

DATED 23 FEBRUARY 2011

BALFOUR BEATTY WORKPLACE LIMITED

and

CUMBRIA COUNTY COUNCIL

and

LANCASHIRE COMBINED FIRE AUTHORITY

and

MERSEYSIDE FIRE AND RESCUE AUTHORITY

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

DUTY OF CARE DEED

relating to North West Fire PFI Project



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THIS DEED OF WARRANTY is made on the 23 day of FEBRUARY 2011 BETWEEN:-

- (1) BALFOUR BEATTY WORKPLACE LIMITED (Company Number 598379) whose registered office is at 19th Floor, Marlowe House, 109 Station Road, Sidcup, Kent, DA15 7BH ("the FM Contractor");
- (2) CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA, LANCASHIRE COMBINED FIRE AUTHORITY of Lancashire Fire and Rescue Service Headquarters, Garstang Road, Fulwood, Preston, PR2 3LH and MERSEYSIDE FIRE AND RESCUE AUTHORITY of Merseyside Fire and Rescue Service Headquarters, Bridle Road, Bootle, Merseyside, L30 4YD (the "Authorities"); and
- (3) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (Company Number 07403391) whose registered office is at 6th Floor, 350 Euston Road, Regent's Place, London, NW1 3AX ("the Contractor").

BACKGROUND

- (A) By a project agreement dated 23 FEBRUARY 2011 (the "Project Agreement") the Authorities have appointed the Contractor to carry out, in relation to the Sites, the provision of serviced accommodation to the Authorities at each and every Station as contemplated by the Project Agreement including the carrying out of the Works and the provision of the Services design and construction of the Works.
- (B) The FM Contractor has been appointed by the Contractor under a contract dated 23 FEBRUARY, 2011 (the "FM Agreement") to carry out Services.
- (C) The FM Contractor is obliged under the FM Agreement to give a warranty in this form in favour of the Authorities.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Deed unless the context otherwise requires, the following expressions shall have the following meanings:-

"Lender"	means any organisation providing funding to the Contractor in connection with the carrying out of the Works.
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- 1.2 Unless expressly defined in this Deed, any defined term in this Deed shall have the same meaning given to such term in the FM Agreement.

2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Authorities to the FM Contractor, receipt of which the FM Contractor acknowledges:-

3. WARRANTY

- 3.1 The FM Contractor warrants to the Authorities that it has carried out and will continue to carry out all its obligations and duties under the FM Agreement in accordance with and to the standard required by the FM Agreement, provided always that the FM Contractor has no liability hereunder which is greater or of a longer duration than that it owes to the Contractor under the FM Agreement.

- 3.2 The FM Contractor agrees that it will not amend the terms and conditions of the FM Agreement without the prior written approval of the Authorities (not to be unreasonably withheld).
- 3.3 The FM Contractor shall be entitled in any proceedings by the Authorities to rely on any limitation in the FM Agreement and to raise equivalent rights in defence of liability as it would have against the Contractor under the FM Agreement.
- 3.4 Notwithstanding anything in this Deed and notwithstanding any payments which may be made by the Authorities to the FM Contractor, the Authorities and the FM Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authorities has given written notice to the FM Contractor pursuant to clause 7.1.1 or clause 7.3 of this Deed.

4. COPYRIGHT

- 4.1 The FM Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authorities with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 4.2 The Authorities will not hold the FM Contractor liable for any use they may make of the Documents for any purpose other than that for which they were originally provided by it unless the FM Contractor authorise such use and confirms that the Documents are suitable for it.
- 4.3 The FM Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authorities or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authorities' expense.
- 4.4 The FM Contractor warrants to the Authorities that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Project will not infringe the rights of any third party.

5. ASSIGNMENT

The benefit of and the rights of the Authorities under this Deed may be assigned without the consent of the FM Contractor on two occasions only and the Authorities will notify the FM Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The FM Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

6. AUTHORITIES' REMEDIES

The rights and benefits conferred upon the Authorities by this Deed are in addition to any other rights and remedies it may have against the FM Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7. STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITIES

7.1 The FM Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the FM Agreement or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authorities not less than thirty (30) Business Days prior written notice specifying the FM Contractor's ground for terminating or treating as terminated or repudiated the FM Agreement or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the FM Agreement. Within such period of notice:-

7.1.1 the Authorities may give written notice to the FM Contractor that the Authorities will thenceforth become the Contractor under the FM Agreement to the exclusion of the Contractor and thereupon the FM Contractor will admit that the Authorities are the Contractor under the FM Agreement and the FM Agreement will be and remain in full force and effect notwithstanding any of the said grounds;

7.1.2 if the Authorities have given such notice as aforesaid or under clause 7.3 below, the Authorities shall accept liability for the Contractor's obligations under the FM Agreement and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the FM Contractor which properly has been included in the FM Contractor's specified grounds pursuant to clause 7.1 (and which has been notified to the Authorities) and which is capable of remedy; and

7.1.3 if the Authorities have given such notice as aforesaid or under clause 7.3 below, the Authorities will from the service of such notice become responsible for all sums properly payable to the FM Contractor under the FM Agreement accruing due after the service of the FM Contractor's notice but the Authorities will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the FM Agreement.

7.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authorities to the FM Contractor, the FM Contractor will not be under any duty to obey any direction or instruction from the Authorities unless and until the Authorities have given notice under clauses 7.1.1 and 7.3.

7.3 The FM Contractor further covenants with the Authorities that if the Project Agreement is terminated by the Authorities, the FM Contractor, if requested by the Authorities, by notice in writing and subject to clause 7.1.2 and clause 7.1.3, will accept the instructions of the Authorities to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the FM Agreement and will if so requested in writing enter into a novation agreement whereby the Authorities are substituted for the Contractor under the FM Agreement.

7.4 Where the FM Contractor has given rights in relation to the FM Agreement similar to those contained in this clause to the Lender then if both the Authorities and the Lender serve notice under clause 7.1.1 or clause 7.3 or its equivalent the notice served by the

