

SCHEDULE 29

This is Schedule 29 comprising the provisions on the treatment of Windfall Profits and Gains 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**

WINDFALL GAINS

1. DEFINITIONS

1.1 In this Schedule the following capitalised words and expressions shall (save where the contrary intention is expressed or the context otherwise requires) have the meanings ascribed to them below:

"Associate" of a person means any other body corporate or partnership which is controlled by that person or any person, body corporate or partnership which controls that person and any other body corporate or partnership which is controlled by a person, body corporate or partnership which controls that person, and for the purposes of this paragraph control shall be construed in accordance with section 840 of the Income and Corporation Taxes Act 1988;

"Base Cash Flow" the projected Relevant Cash Flow to Equity for the five years from the Contract Expansion Date shown in the TIES Bid Model;

"Capital Invested" any amount contributed at any time by any of the Sponsors or their Associates to the PRIME Contractor by way of capital, loans, guarantees in or in any other manner whatsoever;

"Distributed Cash Flow to Equity" the net, after tax, amount in the hands of the Sponsors or their Associates taken together as a whole received and capable of utilisation arising from the actual distribution of any Relevant Cash Flow to Equity (and where this definition would otherwise comprise amounts in the hands of more than one person, this definition shall be construed so as to avoid any double counting);

"Exit IRR Certificate" the certificate referred to in paragraph 2.1(b) of this Schedule;

"Exit IRR" the Internal Rate of Return earned by the Sponsors and their Associates taken together as a whole on the total Capital Invested taking into account all Distributed Cash Flow to Equity and all Relevant Disposal Proceeds;

"Internal Rate of Return" the discount rate, expressed as an annual rate of interest, which, when applied to the Relevant Cash Flow produces a present value of zero;

"Multiple" means the number of times that the Relevant Cash Flow exceeds the Base Case Cash Flow;

"Relevant Cash Flow" the actual Relevant Cash Flow to Equity achieved for the five years from the Contract Expansion Date (adjusted to exclude the impact of disposals) as shown in the audited accounts of the PRIME Contractor covering this period;

"Relevant Cash Flow Certificate" the certificate referred to in paragraph 3.1 of this Schedule;

"Relevant Cash Flow to Equity" the net cash flow derived from or connected with this Agreement external to the Sponsors and their Associates after operating expenses, lease obligations, debt service payments, taxation on income or gains, capital expenditures and all other costs or expenses available for distribution to the limited partners of Trillium (PRIME) Property GP Limited excluding any share of any Development Gain;

"Relevant Disposal Event" the occurrence of a Relevant Sale Event or a Relevant Flotation;

"Relevant Disposal Proceeds" the net after tax proceeds received and capable of utilisation by the Sponsors or their Associates taken together as a whole from any Relevant Sale or a Relevant Flotation (and where this definition would otherwise comprise amounts in the hands of more than one person, this definition shall be construed so as to avoid any double counting);

"Relevant Flotation" occurs on the date when, as a result of an offer for sale to the public, the Sponsors or their Associates taken together as a whole cease to own, directly or indirectly, more than 75% immediately thereafter of the beneficial ownership of Relevant Cash Flow to Equity;

"Relevant Sale Event" occurs on the date of completion of a Relevant Sale which has the consequence that the Sponsors or their Associates taken together as a whole cease to own, directly or indirectly, more than 51% immediately thereafter of the beneficial ownership of Relevant Cash Flow to Equity; and

"Relevant Sale" a sale, transfer or other disposition (whether by a single transaction or by more than one transaction and whether or not any such transactions are related) entered into by one of the Sponsors or their Associates with one or more persons who are not Sponsors or their Associates.

1.2 For the purposes of this Schedule other than paragraph 4.1, the following words and expressions shall (save where the contrary intention is expressed or the context otherwise requires) have the meanings ascribed to them below:

(a) **"after tax"** in respect of an amount in the hands of that person or entity means that amount determined after the deduction of all liabilities to tax of that person or entity or of any investor (whether directly or indirectly) in that person or entity; and

(b) **"tax"** includes (without limitation) all taxes on gross or net income, profits or gains, distributions, receipts, sales, use, occupation, franchise, value added, and personal property, and all levies, imposts, duties, charges or withholdings of any nature whatsoever chargeable by any authority (whether within or outside the

United Kingdom) competent to impose any tax liability, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to the Sponsors or their Associates or any other person and of whether any amount in respect of any of them is recoverable from any other person.

1.3 Capitalised words and expressions defined in Schedule 1 to the Project Agreement shall (save where the contrary intention is expressed or the context otherwise requires) have the same meanings when used in this Schedule. For the avoidance of doubt, words and expressions defined in both Schedule 1 to the Project Agreement and this Schedule shall, when used in this Schedule, have the meaning ascribed to them in this Schedule.

2. WINDFALL SHARING ON RELEVANT DISPOSAL EVENTS

2.1 If a Relevant Disposal Event occurs within five years of the Contract Expansion Date, then:

- (a) the PRIME Contractor shall, within 15 days of first becoming aware of the occurrence of such Relevant Disposal Event, issue a notice to the Department's Representative of the occurrence thereof setting out in reasonable detail the material particulars thereof; and
- (b) within 60 days of the date on which the notice referred to in 2.1(a) above is issued, the PRIME Contractor shall issue a certificate to the Department's Representative:
 - (i) stating the Exit IRR (taking into account the Relevant Disposal Event and any contingent liability associated therewith but disregarding any event or circumstances arising thereafter); and
 - (ii) if the Exit IRR falls within one of the bands numbered 1 to 4 shown in the table at paragraph 2.5 below, setting out a computation of an amount of that element (the "**Windfall Gain Element**") of the Distributed Cash Flow to Equity and the Relevant Disposal Proceeds which the PRIME Contractor reasonably considers results in the Exit IRR falling within that band.

This certificate shall be signed by two officers of the PRIME Contractor and the computations contained therein confirmed in writing by the auditors of the PRIME Contractor for the time being.

2.2 The PRIME Contractor shall at all times use all reasonable endeavours to ensure that:

- (a) it is kept informed of the occurrence of any event which would be a Relevant Disposal Event; and
- (b) it has available to it sufficient information to prepare the Exit IRR Certificate and compute the Windfall Gain Element (if any).

2.3 An amount calculated in accordance with paragraph 2.5 below shall, at the election of the PRIME Contractor by written notice to DWP within 30 days of the issue of the certificate referred to in paragraph 2.1(b), either:

- (a) reduce the amount payable to the PRIME Contractor by DWP on such Payment Date as the PRIME Contractor may elect, provided that Payment Date falls due on or before the ninetieth day following the Relevant Disposal Event; or
- (b) shall be treated as a Change in Costs arising from a Qualifying Change and a computation of the change in all of the Facility Prices will be made under the Qualifying Change mechanism.

2.4 Without prejudice or limitation to any of the foregoing provisions of this paragraph 2, it is expressly confirmed and agreed by DWP that paragraph 2.3 will have no effect unless:

- (a) a Relevant Disposal Event occurs within five years of the Contract Expansion Date; and
- (b) the Exit IRR taking into account such Relevant Disposal Event falls within one of the bands numbered 1 to 4 shown in the table at paragraph 2.5 below.

2.5 The amount referred to in paragraphs 2.3 and 3.2 shall be the amount equal to the aggregate of the percentage shares indicated in the fourth column of the table set out below, of the Windfall Gain Element or Windfall Profit element (as the case may be) as is determined by applying the relevant percentage share to:

- (a) in the case of the Windfall Gain Element, that proportion of the gain (if any) that causes the Exit IRR to achieve each of the levels indicated in the second column of the table set out below, less any reduction by virtue of paragraph 4.1; and

Band	Exit IRR (%)	Multiple	Percentage share (%)
1	20 - 29	5	10
2	30 - 39	6-7	20
3	40 - 49	8-9	35
4	50+	10+	50

- (b) in the case of the Windfall Profit Element, that proportion of the profit (if any) that causes the Multiple to be each of the levels indicated in the third column of the table set out above, less any reduction by virtue of paragraph 4.1.

3. **WINDFALL SHARING OF EXCESS PROFITS**

3.1 If no Relevant Disposal Event occurs on or before the fifth anniversary of the Contract Expansion Date, then within 180 days of such fifth anniversary the PRIME Contractor shall issue a certificate to the Department's Representative:

- (a) stating the Base Cash Flow and the Relevant Cash Flow (as computed over the five years from the Contract Expansion Date); and
- (b) if the Relevant Cash Flow is more than five times the Base Cash Flow, setting out a computation of the amount of such excess (the "**Windfall Profit Element**").

The certificate shall be signed by two officers of the PRIME Contractor and the computations contained therein confirmed in writing by the auditors of the PRIME Contractor for the time being.

3.2 An amount calculated in accordance with paragraph 2.5 above shall, at the election of the PRIME Contractor by written notice to DWP within 30 days of the issue of the certificate referred to in paragraph 3.1, either:

- (a) reduce the amount payable to the PRIME Contractor by DWP on such Payment Date as the PRIME Contractor may elect, provided that Payment Date falls due on or before the ninetieth day following the Relevant Disposal Event; or
- (b) be treated as a Change in Costs arising from a Qualifying Change applied pro rata to all facilities according to the relative amount of their Facility Prices and a computation of the change in all of the Facility Prices will be made under the Qualifying Change mechanism.

3.3 Without prejudice or limitation to any of the foregoing provisions of this paragraph 3, it is expressly confirmed and agreed by DWP that paragraph 3.2 will have no effect whatsoever unless Relevant Cash Flow exceed five times the Base Cash Flow as measured over the five years from the Contract Expansion Date.

4. **MISCELLANEOUS**

4.1 If any taxing authority or other authority within the United Kingdom competent to impose any tax liability imposes on the PRIME Contractor, any Sponsor or any partner or other investor (whether direct or indirect) in the PRIME Contractor, its Associates or any Sponsor (collectively the "**taxpayers**") a liability to tax (howsoever called) calculated by

reference to any measure of excess or Windfall Gain Elements or Windfall Profit Elements (howsoever calculated) then the amount referred to in paragraph 2.3 (an amount equal to [withheld]% of the Windfall Gain Element) and paragraph 3.3 (an amount equal to [withheld]% of the Windfall Profit Element) shall be reduced, pound for pound, by the amount of such liability to tax payable by those taxpayers at the time of the adjustment or at any time thereafter.

- 4.2 It is expressly understood and agreed by DWP that paragraphs 2.3 and 3.2 of this Schedule impose no obligation or other liability on the PRIME Property other than as guarantor of the PRIME Contractor.
- 4.3 In calculating the Exit IRR, or the Relevant Cash Flow, any gains which have already been shared between the parties in accordance with the provisions of Schedule 22 [*Development Gains*], Schedule 35 [*Refinancing Gains*] or Schedule 36 [*Sale and Leaseback Gains*] shall be excluded and not taken into account. For the avoidance of doubt, the amount of the gain to be excluded shall include the element of the gain paid to DWP and the element of the gain retained by the PRIME Contractor.