

SCHEDULE 36

This is Schedule 36 comprising the Lease 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**

LEASE GAIN

1. In this Schedule the words and phrases set out below shall have the meanings ascribed to them below:

"Capital Receipts" means the gross amount (net of any Value Added Tax) paid by the third party to the PRIME Contractor or PRIME Property in respect of any Sale and Leaseback Transaction or all of any Connected Transactions;

"Connected Transactions" means in relation to any Sale and Leaseback Transaction, any other Sale and Leaseback Transactions undertaken by the PRIME Contractor or PRIME Property with the same third party or any Associate of that Third Party on or around the same date;

"DWP Covenant" means the support given by the DWP to a Sale and Leaseback Transaction through either:

- (a) DWP guaranteeing the payment of rent and performance of covenants by the PRIME Contractor or PRIME Property in the leaseback of a Property which is part of the Sale and Leaseback Transaction; or
- (b) DWP taking the leaseback under a Sale and Leaseback Transaction in its own name;

"DWP Share" means [withheld]% of the Lease Gain save in respect of any Former DSS Estate Properties where DWP does not provide a DWP Covenant, where it shall mean [withheld]% of the Lease Gain;

"Intention Notice" means the notice given by the PRIME Contractor or PRIME Property pursuant to paragraph 3 below;

"Lease Gain" means the amount calculated in accordance with paragraph 8 below;

"LST Indemnity" means an indemnity given by the PRIME Contractor or PRIME Property to the DWP in respect of the obligations undertaken by DWP as a result of the provision of a DWP Covenant in a Sale and Leaseback Transaction, such indemnity to be in such form as DWP shall reasonably require;

"Net Rent" means the Net Present Value (calculated using a nominal discount rate of [withheld]) of all rents (other than insurance rent or service charge) payable under the Leaseback;

"Net TVP" means, in the case of Former ES Estate Properties only, means the Net Present Value (calculated using a nominal discount rate of [withheld]) of the result of the following calculation:

(A / B) * C

Where:

(A) = The Base Value of the property / properties under consideration

(B) = [withheld]

(C) = [withheld];

"Relevant Interest" means the interest in a Property which was acquired by the PRIME Contractor or PRIME Property from DWP or the SSE or an OGD pursuant to this Agreement or any agreement supplemental to this Agreement;

"Response Notice" means the notice given by DWP pursuant to paragraph 4 below;

"Risk Adjustment" means [withheld] of the Net Rent;

"Sale and Leaseback Transaction" means a transaction under which the PRIME Contractor or PRIME Property sell the Relevant Interest in a Core Property, a Flexible Property or a Flexi-Core Property to a third party subject to the existing PRIME Lease, taking a leaseback (a **"Leaseback"**) of the Relevant Interest subject to and with the benefit of the PRIME Lease, subject to the provision of DWP Covenant, in the name of the PRIME Contractor or PRIME Property;

"Transaction Costs" means the costs reasonably incurred by the PRIME Contractor or PRIME Property in legal and surveyors' fees and Stamp Duty Land Tax in connection with any Sale and Leaseback Transaction or all of any Connected Transactions;

"VP Values" means in the case of the Former DSS Estate Properties the Base Values as set out in Schedule 22 [*Development Gains*] multiplied by an inflation factor of [withheld] and in the case of the Former ES Estate Properties means the Base Values as set out in Part B of Schedule 22 [*Development Gains*] multiplied by an inflation factor of [withheld] .

2. This Schedule shall apply to any proposal by the PRIME Contractor or PRIME Property to enter into a Sale and Leaseback Transaction.
3. Forthwith upon the PRIME Contractor or PRIME Property determining to enter into a Sale and Leaseback Transaction they shall give written notice to DWP of their intention together with full details of the proposed Sale and Leaseback Transaction, including the Properties affected, the potential purchaser and the likely consideration. This notice shall not be later than 20 Business Days prior to the proposed completion of such transaction.
4. Within 10 Business Days of receipt of the Intention Notice, DWP shall serve a written Response Notice to the PRIME Contractor specifying:

- 4.1 whether or not it is prepared to provide a DWP Covenant for the Sale and Leaseback Transaction referred to in the Intention Notice;
- 4.2 whether there is a minimum sale price that must be obtained for the sale of the Properties under the Sale and Leaseback Transaction as a condition of DWP agreeing to provide a DWP Covenant in the Sale and Leaseback Transaction; and
- 4.3 whether DWP agrees that following completion of the Sale and Leaseback Transaction the UACs of the Properties affected by the Sale and Leaseback Transaction are to be recalculated in accordance with the provisions of Schedule 10.
5. If DWP fails to deliver the Response Notice as required by paragraph 4 or does not state in the Response Notice its agreement to the recalculation of the UACs then DWP shall have no share of any Lease Gain.
6. If DWP agrees to the recalculation of the relevant UACs and is prepared to provide a DWP Covenant on the Sale and Leaseback Transaction then:
 - 6.1 contemporaneous with completion of the Sale and Leaseback Transaction DWP will enter into such documents as are reasonably necessary to provide the DWP Covenant and the PRIME Contractor or PRIME Property will forthwith provide the LST Indemnity; and
 - 6.2 DWP will be entitled to the DWP Share in the Lease Gain created by any Sale and Leaseback Transaction in accordance with the paragraphs 8, 9 and 10 of this Schedule.
7. If DWP agrees to the recalculation of the relevant UACs but is not prepared to provide a DWP Covenant on the Sale and Leaseback Transaction then DWP shall be entitled to the DWP Share in Lease Gain in accordance with paragraphs 8 and 9 this Schedule.
8. Provided that the amount of Lease Gain created by a Sale and Leaseback Transaction, when aggregated with the amount of Lease Gains created by any Connected Transactions is in excess of £[withheld] (indexed in accordance with Part 1 of Schedule 17 [*Payment Provisions*] using the Retail Prices Index) DWP shall be entitled to the DWP Share in Lease Gain calculated in accordance with paragraph 9 of this Schedule.
9. The amount of the Lease Gain shall be calculated by the PRIME Contractor forthwith after completion of any Sale and Leaseback Transaction or the last of any Connected Transactions and shall be, in the case of any Sale and Leaseback Transaction or the last of any Connected Transactions the Capital Receipts less the total of:
 - 9.1 the Transaction Costs;
 - 9.2 the Net Rent;
 - 9.3 the VP Values;

9.4 the Net TVP; and

9.5 the Risk Adjustment;

such amount to be net of any tax payable by the PRIME Contractor or PRIME Property upon the Capital Receipts, provided that where DWP is entitled to the DWP Share in the Lease Gain pursuant to paragraph 6.2, the Capital Receipts and Transactions Costs shall be the amounts determined by an independent valuer on the basis that the Sale and Leaseback Transaction had proceeded without the DWP Covenant. The PRIME Contractor shall notify DWP of the calculation of Lease Gain forthwith in writing, with full details and supporting papers.

10. Where DWP is entitled to the DWP Share in the Lease Gain pursuant to paragraph 6.2, the DWP shall, in addition to any amounts calculated in accordance with paragraph 9 of this Schedule, be entitled to the DWP Share of the amount, if positive, which is the difference between: (a) the Capital Receipts less Transactions Costs in respect of the relevant Sale and Leaseback Transaction; and (b) the Capital Receipts and Transactions Costs determined by an independent valuer on the basis that the Sale and Leaseback Transaction had proceeded without the DWP Covenant.
11. The DWP Share(s) shall be credited to DWP in the next following Variable Amount Invoice following the calculation of the Lease Gain.
12. Where DWP has agreed to the recalculation of the relevant UACs pursuant to paragraphs 6 or 7 of this Schedule, the UACs shall be recalculated by the PRIME Contractor forthwith after completion of any Sale and Leaseback Transaction. The PRIME Contractor shall notify DWP of the recalculation of the relevant UACs forthwith in writing, with full details and supporting papers and Schedule 32 [*Unavoidable Costs*] shall be updated accordingly.