

SCHEDULE 19

This is Schedule 19 comprising the Forms of Direct Agreement referred to in the Project Agreement for the PRIME Project

BETWEEN

The Secretary of State for Work and Pensions

- and -

The First Secretary of State

- and -

Trillium (PRIME) Limited

- and -

Trillium (PRIME) Property GP Limited

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

PART 1

[withheld]

PART 2A
EXTERNAL SERVICE PROVIDER DIRECT AGREEMENT

CONTENTS

CLAUSE

1.	DEFINITIONS AND RULES OF INTERPRETATION	4
2.	SERVICE PROVIDER'S OBLIGATIONS	5
3.	RIGHTS ON TERMINATION OF PROJECT AGREEMENT	6
4.	DIRECT SERVICES PROVISION	6
5.	ORDERLY HANDOVER	7
6.	COMPENSATION ON EXPIRY	10
7.	PAYMENT	10
8.	LIABILITY AND INDEMNITY	10
9.	PRIME CONTRACTOR'S CONSENT	11
10.	SERVICE PERFORMANCE GUARANTOR'S OBLIGATIONS	11
11.	ASSIGNMENT	12
12.	CONFIDENTIALITY	12
13.	COSTS AND EXPENSES	13
14.	SEVERABILITY	13
15.	AMENDMENTS	13
16.	THIRD PARTY BENEFICIARIES	13
17.	WAIVER	13
18.	NOTICES	13
19.	GOVERNING LAW AND JURISDICTION	14

THIS DIRECT AGREEMENT is made as a deed on the [] day of [] 2003.

BETWEEN:

- (1) **The Secretary of State for Work and Pensions** (the "**DWP**");
- (2) **Trillium (PRIME) Limited**, incorporated and registered in England and Wales with registered number 03258384 (the "**PRIME Contractor**");
- (3) [] incorporated and registered in England and Wales with registered number [] (the "**Service Provider**"); and
- (4) [], incorporated and registered in England and Wales with registered number [] (the "**Service Provider Guarantor**").

WHEREAS:

- (A) This is a Direct Agreement referred to in the Project Agreement.
- (B) The PRIME Contractor has agreed pursuant to the Project Agreement to carry out Operations for DWP.
- (C) The Service Provider has agreed pursuant to the terms of a Service Contract to carry out certain services in performance of part or all of the PRIME Contractor's obligations to carry out the Operations for DWP pursuant to the Project Agreement.
- (D) The Service Provider has agreed to enter into this Direct Agreement with DWP in order to create, in the circumstances specified in this Direct Agreement, a direct contractual relationship between DWP and the Service Provider.
- (E) [The Service Performance Guarantor has agreed to guarantee the Service Provider's obligations pursuant to this Direct Agreement.]

IT IS AGREED:

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

In this Direct Agreement:

"Continuing Services" means those services being provided by the Service Provider pursuant to the Service Contract immediately prior to the Operative Date;

"Extended Period" means, unless DWP notifies the Service Provider of a shorter period the period of 12 months from the expiry of the 30 Business Day notice period referred to in clause 2;

"Fee" means the fee or fees due and payable to the Service Provider by the PRIME Contractor or its relevant Associate under the terms of the Service Contract from the Operative Date in respect of the provision of the Continuing Services;

"Project Agreement" means the contract between DSS, SSE, Partnership Property Management (PRIME) Limited and PPM (PRIME) Property Limited (acting as general partner of PPM (PRIME) Property Limited Partnership, a limited partnership registered under the Limited Partnership Act 1957) dated 27 March 1998 as amended from time to time;

"**Service Contract**" means the service contract between the Service Provider and the PRIME Contractor [or its relevant Associate] dated [];

"**Termination Date**" means the date of termination of the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clause 8.1 of the Project Agreement whether by expiry of the Operating Period or otherwise;

1.2 Rules of Interpretation

In this deed:

- (a) a reference to a clause unless stated otherwise is to a clause of this Direct Agreement;
- (b) unless the context otherwise requires or save as expressly defined herein capitalised terms defined in the Project Agreement shall have the same meaning herein;
- (c) the provisions of clause 1 [*Interpretation*] of the Project Agreement shall apply hereto as if expressly set out herein with the necessary changes;
- (d) the headings and sub-headings are included for convenience only and shall not be taken into account in the interpretation of this Direct Agreement;
- (e) the interpretation rule known as the *ejusdem generis rule* shall not apply, nor shall any similar rule or approach to the construction of this Direct Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (f) except where the context requires otherwise, references to any agreement or document include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned;
- (g) except where the context otherwise requires references to "parties" means the parties to this Direct Agreement and references to "a party shall mean one of the parties to this Direct Agreement;
- (h) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (i) a reference to days is a reference to calendar days; and
- (j) where the last day for performance of an obligation under this Direct Agreement falls on a day which is not a Business Day, the latest time for performance shall be extended to noon on the next following Business Day.

2. SERVICE PROVIDER'S OBLIGATIONS

2.1 Notice of termination

If the Service Provider serves on the PRIME Contractor any notice of termination under the Service Contract it shall forthwith upon service of such notice serve a copy of it on DWP.

2.2 Exercise of Rights

The Service Provider covenants and agrees with DWP and the PRIME Contractor that the Service Provider will not exercise or seek to exercise any right which it may now or at any time hereafter have under the Service Contract or otherwise:

- (a) to terminate, cancel, repudiate, accept repudiation or abandon the Service Contract or suspend or terminate the performance of any of its obligations thereunder;
- (b) to take any action or steps or commence any legal proceedings for the winding up, dissolution, administration, voluntary arrangement or reorganisation of [the PRIME Contractor] or for the appointment of a receiver, administrator, trustee, administrative receiver or similar officer in respect of the PRIME Contractor; or
- (c) to levy, make or take any execution, distress, attachment or legal process of the whole or any part of the property, undertaking or assets of [the PRIME Contractor],

without first giving to DWP not less than 30 Business Days' prior written notice of the Service Provider's intentions specifying the ground for the proposed exercise of the relevant right and details of all sums which are properly due and payable to the Service Provider under the Service Contract as at the date of such notice (and full details of the terms of the Service Contract as are relevant to the ground for the proposed exercise of the relevant right) and, notwithstanding any provision of the Service Contract unless terminated by the PRIME Contractor, the Service Contract shall not otherwise terminate, be cancelled or abandoned until the expiry of that 30 Business Day period. It is specifically agreed that once the 30 Business Day notice period has expired the Service Provider's obligations hereunder shall be met if it has served on the DWP a copy of any notice served by the Service Provider on the PRIME Contractor provided always that nothing in this Direct Agreement shall limit the right of the Service Provider to set off sums owing by it to the PRIME Contractor against the liabilities of the PRIME Contractor to it.

3. RIGHTS ON TERMINATION OF PROJECT AGREEMENT

3.1 Following receipt of a notice served by the Service Provider pursuant to clause 2 and at any time before the expiry of the 30 Business Day notice period, subject to clause 3.2 DWP may give written notice to the PRIME Contractor and the Service Provider specifying that DWP requires the Service Provider to provide the Continuing Services for the Extended Period or to effect the orderly handover provisions contained in clause 5 below.

3.2 DWP may only serve the notice referred to in clause 3.1 if:

- (a) an Event of Default (as described in clause 25.1 of the Project Agreement) has occurred; or
- (b) the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clauses 8.1 and 8.1A of the Project Agreement has been terminated

4. DIRECT SERVICES PROVISION

Subject to the fulfilment of the provisions of clause 3, and following the expiry of the 30 Business Day notice period referred to in clause 2, in consideration of DWP making the payments specified in clause 7 the Service Provider shall provide the Continuing Services to the DWP, on the same terms and conditions as contained in the Service Contract, for the Extended Period.

5. ORDERLY HANDOVER

5.1 Obligation to Assist

The Service Provider shall where DWP does not require (or is not entitled to require) the provision of the Continuing Services for the Extended Period following the Termination Date or following the end of the Extended Period, if requested by DWP and upon reasonable notice provide assistance to DWP (including the provision of relevant information and data) with transitional arrangements to the extent reasonable and necessary to achieve the minimum disruption to the provision of the Continuing Services and an orderly transfer to and implementation of alternative services to the Continuing Services, whether provided by the DWP or a third party contractor.

5.2 Access to information

During the transitional period following the Termination Date or the Extended Period as applicable the Service Provider shall, to the extent that the same are reasonably necessary to achieve an effective transition without disruption to the Continuing Services and to the extent it is lawfully and reasonably able so to do, provide all reasonable co-operation to DWP, which co-operation shall extend to full access to all materials, documents, data, reports and summaries (in such form as is compatible with industry standard software used by DWP) in respect of such of the Sites to remain occupied by DWP and Equipment at these Sites acquired or created by the Service Provider for the purposes of performing the Operations and any other information required for such purpose.

5.2A Intellectual Property

Upon termination of the Project Agreement or the termination of the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clause 8.1 of the Project Agreement, irrespective of the reason, the Service Provider shall provide to DWP:

- (a) a 12 month non-exclusive and non-transferable licence to use the object code form only of any base building management systems Software owned by the Service Provider, which is required by DWP or its nominated third party contractor to operate the Equipment and/or facilities located at the Sites which DWP (either by itself or any OGD, ISB or DWP Contractor) continues to occupy at the date of termination of the Project Agreement ("Building Management Software"). For the avoidance of doubt, the Building Management Software shall not include the following software used by the PRIME Contractor and the Service Provider in the performance of the PRIME Contractor's obligations under the Project Agreement:
 - (i) the property and portfolio accounting system software;
 - (ii) the tracking and implementing work order software;
 - (iii) the preventive maintenance work order software;
 - (iv) software used for the centralised call centre; and
 - (v) performance measurement software
- (b) the licence described in clause 32.19(b) above shall include the following terms:
 - (i) the licensee shall use the Building Management Software only for purposes of operating and maintaining the Sites which DWP (itself or through any OGD, ISB or DWP Contractor) continues to occupy;

- (ii) the licensee shall not copy, modify, reverse engineer, decompile, disassemble or disclose the Building Management Software save as otherwise permitted expressly by Law;
 - (iii) to the extent permitted by Law, the licensor disclaims all warranties with respect to the performance of, and otherwise, the Building Management Software;
 - (iv) the licensor shall have the right to terminate the licence upon 30 days notice in the event of breach of the licence by the licensee and such breach not being cured within the 30 day notice period;
 - (v) the licence may include other terms and conditions reasonably required by the licensor of the Building Management Software to protect its proprietary rights in the Building Management Software; and
 - (vi) the provisions under clause 32.4 of the Project Agreement with respect to Confidential Data shall apply to any Confidential Data provided under this clause 5.2A. For the avoidance of doubt, third party contractors nominated by DWP shall have the right to use the Confidential Data subject to the terms and conditions of clause 32.4(b) of the Project Agreement; and
- (c) nothing in this clause 5.2A shall require the Service Provider to provide to DWP any software products owned by the Service Provider other than the Building Management Software.

5.3 Information required for tendering purposes

The Service Provider acknowledges that upon or in anticipation of, the end of the Extended Period or on the Termination Date, DWP may wish to tender or procure the tender of the award of a contract relating to some or all of the Continuing Services. The Service Provider will co-operate with DWP fully in such competition process and will provide DWP with such information as DWP shall reasonably require for the purpose of preparing the tender documentation or the provision of information to tenderers or potential tenderers including, but without prejudice to the generality of the foregoing, the following details:

- (a) full name and ages of all staff employed by the Service Provider in relation to the Continuing Services (and where employees are not engaged wholly in the performance of this Direct Agreement, the Service Contract or the Continuing Services, the Service Provider shall provide details of the relevant employee's participation indicating the proportion of time in which each person is so engaged and how the remainder of the person's time is spent);
- (b) details of staff employed by the Service Provider in relation to the Continuing Services and terms and conditions of employment stating in particular, dates of commencement of employment, salary, bonus and holiday entitlement, pension entitlement and other benefits (including benefits arising on termination of employment); a copy of the terms and conditions of employment relating to the staff employed by the Service Provider must also be provided;
- (c) an indication of the activities performed by each member of staff employed by the Service Provider in relation to the Continuing Services;
- (d) details of membership of any trade union and agreements (including collective agreements) with any trade union;

- (e) any information which DWP reasonably considers necessary to conduct such competition; and

will assist DWP by providing or ensuring the provision to all (or any) participants in such competition process of reasonable access to the Site and Equipment where such access is within its control.

5.4 **Transfer to DWP of assets, contracts etc.**

Upon termination of the Project Agreement or the termination of the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clause 8.1 of the Project Agreement, irrespective of the reason:

- (a) the Service Provider shall, to the extent permitted, deliver or transfer or cause to be delivered or transferred to DWP:
- (i) "as built drawings" showing all alterations made by the Service Provider since the commencement of the Operations;
 - (ii) operation, training and maintenance manuals and any other manuals, instructions or records of procedures necessary for the use of the Sites and Equipment;
 - (iii) any relevant licence, permission or consent relating to the Sites or the FM Services; and
 - (iv) any other drawings, specifications or other data completed or provided in connection with this Agreement,

which relate to those Sites to remain occupied by DWP any OGD, ISB or DWP Contractor.

- (b) DWP shall have an option to purchase from the Service Provider at an open market value (as agreed by DWP and the Service Provider with any disputes as to such open market value being determined in accordance with the relevant provisions of the Red Book by the Adjudicator) and free from any Security Interest any interest of the Service Provider in such of the Equipment as delivers the Required Outputs at the Sites to remain occupied by the DWP, any OGD, ISB or DWP Contractor, all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by the Service Provider and reasonably required in connection with the Operations at the Site to remain occupied by DWP any OGD, ISB or DWP Contractor;
- (c) The Service Provider shall, so far as is practicable, procure that the benefit of all manufacturer's warranties in respect of any Equipment purchased by DWP pursuant to clause 8.1(b) are assigned to DWP or such nominee as DWP may designate from time to time;
- (d) The Service Providers shall approach any third party licensors of any software used to operate any Equipment purchased by DWP pursuant to clause 8.1(b) and shall use its reasonable endeavours to procure the assignment of the same to DWP.
- (e) The Service Provider shall deliver to DWP, any specifications, plans, drawings or other documents or material issued by or on behalf of DWP for the purposes of this Direct Agreement and any data of DWP which were disclosed to or obtained by the Service Provider during the course of providing the FM Services and shall, if so requested, and provided it is lawful so to do, destroy or procure the destruction of any copies (whether in manual or electronic form) of such data.

5.5 **Good faith**

The Service Provider shall act in good faith and take all reasonable steps to ensure that the transitional arrangements cause the least practical disruption and that the handover is achieved in accordance with the timetable reasonably required by DWP.

5.6 **Termination or Expiry of Project Agreement**

The Service Provider shall on termination or expiry of the Project Agreement assist and provide all reasonable co-operation to the PRIME Contractor and DWP to enable the PRIME Contractor fully to comply with its obligations contained in clause 28 [*Effect of Termination or Expiry*] of the Project Agreement.

6. **COMPENSATION ON EXPIRY**

Where the Project Agreement is terminated for the DWP's default, DWP shall not be liable to pay any compensation to the Service Provider other than as provided in clause 29 [*Compensation on Termination*] of the Project Agreement.

7. **PAYMENT**

Upon the Service Provider providing the Continuing Services for the Extended Period pursuant to clause 4 above DWP shall pay and shall continue to pay the Fee on the basis set out in the Service Contract.

8. **LIABILITY AND INDEMNITY**

8.1 **DWP's Liability**

For the avoidance of doubt:

- (a) DWP shall not be responsible for any liabilities incurred by the PRIME Contractor or its Associates to the Service Provider pursuant to the Service Contract or otherwise prior to the Extended Period; and
- (b) in respect of the Continuing Services provided by the Service Provider to DWP pursuant to this Direct Agreement, DWP shall have the same obligations and liabilities to the Service Provider as the PRIME Contractor or its relevant Associates had pursuant to the Service Contract.

8.2 **Service Provider's Liability**

For the avoidance of doubt:

- (a) the Service Provider shall have no obligation or liability to DWP in respect of any service provision by the Service Provider to the PRIME Contractor or its relevant Associate prior to the Extended Period; and
- (b) in respect of the Continuing Services provided by the Service Provider to DWP pursuant to this Direct Agreement, the Service Provider shall owe no greater duty and have no greater liability to DWP than it owes or had to the PRIME Contractor or its relevant Associate pursuant to the Service Contract.

8.3 **DWP's indemnity**

DWP will indemnify the PRIME Contractor against any costs, claims, demands, actions, proceedings, expenses, losses or damages which the PRIME Contractor or its relevant Associate may suffer as a result of DWP exercising its rights under clause 3.

9. **PRIME CONTRACTOR'S CONSENT**

The PRIME Contractor by its execution of this Direct Agreement agrees to its terms and conditions.

10. **SERVICE PERFORMANCE GUARANTOR'S OBLIGATIONS**

10.1 **Guarantee**

The Service Performance Guarantor hereby unconditionally and irrevocably guarantees to DWP:

- (a) the due and punctual performance and observance by the Service Provider of all its obligations, commitments, undertakings, warranties and indemnities in the performance of the Continuing Services under or pursuant to this Direct Agreement; and
- (b) the prompt discharge of all the Service Provider's liabilities under this Direct Agreement including any costs, claims, demands, actions, proceedings, expenses (including but not limited to full legal costs and disbursements on a solicitor and client basis), losses and damages which DWP may suffer or incur through or arising from any breach or negligent performance (or non-performance) by the Service Provider of its obligations, commitments, warranties or undertakings under or pursuant to this Direct Agreement,

provided always that the liability of the Service Performance Guarantor to DWP hereunder shall be no greater than the liability of the Service Provider to DWP pursuant to the terms of this Direct Agreement.

- 10.2 The liability of the Service Performance Guarantor under this Direct Agreement shall not be released or diminished by any variation of the terms of this Direct Agreement or the Service Contract (whether or not agreed by the Service Performance Guarantor), any forbearance, neglect or delay in seeking performance of the obligations hereby imposed or any granting of time for such performance provided always that the liability of the Service Performance Guarantor to DWP hereunder shall be no greater than the liability of the Service Provider to DWP pursuant to this Direct Agreement.

10.3 **Performance of Obligations**

If and whenever the Service Provider defaults for any reason whatsoever in the performance of any obligation or liability undertaken or expressed to be undertaken by the Service Provider under or pursuant to this Direct Agreement the Service Performance shall forthwith perform (or procure the performance of) and satisfy or procure the satisfaction of) the obligation or liability in regard to which such default has been made in the manner prescribed by this Direct Agreement and so that the same benefits shall be conferred on DWP as it would have received if such obligation or liability had been duly performed and satisfied by the Service Provider.

10.4 **Duration**

The guarantee set out in this clause 10 is to be a continuing guarantee and accordingly is to remain in full force and effect until all the obligations and liabilities of the Service Provider pursuant to this Direct Agreement shall have been performed or satisfied. The

guarantee set out in this clause 10 is in addition to and without prejudice to and not in substitution for any rights or security which DWP may now or hereafter have or hold for the performance and observance of the obligations, commitments, undertakings and warranties of the Service Provider under or in connection with this Direct Agreement or otherwise.

10.5 **Legal Limitation**

As a separate and independent stipulation the Service Performance Guarantor agrees that any obligation expressed to be undertaken by the Service Provider (including, without limitation, any moneys expressed to be payable under the this Direct Agreement) which may not be enforceable against or recoverable from the Service Provider by reasons of any legal limitation, disability or incapacity on or of the Service Provider or any other fact or circumstance (other than any limitation imposed by this Direct Agreement or the Service Contract) shall nevertheless be enforced against and recoverable from the Service Performance Guarantor as though the same had been incurred by the Service Performance Guarantor and the Service Performance Guarantor were the sole or principal obligor in respect thereof and shall be performed or paid by the Service Performance Guarantor on demand.

11. **ASSIGNMENT**

DWP may assign by way of absolute legal assignment and/or charge the benefit of this Direct Agreement and/or any of the present or future rights, interests and benefits of DWP hereunder to any third party to whom the Project Agreement is lawfully assigned.

12. **CONFIDENTIALITY**

12.1 **Non-Disclosure**

DWP and the Service Provider shall ensure that all information in relation to, or performance of, the Project Agreement or Service Contract ("**Confidential Information**") which is supplied to it by the other or otherwise becomes available to it shall be treated as confidential. Confidential Information shall not be disclosed or revealed except as required in accordance with clause 12.2 or with the parties' written consent. DWP hereby agrees that the Confidential Information may be disclosed to the Service Provider's professional advisers and employees to the extent reasonably necessary to carry out their functions. The provisions of this clause 12 shall not apply to any information which is in the public domain.

12.2 **Disclosure**

If the Service Provider or DWP (the "**Disclosing Party**") is required to disclose any Confidential Information by Law or by any governmental or regulatory authority in accordance with whose instructions the Disclosing Party is accustomed to act, then DWP or, as the case may be, the Service Provider, shall be deemed to have given its consent to such disclosure. The Service Provider shall inform DWP and DWP shall inform the Service Provider, in either case in writing, of the requirement for disclosure as soon as reasonably possible after it becomes aware of it and, if possible, before any Confidential Information is disclosed. Each party agrees to assist and co-operate in any appropriate action which the other party may decide to take in accordance with this clause.

12.3 **Precautions**

The Service Provider and DWP shall take all practicable precautions to ensure that all Confidential Information is treated as confidential and not disclosed or revealed other than in accordance with the terms of this Direct Agreement.

12.4 Employees

A disclosure or revelation of Confidential Information by:

- (a) an employee, consultant or sub-contractor of the Service Provider shall be deemed to be a disclosure or revelation of Confidential Information by the Service Provider; or
- (b) DWP's staff shall be deemed to be a disclosure or revelation of Confidential Information by DWP.

12.5 Data Protection Act Compliance

The Service Provider warrants that it will duly observe all of its obligations under and shall provide its services in compliance with the Data Protection Act 1984 and/or the Data Protection Act 1998 and all European directives in relation to data protection matters which arise in connection with this Direct Agreement.

12.6 No Announcements

Except with the written consent of DWP the Service Provider shall not make any press announcement or publicise this Direct Agreement in any way.

13. COSTS AND EXPENSES

Each party shall be responsible for paying its own costs and expenses in relation to the preparation, execution and implementation of this Direct Agreement.

14. SEVERABILITY

If any provision of this Direct Agreement is or becomes illegal, invalid or unenforceable, the effectiveness of the remaining provisions of this Direct Agreement shall not be prejudiced or impaired.

15. AMENDMENTS

No amendments to any part of this Direct Agreement shall be binding unless in writing and signed by duly authorised representatives of the parties.

16. THIRD PARTY BENEFICIARIES

This agreement shall not confer any rights whatever on any third party.

17. WAIVER

Any failure of or delay by either party in relation to the exercise of its rights under this Direct Agreement shall not constitute a waiver of such rights and any waiver in respect of one act or omission shall not operate as a waiver in respect of any other or future acts or omissions.

18. NOTICES

18.1 Any notice or communication which is given under this Direct Agreement shall be given in writing. Any notice given under or in connection with this Direct Agreement shall be regarded as properly served when:

- (a) in the case of a notice to the PRIME Contractor, it is delivered by hand or by post to the PRIME Contractor's office at 140 London Wall, London EC2Y 5DN or if it is sent by fax to a published fax number of the PRIME Contractor marked for the attention of the PRIME Contractor's Representative; or

- (b) in the case of a notice to DWP, if it is delivered by hand or by post to the Department of Social Security, PRIME Project Team, 4th Floor, Tavis House, London WC1H 9NB or if it is sent by fax to a published fax number of DWP marked for the attention of DWP's Representative for the time being by name; or
- (c) in the case of a notice to the Service Provider, it is delivered by hand or by post to the Service Provider at [] or if it is sent by fax to a published fax number of the Service Provider marked for the attention of [].
- (d) In the case of a notice to the Service Provider Guarantor, it is delivered by hand or by post to [] at [] or if it is sent by fax to a published fax number of [] marked for the attention of [].

18.2 If the day of service is not a Business Day or service takes place after 5 pm on a Business Day then the notice shall be deemed to be served on the following Business Day.

19. GOVERNING LAW AND JURISDICTION

19.1 Governing Law

This agreement shall be governed by and interpreted in accordance with the laws of England.

19.2 Jurisdiction

The parties each submit to the jurisdiction of the English Courts as regards any claim or matter arising in relation to this Direct Agreement.

IN WITNESS of which the parties have executed and delivered this Direct Agreement as a Deed on the date first written above.

The Corporate Seal of the Secretary of State for Work and Pensions hereunto affixed is authenticated by:

Authorised by the Secretary of State for Work and Pensions

Witnessed by:

Address:

THE PRIME CONTRACTOR

EXECUTED AND DELIVERED as a deed by TRILLIUM (PRIME) LIMITED)
 acting by two of its directors or a director and its secretary)

Signatory Full Name: []

[]

THE SERVICE PROVIDER

EXECUTED AND DELIVERED as a deed by)
[] acting by two of its directors or)
a director and its secretary)

Signatory Full Name: []
[]

[]

EXECUTED AND DELIVERED as a deed by)
[] acting by two of its directors or)
a director and its secretary)

Signatory Full Name: []
[]

PART 2B

SERVICES DIRECT AGREEMENT FROM ASSOCIATES PROVIDING SERVICES

DATED _____ 200

The Secretary of State for Work and Pensions

- and -

Trillium (PRIME) Limited

- and -

[Associates]

**SERVICES DIRECT AGREEMENT FROM ASSOCIATES
PROVIDING SERVICES**

relating to the TIES Project

Lovells
ATLANTIC HOUSE
HOLBORN VIADUCT
LONDON EC1A 2FG

Document: 1267547

CONTENTS

CLAUSE		
1.	DEFINITIONS AND RULES OF INTERPRETATION	4
2.	ORDERLY HANDOVER	5
3.	LIABILITY AND INDEMNITY	8
4.	PRIME CONTRACTOR'S CONSENT	9
5.	CONFIDENTIALITY	9
6.	SEVERABILITY	10
7.	AMENDMENTS	10
8.	WAIVER	10
9.	NOTICES	10
10.	GOVERNING LAW AND JURISDICTION	11

THIS DIRECT AGREEMENT is made as a deed on the [] day of [] 2003.

BETWEEN:

- (1) **The Secretary of State for Work and Pensions (the "DWP");**
- (2) **Trillium (PRIME) Limited**, incorporated and registered in England and Wales with registered number 03258384 (the "**PRIME Contractor**");
- (3) [], incorporated and registered in England and Wales with registered number [] (the "**Service Provider**"); and

WHEREAS:

- (C) This is a Direct Agreement referred to in the Project Agreement.
- (D) The PRIME Contractor has agreed pursuant to the Project Agreement to carry out Operations for DWP.
- (C) The Service Provider has agreed pursuant to the terms of an intra group arrangement between the PRIME Contractor and the Service Provider to carry out certain services in performance of part or all of the PRIME Contractor's obligations to carry out the Operations for DWP pursuant to the Project Agreement.
- (D) The Service Provider has agreed to enter into this Direct Agreement with DWP in order to create, in the circumstances specified in this Direct Agreement, a direct contractual relationship between DWP and the Service Provider.

IT IS AGREED:

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions

In this Direct Agreement:

"Operative Date" means the date of termination of the right and obligation of the PRIME Contractor to continue to implement the Operations in accordance with clause 8.1 of the Project Agreement (whether by expiry of the Operating Period or otherwise);

"Project Agreement" means the Contract between DSS, SSE, Partnership Property Management (PRIME) Limited and PPM (PRIME) Property Limited (acting as general partner of PPM (PRIME) Property Limited Partnership, a limited partnership registered under the Limited Partnerships Act 1907) dated 27 March 1998 as amended from time to time.

1.2 Rules of Interpretation

In this deed:

- (a) a reference to a clause unless stated otherwise is to a clause of this Direct Agreement;
- (b) unless the context otherwise requires or save as expressly defined herein capitalised terms defined in the Project Agreement shall have the same meaning herein;
- (c) the provisions of clause 1 [*Interpretation*] of the Project Agreement shall apply hereto as if expressly set out herein with the necessary changes;

- (d) the headings and sub-headings are included for convenience only and shall not be taken into account in the interpretation of this Direct Agreement;
- (e) the interpretation rule known as the *ejusdem generis rule* shall not apply, nor shall any similar rule or approach to the construction of this Direct Agreement and accordingly general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words;
- (f) except where the context requires otherwise, references to any agreement or document include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned;
- (g) except where the context otherwise requires references to "parties" means the parties to this Direct Agreement and references to "a party shall mean one of the parties to this Direct Agreement;
- (h) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (i) a reference to days is a reference to calendar days; and
- (j) where the last day for performance of an obligation under this Direct Agreement falls on a day which is not a Business Day, the latest time for performance shall be extended to noon on the next following Business Day.

2. ORDERLY HANDOVER

2.1 Intellectual Property

Upon occurrence of the Operative Date, the Service Provider shall provide to DWP:

- (a) (in such form as is compatible with industry standard software used by DWP in order that DWP may access) all materials, documents and data acquired or created by the Service Provider for the purposes of performing the Operations but not for other purposes other than the Operations which are reasonably required by DWP to operate, maintain, enhance or improve the Sites which DWP (either by itself or through an OGD, ISB or DWP Contractor) continues to occupy, which shall include purposes of maintaining and improving the Equipment located at such Sites (where applicable), providing the FM Services (or a part thereof) provided by the Service Provider prior to termination or expiry to such Sites and the carrying out of the Operations (or a part thereof) by DWP or a third party on its behalf provided that the provisions under clause 5 hereof with respect to Confidential Data shall apply to any Confidential Data provided under this clause; and
- (b) a 12 month non-exclusive and non-transferable licence to use the object code form only of any base building management systems Software owned by the Service Provider, which is required by DWP or its nominated third party contractor to operate the Equipment and/or facilities located at the Sites which DWP (either by itself or any OGD, ISB or DWP Contractor) continues to occupy at the date of termination of the Project Agreement ("Building Management Software"). For the avoidance of doubt, the Building Management Software shall not include the

following software used by the PRIME Contractor or the Service Provider in the performance of the PRIME Contractor's obligations under the Project Agreement:

- (i) the property and portfolio accounting system software;
 - (ii) the tracking and implementing work order software;
 - (iii) the preventive maintenance work order software;
 - (iv) software used for the centralised call centre; and
 - (v) performance measurement software
- (c) the licence described in clause 2.1(b) above shall include the following terms:
- (i) the licensee shall use the Building Management Software only for purposes of operating and maintaining the Sites which DWP (itself or through any OGD, ISB or DWP Contractor) continues to occupy;
 - (ii) the licensee shall not copy, modify, reverse engineer, decompile, disassemble or disclose the Building Management Software save as otherwise permitted expressly by Law;
 - (iii) to the extent permitted by Law, the licensor disclaims all warranties with respect to the performance of, and otherwise, the Building Management Software;
 - (iv) the licensor shall have the right to terminate the licence upon 30 days notice in the event of breach of the licence by the licensee and such breach not being cured within the 30 day notice period;
 - (v) the licence may include other terms and conditions reasonably required by the licensor of the Building Management Software to protect its proprietary rights in the Building Management Software; and
 - (vi) the provisions under clause 32.4 of the Project Agreement with respect to Confidential Data shall apply to any Confidential Data as if set out herein. For the avoidance of doubt, third party contractors nominated by DWP shall have the right to use the Confidential Data subject to the terms and conditions of clause 32.4(b) of the Project Agreement as if set out herein; and
- (d) nothing in this clause 2.1 shall require the Service Provider to provide to DWP any software products owned by the Service Provider other than the Building Management Software.
- (e) notwithstanding the foregoing provisions of this clause 2.1, in no event shall any party be obliged to licence or otherwise provide DWP or any other party with the right to use or access that certain software system and process (including, without limitation, trade secret and other confidential information and/or documentation regarding the same) currently owned by the Archon Group and known as the Venture Asset Management System, as such system may be modified, enhanced and updated from time to time.

2.2 Information required for tendering purposes

- (a) If DWP wishes to conduct a competition prior to the Operative Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the FM Services or any of them) following the

Operative Date, the Service Provider shall co-operate with DWP fully in such competition process including (without limitation) by:

- (i) providing any information held by the Service Provider which DWP reasonably considers necessary to conduct such competition; and
- (ii) assisting DWP by providing or ensuring the provision to all (or any) participants in such competition process of reasonable access to the Sites and the Equipment (insofar as this is within the control of the Service Provider).

DWP shall reimburse the Service Provider for all reasonable costs and expenses incurred in carrying out its obligations under clause 2.2(a).

- (b) The Service Provider agrees that in the period prior to, or after the Operative Date it shall use its best endeavours to provide to DWP and/or to any prospective Incoming Contractor, within 45 days of receiving a written request, such information and documentation regarding the PRIME Contractor Staff which are employed by the Service Provider which may be reasonably required by DWP or any prospective Incoming Contractor for use in a re-tender process only. This obligation shall be subject to any data protection obligations and other legal restraints from time to time applicable.

2.3 **Transfer to DWP of assets, contracts etc.**

Upon the occurrence of the Operative Date:

- (a) the Service Provider shall transfer or cause to be transferred to, and there shall vest in, DWP (or such person as DWP may direct) any interest of the Service Provider in such of the DWP Equipment and DWP Furniture at the Sites to remain occupied by the DWP, any OGD, ISB or DWP Contractor which in the case of the termination of the Project Agreement on expiry of the Operating Period shall be in the state required in accordance with clause 14 [*Expiry Requirements*] of the Project Agreement. If the right and obligation of the PRIME Contractor to continue to implement the Operations is terminated:
 - (i) in relation to all Former DSS Equipment and Former DSS Furniture no consideration shall be payable by DWP for such transfer under this clause 2.3(a); and
 - (ii) in relation to all Former ES Equipment and Former ES Furniture the consideration payable by DWP for such transfer under this clause 2.3(a) shall be an amount equal to the amount that remains owing under the Floating Charge for such equipment and furniture and the payment of that consideration shall be satisfied by DWP releasing the PRIME Contractor from its obligations under clause 2.3 of the Floating Charge;
- (b) DWP shall have an option to purchase from the Service Provider at an open market value (as agreed by DWP and the Service Provider with any disputes as to such open market value being determined in accordance with the relevant provisions of the Red Book by the Adjudicator) and free from any Security Interest any interest of the Service Provider in such of the Equipment (excluding DWP Equipment and Furniture) as delivers the Required Outputs at the Sites to remain occupied by the DWP, any OGD, ISB or DWP Contractor, all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by the Service Provider and reasonably required in connection with the Operations at the Site to remain occupied by DWP any OGD, ISB or DWP Contractor;

- (c) The Service Provider shall, so far as is practicable, procure that the benefit of all manufacturer's warranties in respect of any Equipment purchased by DWP pursuant to clause 2.3(b) are assigned to DWP or such nominee as DWP may designate from time to time;
- (d) The Service Provider shall approach any third party licensors of any software used to operate any Equipment purchased by DWP pursuant to clause 2.3(b) and shall use its best endeavours to procure the assignment of the same to DWP or such nominee as DWP may designate from time to time;
- (e) the Service Provider shall, to the extent permitted, deliver or transfer or cause to be delivered or transferred to DWP:
 - (i) "as built drawings" showing all alterations made by the Service Provider since the commencement of the Operations;
 - (ii) operation, training and maintenance manuals and any other manuals, instructions or records of procedures necessary for the use of the Sites and Equipment;
 - (iii) any relevant licence, permission or consent relating to the Sites or the FM Services; and
 - (iv) any other drawings, specifications or other data completed or provided in connection with this Agreement,

which relate to those Sites to remain occupied by DWP any OGD, ISB or DWP Contractor and which were produced by or on behalf of the Service Provider or which were delivered to the Service Provider pursuant to paragraph 10 of Part 1 of Schedule 4 of the Project Agreement or paragraph 10 of Part 1 of Schedule 1 of the Second Supplemental Agreement;

- (f) the Service Provider shall deliver to DWP, any specifications, plans, drawings or other documents or material issued by or on behalf of DWP for the purposes of the Project Agreement and any data of DWP which was disclosed to or obtained by the Service Provider during the course of providing the FM Services and shall, if so requested, and provided it is lawful so to do, destroy or procure the destruction of any copies (whether in manual or electronic form) of such data;
- (g) the Service Provider shall provide or cause to be provided either to DWP or its nominee all materials, documents and data maintained by the Service Provider in respect of such of those Sites to remain occupied by DWP and the Equipment of those Sites in accordance with the provisions of clause 32.19 of the Project Agreement.

3. LIABILITY AND INDEMNITY

3.1 DWP's Liability

For the avoidance of doubt, DWP shall not be responsible for any liabilities incurred by the PRIME Contractor to the Service Provider pursuant to the intra group arrangement referred to in Recital C or otherwise prior to the Operative Date.

3.2 Service Provider's Liability

For the avoidance of doubt, the Service Provider shall have no obligation or liability to DWP in respect of any service provision by the Service Provider to the PRIME Contractor prior to the Operative Date.

4. PRIME CONTRACTOR'S CONSENT

The PRIME Contractor by its execution of this Direct Agreement agrees to its terms and conditions.

5. CONFIDENTIALITY

5.1 Each party shall hold in confidence the contents of this Agreement and all documents and other information whether technical or commercial supplied by or on behalf of the other parties (including without limitation all documents and information supplied in the course of proceedings under the Dispute Resolution Procedure) or otherwise in relation to the Operations and shall not publish or otherwise disclose the same otherwise than for the purposes contemplated by, and to the extent necessary for compliance with, this Direct Agreement, save (subject to the provisions of clause 5.3):

- (a) with the other parties' written consent;
- (b) as may necessarily be required by any Law, any relevant stock exchange or other competent regulatory authority (but only to the extent so required);
- (c) as either DWP or the Service Provider may require for the purpose of the operation, maintenance, enhancement or improvement of the Facilities, the Equipment or any other Operations;
- (d) as DWP may consider reasonably necessary when seeking tenders from potential contractors to fulfil any of the functions provided by the Service Provider; or
- (e) which is in or enters the public domain other than as a result of a breach of the obligations imposed by this clause 5.1,

provided that the provisions of this clause 5.1 shall not restrict any party from passing such information to its professional advisers.

5.2 Employees

The Service Provider shall procure that their agents and contractors comply with the obligations of the Service Provider under this clause and the Service Provider shall be responsible for any act or omission of any such person and its or their officers, employees, workmen, contractor and sub-contractors of any tier in this respect.

5.3 No Announcements

No party shall, without the prior consent in writing of the other parties (such consent not to be unreasonably withheld or delayed):

- (a) communicate with representatives of the general or technical press, radio, television or other communication media on any aspect of this Agreement; or
- (b) photograph or film the Facilities, the Sites or the Properties or the staff of any such other party.

To avoid doubt:

- (c) it shall not be unreasonable for DWP to withhold its consent pursuant to this clause 5.3 for security purposes or if the communication, photographing or filming may, in the opinion of DWP, affect the ability of DWP to transact its business at any Facility or affect the standing of DWP or its staff in the eyes of the public;
- (d) paragraph (b) of this clause shall not apply to:

- (i) any Properties no longer occupied by DWP; or
 - (ii) the taking of any photographs or filming of the Facilities, the Sites or, the Properties by or on behalf of the PRIME Contractor for marketing and management purposes, subject to the PRIME Contractor complying with and ensuring that any person taking photographs or filming on its behalf complies with, such reasonable regulations as DWP may impose with regard to such activities; and
- (e) nothing in this clause shall entitle the PRIME Contractor or any other person acting on behalf of the PRIME Contractor to film or photograph DWP staff without their prior consent other than for the purposes of security.

6. SEVERABILITY

The invalidity in whole or in part of any of these terms shall not affect the validity of any other provision and all remedies available to each party for breach of contract are cumulative and may be exercised concurrently or separately.

7. AMENDMENTS

No alterations or amendments to this Direct Agreement (other than any variation made in accordance with this Direct Agreement) may be made except where expressly recorded in writing in English by a document expressed to be supplemental to this Agreement and signed by or on behalf of each of DWP, the PRIME Contractor and the Service Provider. For the purposes of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (and where appropriate the Contract (Scotland) Act 1997) any additional conditions or variation of the conditions contained in this Direct Agreement which are agreed in correspondence between the parties where the correspondence makes express reference to this clause are deemed to be incorporated in this Direct Agreement and it is hereby acknowledged that this Direct Agreement (with the incorporation of any such additional conditions or variation) constitutes the entire contract between the parties.

8. WAIVER

Failure by a party at any time to enforce any provision of this Direct Agreement or to require performance by another party of any of the provisions of this Direct Agreement shall not be construed as a waiver of any such provision and shall not affect the validity of the Direct Agreement or any part of the Direct Agreement or create any estoppel or in any other way affect the right of such party to enforce any provision in accordance with its terms.

9. NOTICES

- 9.1 All notices under this Direct Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Direct Agreement shall be served by sending the same by prepaid first class post, facsimile or leaving the same at:

If to the PRIME Contractor
140 London Wall
London EC2Y 5DN

Fax No: [withheld]

Attention: [withheld]

If to DWP

Department of Social Security

PRIME Project Team
 4th Floor, Tavis House
 London WC1H 9NB
 Attention: [withheld]

Fax No: [withheld]

- 9.2 A party to this Direct Agreement may change its nominated address or facsimile number by prior notice to the other parties.
- 9.3 Notices sent by first class post shall be deemed to have been delivered on the fifth Business Day after posting.
- 9.4 Notices given by facsimile shall be deemed to have been delivered where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:
- (a) within two hours after sending, if sent on a Business Day between the hours of 9.00 am and 4.00 pm; or
 - (b) by 11.00 am on the next following Business Day, if sent after 4.00 pm, on a Business Day but before 9.00 am on that next following Business Day.

10. GOVERNING LAW AND JURISDICTION

10.1 Governing Law

This agreement shall be governed by and interpreted in accordance with the laws of England.

10.2 Jurisdiction

The parties submit to the non-exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Direct Agreement.

IN WITNESS of which the parties have executed and delivered this Direct Agreement as a Deed on the date first written above.

The Corporate Seal of the Secretary
 of State for Work and Pensions hereunto
 affixed is authenticated by:

Authorised by the Secretary
 of State for Work and Pensions

Witnessed by:

Address:

THE PRIME CONTRACTOR

