

**SCHEDULE 35**

This is Schedule 35 comprising the Refinancing Gains provisions referred to in the Project Agreement for the PRIME Project between

**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**

## SCHEDULE 35

### REFINANCING GAINS

#### 1. DEFINITIONS

1.1 In this schedule the following words and expressions shall have the same meanings set out below:

**"Contingent Funding Liabilities"** means any and all contingent liabilities of any Relevant Person in respect of financial obligations owed to any other Relevant Person, the PRIME Contractor or PRIME Property;

**"Distribution"** means:

- (a) whether in cash or in kind any of the following to the extent paid to or received by a Relevant Person:
  - (i) a dividend or other distribution in respect of share capital;
  - (ii) a reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share capital;
  - (iii) a payment under the Sponsor Funding Agreements (whether of principal, interest, breakage costs or otherwise);
  - (iv) a payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after the Commencement Date and was neither in the ordinary course of business nor on reasonable commercial terms;
  - (v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms, or
- (b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

**"Exempt Refinancing"** means:

- (a) any Refinancing that was fully taken into account in the calculation of the Facilities Prices and MOFUPSs set out in Parts 2 and 3 (respectively) of Schedule 17 [*Payment*];
- (b) a change in taxation or change in accounting treatment;

- (c) waivers, consents and similar actions which relate to day to day administrative and supervisory matters that are in respect of breaches of representations or warranties, late or non-provision of information or amendments to sub-contracts;
- (d) any sale of shares in the PRIME Contractor or PRIME Property by the shareholders or securitisation of the existing rights and/or interests attaching to shares in the PRIME Contractor;
- (e) any sale or transfer of the Sponsor's existing rights and/or interests under the Sponsor Funding Agreements or securitisation of the Sponsors' existing rights and/or interests under the Sponsor Funding Agreements;
- (f) any Qualifying Bank Transaction;
- (g) any Refinancing to the extent that it is a replacement of all or part of the funds advanced pursuant to the LS Internal Financing Agreement and/or the Funding Agreements in place as at the Contract Expansion Date and is made substantially on the terms of the term sheet set out as Annex 1 to this Schedule;
- (h) without prejudice to the definition of Financing Conditions Refinancing, any Refinancing to the extent that the sums borrowed, when aggregated with the sums then outstanding under any other Funding Agreements, do not exceed £350 million;

**"Financing Conditions Refinancing"** means any Qualifying Refinancing, disregarding for the purposes of this definition paragraph (h) of the definition of Exempt Refinancing, to the extent that a Refinancing Gain is produced as a consequence of a change in the terms and conditions applicable to the sums outstanding immediately prior to the Refinancing;

**"Funding Agreements"** for the purpose of this Schedule 35 only will mean:

- (a) any agreement defined as a Funding Agreement by Schedule 1; and
- (b) the LS Internal Financing Agreement provided that this agreement will not be treated as a funding agreement, and Land Securities Trillium Limited will not be treated as a Funder for the purposes of the definition of "Qualifying Bank Transaction and "Qualifying Lender";

**"LS Internal Financing Agreement"** means the agreement made on or about the Contract Expansion Date between PRIME Property and Land Securities Trillium Limited in relation to a facility of £155 million;

**"Pre-Refinancing Equity NPV"** means the net present value at the Contract Expansion Date of the Distributions (after tax in the hands of the PRIME Contractor or PRIME

Property) made or projected in the Combined PRIME/TIES Model as updated (including as to performance of the project) so as to be current immediately prior to the Refinancing (but without taking into account the effect of the Refinancing) to be made to each Relevant Person from the Contract Expansion Date over the remaining term of the Agreement following the Contract Expansion Date;

**"Qualifying Bank Transaction"** means:

- (a) the disposition by a Funder of any of its rights or interests in the Funding Agreements to a Qualifying Lender;
- (b) the grant by a Funder to a Qualifying Lender of any rights of participation in respect of the Funding Agreements; or
- (c) the grant by a Funder to a Qualifying Lender of any other form of benefit or interest in either the Funding Agreements or the revenues or assets of the PRIME Contractor or PRIME Property, whether by way of security or otherwise;

**"Qualifying Lender"** means any assignee or transferee of any Funder permitted in accordance with the Funding Agreements (but excluding any Relevant Person or any of its Sponsors);

**"Qualifying Refinancing"** means any Refinancing that:

- (a) will give rise to a Refinancing Gain greater than zero; and
- (b) is not an Exempt Refinancing;

**"Refinancing"** means at any time after the Contract Expansion Date (the **"Relevant Time"**):

- (a) any amendment, variation, novation, supplement or replacement of any Funding Agreement;
- (b) the exercise of any right, or the grant of any waiver or consent, under any Funding Agreement;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Funding Agreements or the creation or granting of any other form of benefit or interest in either the Funding Agreements, the contracts, revenues or assets of the PRIME Contractor and/or PRIME Property and the contracts, revenues or assets of any other Relevant Person that are used for the Operations whether by way of security or otherwise; or
- (d) any other arrangement put in place by the PRIME Contractor and/or PRIME Property and/or another person which has an effect which is similar to any of (a)-

(c) above or which has the effect of limiting the PRIME Contractor's ability to carry out any of (a)-(c) above;

provided that, for the purposes of this definition, reference to Funding Agreements at the Relevant Time is reference to the Funding Agreements as at the date of this Agreement, as such Funding Agreements are from time to time amended, supplemented or replaced in accordance with this Agreement prior to the Refinancing Date.

**"Refinancing Gain"** means the greater of zero and  $(A - B) - C$ , where (without double counting):

A = the net present value of the Distributions projected by the Combined PRIME/TIES Model as updated (including as to performance of the project) so as to be current immediately prior to the Refinancing (taking into account the effect of the Refinancing) to be made to each Relevant Person over the remaining term of the Agreement following the Refinancing;

B = the net present value of the Distributions projected in the Combined PRIME/TIES Model immediately as updated (including as to performance of the project) so as to be current prior to the Refinancing (but without taking into account the effect of the Refinancing) to be made to each Relevant Person over the remaining term of the Agreement following the Refinancing; and

C = any additional Distribution that would need to be assumed to be paid on the Refinancing Date and included in the calculation of the Pre-Refinancing Equity NPV in order to raise the Pre-Refinancing Equity NPV to the Threshold Equity NPV;

**"Relevant Person"** means the Sponsor and any of its Associates;

**"Sponsor Funding Agreements"** means if applicable, any agreement which would have been within the definition of the term "Funding Agreement" were it not for the fact that an Associate of the PRIME Contractor is the lender and such lender has agreed with DWP that the interests of the lender under such agreement are subordinated to the interests of DWP under the Project Documents on terms acceptable to DWP, acting reasonably;

**"Subordinated Lenders"** means the lenders under the Sponsor Funding Agreements;

**"Threshold Equity NPV"** means the net present value at the Contract Expansion Date of the Distributions (after tax in the hands of the PRIME Contractor or PRIME Property) projected in the Combined PRIME/TIES Model in the form that it exists at the Contract Expansion Date to be made to each Relevant Person from the Contract Expansion Date over the remaining term of the Agreement following the Contract Expansion Date;

**"Subordinated Lenders"** means the lenders under the Sponsor Funding Agreements.

All Net Present Values shall be calculated using a discount rate of 10% nominal.

- 1.2 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.
- 1.3 The PRIME Contractor and PRIME Property shall obtain DWP's prior written consent to any Qualifying Refinancing and each of DWP, the PRIME Contractor and PRIME Property shall at all times act in good faith with respect to any Refinancing.
- 1.4 DWP shall be entitled to receive
  - (a) a share equal to 90.00% of the amount of any Refinancing Gain arising from any Qualifying Refinancing or Financing Conditions Refinancing after tax in the hands of the PRIME Contractor or PRIME Property which occurs within a year after the Contract Expansion Date; and
  - (b) a share equal to 37.14% of the amount of any Refinancing Gain arising from any Qualifying Refinancing or Financing Conditions Refinancing after tax in the hands of the PRIME Contractor or PRIME Property which occurs after the first anniversary of the Contract Expansion Date.
- 1.5 DWP shall not withhold or delay its consent to a Qualifying Refinancing to obtain a greater share of the Refinancing Gain than that referred to in paragraph 1.4.
- 1.6 The PRIME Contractor and PRIME Property shall promptly provide DWP with full details of any proposed Qualifying Refinancing or Financing Conditions Refinancing, including a copy of the financial model relating to it (if any) and the basis for the assumptions used in the financial model. DWP shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over any financial model and documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with that Refinancing whether or not that Refinancing is a Qualifying Refinancing or Financing Conditions Refinancing).
- 1.7 DWP shall have the right to elect to receive its share of any Refinancing Gain as:
  - (a) a single payment from the PRIME Contractor in an amount not exceeding the amount, if any, by which any Distribution made on or about the Refinancing Date is or is to be greater than the amount of any Distribution which, as determined from the Combined PRIME/TIES Model as from time to time updated in accordance with this Agreement (other than to reflect the Refinancing), would

have been made on or about the Refinancing Date had the Refinancing not occurred;

(b) a reduction in the Facility Prices over the remaining term of the Agreement and for the purposes of calculating such reduction, DWP's share shall be treated as a Change in Cost arising from a Qualifying Change and a computation of the change in Facility Unit Prices will be made under the Qualifying Change Mechanism; or

(c) a combination of (a) or (b) above.

1.8 DWP, the PRIME Contractor and PRIME Property will negotiate in good faith to agree the basis and method of calculation of the Refinancing Gain and payment of DWP's share of the Refinancing Gain (taking into account how DWP has elected to receive its share of the Refinancing Gain under Clause 1.7 above). If DWP, the PRIME Contractor and PRIME Property fail to agree the basis and method of calculation of the Refinancing Gain or the payment of DWP's share, the dispute shall be determined in accordance with the Dispute Resolution Procedures.

1.9 The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each party directly incurs in relation to the Qualifying Refinancing or Financing Conditions Refinancing and on the basis that all reasonable and proper professional costs incurred by DWP will be paid to DWP by the PRIME Contractor and/or PRIME Property within 28 days after any Qualifying Refinancing or Financing Conditions Refinancing.

## 2. **FULL SATISFACTION**

2.1 The single payment (if any) made in accordance with paragraph 1.7 (a) above, together with the reduction in the Facilities Prices (if any), over the remaining term of this Agreement made in accordance with paragraph 1.7(b) above or any combination thereof made in accordance with paragraph 1.7(c) above shall be in full satisfaction of DWP's claim to receive its share of the relevant Refinancing Gain.

## 3. **UPDATING THE Combined PRIME/TIES MODEL**

3.1 Within 14 days after the Refinancing Date and subject to paragraph 2 above, the PRIME Contractor shall procure that the Combined PRIME/TIES Model is updated (included as to the performance of the Project) to take account of:

(a) the terms of the relevant Qualifying Refinancing or Financing Conditions Refinancing; and

(b) as applicable:

- (i) the single payment made in accordance with paragraph 1.7(a) above; or
- (ii) the reduction in value for the Facilities Prices in accordance with paragraph 1.7(b) above; or
- (iii) any combination of a single payment and a reduction in the Facilities Prices in accordance with paragraph 1.7(c) above.

3.2 The Combined PRIME/TIES Model as so revised shall be the Combined PRIME/TIES Model for all purposes of this Agreement, subject to further revision in accordance with Schedule 10 [*Change Procedure*] or this Schedule.

**ANNEX 1**

[withheld]