

**SCHEDULE 28**

This is Schedule 28 comprising the Guidance on vacation of Flexible and Flexi-Core Facilities referred to in the Project Agreement for the PRIME Project

**BETWEEN**

**The Secretary of State for Work and Pensions**

- and -

**The First Secretary of State**

- and -

**Trillium (PRIME) Limited**

- and -

**Trillium (PRIME) Property GP Limited**

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

**PART I**

**"Capable of being relet"**

1. [withheld]
2. For the avoidance of doubt paragraph 1 above will apply to any vacation under a lease which was in force at the Commencement Date (in respect of a Flexible Facility), or the Contract Expansion Date (in respect of a Flexi-Core Facility), and has since been renewed, except to the extent that PRIME Property agreed different terms at renewal which prejudice DWP's right to vacate, in which case the terms of the original lease will apply in order to determine whether or not the area is capable of being relet for the purposes of clause 17.1A and 17.1E.

**PART II**

**"Capable of Independent Occupation"**

All or part of a Flexible Facility or Flexi-Core Facility which DWP intends to vacate under clause 17.1A or clause 17.1E respectively shall be capable of independent occupation for the purposes of that clause if the requirements of paragraphs 1 to 6 below are fulfilled.

**1. ACCESSIBILITY**

- 1.1 The vacated space must be accessible.
- 1.2 The vacated space will be regarded as accessible if:
  - (a) it is already served by a separate access; or
  - (b) it is accessed over existing common parts such as entrance lobbies, corridors, lifts and stairways; or
  - (c) it would become accessible if a separate access can be created both physically and legally, [withheld]; or
  - (d) common parts can be created or existing access and circulation areas can be designated and treated as common both physically and legally, [withheld],

provided that:

- (e) the primary access route does not involve access over an area which is used by members of the public as the main access into a Benefits Agency public caller office; and
- (f) access from the public highway into the vacated space is not materially worse than the current main access or accesses to the Facility. However, where the vacated space is small in comparison with the size of the Facility, the agreed access should be appropriate to the size and quality of the space.

**2. INDEPENDENCE**

- 2.1 The vacated space must be independent.
- 2.2 The vacated space will be regarded as independent if either:

- (a) the space is physically separated from the retained space and any common parts; or
- (b) the space is capable of becoming independent by being physically separated from the retained space and any common parts.

2.3 For the avoidance of doubt, physical separation may be achieved by the erection of a partition and a lockfast door or the sealing off of any existing connecting doorways and other openings.

### 3. **SIZE**

3.1 The vacated space must be of an appropriate size.

3.2 The vacated space will be regarded as being of an appropriate size if either:

- (a) it has a net internal area of at least 50m<sup>2</sup> of contiguous space; or
- (b) it is currently being used as an independent unit of accommodation,

provided that:

- (c) the configuration of the space is not unduly narrow and is not contiguous by virtue of long corridors.

3.3 Where the space which DWP wishes to vacate has a net internal area of less than 50m<sup>2</sup>, the PRIME Contractor and DWP will consider whether such space is of an appropriate size on a case by case basis.

### 4. **FACILITIES**

4.1 The vacated space must be sufficiently serviced by facilities.

4.2 The vacated space will be regarded as sufficiently serviced by facilities if access remains available to shared facilities such as WCs, kitchens, car parks, restaurants etc., where such facilities are currently available to DWP and other occupiers in respect of multi-let buildings.

4.3 Where car parking is available with the Facility at which space is being vacated, and is not being used for either disabled or visitor parking, the spaces at the Facility will be divided pro rata to the space being vacated to the nearest whole parking space.

4.4 Where a passenger lift currently provides access in a multi-storey building, space will not be regarded as sufficiently serviced by facilities if access to any vacated space more than one floor above a lift door is only available by stairs. PROVIDED THAT where the space comprises two floors within the same demise, and where the lower of these two floors is not more than one floor above a lift door, both floors shall be regarded as sufficiently served by facilities.

### 5. **UTILITIES**

The vacated space must be:

- (a) separately metered or submetered for electricity from the retained accommodation; or
- (b) works must be undertaken to provide such submeters.

**6. STATUTORY COMPLIANCE**

- 6.1 The vacated space must be compliant with all relevant statutory requirements.
- 6.2 The vacated space will be regarded as compliant with all relevant statutory requirements if either:
  - (a) the independent occupation of the space and the continued occupation of any retained space does not breach any relevant statutory requirements; or
  - (b) works are undertaken to comply with all such relevant statutory requirements; or
  - (c) an exemption from compliance with any such statutory requirements is obtained.

**PART III**

**Other requirements for vacation**

- 1. Where works are required in order that the vacated space complies with paragraphs 1 to 6 of Part II of this Schedule, DWP may order the PRIME Contractor to carry out such works and such an order shall be treated as a Department's Configuration Change under clause 17.15. If the cost of any item of works cannot be ascertained under Schedule 27 [*Procedure for Procuring Department's Configuration Changes*], it will be agreed in good faith by DWP and the PRIME Contractor at the time of the order.
- 2. DWP shall bear all costs of ensuring vacated space complies with Parts I and II of this Schedule, except the direct costs of the PRIME Contractor and/or PRIME Property.
- 3. DWP shall, prior to the commencement of any works, submit to the PRIME Contractor for its approval (such approval not to be unreasonably withheld) a schedule of works and any other actions required in order for the space to be vacated to comply with Parts I and II of this Schedule. Such schedule of works will include a detailed specification of works which DWP may request the PRIME Contractor to assist in preparing. DWP will pay the PRIME Contractor its reasonable costs in providing such assistance.
- 4. DWP may not vacate all or part of a Flexible Facility or Flexi-Core Facility until the PRIME Contractor has approved (such approval not to be unreasonably withheld):
  - (a) the completion of the necessary works and other actions to enable the vacated space to comply with the provisions of Parts I and II of this Schedule;
  - (b) that any works have been carried out in accordance with the Required Accommodation Standards (except to the extent that the PRIME Contractor would have been relieved from such standards under clause 10.24 [*Life Cycle Works at Existing Sites*]);
  - (c) that as far as is practicable, the benefit of all manufacturer's warranties in respect of the works carried out are assigned to the PRIME Contractor; and

(d) that the division of the space to be vacated from the space to be retained does not result in the space to be retained failing to comply with the Required Accommodation Standards where it so complied prior to such division,

and DWP will continue to make the Facilities Payment for such Flexible Facility or Flexi-Core Facility or part of it until the PRIME Contractor gives such approval.