mitigate any costs to be recovered from DWP.

- 8.4 Save in respect of DWP's Configuration Works, the PRIME Contractor shall give all notices required by any Laws or otherwise which may be required in respect of the Configuration Works (including notices to any Utility Providers as required) and comply with all Statutory Requirements in respect of the Configuration Works.
- 8.5 Save in respect of DWP's Configuration Works, the PRIME Contractor will be responsible for identifying all utilities and other services (including drainage) at the relevant Site and shall ensure that the utilities and other services (and associated cables, ducts, pipes, drains and other improvements) at the relevant Site are not damaged or interrupted during the execution of the Configuration Works.
- 8.6 DWP shall be entitled to inspect the Configuration Works before they are covered up. If DWP notifies the PRIME Contractor that DWP requires the ability to inspect the Configuration Works before they are covered up:
- (a) prior to the commencement of the Configuration Works on site, the PRIME Contractor will give seven days notice to the Department's Representative before the relevant works are covered up. If DWP attends the inspection on the date notified by the PRIME Contractor, the PRIME Contractor shall not be entitled to claim an extension of time or costs in respect of any such inspection; and
 - (b) after the commencement of the Configuration Works on site, the PRIME Contractor shall be entitled to claim an extension of the time to the Early Completion Date and the Completion Date for any reasonable delay and any reasonable additional costs to the PRIME Contractor caused by such inspection, provided that the PRIME Contractor will take reasonable steps in accordance with Good Industry Practice to minimise the delay and additional costs caused by such inspection.
- 8.7 The PRIME Contractor shall invite the Department's Representative to attend all design meetings, site meetings, testing and inspections in respect of the Configuration Works.
- 8.8 If, during the course of the Configuration Works, the PRIME Contractor:
- (a) is required to issue any notice to the relevant enforcing authority or the Health and Safety Executive under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, the PRIME Contractor shall at the same time copy that notice to DWP; and/or
 - (b) becomes aware of any circumstance that were not foreseen at the commencement of Configuration Works which, in its reasonable opinion, could materially affect the safety of any person, it must inform the Department's Representative of the nature of the hazard as soon as reasonably practicable.

- 8.9 Save in respect of DWP's Configuration Works or where DWP elects to have joint certification (such election to be made prior to agreeing the Final Proposal), the PRIME Contractor's Representative, acting reasonably and impartially, shall certify Practical Completion of all Configuration Works. Where the parties jointly certify, their respective representatives shall do so acting reasonably and impartially. Both parties shall be entitled to dispute the PRIME Contractor's Representative's certification (or joint certification as the case may be), which shall be referred to the Adjudicator under the Dispute Resolution Procedure.
- 8.10 At least fourteen days before the date on which the PRIME Contractor estimates that it will achieve Practical Completion, the PRIME Contractor must give DWP written notice of that date. DWP may (at its discretion but without being obliged to do so and without prejudice to its rights in this Agreement) issue a notice identifying those works that need to be undertaken before Practical Completion will be achieved. On the Date of Practical Completion, the PRIME Contractor shall prepare a list of minor defects which do not prevent Practical Completion ("**Snagging List**"), and forward the same to the Department's Representative. The Department's Representative, acting reasonably may (at its discretion but without being obliged to do so and without prejudice to its rights in this Agreement) give notice of minor defects to add to the Snagging List. The PRIME Contractor's Representative acting reasonably and impartially shall decide whether to add such minor defects to the Snagging List.
- 8.11 Save in respect of DWP's Configuration Works, as soon as reasonably practicable following the Date of Practical Completion of the Configuration Works the PRIME Contractor will:
- (a) in relation to all Configuration Works which cost DWP £6,220 or more, undertake a condition survey and provide DWP with a report evaluating the impact of the relevant Configuration Works on the maintenance requirements (including the Maintenance Works and Life Cycle Works) at the relevant Site(s) (such report to be in an appropriate detail having regard to the value of the works) during the following 15 years; and
 - (b) provide DWP with copies of revised Three Year Plans, the Schedule of Maintenance Works and the Schedule of Life Cycle Works incorporating the changes reasonably consequent upon the relevant Department's Configuration Change for DWP's approval pursuant to clause 10.7.
- 8.12 [Not used]
- 8.13 [Not used]

- 8.14 The PRIME Contractor acknowledges that Good Industry Practice requires that all Department's Configuration Changes which are constructed within, abut or are in any way physically connected to a Site, are to be properly integrated within such Site.
- 8.15 Subject as provided below, where, as a result of carrying out Configuration Works, 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 shall not have effect in respect of that part of the Site affected by such Configuration Works to the extent that the PRIME Contractor's obligations are so qualified, and the provisions of Schedule 17 relating to Availability Deduction Amounts shall only apply in the circumstances set out in paragraph 10.5, 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 Configuration Works prior to the end of Stage D in respect of the Configuration Works, 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 Configuration Works (additional to the relief notified in accordance with paragraph (a) above) for reasons that were not reasonably foreseeable prior to the end of Stage D, 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 Configuration Works performed at that Site.

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

- 8.16 The PRIME Contractor shall ensure that the Configuration Works comply with the Required Accommodation Standards and the Service Requirements.
- 8.17 For the avoidance of doubt, subject to any relief granted under paragraph 8.15 or any other provision of the Agreement, the PRIME Contractor shall deliver FM Services in respect of a Facility in which Configuration Works are being carried out.
- 8.18 The PRIME Contractor will not alter or vary the Configuration Works other than as instructed by the Department's Representative in writing. Where acting as agent, the PRIME Contractor shall issue such variations to the works as DWP may reasonably require. DWP and the PRIME Contractor shall follow such procedures for valuing and

performing variations as agreed in writing with DWP from time to time. The PRIME Contractor may from time to time propose variations to the Configuration Works, and DWP may at its discretion request the PRIME Contractor in writing to implement such variation.

- 8.19 For the avoidance of doubt, where DWP is required to give its consent or approval in respect of any matter concerning any Configuration Works or to inspect any Configuration Works, such consent, approval or inspection shall not relieve the PRIME Contractor of any of its duties under Schedule 27.
- 8.20 For the avoidance of doubt, the PRIME Contractor and its Associates shall not be disqualified from consideration in respect of any tender or contract to carry out a Department's Configuration Change 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 a Connected Person wishes to undertake the Department's Configuration Change a reasonable period prior to DWP entering into, or proposing to enter into, any contract with the Connected Person in respect of the Department's Configuration Change.
- 8.21 During the progress of the Department's Configuration Change (from the outset to the Date of Practical Completion), the PRIME Contractor shall:
- (a) consult DWP at all appropriate times and keep it informed of all matters connected with the Department's Configuration 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 Department's Configuration Change (or any part thereof) as it shall from time to time require;
 - (c) consult all authorities having statutory powers and any other person or authority having rights which are connected with or affected by the Department's Configuration Change (or any part thereof) and such other authorities as DWP may direct (the "**Interested Parties**");
 - (d) throughout the duration of the Department's Configuration Change, keep DWP advised as to the requirements of the Interested Parties; and
 - (e) maintain a full audit trail of each Department's Configuration Change and make all such records (including details of all tenders received) available for inspection by DWP and its authorised representatives and nominees (including without limitation the National Audit Office) on reasonable notice from DWP.

8.22 Where the PRIME Contractor is implementing the Department's Configuration Change, it shall continue to do so notwithstanding that any dispute may have arisen in relation thereto, unless the Department's Representative directs otherwise.

8.23 The PRIME Contractor shall at all times take all reasonable steps in accordance with Good Industry Practice to mitigate any costs that the PRIME Contractor is entitled to recover from DWP in accordance with paragraphs 1.7 and 4.12 of this Schedule 27.

9. LIFE CYCLE MAINTENANCE

9.1 Notwithstanding anything to the contrary expressed or implied in this Agreement, but subject to clauses 17.23, 17.24, and 17.25, the PRIME Contractor shall pay DWP a capital contribution towards the costs of any Configuration Works as follows:

(a) to the extent the same relate to an item of Life Cycle Works shown in a Three Year Plan equal to the following:

(i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works appears is in year 1 of the current Three Year Plan;

(ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works appears is in year 2 of the current Three Year Plan; and

(iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works appears is in year 3 of the current Three Year Plan,

(b) where the Configuration Works are performed at an Existing ES Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to an item of Life Cycle Works that would have been shown in a Three Year Plan had such a plan been in place at that time taking into account the criteria set out in clause 10, the capital contribution shall be equal to the following:

(i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within one year from the date of the Configuration Works;

(ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within two years from the date of the Configuration Works; and

- (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within three years from the date of the Configuration Works,
- (c) where the Configuration Works are performed at an Existing DSS Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to Life Cycle Works shown on a Life Cycle Maintenance Plan in existence on the day before the Contract Expansion Date, such capital contribution shall be equal to the following:
- (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within one year from the date of the Configuration Works;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within two years from the date of the Configuration Works; and
 - (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Configuration Works where the item of Life Cycle Works would have been carried out within three years from the date of the Configuration Works,

each such contribution referred to as the "**PRIME Contractor's DCC Contribution**".

9.2 Each PRIME Contractor's DCC Contribution shall:

- (a) be reconciled and notified to DWP within one month of the Date of Practical Completion of the Configuration Works or the Programme of Works (as the case may be); and
- (b) credited to DWP through a Variable Amount Invoice issued:
 - (i) one month before the end of the relevant Contract Year, or
 - (ii) as directed by DWP in writing.

10. DELAY IN COMPLETION OF CONFIGURATION WORKS

10.1 The parties acting reasonably, will agree a Completion Date and may agree an Early Completion Date for Configuration Works.

10.2 If there is not an Early Completion Date for Configuration Works:

- (a) paragraphs 10.3 and 11.5 will not apply; and
- (b) all other provisions which make reference to the Early Completion Date shall be construed as if no such reference to the Early Completion Date had been made.

10.3 The PRIME Contractor will use its reasonable endeavours to procure that the Third Party Contractor achieves Practical Completion of the relevant Configuration Works by the Early Completion Date.

10.4 If the Third Party Contractor:

- (a) fails to achieve Practical Completion by the Completion Date; and
- (b) has an obligation to pay Liquidated Damages for failure to achieve Practical Completion of the Configuration Works by the Completion Date under its contract with:
 - (i) DWP (where the PRIME Contractor is acting as DWP's agent); or
 - (ii) the PRIME Contractor (where the PRIME Contractor is acting as contractor under paragraph 3.3),

the PRIME Contractor will:

- (c) advise DWP in respect of its entitlement to the payment of Liquidated Damages and use its reasonable endeavours to recover Liquidated Damages from the Third Party Contractor (which shall include such preliminary steps as corresponding with the Third Party Contractor regarding its obligation to pay Liquidated Damages, but shall not include pursuing legal proceedings); and
- (d) if requested by DWP, and at DWP's cost, enforce DWP's rights to payment of Liquidated Damages against the third party, provided that the PRIME Contractor:
 - (i) provides DWP with an estimate of the costs of such enforcement as soon as possible;
 - (ii) notifies DWP prior to exceeding the estimate if it appears that the actual costs of such enforcement are likely to exceed the estimate;
 - (iii) follows any directions given by the DWP in relation to such enforcement; and
 - (iv) at all times takes all reasonable steps in accordance with Good Industry Practice to mitigate any increase in costs from its original estimate.

The PRIME Contractor will pass to DWP all monies recovered from the Third Party Contractor.

10.5 If:

- (a) the contract between the Third Party Contractor and the PRIME Contractor (where the PRIME Contractor is acting as contractor under paragraph 3.3) or DWP (where the PRIME Contractor is acting as DWP's agent) does not impose an obligation on the Third Party Contractor to pay Liquidated Damages for delay in achieving Practical Completion by the Completion Date, and Practical Completion of the relevant Configuration Works is not achieved by the Completion Date; or
- (b) the contract between the Third Party Contractor and the PRIME Contractor (where the PRIME Contractor is acting as contractor under paragraph 3.3) or DWP (where the PRIME Contractor is acting as DWP's agent) imposes an obligation on the Third Party Contractor to pay Liquidated Damages for delay in achieving Practical Completion by the Completion Date and the Third Party Contractor is granted an extension of time to the Early Completion Date and the Completion Date due to an act or omission of the PRIME Contractor (which is in no way attributable to an act or omission by DWP),

the Business Square Metres within the Affected Area at each Site shall be treated as failing to comply with the Critical Aspects of Service Requirements relating to Facility layouts set out in paragraph 2 of Schedule 15 [*Critical Aspects of Service Requirements*] for the following period:

- (i) if paragraph 10.5(a) applies, for every day after the Completion Date up to and including the Date of Practical Completion; and
- (ii) if paragraph 10.5(b) applies, for the period of the extension of time attributable to the act or omission of the PRIME Contractor.

10.6 [Not used]

10.7 DWP shall only be entitled to apply any Availability Deduction Amounts available under paragraph 10.5 in respect of Configuration Works instructed after the Contract Expansion Date.

11. **EXTENSIONS OF TIME TO EARLY COMPLETION DATE AND COMPLETION DATE**

11.1 Subject to paragraphs 11.2 and 11.3, the PRIME Contractor is entitled to a reasonable extension of time to the Early Completion Date and Completion Date to the extent that the Configuration Works are delayed by the following circumstances:

- (a) Force Majeure and Relief Events;
- (b) a variation under paragraph 8.18;

- (c) an act, omission or default by DWP, its agents or employees which physically impedes the progress of the works (provided the PRIME Contractor immediately advises the Department's Representative);
- (d) breach by DWP of its obligations under the Agreement;
- (e) exceptionally adverse weather conditions;
- (f) compliance with DWP's instructions to inspect the Configuration Works where notification of such inspection has been given after commencement of the works on Site as contemplated by paragraph 8.6(b);
- (g) the PRIME Contractor not having received reasonable prior written instructions, information or assistance from DWP or from any DWP Contractor within a reasonable time or in the manner agreed in the Final Proposal or any other written agreement between the parties in connection with any particular Configuration Works stating that DWP and/or any DWP Contractor is required to provide information or assistance instructions on a particular matter by a particular time;
- (h) failure of DWP to give access to the Site or any part of the Site by the agreed date;
- (i) delay in obtaining materials due to an exercise by the government of a statutory power which directly affects the performance of the Configuration Works;
- (j) the performance by a local authority or statutory undertaker of work in pursuance of its statutory obligations in relation to the Configuration Works;
- (k) suspension of the Configuration Works by DWP under paragraph 7.1;
- (l) the use or threat of terrorism where DWP has required its staff to vacate the Site the subject of the Configuration Works and/or the activity of the relevant authorities in dealing with such use or threat; and
- (m) Latent Conditions.

11.2 The PRIME Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to mitigate, avoid, overcome and minimise the delay and the consequences of the delay. The PRIME Contractor must give written notice to DWP of anything which causes, or may be likely to cause, delay to the Early Completion Date and Completion Date for the Configuration Works as soon as reasonably practicable but in any event no later than 10 Business Days after becoming aware of the fact or reasonable likelihood of delay (or after the PRIME Contractor ought, in accordance with Good Industry Practice, to have become aware of the same). The notice must provide details of the event giving rise to the delay, the estimated number of days the PRIME Contractor may claim for the

extension of time (provided that where the PRIME Contractor has provided an estimate, it will not prevent the PRIME Contractor from specifying the actual number of days claimed for the extension of time within a reasonable period of the PRIME Contractor becoming aware of the actual delay). Following submission of the notice, the PRIME Contractor will as soon as reasonably practicable provide details of the steps taken to minimise the effects of the delay. If the PRIME Contractor fails to give such notice within the required time, the PRIME Contractor shall not be entitled to claim any extension of time to the Early Completion Date and Completion Date for the Configuration Works.

- 11.3 DWP will use reasonable endeavours, within 10 Business Days of receipt of the PRIME Contractor's written notice under paragraph 11.2, to give the PRIME Contractor written notice of any reasonable extension of time granted or, if no extension is granted, reasons for that decision, or seek more information regarding the PRIME Contractor's claim. Once DWP has received all reasonable additional information required to assess the delay and the PRIME Contractor's claim, then as soon as reasonably practical thereafter, DWP shall reach a decision and notify the PRIME Contractor in writing as to the extension of time granted to the PRIME Contractor in respect of the event giving rise to the delay.
- 11.4 If the PRIME Contractor does not agree with DWP's written notice under paragraph 11.3 it may refer the matter to the Adjudicator under the Dispute Resolution Procedure.
- 11.5 For the avoidance of doubt, where the PRIME Contractor is granted an extension of time, the period of the extension will be applied to the Early Completion Date and Completion Date.

APPENDIX 1

PROCESS FOR DEPARTMENT'S CONFIGURATION CHANGES WITH A VALUE OVER £186,500, OR WHICH DWP HAS ELECTED TO PROCURE THROUGH A COMPETITIVE OR NEGOTIATED TENDER PROCEDURE

1. PRELIMINARY SERVICES

- 1.1 Upon receipt of a Department's Configuration Change Enquiry, the PRIME Contractor will, save as directed in writing by DWP to do otherwise, perform Stage A and Stage B (preliminary services).
- 1.2 The parties will, as soon as practicable, agree:
- (a) a reasonable programme for completing an Outline Proposal, Final Proposal and Configuration Change Implementation Plan together with any necessary consultation periods in respect thereof. If the parties do not agree a reasonable programme for the completion of those documents, the PRIME Contractor shall provide the documents as soon as reasonably practicable; and
 - (b) any Consultancy Services that are appropriate and reasonably required to complete the proposed Department's Configuration Change in addition to the Project Management Services.

2. PRE-CONTRACT SERVICES

- 2.1 Upon receipt of DWP's Brief and a written request from the Department's Representative to prepare an Outline Proposal, the PRIME Contractor will (save as directed in writing by DWP to do otherwise), as soon as reasonably practicable, and otherwise in accordance with DWP's Brief and the agreed programme, perform Stage C (pre-contract services).
- 2.2 Upon receipt by DWP of the Outline Proposal, the parties will consult and seek to agree the final scope of the Configuration Works and the other matters described in the Outline Proposal.
- 2.3 Any matter which the parties are unable to agree under the body of Schedule 27 and Appendices 1 and 2 may be determined under the Dispute Resolution Procedure, unless expressly stated otherwise.

3. FINAL PROPOSAL AND DRAFT CONFIGURATION CHANGE IMPLEMENTATION PLAN

- 3.1 The PRIME Contractor will (save as directed in writing by DWP to do otherwise), without delay, after completing an Outline Proposal and receiving a written notice from DWP to proceed with the Final Proposal, perform Stage D, Stage E and Stage F (pre-contract services).

3.2 Once the Final Proposal has been agreed or determined, the cost of the proposed Department's Configuration Change will be fixed, and will only be subject to adjustment to reflect:

- (a) any prices which are to be determined through a competitive or negotiated tender procedure (or such other procurement process as is to be undertaken at the request of DWP pursuant to paragraph 1.6 of Schedule 27) which will be fixed pursuant to paragraphs 3.5 and 3.6; or
- (b) any costs allowed by the Configuration Change Implementation Plan; or
- (c) any variations to the Configuration Works instructed by DWP in writing.

3.3 The draft Configuration Change Implementation Plan will include the following (unless DWP directs otherwise):

- (a) an obligation on the PRIME Contractor to implement the Department's Configuration Change in accordance with the Final Proposal;
- (b) the amount (if any) of Liquidated Damages to be incorporated in the contract between:
 - (i) the PRIME Contractor and the Third Party Contractor (where the PRIME Contractor is acting as the contractor under paragraph 3.3 of Schedule 27); or
 - (ii) DWP and the Third Party Contractor (where the PRIME Contractor is acting as agent for DWP),

for delay in completion of the Configuration Works;

- (c) the payment arrangements for the PRIME Contractor's fees referred to in paragraph 5.8 of Schedule 27;
- (d) the conditions of the building contract (including any special conditions) under which the Configuration Works will be completed by the Third Party Contractor(s) including payment arrangements and reasonable retentions. Specifically, DWP shall not be obliged to pay for:
 - (i) any defective works; or
 - (ii) any Configuration Works unless it has been completed and/or delivered to the Site (free from any lien or encumbrance); and
- (e) all other matters which are considered by the PRIME Contractor or DWP in each case acting reasonably to be necessary or expedient.

- 3.4 Upon receipt by DWP of the draft Configuration Change Implementation Plan, the parties will, as soon as practicable, agree upon a final Configuration Change Implementation Plan.
- 3.5 Upon receipt of the final tenders or offers in respect of each element of the Configuration Works:
- (a) the parties will agree which tender(s)/offer(s) best achieves DWP's Objectives; and
 - (b) the PRIME Contractor will confirm the final costs of the Department's Configuration Change.
- 3.6 DWP may dispute the final costs of the Department's Configuration Change. Within 10 Business Days of the final cost being agreed or determined, DWP shall either:
- (a) confirm the final costs and issue a Notice to Proceed; or
 - (b) issue a Notice to Withdraw; or
 - (c) issue a Notice to Suspend.
- 3.7 If DWP fail to issue any notice pursuant to paragraph 3.6 above within the 10 Business Day period, DWP will be deemed to have issued a Notice to Suspend unless at that time DWP has already suspended the proposed Department's Configuration Change process described herein for a cumulative period of six months, in which case DWP will be deemed to have issued a Notice to Withdraw.
- 3.8 To avoid doubt:
- (a) DWP shall not be bound to proceed with a proposed Department's Configuration Change;
 - (b) upon the issue by DWP of a Notice to Proceed, the PRIME Contractor will perform Stage G (post contract services) and procure execution and completion of the proposed Department's Configuration Change in accordance with the Final Proposal, the final Configuration Change Implementation Plan and the terms of this Agreement; and
 - (c) subject as provided below, the PRIME Contractor shall not permit any works to be undertaken which require a Consent without having first obtained that Consent on terms which best meet DWP's Objectives, and will comply with the terms of such Consent. The PRIME Contractor will use its reasonable endeavours to obtain such Consents.

- 3.9 Save in respect of DWP's Configuration Works, the PRIME Contractor shall in respect of Configuration Works where the CDM Regulations apply:
- (a) act as the sole client in respect of the same for the purposes of the CDM Regulations and comply with the obligations imposed upon a client by the CDM Regulations and procure that DWP's Contractors, designers and planning supervisor (to be appointed by the PRIME Contractor under the CDM Regulations) shall comply in all aspects with the CDM Regulations;
 - (b) on the Date of Practical Completion, supply to DWP a full and complete and/or updated copy of the health and safety file for the Configuration Works in question prepared in accordance with the CDM Regulations and any other Law, code of practice or other guidance issued by any competent authority; and
 - (c) not later than three months after the Date of Practical Completion, supply to DWP operation and maintenance manuals and as built drawings.
- 3.10 The PRIME Contractor shall co-operate with any planning supervisor appointed by DWP in respect of DWP's Configuration Works.

APPENDIX 2

STAGES OF DEPARTMENT'S CONFIGURATION CHANGE

PRELIMINARY SERVICES	
Stage A	<ul style="list-style-type: none">• Assist DWP to formulate DWP's Brief in respect of the proposed Department's Configuration Change• As soon as practicable (but in any event within five Business Days), meet the Department's Representative and agree with the Department's Representative the extent and timing of the Appraisal• Thereafter, conduct, complete and submit to DWP the Appraisal, consulting with DWP as required, including providing drafts of the Appraisal and modifying the scope of the Appraisal, as is necessary and appropriate with the Department's approval
Stage B	<ul style="list-style-type: none">• Visit the relevant Site as required• Complete the Appraisal and submit the same to DWP, including an estimate of the costs and programme for completion, in respect of the proposed Department's Configuration Change• Recommend the procurement procedure(s) and procurement strategy
PRE- CONTRACT SERVICES	
Stage C	<ul style="list-style-type: none">• Prepare and submit an Outline Proposal to DWP for its approval which will include details in respect of the following

	<p>(unless DWP directs otherwise in writing):</p> <ul style="list-style-type: none">(a) an outline scope of works for the relevant proposed Configuration Works, describing amongst other things the Site affected(b) indicative outline drawings of the proposed Configuration Works (including the design of the Configuration Works)(c) the Consents (other than DWP's internal consents) that will be required to complete the proposed Department's Configuration Change and an estimate of aggregate costs in obtaining such Consents(d) details of the procurement strategy(e) an estimate of the final cost to DWP for completion of the proposed Department's Configuration Change, broken down into costs, fees and contingencies and giving reasonable detail to show how the final cost has been arrived at(f) a proposal for alternative accommodation (if necessary) and for the decanting and recanting of DWP's staff (if necessary) and the price associated with such decanting and recanting(g) whether, and to what extent, the PRIME Contractor and/or any of its Associates will be unreasonably prevented or inhibited from carrying out the Operations or will only be able to carry out the Operations in a limited manner during the execution of the Configuration Works(h) confirmation that the Configuration Works and the Site at which the Configuration Works will be completed, will both comply with the Required Accommodation Standards and the Service Requirements once the Configuration Works are completed(i) an estimate of the overall project programme for completing the Configuration Works (from Notice to
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	<p>Proceed until the Completion Date, showing completion of any key stages and milestones if any, including the expected Completion Date and, if relevant, the Early Completion Date)</p> <ul style="list-style-type: none">(j) an initial project risk assessment assessing any site specific design and construction risks and contingencies which might delay the programme for completion of the works(k) any special security arrangements that may need to be put in place during the Configuration Works (if required, and if not required, then a statement to that effect)(l) the extent to which the proposed Department's Configuration Change could disrupt DWP's Business(m) all other matters which are considered by the PRIME Contractor or DWP (in each case acting reasonably) to be necessary or expedient
PRE- CONTRACT SERVICES	
Stage D	<ul style="list-style-type: none">• Prepare and submit a Final Proposal and a draft Configuration Change Implementation Plan in respect of the proposed Department's Configuration Change to DWP for its approval• The Final Proposal will develop and finalise the issues set out in the Outline Proposal, and in particular, it will contain (unless DWP directs otherwise in writing):<ul style="list-style-type: none">➤ a statement as to whether DWP requires joint certification of the Configuration Works➤ a final design and scope of works and working drawings for the Configuration Works (including any consequential facilities works as agreed or determined) in sufficient detail to enable the Configuration Works to be priced under a competitive or negotiated tender procedure or

	<p>such other procurement process as is to be undertaken at the request of DWP under paragraph 1.6 of Schedule 27</p> <ul style="list-style-type: none">➤ details of, amongst other things, the following:<ul style="list-style-type: none">(i) the various trade packages, quality, standard, performance characteristics and estimated life of the proposed Configuration Works (and parts thereof)(ii) the stages or sections in which the Configuration Works will be completed(iii) what efforts have been made to meet DWP's environmental aims(iv) the likely increase or decrease in energy consumption and emissions, and other notable environmental impacts as a consequence of the proposed Configuration Works(v) what stages of the Configuration Works DWP wish to inspect before they are covered up (if any)(vi) the extent to which works set out in the Schedule of Life Cycle Works will either be deleted, delayed or remain unchanged as a consequence of the Configuration Works(vii) the collateral warranties in favour of DWP (in a form acceptable to DWP acting reasonably) to be procured by the PRIME Contractor in accordance with Good Industry Practice➤ a final estimate of costs in respect of the proposed Department's Configuration Change <ul style="list-style-type: none">• Prepare and submit to DWP a list of prospective tenderers (for the avoidance of doubt, DWP may at its option specify the numbers of tenders which will be sought where a competitive tender procedure is being used)
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	<ul style="list-style-type: none">• Use its reasonable endeavours to obtain all Consents
Stage E	<ul style="list-style-type: none">• Prepare and submit to DWP for its approval all other documents necessary or required by DWP for the purposes of inviting tenders and carrying out the Department's Configuration Change (whether as a whole or in parts) and where the procurement process will be completed in stages, appropriate drafts or summaries of such documents will be submitted, identifying the stages and timing for finalising the same• Prepare and submit to DWP for its approval a proposal for the participation by DWP in the following (as applicable):<ul style="list-style-type: none">➤ negotiations with contractors or other persons whom the PRIME Contractor proposes to engage in connection with the proposed Department's Configuration Change➤ the evaluation of tenders/offers received in connection with the Department's Configuration Change➤ the finalisation of the design of the Configuration Works➤ the inspection, testing and commissioning of the Configuration Worksit being acknowledged that DWP has the right to reasonable participation in these activities• Implement the competitive or negotiated tender procedure, or such other procurement process as is to be undertaken at the request of DWP under paragraph 1.6 of Schedule 27, including:<ul style="list-style-type: none">➤ advertising and inviting tenders (where a competitive tender procedure is used)➤ providing advice and assistance to DWP in considering each bid (and where a competitive tender procedure is used, in selecting the preferred tender or tenders)➤ making recommendations for the selection of Third Party Contractor(s)

	<ul style="list-style-type: none"> ➤ negotiating on behalf of DWP (where the PRIME Contractor is acting as DWP's agent) the terms of the contract for carrying out the Department's Configuration Change, any such contract to be subject to DWP's approval prior to the selection and conclusion of a contract with the successful tenderer (it being acknowledged that the PRIME Contractor has no right to commit DWP to the contract) ➤ providing any Third Party Contractor(s) with the documentation which it requires free of charge to enable it to proceed with the Configuration Works which it is to perform in accordance with the terms of its contract ➤ providing DWP with such copies as it may require of all documents relating to the Department's Configuration Change ➤ without limiting the forgoing, ensuring that the principles of equality of information to, treatment of, tenderers shall apply at all times
<p>Stage F</p>	<ul style="list-style-type: none"> • Without limiting the foregoing, prepare and submit to DWP for its approval: <ul style="list-style-type: none"> ➤ a final technical specification and final set of scale working drawings as part of the Final Proposal ➤ final costs in respect of the Department's Configuration Change ➤ a firm programme for the works ➤ the contract (or contracts) with the Third Party Contractor(s)
<p>POST- CONTRACT SERVICES</p>	
<p>Stage G</p>	<ul style="list-style-type: none"> • Decant of staff of DWP, OGD, ISB or DWP Contractor

	<p>affected</p> <ul style="list-style-type: none">• Where the PRIME Contractor is acting as agent, it shall unless DWP otherwise instructs:<ul style="list-style-type: none">➤ certify Practical Completion➤ certify additional costs➤ certify extensions of time➤ instruct variations <p>and/or where the PRIME Contractor is acting as contractor under paragraph 3.3 of Schedule 27, it shall:</p> <ul style="list-style-type: none">➤ certify Practical Completion, under its contract with DWP➤ certify additional works and extensions of time in respect of its contract with Third Party Contractors➤ instruct variations in respect of its contract with Third Part Contractors <ul style="list-style-type: none">• Arrange for the works to commence• Ensure they are completed in accordance with the relevant terms, where acting as contractor under paragraph 3.3 of Schedule 27• Monitor and report progress not less frequently than every month• Administer the building contract• Measure the works• Submit final invoice for the works within 150 days from the Date of Practical Completion of the same• Manage the retentions• Use reasonable endeavours to recover Liquidated Damages due to DWP by any Third Party Contractor• Upon Practical Completion of the Configuration Works, the preparation and delivery to DWP of any information DWP may reasonably require in connection with the Department's
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	<p>Configuration Change (or part thereof) save in respect of any information provided under paragraph 3.9 of Appendix 1 of Schedule 27 which shall be supplied in accordance with that paragraph</p> <ul style="list-style-type: none">• Recant of staff of DWP, OGD, ISB or DWP Contractor affected
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APPENDIX 3

JOBCENTRE PLUS SPECIAL TERMS

Interpretation

For the purposes of this Appendix 3 "go-live date" means the date that DWP is in occupation of the Jobcentre Plus accommodation and references to "goes-live" and "gone-live" shall have the same meaning.

Notwithstanding anything to the contrary, the provisions of this Schedule 27 shall not apply to Jobcentre Plus Projects or a Jobcentre Plus Programme save for this Appendix 3.

Jobcentre Plus Projects

1. The Jobcentre Plus Projects and the Jobcentre Plus Programme shall be performed in accordance with the Jobcentre Plus Agreements, and nothing in this Agreement will prevent DWP exercising its rights under the Jobcentre Plus Agreements.
2. The provisions set out below shall only apply to Jobcentre Plus Projects commencing after the Contract Expansion Date, subject to any existing arrangements between the parties on current Jobcentre Plus Projects.
3. Subject as provided below, where, as a result of the carrying out of any Jobcentre Plus Project, the PRIME Contractor is prevented or inhibited from carrying out the Operations or is able to carry out the Operations in a limited manner only, the PRIME Contractor's obligations under this Agreement and the Project Documents shall be qualified to the extent of such prevention, inhibition or limitation and, for the avoidance of doubt, the Performance Measuring System and the provisions of Schedule 17 relating to Availability Deduction Amounts shall not have effect in respect of that part of the works site affected by the Jobcentre Plus Project 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 works site affected by each Jobcentre Plus Project prior to the commencement of the Jobcentre Plus Project at a works site, and the relief will be as reasonably agreed by DWP and promptly notified to the PRIME Contractor in writing or, failing agreement, determined under the Dispute Resolution Procedure; and
 - (b) the PRIME Contractor may notify DWP in writing of any further relief it wishes to seek in connection with the performance of the Jobcentre Plus Project (additional to the relief notified in accordance with paragraph (a) above) when the circumstances giving rise to the need for that relief were not reasonably foreseeable at the outset of the Jobcentre Plus Project at a works site, and any

such further relief will be as reasonably agreed by DWP and promptly notified to the PRIME Contractor in writing or, failing agreement, determined under the Dispute Resolution Procedure.

4. Any relief granted to the PRIME Contractor in accordance with paragraph 3 above shall not continue after the Jobcentre Plus Project at the Site goes-live, provided that if DWP requires the delivery of certain FM Services to the works site the subject of the Jobcentre Plus Project between the completion date of the Jobcentre Plus Project (as that term is defined in the Jobcentre Plus Agreement) and the go-live date of the Jobcentre Plus Project, DWP may instruct the PRIME Contractor in writing to provide those FM Services.
5. For the avoidance of doubt, subject to any relief granted under paragraph 3 above or any further relief granted under any other provision of the Agreement:
 - (a) upon completion of the Jobcentre Plus Project in accordance with the Jobcentre Plus Agreements, all aspects of this Agreement (including the Required Accommodation Standards and the Service Requirements) will continue to apply to the Facility as if the accommodation incorporating the Jobcentre Plus Project had been included in Part 1 [*Basic Property Data*] of Schedule 6 [*Facility Output Requirements*]; and
 - (b) the PRIME Contractor shall deliver FM Services to the Facility in accordance with this Agreement of which the Jobcentre Plus Project forms part.

6. Life Cycle Maintenance

- 6.1 Notwithstanding anything to the contrary expressed or implied in this Agreement, but subject to clauses 17.23, 17.24, and 17.25, the PRIME Contractor shall pay DWP a capital contribution towards the costs of any works performed pursuant to a Jobcentre Plus Projects as follows:
 - (a) to the extent that that the works performed pursuant to a Jobcentre Plus Project relates to an item of Life Cycle Works shown in a Three Year Plan, the capital contribution shall be equal to the following:
 - (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works appears is in year 1 of the current Three Year Plan;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works appears is in year 2 of the current Three Year Plan; and

- (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works appears in year 3 of the current Three Year Plan,

- (b) where the Jobcentre Plus Project is performed at an Existing ES Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to an item of Life Cycle Works that would have been shown in a Three Year Plan had such a plan been in place at that time taking into account the criteria set out in clause 10, the capital contribution shall be equal to the following:
 - (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within one year from the date of the Jobcentre Plus Project;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within two years from the date of the Jobcentre Plus Project; and
 - (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within three years from the date of the Jobcentre Plus Project,

- (c) where the Jobcentre Plus Project is performed at an Existing DSS Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to Life Cycle Works shown on a Life Cycle Maintenance Plan in existence on the day before the Contract Expansion Date, such capital contribution shall be equal to the following:
 - (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within one year from the date of the Jobcentre Plus Project;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within two years from the date of the Jobcentre Plus Project; and

- (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Jobcentre Plus Project where the item of Life Cycle Works would have been carried out within three years from the date of the Jobcentre Plus Project,

each such contribution referred to as the "**PRIME Contractor's JCP Contribution**".

6.2 Each PRIME Contractor's JCP Contribution shall:

- (a) be reconciled and notified to DWP within one month of the completion date of the Jobcentre Plus Project (as that term is defined in the Jobcentre Plus Agreements);
and
- (b) credited to DWP through a Variable Amount Invoice issued:
 - (i) one month before the end of the relevant Contract Year, or
 - (ii) as directed by DWP in writing.

APPENDIX 4

LARGE Scale PROGRAMMES

Notwithstanding anything to the contrary, the provisions of this Schedule 27 shall not apply to Large Scale Programmes save for this Appendix 4.

1. Duties relating to a Large Scale Programme

1.1 The PRIME Contractor may be asked to perform any of the following duties in relation to a Large Scale Programme, in accordance with the provisions of this Appendix 4:

LSP Project Management Services

- (a) The PRIME Contractor will allocate a LSP Project Manager or team of LSP Project Managers (as required by Good Industry Practice) either from its staff or as an external appointment (at the PRIME Contractor's cost) to manage all Large Scale Programmes and perform the services pursuant to this Appendix 4.
- (b) The PRIME Contractor shall ensure that all persons appointed to perform the LSP Project Management Services are suitably qualified, trained, experienced and competent to perform the LSP Project Management Services and other services. To avoid doubt, if the PRIME Contractor does not have such persons as part of its staff, it will engage external LSP Consultants at its cost.
- (c) The PRIME Contractor will appoint the appropriate LSP Works Manager(s) which DWP (at its discretion) requires in writing, provided (to avoid doubt) that no such LSP Works Manager(s) appointed under this paragraph shall perform, nor be appointed to perform, any LSP Project Management Services.
- (d) The PRIME Contractor will appoint the appropriate LSP Consultants which are either proposed by the PRIME Contractor and agreed with DWP as reasonably required, or which DWP reasonably requires in writing, provided (to avoid doubt) that no such LSP Consultant and/or LSP Works Manager(s) appointed under this paragraph shall perform, nor be appointed to perform, any LSP Project Management Services.
- (e) The LSP Works Manager(s) and/or LSP Consultants referred to in paragraphs (c) and (d) above (respectively) will be appointed through a competitive tender procedure approved by DWP. DWP and the PRIME Contractor will agree jointly a separate fee rate and roles and responsibilities of the LSP Consultants and/or the LSP Manager(s), or at DWP's option, the costs and terms for the LSP Consultancy Services and the LSP Works Management shall be as determined through a competitive tender procedure approved by DWP. The separate fee rate will be expressed as an hourly, daily or fixed term rate and the cost of the services

of such LSP Consultants and/or LSP Works Manager(s) will be invoiced directly to DWP without any additions, provided the LSP Consultant and/or the LSP Works Manager(s) has not performed any LSP Project Management Services. DWP must act reasonably when approving the tender procedure.

- (f) The PRIME Contractor shall procure that each LSP Consultant and/or the LSP Works Manager appointed by it executes a collateral warranty in favour of DWP in a form acceptable to DWP (acting reasonably).
- (g) The PRIME Contractor shall not vary the scope of services performed by any LSP Consultant and/or the LSP Works Managers in a material respect, or the timing or amount of payment or liability of the LSP Consultant and/or the LSP Works Manager under the relevant contract without DWP's written consent, such consent not to be unreasonably withheld.
- (h) The PRIME Contractor shall not charge any percentage additions by way of fees for undertaking the LSP Project Management Services and performing the PRIME Contractor's duties under this Appendix 4, in addition to such LSP Consultant's and/or the LSP Works Manager's fees payable pursuant to paragraph (e), unless the parties agree otherwise in writing or it is determined to be appropriate under the Dispute Resolution Procedure.
- (i) Where the PRIME Contractor appoints an external LSP Project Manager(s) (rather than a member of its staff) to manage the works, the PRIME Contractor shall, however, retain overall responsibility for the necessary consultation and liaison between DWP, the PRIME Contractor and the professional advisers appointed by the PRIME Contractor.
- (j) The generic roles and responsibilities of the LSP Project Manager shall include:
 - (i) obtaining a full understanding of the needs of DWP and interpreting these as necessary, including co-ordinating the performance by the PRIME Contractor of its obligations under this Appendix 4 and operating the procurement procedure as required in relation to the relevant Large Scale Programme;
 - (ii) ensuring that all necessary documentation for authorisation is available for the Department's Representative;
 - (iii) preparing the LSP Appraisal, and any churn related feasibility studies with budget costings for discussion and agreement with the Department's Representative (including costings for alternative courses of action if appropriate). The preparation of a feasibility study will not involve the exploration of the business process of DWP. Costings will be supported

with outline specifications of works where the churn project includes building works. The number of principal options to be explored in any feasibility study will be no more than three per project;

- (iv) employing such LSP Consultants and/or LSP Works Manager as necessary (as agreed or required) (such fees will be reimbursed separately in accordance with paragraph 1.1(e)) and overseeing and co-ordinating the services of the LSP Consultants and/or LSP Works Manager;
- (v) on receipt of the Department's Representative's approval to proceed, managing and co-ordinating through the employment of LSP Consultants and LSP Works Managers as necessary, the design, cost management, planning, specifying and procuring processes through to selection and award of contracts and delivery of the agreed output of the project;
- (vi) procuring, either directly or through others, contractors and LSP Consultants and managing contractors, LSP Consultants and PRIME Contractor's staff as appropriate;
- (vii) identifying and setting out roles and responsibilities of all parties including DWP and all contractors and LSP Consultants as appropriate;
- (viii) managing and co-ordinating all aspects of the project;
- (ix) preparing detailed plan of action with method statements describing who does what, where and when;
- (x) agreeing work programme with Department's Representative (and IT service providers, if appropriate) to ensure the minimum of disruption to DWP;
- (xi) conducting a risk assessment relating to the move, associated works and revised layout including health and safety issues;
- (xii) setting up, attending and taking minutes of all project meetings and circulating the minutes;
- (xiii) ensuring the Schedule of Maintenance Works, the Schedule of Life Cycle Works and Three Years Plan for the relevant Facility are amended if necessary and changes are agreed with the Department's Representative;
- (xiv) providing information to allow amendment of space plans by the PRIME Contractor as necessary;

- (xv) conducting a post move audit and obtaining acceptance of the change by the Department's Representative;
- (xvi) liaising with DWP through appropriate media (for example notice boards, circulars) as part of a communication programme as agreed with the Department's Representative; and
- (xvii) liaising with the Department's Representative to ensure DWP is fully appraised of the timetable, works, responsibilities, impact of works on Available Business Square Metres and FM Services and any other information necessary to ensure the smooth and effective operation of the churn works.

Contracting Services

DWP may (from time to time) in accordance with this Appendix 4 issue a written instruction to the PRIME Contractor requiring it to act as the contractor and not as agent in relation to Large Scale Programmes. If DWP issues such an instruction, to the extent consistent with the principles adopted under paragraph 2.2(c):

- (k) the PRIME Contractor will enter into:
 - (i) a building contract with DWP (on terms to be agreed by the parties, acting reasonably, which shall be consistent with Good Industry Practice for works of a similar nature and scope to the Large Scale Programme); and
 - (ii) a sub-contract with a third party contractor;
- (l) DWP's involvement in the engagement of the third party contractor appointed by the PRIME Contractor shall be limited to extent necessary for DWP to be satisfied that the proposed sub-contract with the third party contractor is capable of meeting DWP's Objectives, and DWP shall not otherwise be involved in the negotiation of the terms and conditions of the sub-contract with the third party contractor; and
- (m) the PRIME Contractor shall, so far as reasonably possible, be responsible for performance by the third party contractor of the Large Scale Programme.

2. Procedure for Procuring a Large Scale Programme

- 2.1 Subject to clause 17.22, the following procedures shall apply to the implementation of a Large Scale Programme.
- 2.2 DWP shall notify the PRIME Contractor of its intention to implement a Large Scale Programme and shall consult with the PRIME Contractor for a period of one month with

regard to the most efficient and economic manner in which the Large Scale Programme can be implemented, taking into account:

- (a) the project management and professional services required, with reference to the duties set out in paragraph 1.1;
- (b) the procurement and contractual arrangements in relation to the works;
- (c) the adoption of any or all of the following principles:
 - that DWP and the PRIME Contractor will act as joint clients under a framework agreement appointing contractors to perform services / work.
 - a framework agreement may provide for projects / services to be awarded at the discretion of DWP where either DWP or the PRIME Contractor (as determined by DWP) will act as client to appoint the selected contractor for the works/services.
 - that DWP will prepare the contract documents for each individual set of works/services, and retains control of any LSP Consultants appointed.
 - that DWP and the PRIME Contract will co-operate in the performance of their role as client on these works/services.
 - that DWP and the PRIME Contractor will be involved in the selection process for the contractors, LSP Consultants and other team members, however, DWP will have final nomination rights to select the chosen contractors, LSP Consultants and other team members for particular works/services.
 - any payments for works/services will be made by DWP direct to LSP Consultants/contractors and other team members where DWP is the client, and any payments will be made to the PRIME Contractor by DWP where the PRIME Contractor is the client.
 - a supply chain of first and second tier suppliers may be selected jointly by the PRIME Contractor and DWP via OJEC taking due account of future maintenance arrangements, with any other supply chain arrangements to be agreed.
 - a national management team may be jointly established by DWP and the PRIME Contractor.

- a direct management structure may be established to provide construction expertise to the end user to assist in the interpretation of their requirements.
- a partnering contract and culture may be adopted which may adopt the partnering form of contract modelled on the ACA Standard Form Contract for Project Partnering PPC2000 (as amended or updated) for use on each individual set of works/services.
- a structured gateway process of approvals may be implemented to control all activities prior to commencement on site.
- that business objectives and design will be closely aligned and clearly communicated.

2.3 Following such consultation the Department's Representative may issue to the PRIME Contractor a notice (a "**Large Scale Programme Enquiry**") specifying:

- (a) on its face that the notice is a Large Scale Programme Enquiry;
- (b) reasonable details of the nature of the Large Scale Programmes;
- (c) the matters to be taken into account as referred to in paragraphs 2.2 (a) - (c) above;
- (d) which of the duties referred to in paragraph 1.1 the DWP wishes the PRIME Contractor to carry out in relation to the Large Scale Programme; and
- (e) any other matters considered by the DWP to be necessary or expedient,

and requesting the PRIME Contractor to submit proposals ("**Large Scale Programme Proposal**") for its fees and other financial terms for the performance of the relevant duties.

2.4 Within one month of receipt of the Large Scale Programme Enquiry:

- (a) the PRIME Contractor shall submit its Large Scale Programme Proposal; and
- (b) the PRIME Contractor shall state whether it considers that it, or the Associate which owns the relevant Site, will have any claim under the indemnity referred to in paragraph 2.7 and if so, what the basis of the claim is and to the extent that it is reasonably practicable to do so, what the value of the claim is.

DWP may adjust its Large Scale Programme in light of the information supplied under paragraph 2.4(b) to remove the basis for the claim prior to engaging in the discussion referred to in paragraph 2.5.

2.5 Following receipt by DWP of the Large Scale Programme, the parties will discuss and seek to agree in good faith fair and reasonable market fees and other financial terms for the services required in relation to the Large Scale Programme. If the parties have not agreed the fees and terms within 10 Business Days then either party may refer the matter to an Adjudicator appointed in accordance with the Dispute Resolution Procedure, provided that for the purposes of this paragraph 2.5, the following provisions shall apply:

- (a) the Adjudicator shall not provide a draft of his determination in accordance with paragraph 2.21 of Schedule 20, but shall instead provide his final determination within the time specified in that paragraph (35 Business Days of his appointment); and
- (b) the Adjudicator's final determination shall be binding on DWP but the PRIME Contractor may decline to proceed to supply the services on the fee basis determined by the Adjudicator's decision.

2.6 If the PRIME Contractor does not accept the Adjudicator's decision in accordance with paragraph 2.5(b) above, then paragraph 3 below shall apply.

2.7 DWP shall indemnify the PRIME Contractor and the Associate which owns a Site affected by a Large Scale Programme for diminution of the value of the reversionary interest in the Site as a consequence of implementation of the Large Scale Programme in accordance with its terms (which, for the avoidance of doubt, shall not include any claims for physical damage caused by (for example) negligent workmanship), provided that:

- (a) a claim may only be made if notice of the possibility of the claim and other details is given in the manner referred to in paragraph 2.4, or where a third party is engaged to implement a Large Scale Programme in the manner referred to in paragraph 3.3; and
- (b) if it is necessary to refer any issue in relation to a claim under this indemnity to the Dispute Resolution Procedure, such reference may not be made later than one month after the planned physical works to be carried out to implement the Large Scale Programme have been designed to a sufficient level of detail to enable the effect to be determined and if the reference is not made within this time period DWP will have no liability under this indemnity.

3. **Third Party Implementation of Large Scale Programmes**

3.1 If the provisions set out in paragraph 2 above:

- (a) cannot be operated because DWP considers that it is required by Law to run a competitive process in relation to project management services in accordance with clause 17.22; or

- (b) are operated but do not result in the parties agreeing the procurement procedures and/or a set of fees and financial terms,

then DWP shall be entitled to engage a third party to implement all or any part of the Large Scale Programme without involving the PRIME Contractor or any of its Associates, including all or any part of the related project management and other professional services, and/or the works.

3.2 Where DWP engages a third party to implement all or any part of the Large Scale Programme in accordance with paragraph 3.1 above, the provisions of:

- (a) paragraphs 4.2 - 4.11 of Schedule 27; and
- (b) paragraph 1.8 of Part 2 of Schedule 10

shall apply to this Appendix 4 as if set out *mutatis mutandis* herein.

3.3 For the purposes of claiming under the indemnity set out in paragraph 2.7, a claim may only be made if notice of the possibility of the claim and other details are given in the following manner:

- (a) DWP will provide the PRIME Contractor with reasonable details of the nature of the Large Scale Programme which a third party has been engaged to implement, and any other matters considered by the DWP to be necessary or expedient, in order for the PRIME Contractor to consider whether it has a claim in accordance with paragraph (b) below;
- (b) within one month of receipt of the details provided in paragraph (a) the PRIME Contractor shall state whether it considers that it, or the Associate which owns the relevant Site, will have any claim under the indemnity referred to in paragraph 2.7 and if so, what the basis of the claim is and to the extent that it is reasonably practicable to do so, what the value of the claim is.

DWP may adjust its Large Scale Programme in light of the information supplied under paragraph 3.3(b) to remove the basis for the claim.

4. **Life Cycle Maintenance**

4.1 Notwithstanding anything to the contrary expressed or implied in this Agreement, but subject to clauses 17.23, 17.24, and 17.25, the PRIME Contractor shall pay DWP a capital contribution towards the costs of any Large Scale Programmes as follows:

- (a) to the extent the same relate to an item of Life Cycle Works shown in a Three Year Plan equal to the following:

- (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works appears is in year 1 of the current Three Year Plan;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works appears is in year 2 of the current Three Year Plan; and
 - (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works appears is in year 3 of the current Three Year Plan,
- (b) where the Large Scale Programme is performed at an Existing ES Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to an item of Life Cycle Works that would have been shown in a Three Year Plan had such a plan been in place at that time taking into account the criteria set out in clause 10, the capital contribution shall be equal to the following:
- (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would have been carried out within one year from the date of the Large Scale Programme;
 - (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would have been carried out within two years from the date of the Large Scale Programme; and
 - (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would have been carried out within three years from the date of the Large Scale Programme,
- (c) where the Large Scale Programme is performed at an Existing DSS Site from the Contract Expansion Date until 1 April 2004 and a Three Year Plan has not been finalised in accordance with clause 6.3 of the Second Supplemental Agreement, then to the extent that any of the relevant works relate to Life Cycle Works shown on a Life Cycle Maintenance Plan in existence on the day before the Contract Expansion Date, such capital contribution shall be equal to the following:
- (i) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would

have been carried out within one year from the date of the Large Scale Programme;

- (ii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would have been carried out within two years from the date of the Large Scale Programme; and
- (iii) [withheld]% of the costs of the item of Life Cycle Works performed as part of the Large Scale Programme where the item of Life Cycle Works would have been carried out within three years from the date of the Large Scale Programme,

each such contribution referred to as the "**PRIME Contractor's LSP Contribution**".

4.2 Each PRIME Contractor's LSP Contribution shall:

- (a) be reconciled and notified to DWP within one month of the date of practical completion of the Large Scale Programme; and
- (b) credited to DWP through a Variable Amount Invoice issued:
 - (i) one month before the end of the relevant Contract Year, or
 - (ii) as directed by DWP in writing.

5. **Relief from Providing Operations**

5.1 Subject as provided below, where, as a result of carrying out a Large Scale Programme, the PRIME Contractor is prevented or inhibited from carrying out the Operations or is able to carry out the Operations in a limited manner only, the PRIME Contractor's obligations under this Agreement and the Project Documents shall be qualified to the extent of such prevention, inhibition or limitation, and for the avoidance of doubt, the Performance Measuring System and the provisions of Schedule 17 relating to Availability Deduction Amounts shall not have effect in respect of such Sites affected by the Large Scale Programme 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 Large Scale Programme prior to the submittal of the final proposal in respect of the Large Scale Programme being agreed or determined, 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 Large Scale Programme (additional to the relief notified in

accordance with paragraph (a) above) for reasons that were not reasonably foreseeable prior to the submittal of the final proposal in respect of the Large Scale Programme being agreed or determined, 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 Large Scale Programme performed at that Site.

Following the date of practical completion, the PRIME Contractor shall accept the Large Scale Programme and deliver the Operations in respect of the Site incorporating the Large Scale Programme in accordance with this Agreement.