DATED 23 February 2011

CUMBRIA COUNTY COUNCIL

LANCASHIRE COMBINED FIRE AUTHORITY

MERSEYSIDE FIRE AND RESCUE AUTHORITY

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

and

DEXIA CRÉDIT LOCAL

and

GLEEDS MANAGEMENT SERVICES LIMITED

INDEPENDENT CERTIFIER APPOINTMENT

relating to North West Fire and Rescue Services PFI Project

DICKINSON DEES
Dickinson Dees LLP
One Trinity Broad Chare Newcastle upon Tyne NE1 2HF
Telephone: 0191 279 9000 Fax: 0191 230 8501
Email: law@dickinsondees.com www.dickinson-dees.com

THIS DEED OF APPOINTMENT dated 23 February 2011

BETWEEN:-

(1) 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");

(2) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED a company registered in England (registration number 7403391) whose registered office is at 350 Euston Road, Regent's Place London NW1 3AX (the "Contractor");

(3) DEXIA CRÉDIT LOCAL, of Shackleton House, 4 Battle Bridge Lane, London, SE1 2RB which expression shall include its successors and assigns (the "Facility Agent"); and

(4) GLEEDS MANAGEMENT SERVICES LIMITED (registered in England under company number 01753465) whose registered office is at 95 New Cavendish Street, London W1W 6XF (the "Independent Certifier").

BACKGROUND

(A) The Contractor has entered (or is about to enter) into the Project Agreement with the Authorities for the construction and provision of new fire stations to be located at various sites in Merseyside, Lancashire and Cumbria ("the Project") pursuant to the Government's Private Finance Initiative.

(B) The Contractor has entered (or is about to enter) into the Financing Agreements with the Senior Lenders.

(C) The terms of the Project Agreement require the Authorities and the Contractor jointly to appoint the Independent Certifier.

(D) The Independent Certifier is an independent adviser willing to provide services to the Authorities and the Contractor and for the benefit of the Senior Lenders.

(E) The Authorities, the Contractor, the Facility Agent and the Independent Certifier have agreed to enter into this Deed for the purposes of setting out the terms upon which the Independent Certifier is appointed.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this appointment unless the context otherwise requires, words and expressions defined in the Project Agreement shall have the same meanings in this appointment and the following expressions shall have the following meanings:-

"Construction Sub-Contract"	means the sub-contract entered into by the Contractor and the Building Contractor for the design, construction and commissioning of the whole or part of the Works;
"Building Contractor"	means the building contractor appointed by the Contractor to carry out the Works under the Construction

	Sub-Contract;
"Employers"	means the Authorities and the Contractor (each an "Employer");
"Fee"	means the sum or sums referred to in Schedule 2 payable in relation to the performance of the Services subject to any adjustment in accordance with this appointment;
"FM Agreement"	shall have the meaning set out in the Project Agreement;
"FM Contractor"	shall have the meaning set out in the Project Agreement;
"Key Personnel"	means those persons named in Schedule 3;
"Project Agreement"	means the agreement dated 23 FEBRUARY 2011 (including any variation or replacement of such agreement from time to time) entered into between the Authorities and the Contractor for the provision of the Project;
"Professional Indemnity Insurance"	means professional indemnity insurance in an amount of not less than ten million pounds sterling (£10,000,000) for any one claim but limited to an aggregate basis in respect of pollution and contamination and to two hundred and fifty thousand pounds sterling (£250,000) in respect of asbestos;
"Services"	means the services to be provided by the Independent Certifier as described in clause 2 and Schedule 1 as may be amended in accordance with this appointment (including without limitation any such services carried out prior to the date of this appointment); and
"Works"	means the design and construction of the works by the Contractor as more particularly described in the Project Agreement.

1.2 **Documents comprising the appointment and priority of documents**

This appointment shall incorporate by reference all documents referred to in it and shall together comprise the exclusive terms and conditions of the appointment of the Independent Certifier by the Contractor and the Authorities. The Independent Certifier acknowledges and agrees that the terms and conditions of this appointment will prevail over all other terms and conditions whatsoever put forward by the Independent Certifier. In the event of any conflict or inconsistency between the terms of this appointment document and any documents incorporated by reference, the former shall prevail.

1.3 **Successors**

References to "the Authorities" and "the Contractor" shall include any person or persons for the time being entitled to the benefit of this appointment as a successor to such entities from time to time.

1.4 **Joint liability**

Where two or more persons are included in the expression "Independent Certifier", the term "Independent Certifier" shall include the plural numbers and any obligation expressed to be made by or with such party shall be deemed to be made and undertaken by such persons jointly and severally.

1.5 **Headings**

The headings in this appointment are inserted for convenience only and shall be ignored in construing its terms.

1.6 **Notices**

All notices or other communications required in connection with this appointment shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number of the Authorities and the Contractor as set out in the Project Agreement and to the address set out above in respect of the Facility Agent and the Independent Certifier or to such other address or facsimile number as a party to this appointment may notify to another party to this appointment in writing.

1.7 **Legislation and regulations**

Reference to any statute or regulation or code of practice or standard includes the reference to the same as amended or extended or re-enacted from time to time.

2. DUTIES OF THE INDEPENDENT CERTIFIER

2.1 The Contractor and the Authorities hereby jointly appoint the Independent Certifier and the Independent Certifier agrees to carry out and complete the obligations and tasks which are ascribed to the Independent Certifier under the Project Agreement (which are summarised in Schedule 1) and the Services in accordance with this appointment exercising the level of reasonable skill care and diligence to be expected from a competent and properly qualified professional Independent Certifier experienced in providing services of a similar scope, type, scale and complexity to the Services and in accordance with all current British Standards and Codes of Practice and any other approved criteria and standards or code and in compliance with all applicable statutes and regulations. The Independent Certifier acknowledges that the Contractor, the Authorities and the Facility Agent may rely on, and shall continue to rely upon, the professional skill and judgement of the Independent Certifier in the performance of the Services.

2.2 The Independent Certifier shall carry out the Services (including without limitation the exercise of any discretion in the performance of the Services) independently fairly and impartially to and as between the Contractor and the Authorities and having regard to the interests of the Facility Agent in relation to the Project Agreement, at such times and in such locations as the parties shall agree from time to time. Whilst the Independent Certifier may take account of any representations made by the Contractor, the Authorities or the Facility Agent the Independent Certifier shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.

2.3 The Independent Certifier shall procure that the Key Personnel shall be employed throughout the duration of this appointment to direct and control the overall performance and delivery of the Services. Changes to any of the Key Personnel shall only be made

with the consent of the Contractor and the Authorities, such consent not to be unreasonably withheld or delayed.

2.4 The Independent Certifier shall comply with:

(a) all Legislation and the requirements of any relevant planning permission, building regulations or other consent, licence, approval or authority of which the Independent Certifier is or should be aware; and

(b) all lawful and reasonable directions, instructions or request (including without limitation any relevant site rules) of the Contractor, the Authorities, the Building Contractor or the FM Contractor whilst the Independent Certifier is present on any of the Sites.

2.5 The Independent Certifier shall comply with all reasonable instructions given to it by the Contractor and the Authorities acting jointly, except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this appointment or prejudice or might prejudice the exercise by the Independent Certifier of its professional judgement in accordance with clauses 2.1 and 2.2. All instructions to the Independent Certifier shall be given in writing by the Contractor and the Authorities acting jointly.

2.6 Insofar as the Independent Certifier has already performed or partly performed any of the Services, the Independent Certifier warrants to each of the Contractor, the Authorities and the Facility Agent that:

2.6.1 it has done so in accordance with the standards of reasonable skill and care and all terms and conditions set out in this appointment;

2.6.2 all warranties and undertakings in this appointment apply to them;

2.6.3 the Independent Certifier will complete the performance of any part of the performed Services in due time in accordance with this appointment; and

2.6.4 all sums (if any) paid to the Independent Certifier to date in respect of work done in relation to the role of Independent Certifier for the Project are payments on account of sums due under this appointment.

2.7 The Contractor and the Authorities agree to co-operate with, and provide reasonable assistance to, the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Works to enable the Independent Certifier to carry out its obligations under this appointment.

2.8 The Independent Certifier shall familiarise himself with and shall be deemed to have full knowledge of the provisions of the Project Agreement, the Construction Sub-Contract and the FM Agreement (the "Project Documents") and the Financing Agreements, copies of which the Independent Certifier acknowledges it has received at the date of this appointment and such variations to them as the Employers may provide to the Independent Certifier and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Contractor and the Authorities which are set out in the Project Documents and the Financing Agreements. The Independent Certifier shall perform the Services in such manner and at such times that no act, omission or default of the Independent Certifier shall constitute or cause any breach by the Contractor and/or the Authorities and/or any related parties of any requirements and/or obligations in the Project Documents and/or

the Financing Agreements. The Independent Certifier further acknowledges that a breach by it of this appointment may result in the Employers incurring liability under the Project Documents and/or the Financing Agreements and other costs and losses and all such liability, costs and losses are hereby agreed to be within the contemplation of the Independent Certifier for the purposes of determining the extent of the Independent Certifier's liability under this appointment. The Independent Certifier acknowledges that the Facility Agent has an interest in the performance by the Independent Certifier of the obligations ascribed to it under the Project Agreement even though the Facility Agent is not a party to the Project Agreement.

2.9 The Independent Certifier shall promptly and efficiently perform the Services as soon as reasonably practicable consistent with the standards specified in clauses 2.1 and 2.2.

3. FEE

3.1 The Contractor shall pay to the Independent Certifier, in full satisfaction of its performance of the Services, the Fee in the instalments and at the intervals set out in Schedule 2.

3.2 The Independent Certifier shall submit to the Contractor VAT invoices (together with all supporting documentation reasonably requested by the Contractor, the Authorities and/or the Facility Agent) in respect of the instalments of the Fee due in accordance with Schedule 2. Subject to the Contractor taking reasonable steps to satisfy itself that the relevant instalment or instalments is, or are, so due, the Contractor shall make payment against each invoice within twenty (20) Business Days of the date of the Contractor's receipt of the Independent Certifier's VAT invoice.

3.3 Payment by the Contractor shall be subject to clause 14 and shall be without prejudice to any claims or rights which the Contractor may have against the Independent Certifier and shall not constitute any admission by the Contractor as to performance by the Independent Certifier of its obligations under this appointment.

3.4 All sums stated in this appointment are exclusive of Value Added Tax unless stated otherwise.

3.5 For the purposes of Housing Grants, Construction and Regeneration Act 1996, payment shall become due on the dates identified in Schedule 2 and the final date for payment shall be twenty (20) Business Days thereafter.

3.6 Subject to the provisions of clauses 3.7 to 3.9 the Authorities and the Facility Agent shall have no liability whatsoever for payment of the Fee or any other fee charged by the Independent Certifier.

3.7 In the event of non payment of the Fee by the Contractor by the final date for payment set out in clause 3.5, the Independent Certifier agrees that it will not exercise any right it may have to terminate this appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Independent Certifier by reason of non payment of fees by the Contractor without first serving a notice on the Authorities (a "Default Notice").

3.8 Subject to this clause 3 the Authorities shall have a right to serve notice on the Independent Certifier (a "Pre-Emption Notice") at any time within ten (10) Business Days of receipt of the Default Notice.

3.9 Upon receipt of a Pre-Emption Notice:-

3.9.1 the Independent Certifier's right to terminate this appointment or to treat the same as having been repudiated or to discontinue performance shall cease;

3.9.2 upon the issue of the Pre-Emption Notice the Authorities will pay any amounts due to the Independent Certifier under this appointment that remain unpaid within a reasonable time.

4. ALTERATIONS TO THIS APPOINTMENT AND INSTRUCTIONS

4.1 The Contractor and the Authorities acting jointly may by notice in writing to the Independent Certifier give notice of their intention to vary the scope of the Services by the omission from or addition to the Services. The Independent Certifier shall notify the Contractor and the Authorities in writing if, in addition to the Services, there are services which the Independent Certifier considers should be performed by the Independent Certifier to enable the Contractor to perform its obligations under the Project Agreement and/or the Construction Sub-Contract and/or the FM Agreement.

4.2 Within ten (10) Business Days of receiving or issuing a notification under clause 4.1 and at no additional cost to the Contractor and the Authorities, the Independent Certifier shall advise the Authorities and Contractor in writing of:

4.2.1 in the case of additions to the Services, any increase in fee; or

4.2.2 in the case of omissions from the Services, any decrease in the fee which is fairly and reasonably required as a result of the proposed omission of or addition to the Services.

4.3 Following receipt of the advice from the Independent Certifier in accordance with clause 4.2, the Contractor and the Authorities may vary the Services on such terms that the Contractor and the Authorities consider appropriate and thereafter the Independent Certifier shall perform the Services so varied in accordance with the terms of this appointment.

4.4 The fee payable in accordance with Schedule 2 shall be adjusted to reflect the additional or reduced cost to the Independent Certifier of providing the Services as varied (such adjustment to be agreed between the Parties or determined in accordance with clause 17).

5. CONFIDENTIAL INFORMATION

The Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of any unpublished information relating to the Contractor's, or the Authorities' technology or other know-how business plans or finances (including without limitation the terms of any Financing Agreement) or any such information relating to a subsidiary, supplier, customer or client of the Contractor or the Authorities where the information was received during the period of this appointment. Upon termination of this appointment for whatever reason the Independent Certifier shall deliver up to the Contractor or the Authorities or the Facility Agent (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by the Independent Certifier pursuant either to this appointment or to any previous obligation owed to the Contractor or the Authorities or the Facility Agent.

6. **CERTIFICATION**

6.1 The Independent Certifier warrants that the Employers and the Facility Agent may:

6.1.1 rely on any certificate which the Independent Certifier may issue and any approvals which the Independent Certifier may give in relation to the Project; and

6.1.2 assume that the work or services to which such certificates or approvals relate has or have been carried out and completed or supplied (as the case may be) in accordance with the terms of the relevant agreement, contract or appointment (provided that, for the avoidance of doubt, this clause 6.1.2 shall be subject to and shall not prejudice the Independent Certifier's obligation to exercise the level of reasonable skill and care set out in clause 2.4).

6.2 The respective forms of the certificates for issue by the Independent Certifier are set out in Schedule 5.

7. **OBLIGATIONS OF THE CONTRACTOR**

7.1 Throughout the period of this appointment, during normal business hours and on reasonable prior notice, the Independent Certifier shall be entitled to reasonable access to the Contractor's and the Building Contractor's relevant sites and any relevant information and other written material in the possession of the Contractor and the Building Contractor as the Independent Certifier shall reasonably require to carry out the Services.

7.2 The Contractor shall appoint one or more appropriate personnel to liaise with the Independent Certifier.

8. **LIMITATIONS ON THE AUTHORITY OF THE INDEPENDENT CERTIFIER**

8.1 The Independent Certifier shall not:-

8.1.1 make or purport to make any alteration or addition to or omission from the design of the Works (including without limitation the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Works; or

8.1.2 consent or agree to any waiver or release of any obligation of the Contractor or the Authorities or the Building Contractor under the Project Agreement or under the Construction Sub-Contract (as the case may be) or of any contractor or professional consultant employed or engaged in connection with the Works.

8.2 For the avoidance of doubt, the Independent Certifier shall not express an opinion on and shall not interfere with or make any advice, opinion or representation in relation to any matters which are beyond its role and responsibilities under this appointment.

9. **TERMINATION**

9.1 The Contractor and the Authorities may by joint notice in writing (a "Joint Notice") immediately terminate this appointment if the Independent Certifier:-

9.1.1 is in breach of any of the terms of this appointment which, in the case of a breach capable of remedy, shall not have been remedied by the Independent

Certifier within fifteen (15) Business Days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;

9.1.2 is incompetent, guilty of gross misconduct and/or any material negligence or delay in the provision of the Services;

9.1.3 fails or refuses after written warning to provide the Services reasonably and properly required; or

9.1.4 ceases for any reason to carry on its business or is unable to pay its debts as they fall due or if any distress or execution is levied or threatened upon the Independent Certifier's property or assets or if the Independent Certifier makes or offers to make any arrangement or composition with its creditors (including without limitation taking any step with a view to a moratorium) or commit any act of bankruptcy or if any petition, application or receiving order in bankruptcy is presented or made against it or (if it is a limited company) any resolution or petition to wind up the Independent Certifier's business or other proceeding is made, passed or presented (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency and provided that in the case of a winding up proceeding such proceedings has not been withdrawn, dismissed, set aside or revoked within twenty (20) Business Days) or the Independent Certifier petitions or applies for or arranges for the appointment of, or has an order made appointing to it, a trustee, liquidator, administrator, receiver or manager of the Independent Certifier's undertaking property or assets or any part of them.

9.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this appointment may be terminated by Joint Notice and with immediate effect.

9.3 Following any termination of this appointment, but subject to any set-off or deductions which the Contractor may be entitled properly to make as a result of any breach of this appointment by the Independent Certifier, the Independent Certifier shall be entitled to be paid by the Contractor in full and final settlement of any claim which the Independent Certifier may have in consequence thereof, any fees due under clause 3 in respect of Services carried out in accordance with this appointment prior to the date of termination. For the avoidance of doubt, neither the Contractor nor the Authorities nor the Facility Agent shall have any liability to the Independent Certifier for loss of profit, loss of contracts or other costs, losses and/or expenses (in each case, whatsoever howsoever) arising out of or in connection with such termination.

9.4 Termination of this appointment shall be without prejudice to any accrued rights and obligations under this appointment as at the date of termination (including without limitation the right of the Contractor and the Authorities and the Facility Agent to recover damages from the Independent Certifier).

9.5 If this appointment is terminated in accordance with this clause 9, the Contractor, the Authorities and the Facility Agent shall use reasonable endeavours to engage an alternative independent certifier within twenty five (25) Business Days, subject to any relevant legal requirements and public procurement rules. The costs incurred in procuring such an alternative appointment shall be borne by the Contractor except in the event of termination pursuant to clause 9.1.2 in which case the costs shall be borne by the Independent Certifier. If within such period the Contractor, the Authorities and the Facility Agent are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms and termination is caused by the Independent

Certifier's default of this appointment, the Independent Certifier shall pay the Contractor and/or the Authorities and/or the Facility Agent, as the case may be, any reasonable additional loss, damage or extra costs suffered by each of them.

9.6 Termination of this appointment shall not affect the continuing rights and obligations of the parties under clauses 5 (Confidential Information), 12 (Professional Indemnity Insurance), 14 (Limitation of Liabilities), 17 (Dispute Resolution Procedure) and this clause or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. ASSIGNMENT BY INDEPENDENT CERTIFIER

The Independent Certifier shall not assign, transfer or sub-contract the benefits or obligations of this appointment or any part thereof without the prior written consent of the Contractor and the Authorities.

11. ASSIGNMENT BY CONTRACTOR/AUTHORITIES

11.1 Subject to clause 11.2 below, the Contractor and/or the Authorities may assign or transfer any of their rights and obligations under this appointment to any other person, firm, corporate body or company provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter to the other parties to this appointment.

11.2 While the Independent Certifier is still providing services under this appointment no such assignment or transfer by the Contractor (other than by way of security) shall be permitted without the consent of the Authorities and the Independent Certifier (such consent not to be unreasonably withheld or delayed).

12. PROFESSIONAL INDEMNITY INSURANCE

12.1 The Independent Certifier shall take out and maintain Professional Indemnity Insurance.

12.2 The Independent Certifier shall maintain such Professional Indemnity Insurance with reputable insurers carrying on business in the European Union who are acceptable to the Contractor, the Facility Agent and the Authorities (such acceptance not to be unreasonably withheld or delayed) for a period of not less than 12 years from the date of the completion of the Independent Certifier's duties under this appointment, provided that such insurance is available at reasonable commercial rates.

12.3 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts or omissions particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.

12.4 The Independent Certifier shall provide to the Contractor, the Authorities and the Facility Agent at their reasonable request, written confirmation by an independent company of insurance brokers that it has the Professional Indemnity Insurance in force for the ensuing 12 months.

12.5 The Independent Certifier shall immediately inform the Contractor, the Authorities and the Facility Agent if the Professional Indemnity Insurance ceases to be available at commercially reasonable rates in order that the Independent Certifier and the Contractor and the Authorities and the Facility Agent can discuss means of best protecting their respective positions in the absence of such insurance.

13. COLLATERAL WARRANTIES

Within 14 days of receipt of a written request from time to time from the Contractor, the Independent Certifier shall execute as a deed one or more collateral warranties in the form annexed as Schedule 4 in favour of the Building Contractor, Border Construction and any FM Contractor (within the meaning set out in the Project Agreement) and any other person having an interest in, or providing funding in respect of the Works or any part of the Works.

14. LIMITATION OF LIABILITIES

14.1 Save in respect of death or personal injury or fraud, the maximum aggregate liability of the Independent Certifier to each of the Contractor and the Authorities pursuant to this appointment shall be ten million pounds.

14.2 For the avoidance of doubt, it is not intended that the Independent Certifier should have any asbestos related duties or liabilities pursuant to this Agreement but, to the extent that any nevertheless arise whether under statute or otherwise, the Independent Certifier's liability in relation to asbestos related claims shall (save in relation to death or personal injury) be limited to the sum of two hundred and fifty thousand pounds (£250,000.00).

15. SET-OFF

15.1 Nothing contained elsewhere in this appointment shall in any way limit or exclude the Contractor's rights and entitlements at common law to deduct or to set-off any monies due to it or which may become due to it from the Independent Certifier (whether by reason of the provisions of this appointment or in consequence of any negligence, omission or default of the Independent Certifier in the performance of its obligations under this appointment) from or against any monies otherwise due to the Independent Certifier under this appointment.

15.2 For the purpose of the Housing Grants, Construction and Regeneration Act 1996, any notice of intention to withhold payment shall be given to the Independent Certifier not less than two days before the final date for payment in accordance with clause 3.5.

16. ENTIRE APPOINTMENT

This appointment sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this appointment. None of the parties shall be entitled to rely on anything which is not stated in this appointment or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith.

17. DISPUTE RESOLUTION PROCEDURE

17.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure set out in the Project Agreement.

17.2 The Contractor, the Authorities, the Facility Agent and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this appointment.

18. **CUMULATIVE RIGHTS AND ENFORCEMENT**

Any rights and remedies provided for in this appointment whether in favour of the Contractor, the Authorities, the Facility Agent or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

19. **WAIVER**

The failure of any party at any one time to enforce any provision of this appointment shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

20. **SEVERABILITY**

In the event that any term, condition or provision contained in this appointment shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this appointment and the rest of this appointment shall stand, without affecting the remaining clauses.

21. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties agree that, notwithstanding any other provision of this appointment, this appointment shall not purport to confer on any third party any right to enforce any term of this appointment for the purposes of the Contracts (Rights of Third Parties) Act 1999 save that (for the avoidance of doubt) nothing contained herein shall prejudice any claim under any collateral warranty given pursuant to this appointment.

22. **JURISDICTION AND LAW**

The laws applicable to this appointment shall be the laws of England and Wales and it shall be subject to the exclusive jurisdiction of the Courts of England.

23. **COUNTERPARTS**

This appointment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document.

24. **NO PARTNERSHIP**

Nothing in this appointment shall be construed as creating a partnership between the Employers and they will not conduct themselves in such a way so as to create the impression such a partnership exists.

IN WITNESS whereof the parties hereto have executed this appointment as a deed on the day and year first before written.

THE COMMON SEAL of CUMBRIA COUNTY COUNCIL was hereunto affixed in the presence of:-)
)
)
)

Authorised Signatory

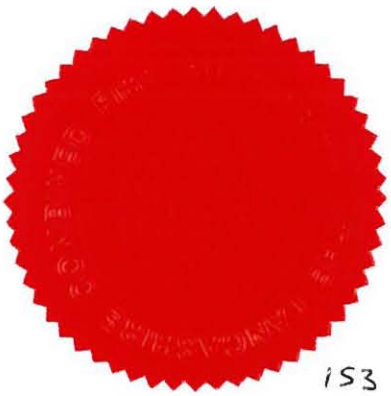
c25459

THE COMMON SEAL of MERSEYSIDE FIRE AND RESCUE AUTHORITY was hereunto affixed in the presence of:-)
)
)
)

Authorised Signatory

THE COMMON SEAL of LANCASHIRE COMBINED FIRE AUTHORITY was hereunto affixed in the presence of:-)
)
)

Authorised Signatory



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EXECUTED AS A DEED by BALFOUR BEATTY FIRE AND RESCUE NW LIMITED acting by its duly appointed attorney:-)
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in the presence of

Witness:

Name: BRIAN CARROLL

Address: ASHFORDS LLP, EXETER, EX1 3LH.

EXECUTED AS A DEED by DEXIA CRÉDIT LOCAL acting by its duly appointed attorney:-

in the presence of JOANNA SPALDING

Witness:

Name:

Address:

Ashfords LLP
Solicitors
Tower Wharf
Cheese Lane
Bristol BS2 0JJ

EXECUTED AS A DEED by

GLEEDS MANAGEMENT SERVICES LIMITED

by the signatures of:-

Director .....

Director/Company Secretary .....

SCHEDULE 1 - SERVICES

The Independent Certifier shall:

1 fulfil the role of the Independent Certifier as described in the Project Agreement and the Construction Sub-Contract in respect of the Services and in accordance with all of the provisions of this appointment;

2 familiarise itself with the Project Agreement (including without limitation the Authorities' Requirements and the Contractor's Proposals and any changes implemented from time to time under the Project Agreement and any other relevant documentation or information referred to in the Project Agreement), the Financing Agreements, the FM Agreement and the Construction Sub-Contract provided that such changes are notified to the Independent Certifier to the extent necessary to be in a position to carry out the Services in accordance with the terms of the Project Agreement, the Construction Sub-Contract and this appointment;

3 perform the obligations and duties of the Independent Certifier contained in the Project Agreement;

4 use reasonable endeavours to procure the supply of any necessary and/or relevant data and/or information from the Parties and any third party as advised in writing by the Parties as may be necessary for the Independent Certifier to carry out his duties under this appointment, the Project Agreement, the Construction Sub-Contract, the Financing Agreements and the FM Agreement;

5 following notification by the Contractor pursuant to the Project Agreement and the Construction Sub-Contract (or otherwise) liaise with the relevant Authority, the Contractor and the Facility Agent in anticipation of carrying out such activities as are necessary for it to determine whether or not the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied and notifying the Contractor, the relevant Authority, the Building Contractor and the Facility Agent of any outstanding matters to be attended to before the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied;

6 prepare a checklist by no later than six (6) months after the date of this Appointment for issuing the Acceptance Certificates and the Post Completion Works Acceptance Certificates and in the case of the Initial Phase Acceptance Certificates, by no later than four (4) weeks after the date of this Appointment, and agree the same with the Authorities, the Contractor and the Facility Agent;

7 agree with the Authorities, the Contractor and the Facility Agent the scope and criteria for auditing each Initial Phase Acceptance Certificate, Acceptance Certificate and Post Completion Works Acceptance Certificate to be issued under the Project Agreement;

8 review and comment on commissioning and testing programmes for all of the Stations subject to the relevant information being provided to the Independent Certifier by the Building Contractor's relevant design consultant within a reasonable time prior to the Completion Date for each Station;

9 take such steps as are reasonably required to ensure that the Contractor's commissioning is carried out fully and properly, and report on such commissioning in order to establish that the Contractor's obligations have been met in relation thereto and review and comment on test results for each of the Stations;

10 provide regular monthly reports to the Employers and the Facility Agent in respect of the carrying out of the following areas of the Works subject to the relevant validation certificates being provided to the Independent Certifier by the Building Contractor's design consultant:-

10.1 drainage;

10.2 foundations;

10.3 structural steelwork;

10.4 external walling;

10.5 roofing;

10.6 internal partitions;

10.7 mechanical;

10.8 electrical;

10.9 finishes; and

10.10 external works.

11 provide regular monthly audit reports, (by the fifteenth (15th) day of each month following the relevant monthly period covered by the audit report), for the Authorities, the Contractor and the Facility Agent to include progress reports (including without limitation a comparison of the Building Contractor's anticipated programme and as-built programme) subject to the Contractor supplying to the Independent Certifier the relevant construction programme information updated checklists and outstanding information requirement schedules;

12 visit the Sites as and when required (to be at least monthly) to inspect and comment on the detail of the Works with regard to compliance with the design and construction proposals and Good Industry Practice;

13 attend the regular monthly contract progress meetings (for each region) to the extent necessary to carry out the Services and to report on progress and identify outstanding information required together with reporting on delays and extensions of time to any Services Start Date, any Planned Services Availability Date and/or any Planned Post Completion Works Acceptance Date (as applicable) subject to the Contractor supplying to the Independent Certifier the relevant Construction Programme information;

14 issue the Initial Phase Acceptance Certificates, Acceptance Certificates and Post

Completion Works Acceptance Certificates in the form set out in Schedule 5 to this appointment when the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied in accordance with the Project Agreement;

15 ensure that the Independent Certifier's monthly reports address any issues as they arise and will focus on the following:

15.1 Progress relative to the Construction Programme;

15.2 Compliance with the Authorities' Requirements and the Contractor's Proposals;

15.3 Alternative specifications as notified to the Independent Certifier; and

15.4 Changes to the Project as notified to the Independent Certifier.

16 provide the following certification services as part of the Services:

16.1 Initial Review:

a) review and take note of the Authorities' Requirements as set out in the Project Documents; and

b) following the review, raise any points requiring clarification with the Authorities for discussion and resolution.

16.2 Design/Design Development Stage Activities:

a) review the Building Contractor's proposed design development and drawing issue procedures and programme subject to such information being supplied to the Independent Certifier. Comment as necessary to the Authorities, the Contractor and the Facility Agent;

b) attend certain design review meetings where necessary to supplement written monthly reports; and

c) monitor the submission and progress of statutory and mandatory applications, subject to such programme information being supplied by the Contractor to the Independent Certifier including without limitation:

i) Town & Country Planning Acts;

ii) Building Regulations;

iii) Statutory Undertakers; and

iv) Health and Safety.

16.3 Construction Stage/Completion Stage

a) Check and determine that relevant facilities are provided in accordance with

the requirements and allocations defined in the Authorities' Requirements and the Contractor's Proposals and are available and have been demonstrated satisfactorily to the Independent Certifier and, if so, issue an Initial Phase Acceptance Certificate, an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as applicable) in respect of those facilities.

b) Check and determine that all facilities defined have received an Initial Phase Acceptance Certificate, an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as applicable) and that the certification procedure set out in the Project Agreement and the Construction Sub-Contract has been completed.

c) Checks and certifications in this regard will include without limitation such matters as:

i) checks on accommodation provisions, in terms of type, quantity, capacity, function and size subject to the relevant information being supplied to the Independent Certifier;

ii) checks on fit-out of accommodation and facilities including without limitation in respect to specialist requirements subject to the relevant information being supplied to the Independent Certifier;

iii) observations on site health & safety issues;

iv) ensuring all appropriate obligations to relevant agencies have been discharged including without limitation planning, building regulations, section agreements for highways works, warranties and insurances, outstanding 'identified' legal issues such as rights of way, easements and the like; and

v) obtaining copies of maintenance manuals, health and safety files and the like.

d) Prepare a definitive Snagging List for each Station and carry out an inspection when notified that the Snagging Items in respect of each Station have been made good.

e) Check that the Health & Safety File for each Station is available in accordance with the provisions of the Project Agreement including without limitation all as-built drawings, operating and maintenance manuals, testing and commissioning certificated and related information.

SCHEDULE 2 - FEE

The Fee is the fixed fee of £55,000 for the provision of the Services identified in Schedule 1 together with any services necessary or reasonably incidental to such services.

Trigger for payment of instalment	**Amount of instalment**
Monthly drawdown – Invoice at month end	29 equal payments of £1,897 plus VAT

Any/all work beyond month 30 (inc. post completion work, delays to programme, etc.) to be time charged @ £75/hr.

Additional services (attendance at additional meetings, re-reviews due to changes, re-inspections following any Notice of non-completion, etc.) to be time charged @ £75/hr.

SCHEDULE 3 - KEY PERSONNEL

Relevant Key Personnel	Job title	Area(s) of expertise
Des Mahood	Director	Project Administration
Chris Rogers	Associate Director	Independent Certifier
Chris Aspen	Assistant PM	Independent Certifier

SCHEDULE 4 - DRAFT COLLATERAL WARRANTY

DATED 201

[BENEFICIARY] (1)

and

GLEEDS MANAGEMENT SERVICES LIMITED (2)

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (3)

INDEPENDENT CERTIFIER'S WARRANTY

Relating to North West Fire PFI Project

THIS DEED dated 200[ ] BETWEEN:-

(1) [BENEFICIARY] (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] ("the Beneficiary");

(2) GLEEDS MANAGEMENT SERVICES LIMITED (registered in England under company number 01753465) whose registered office is at 95 New Cavendish Street, London W1W 6XF ("the Independent Certifier"); and

(3) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] ("the Contractor").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Appointment"	means an agreement made between the Authorities, the Contractor, the Facility Agent and the Independent Certifier for services to be carried out by the Independent Certifier on behalf of the Contractor in connection with the Works;
"Authorities"	means 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");
"Facility Agent"	means [ ]
["Construction Sub-Contract"[1]	means the sub-contract entered into by the Contractor and the Building Contractor for the design, construction and commissioning of the whole or part of the Works;]
["Building Contractor"[2]	means [*Contractor*] (registered in England and Wales under company number [*insert number*]) whose registered office is at [*insert address*];]
"Project Agreement"	means the agreement dated [ ] (including any variation or replacement of such agreement from time to time) entered into between the Authorities and the

[1] This definition may not be required where the Building Contractor is not the Beneficiary.

[2] This definition only required where the Beneficiary is not also the Building Contractor.

	Contractor for the provision of the Project;
"Professional Indemnity Insurance"	means professional indemnity insurance in an amount of not less than ten million pounds sterling (£10,000,000) for any one claim but limited to an aggregate basis in respect of pollution and contamination and to two hundred and fifty thousand pounds sterling (£250,000) in respect of asbestos;
"Services"	means the general and specific duties and obligations of the Independent Certifier under the Appointment;
"Works"	means the design and construction of the works by the Contractor as more particularly described in the Project Agreement.

1.2 **Successors**

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this Deed.

1.3 **Joint liability**

Where there are two or more persons included in the expressions "Independent Certifier", the term Independent Certifier shall include the plural numbers and any obligation expressed to be made by or with such party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

1.4 **Headings**

The headings in this Deed are inserted for convenience only and shall be ignored in construing the terms.

1.5 **Notices**

All notices under this Deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this Deed or to the registered office or principal business address of either party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.6 **References to statutes, etc**

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.7 **Genders and numbers**

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2. **DUTY OF CARE**

2.1 The Independent Certifier warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Services the reasonable

skill, care and diligence to be expected from a competent and properly qualified Independent Certifier experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Works as those comprised in the Works in the performance of its duties and obligations under the Appointment.

2.2 For the avoidance of doubt the Independent Certifier shall owe no obligation or liability to the Beneficiary by virtue of this Deed which is greater or of longer duration than it would owe to the Beneficiary under the Appointment if the Beneficiary had been named as joint employer under the Appointment and the Independent Certifier shall be entitled in any action or proceedings by the Beneficiary under this Agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Contractor under the Appointment.

3. PROFESSIONAL INDEMNITY INSURANCE

The Independent Certifier covenants:-

3.1 to take out and maintain Professional Indemnity Insurance for a period of twelve (12) years from the date of completion of the Independent Certifier's duties under the Appointment provided such insurance is available in the market at commercially reasonable rates;

3.2 to inform the Beneficiary or its assignees in writing immediately if any failure or inability to maintain such professional indemnity insurance cover in accordance with 3.1 above in order that the parties can discuss means of best protecting their respective positions in the absence of such insurance; and

3.3 when requested by the Beneficiary (but not more often than is reasonable) to produce written evidence of the Professional Indemnity Insurance cover and confirmation from the Professional Indemnity Insurance provider that the last premium has been paid.

4. ASSIGNMENT

4.1 The benefit of this Deed may be assigned by the Beneficiary to any other person having an interest in the Works provided that:-

4.1.1 the number of assignments under this clause is limited to two only;

4.1.2 the Independent Certifier shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and

4.1.3 the Independent Certifier shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.

4.2 The Independent Certifier will not contend that any assignee is precluded from recovering any loss from any breach of this Agreement (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 intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or that that original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

5. **INDEPENDENT ENQUIRY CLAUSE**

The liability of the Independent Certifier under this Deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Certifier might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

6. **NON WAIVER**

The Contractor and the Independent Certifier agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

7. **PARTNERSHIP**

If the Independent Certifier is a partnership each partner including any other person or persons taken into the partnership during the currency of this Deed shall be jointly or severally liable for any breach of this Deed.

8. **JURISDICTION AND LAW**

The laws applicable to this Deed shall be the laws of England and Wales.

9. **WARRANTY IN RESPECT OF CERTIFICATES**

The Independent Certifier warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this Deed.

EXECUTED AS A DEED by

the INDEPENDENT CERTIFIER

in the presence of:-

Director .....

Director/Company Secretary .....

EXECUTED AS A DEED by

the BENEFICIARY in the presence of:-

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director .....

Director/Company Secretary .....

EXECUTED AS A DEED by the

CONTRACTOR in the presence of:-

Director .....

Director/Company Secretary .....

SCHEDULE 5 – CERTIFICATES

Form of [Initial Phase Acceptance certificate/Acceptance Certificate/Post Completion Works Acceptance Certificate]*

in relation to ***NORTH WEST FIRE AND RESCUE SERVICES PRIVATE FINANCE INITIATIVE PROJECT***

To:

Balfour Beatty Fire and Rescue NW Limited

and

Cumbria County Council, Lancashire Combined Fire Authority, Merseyside Fire and Rescue Authority (the "Authorities")

and

"Facility Agent"

and

"Building Contractor"

and

"FM Contractor"

I/We refer to the agreement dated ..... 2011 between the "Authorities" and Balfour Beatty Fire and Rescue NW Limited (the **"Project Agreement"**) and the agreement for the appointment of an independent certifier dated ..... 2010 between (1) the "Authorities", (2) Balfour Beatty Fire and Rescue NW Limited, (3) *"Facility Agent"* and (4) Gleeds Management Services (the **"Independent Certifier Appointment"**).

I, C. A. Rogers, being Associate Director of Gleeds hereby certify that I am satisfied that, in respect of the Station known as ***xxxxxxxxxx,*** the [Initial Phase Services Availability Requirements/Services Availability Requirements/Post Completion Works Acceptance Requirements]* have been satisfied [(save for the Snagging Items listed in the respective snag list)]** and that the [Services Start Date/Services Availability Date/Post Completion Works Acceptance Date]* is, for the purpose of the Project Agreement, the ***xx xxxxx 20xx.***

This certificate is issued pursuant to [Clause20 of]** the Project Agreement and our obligations under the Independent Certifier Appointment.

When used in this certificate, the words which are defined in the Project Agreement have the meanings given to such words in that agreement.

.....

Signed for and on behalf of

GLEEDS

Date of issue .....

Notes:

*** Delete as appropriate.**

**** Relevant only for certification of the Works under clause 20 of the Project Agreement.**

DATED 23 February 2011

CUMBRIA COUNTY COUNCIL

LANCASHIRE COMBINED FIRE AUTHORITY

MERSEYSIDE FIRE AND RESCUE AUTHORITY

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

and

DEXIA CRÉDIT LOCAL

and

GLEEDS MANAGEMENT SERVICES LIMITED

INDEPENDENT CERTIFIER APPOINTMENT

relating to North West Fire and Rescue Services PFI Project

DICKINSON DEES
Dickinson Dees LLP
One Trinity Broad Chare Newcastle upon Tyne NE1 2HF
Telephone: 0191 279 9000 Fax: 0191 230 8501
Email: law@dickinsondees.com www.dickinson-dees.com

THIS DEED OF APPOINTMENT dated 23 February 2011

BETWEEN:-

(1) 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");

(2) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED a company registered in England (registration number 7403391) whose registered office is at 350 Euston Road, Regent's Place London NW1 3AX (the "Contractor");

(3) DEXIA CRÉDIT LOCAL, of Shackleton House, 4 Battle Bridge Lane, London, SE1 2RB which expression shall include its successors and assigns (the "Facility Agent"); and

(4) GLEEDS MANAGEMENT SERVICES LIMITED (registered in England under company number 01753465) whose registered office is at 95 New Cavendish Street, London W1W 6XF (the "Independent Certifier").

BACKGROUND

(A) The Contractor has entered (or is about to enter) into the Project Agreement with the Authorities for the construction and provision of new fire stations to be located at various sites in Merseyside, Lancashire and Cumbria ("the Project") pursuant to the Government's Private Finance Initiative.

(B) The Contractor has entered (or is about to enter) into the Financing Agreements with the Senior Lenders.

(C) The terms of the Project Agreement require the Authorities and the Contractor jointly to appoint the Independent Certifier.

(D) The Independent Certifier is an independent adviser willing to provide services to the Authorities and the Contractor and for the benefit of the Senior Lenders.

(E) The Authorities, the Contractor, the Facility Agent and the Independent Certifier have agreed to enter into this Deed for the purposes of setting out the terms upon which the Independent Certifier is appointed.

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this appointment unless the context otherwise requires, words and expressions defined in the Project Agreement shall have the same meanings in this appointment and the following expressions shall have the following meanings:-

"Construction Sub-Contract"	means the sub-contract entered into by the Contractor and the Building Contractor for the design, construction and commissioning of the whole or part of the Works;
"Building Contractor"	means the building contractor appointed by the Contractor to carry out the Works under the Construction

	Sub-Contract;
"Employers"	means the Authorities and the Contractor (each an "Employer");
"Fee"	means the sum or sums referred to in Schedule 2 payable in relation to the performance of the Services subject to any adjustment in accordance with this appointment;
"FM Agreement"	shall have the meaning set out in the Project Agreement;
"FM Contractor"	shall have the meaning set out in the Project Agreement;
"Key Personnel"	means those persons named in Schedule 3;
"Project Agreement"	means the agreement dated 23 February 2011 (including any variation or replacement of such agreement from time to time) entered into between the Authorities and the Contractor for the provision of the Project;
"Professional Indemnity Insurance"	means professional indemnity insurance in an amount of not less than ten million pounds sterling (£10,000,000) for any one claim but limited to an aggregate basis in respect of pollution and contamination and to two hundred and fifty thousand pounds sterling (£250,000) in respect of asbestos;
"Services"	means the services to be provided by the Independent Certifier as described in clause 2 and Schedule 1 as may be amended in accordance with this appointment (including without limitation any such services carried out prior to the date of this appointment); and
"Works"	means the design and construction of the works by the Contractor as more particularly described in the Project Agreement.

1.2 **Documents comprising the appointment and priority of documents**

This appointment shall incorporate by reference all documents referred to in it and shall together comprise the exclusive terms and conditions of the appointment of the Independent Certifier by the Contractor and the Authorities. The Independent Certifier acknowledges and agrees that the terms and conditions of this appointment will prevail over all other terms and conditions whatsoever put forward by the Independent Certifier. In the event of any conflict or inconsistency between the terms of this appointment document and any documents incorporated by reference, the former shall prevail.

1.3 **Successors**

References to "the Authorities" and "the Contractor" shall include any person or persons for the time being entitled to the benefit of this appointment as a successor to such entities from time to time.

1.4 **Joint liability**

Where two or more persons are included in the expression "Independent Certifier", the term "Independent Certifier" shall include the plural numbers and any obligation expressed to be made by or with such party shall be deemed to be made and undertaken by such persons jointly and severally.

1.5 **Headings**

The headings in this appointment are inserted for convenience only and shall be ignored in construing its terms.

1.6 **Notices**

All notices or other communications required in connection with this appointment shall be in writing and sent by hand, by first class pre-paid post or by facsimile transmission to the relevant address or facsimile number of the Authorities and the Contractor as set out in the Project Agreement and to the address set out above in respect of the Facility Agent and the Independent Certifier or to such other address or facsimile number as a party to this appointment may notify to another party to this appointment in writing.

1.7 **Legislation and regulations**

Reference to any statute or regulation or code of practice or standard includes the reference to the same as amended or extended or re-enacted from time to time.

2. DUTIES OF THE INDEPENDENT CERTIFIER

2.1 The Contractor and the Authorities hereby jointly appoint the Independent Certifier and the Independent Certifier agrees to carry out and complete the obligations and tasks which are ascribed to the Independent Certifier under the Project Agreement (which are summarised in Schedule 1) and the Services in accordance with this appointment exercising the level of reasonable skill care and diligence to be expected from a competent and properly qualified professional Independent Certifier experienced in providing services of a similar scope, type, scale and complexity to the Services and in accordance with all current British Standards and Codes of Practice and any other approved criteria and standards or code and in compliance with all applicable statutes and regulations. The Independent Certifier acknowledges that the Contractor, the Authorities and the Facility Agent may rely on, and shall continue to rely upon, the professional skill and judgement of the Independent Certifier in the performance of the Services.

2.2 The Independent Certifier shall carry out the Services (including without limitation the exercise of any discretion in the performance of the Services) independently fairly and impartially to and as between the Contractor and the Authorities and having regard to the interests of the Facility Agent in relation to the Project Agreement, at such times and in such locations as the parties shall agree from time to time. Whilst the Independent Certifier may take account of any representations made by the Contractor, the Authorities or the Facility Agent the Independent Certifier shall not be bound to comply with any representations made by any of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.

2.3 The Independent Certifier shall procure that the Key Personnel shall be employed throughout the duration of this appointment to direct and control the overall performance and delivery of the Services. Changes to any of the Key Personnel shall only be made

with the consent of the Contractor and the Authorities, such consent not to be unreasonably withheld or delayed.

2.4 The Independent Certifier shall comply with:

(a) all Legislation and the requirements of any relevant planning permission, building regulations or other consent, licence, approval or authority of which the Independent Certifier is or should be aware; and

(b) all lawful and reasonable directions, instructions or request (including without limitation any relevant site rules) of the Contractor, the Authorities, the Building Contractor or the FM Contractor whilst the Independent Certifier is present on any of the Sites.

2.5 The Independent Certifier shall comply with all reasonable instructions given to it by the Contractor and the Authorities acting jointly, except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the Services or its authority or responsibilities under this appointment or prejudice or might prejudice the exercise by the Independent Certifier of its professional judgement in accordance with clauses 2.1 and 2.2. All instructions to the Independent Certifier shall be given in writing by the Contractor and the Authorities acting jointly.

2.6 Insofar as the Independent Certifier has already performed or partly performed any of the Services, the Independent Certifier warrants to each of the Contractor, the Authorities and the Facility Agent that:

2.6.1 it has done so in accordance with the standards of reasonable skill and care and all terms and conditions set out in this appointment;

2.6.2 all warranties and undertakings in this appointment apply to them;

2.6.3 the Independent Certifier will complete the performance of any part of the performed Services in due time in accordance with this appointment; and

2.6.4 all sums (if any) paid to the Independent Certifier to date in respect of work done in relation to the role of Independent Certifier for the Project are payments on account of sums due under this appointment.

2.7 The Contractor and the Authorities agree to co-operate with, and provide reasonable assistance to, the Independent Certifier to familiarise the Independent Certifier with all necessary aspects of the Works to enable the Independent Certifier to carry out its obligations under this appointment.

2.8 The Independent Certifier shall familiarise himself with and shall be deemed to have full knowledge of the provisions of the Project Agreement, the Construction Sub-Contract and the FM Agreement (the "Project Documents") and the Financing Agreements, copies of which the Independent Certifier acknowledges it has received at the date of this appointment and such variations to them as the Employers may provide to the Independent Certifier and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Contractor and the Authorities which are set out in the Project Documents and the Financing Agreements. The Independent Certifier shall perform the Services in such manner and at such times that no act, omission or default of the Independent Certifier shall constitute or cause any breach by the Contractor and/or the Authorities and/or any related parties of any requirements and/or obligations in the Project Documents and/or

the Financing Agreements. The Independent Certifier further acknowledges that a breach by it of this appointment may result in the Employers incurring liability under the Project Documents and/or the Financing Agreements and other costs and losses and all such liability, costs and losses are hereby agreed to be within the contemplation of the Independent Certifier for the purposes of determining the extent of the Independent Certifier's liability under this appointment. The Independent Certifier acknowledges that the Facility Agent has an interest in the performance by the Independent Certifier of the obligations ascribed to it under the Project Agreement even though the Facility Agent is not a party to the Project Agreement.

2.9 The Independent Certifier shall promptly and efficiently perform the Services as soon as reasonably practicable consistent with the standards specified in clauses 2.1 and 2.2.

3. FEE

3.1 The Contractor shall pay to the Independent Certifier, in full satisfaction of its performance of the Services, the Fee in the instalments and at the intervals set out in Schedule 2.

3.2 The Independent Certifier shall submit to the Contractor VAT invoices (together with all supporting documentation reasonably requested by the Contractor, the Authorities and/or the Facility Agent) in respect of the instalments of the Fee due in accordance with Schedule 2. Subject to the Contractor taking reasonable steps to satisfy itself that the relevant instalment or instalments is, or are, so due, the Contractor shall make payment against each invoice within twenty (20) Business Days of the date of the Contractor's receipt of the Independent Certifier's VAT invoice.

3.3 Payment by the Contractor shall be subject to clause 14 and shall be without prejudice to any claims or rights which the Contractor may have against the Independent Certifier and shall not constitute any admission by the Contractor as to performance by the Independent Certifier of its obligations under this appointment.

3.4 All sums stated in this appointment are exclusive of Value Added Tax unless stated otherwise.

3.5 For the purposes of Housing Grants, Construction and Regeneration Act 1996, payment shall become due on the dates identified in Schedule 2 and the final date for payment shall be twenty (20) Business Days thereafter.

3.6 Subject to the provisions of clauses 3.7 to 3.9 the Authorities and the Facility Agent shall have no liability whatsoever for payment of the Fee or any other fee charged by the Independent Certifier.

3.7 In the event of non payment of the Fee by the Contractor by the final date for payment set out in clause 3.5, the Independent Certifier agrees that it will not exercise any right it may have to terminate this appointment or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Independent Certifier by reason of non payment of fees by the Contractor without first serving a notice on the Authorities (a "Default Notice").

3.8 Subject to this clause 3 the Authorities shall have a right to serve notice on the Independent Certifier (a "Pre-Emption Notice") at any time within ten (10) Business Days of receipt of the Default Notice.

3.9 Upon receipt of a Pre-Emption Notice:-

3.9.1 the Independent Certifier's right to terminate this appointment or to treat the same as having been repudiated or to discontinue performance shall cease;

3.9.2 upon the issue of the Pre-Emption Notice the Authorities will pay any amounts due to the Independent Certifier under this appointment that remain unpaid within a reasonable time.

4. ALTERATIONS TO THIS APPOINTMENT AND INSTRUCTIONS

4.1 The Contractor and the Authorities acting jointly may by notice in writing to the Independent Certifier give notice of their intention to vary the scope of the Services by the omission from or addition to the Services. The Independent Certifier shall notify the Contractor and the Authorities in writing if, in addition to the Services, there are services which the Independent Certifier considers should be performed by the Independent Certifier to enable the Contractor to perform its obligations under the Project Agreement and/or the Construction Sub-Contract and/or the FM Agreement.

4.2 Within ten (10) Business Days of receiving or issuing a notification under clause 4.1 and at no additional cost to the Contractor and the Authorities, the Independent Certifier shall advise the Authorities and Contractor in writing of:

4.2.1 in the case of additions to the Services, any increase in fee; or

4.2.2 in the case of omissions from the Services, any decrease in the fee which is fairly and reasonably required as a result of the proposed omission of or addition to the Services.

4.3 Following receipt of the advice from the Independent Certifier in accordance with clause 4.2, the Contractor and the Authorities may vary the Services on such terms that the Contractor and the Authorities consider appropriate and thereafter the Independent Certifier shall perform the Services so varied in accordance with the terms of this appointment.

4.4 The fee payable in accordance with Schedule 2 shall be adjusted to reflect the additional or reduced cost to the Independent Certifier of providing the Services as varied (such adjustment to be agreed between the Parties or determined in accordance with clause 17).

5. CONFIDENTIAL INFORMATION

The Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of any unpublished information relating to the Contractor's, or the Authorities' technology or other know-how business plans or finances (including without limitation the terms of any Financing Agreement) or any such information relating to a subsidiary, supplier, customer or client of the Contractor or the Authorities where the information was received during the period of this appointment. Upon termination of this appointment for whatever reason the Independent Certifier shall deliver up to the Contractor or the Authorities or the Facility Agent (as appropriate) all working papers, computer disks and tapes or other material and copies provided to or prepared by the Independent Certifier pursuant either to this appointment or to any previous obligation owed to the Contractor or the Authorities or the Facility Agent.

6. **CERTIFICATION**

6.1 The Independent Certifier warrants that the Employers and the Facility Agent may:

6.1.1 rely on any certificate which the Independent Certifier may issue and any approvals which the Independent Certifier may give in relation to the Project; and

6.1.2 assume that the work or services to which such certificates or approvals relate has or have been carried out and completed or supplied (as the case may be) in accordance with the terms of the relevant agreement, contract or appointment (provided that, for the avoidance of doubt, this clause 6.1.2 shall be subject to and shall not prejudice the Independent Certifier's obligation to exercise the level of reasonable skill and care set out in clause 2.4).

6.2 The respective forms of the certificates for issue by the Independent Certifier are set out in Schedule 5.

7. **OBLIGATIONS OF THE CONTRACTOR**

7.1 Throughout the period of this appointment, during normal business hours and on reasonable prior notice, the Independent Certifier shall be entitled to reasonable access to the Contractor's and the Building Contractor's relevant sites and any relevant information and other written material in the possession of the Contractor and the Building Contractor as the Independent Certifier shall reasonably require to carry out the Services.

7.2 The Contractor shall appoint one or more appropriate personnel to liaise with the Independent Certifier.

8. **LIMITATIONS ON THE AUTHORITY OF THE INDEPENDENT CERTIFIER**

8.1 The Independent Certifier shall not:-

8.1.1 make or purport to make any alteration or addition to or omission from the design of the Works (including without limitation the setting of performance standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Works; or

8.1.2 consent or agree to any waiver or release of any obligation of the Contractor or the Authorities or the Building Contractor under the Project Agreement or under the Construction Sub-Contract (as the case may be) or of any contractor or professional consultant employed or engaged in connection with the Works.

8.2 For the avoidance of doubt, the Independent Certifier shall not express an opinion on and shall not interfere with or make any advice, opinion or representation in relation to any matters which are beyond its role and responsibilities under this appointment.

9. **TERMINATION**

9.1 The Contractor and the Authorities may by joint notice in writing (a "Joint Notice") immediately terminate this appointment if the Independent Certifier:-

9.1.1 is in breach of any of the terms of this appointment which, in the case of a breach capable of remedy, shall not have been remedied by the Independent

Certifier within fifteen (15) Business Days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;

9.1.2 is incompetent, guilty of gross misconduct and/or any material negligence or delay in the provision of the Services;

9.1.3 fails or refuses after written warning to provide the Services reasonably and properly required; or

9.1.4 ceases for any reason to carry on its business or is unable to pay its debts as they fall due or if any distress or execution is levied or threatened upon the Independent Certifier's property or assets or if the Independent Certifier makes or offers to make any arrangement or composition with its creditors (including without limitation taking any step with a view to a moratorium) or commit any act of bankruptcy or if any petition, application or receiving order in bankruptcy is presented or made against it or (if it is a limited company) any resolution or petition to wind up the Independent Certifier's business or other proceeding is made, passed or presented (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency and provided that in the case of a winding up proceeding such proceedings has not been withdrawn, dismissed, set aside or revoked within twenty (20) Business Days) or the Independent Certifier petitions or applies for or arranges for the appointment of, or has an order made appointing to it, a trustee, liquidator, administrator, receiver or manager of the Independent Certifier's undertaking property or assets or any part of them.

9.2 If the Project Agreement is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, this appointment may be terminated by Joint Notice and with immediate effect.

9.3 Following any termination of this appointment, but subject to any set-off or deductions which the Contractor may be entitled properly to make as a result of any breach of this appointment by the Independent Certifier, the Independent Certifier shall be entitled to be paid by the Contractor in full and final settlement of any claim which the Independent Certifier may have in consequence thereof, any fees due under clause 3 in respect of Services carried out in accordance with this appointment prior to the date of termination. For the avoidance of doubt, neither the Contractor nor the Authorities nor the Facility Agent shall have any liability to the Independent Certifier for loss of profit, loss of contracts or other costs, losses and/or expenses (in each case, whatsoever howsoever) arising out of or in connection with such termination.

9.4 Termination of this appointment shall be without prejudice to any accrued rights and obligations under this appointment as at the date of termination (including without limitation the right of the Contractor and the Authorities and the Facility Agent to recover damages from the Independent Certifier).

9.5 If this appointment is terminated in accordance with this clause 9, the Contractor, the Authorities and the Facility Agent shall use reasonable endeavours to engage an alternative independent certifier within twenty five (25) Business Days, subject to any relevant legal requirements and public procurement rules. The costs incurred in procuring such an alternative appointment shall be borne by the Contractor except in the event of termination pursuant to clause 9.1.2 in which case the costs shall be borne by the Independent Certifier. If within such period the Contractor, the Authorities and the Facility Agent are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms and termination is caused by the Independent

Certifier's default of this appointment, the Independent Certifier shall pay the Contractor and/or the Authorities and/or the Facility Agent, as the case may be, any reasonable additional loss, damage or extra costs suffered by each of them.

9.6 Termination of this appointment shall not affect the continuing rights and obligations of the parties under clauses 5 (Confidential Information), 12 (Professional Indemnity Insurance), 14 (Limitation of Liabilities), 17 (Dispute Resolution Procedure) and this clause or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

10. ASSIGNMENT BY INDEPENDENT CERTIFIER

The Independent Certifier shall not assign, transfer or sub-contract the benefits or obligations of this appointment or any part thereof without the prior written consent of the Contractor and the Authorities.

11. ASSIGNMENT BY CONTRACTOR/AUTHORITIES

11.1 Subject to clause 11.2 below, the Contractor and/or the Authorities may assign or transfer any of their rights and obligations under this appointment to any other person, firm, corporate body or company provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter to the other parties to this appointment.

11.2 While the Independent Certifier is still providing services under this appointment no such assignment or transfer by the Contractor (other than by way of security) shall be permitted without the consent of the Authorities and the Independent Certifier (such consent not to be unreasonably withheld or delayed).

12. PROFESSIONAL INDEMNITY INSURANCE

12.1 The Independent Certifier shall take out and maintain Professional Indemnity Insurance.

12.2 The Independent Certifier shall maintain such Professional Indemnity Insurance with reputable insurers carrying on business in the European Union who are acceptable to the Contractor, the Facility Agent and the Authorities (such acceptance not to be unreasonably withheld or delayed) for a period of not less than 12 years from the date of the completion of the Independent Certifier's duties under this appointment, provided that such insurance is available at reasonable commercial rates.

12.3 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts or omissions particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.

12.4 The Independent Certifier shall provide to the Contractor, the Authorities and the Facility Agent at their reasonable request, written confirmation by an independent company of insurance brokers that it has the Professional Indemnity Insurance in force for the ensuing 12 months.

12.5 The Independent Certifier shall immediately inform the Contractor, the Authorities and the Facility Agent if the Professional Indemnity Insurance ceases to be available at commercially reasonable rates in order that the Independent Certifier and the Contractor and the Authorities and the Facility Agent can discuss means of best protecting their respective positions in the absence of such insurance.

13. COLLATERAL WARRANTIES

Within 14 days of receipt of a written request from time to time from the Contractor, the Independent Certifier shall execute as a deed one or more collateral warranties in the form annexed as Schedule 4 in favour of the Building Contractor, Border Construction and any FM Contractor (within the meaning set out in the Project Agreement) and any other person having an interest in, or providing funding in respect of the Works or any part of the Works.

14. LIMITATION OF LIABILITIES

14.1 Save in respect of death or personal injury or fraud, the maximum aggregate liability of the Independent Certifier to each of the Contractor and the Authorities pursuant to this appointment shall be ten million pounds.

14.2 For the avoidance of doubt, it is not intended that the Independent Certifier should have any asbestos related duties or liabilities pursuant to this Agreement but, to the extent that any nevertheless arise whether under statute or otherwise, the Independent Certifier's liability in relation to asbestos related claims shall (save in relation to death or personal injury) be limited to the sum of two hundred and fifty thousand pounds (£250,000.00).

15. SET-OFF

15.1 Nothing contained elsewhere in this appointment shall in any way limit or exclude the Contractor's rights and entitlements at common law to deduct or to set-off any monies due to it or which may become due to it from the Independent Certifier (whether by reason of the provisions of this appointment or in consequence of any negligence, omission or default of the Independent Certifier in the performance of its obligations under this appointment) from or against any monies otherwise due to the Independent Certifier under this appointment.

15.2 For the purpose of the Housing Grants, Construction and Regeneration Act 1996, any notice of intention to withhold payment shall be given to the Independent Certifier not less than two days before the final date for payment in accordance with clause 3.5.

16. ENTIRE APPOINTMENT

This appointment sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this appointment. None of the parties shall be entitled to rely on anything which is not stated in this appointment or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith.

17. DISPUTE RESOLUTION PROCEDURE

17.1 All disputes shall be resolved in accordance with terms equivalent (mutatis mutandis) to the Dispute Resolution Procedure set out in the Project Agreement.

17.2 The Contractor, the Authorities, the Facility Agent and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this appointment.

18. **CUMULATIVE RIGHTS AND ENFORCEMENT**

Any rights and remedies provided for in this appointment whether in favour of the Contractor, the Authorities, the Facility Agent or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.

19. **WAIVER**

The failure of any party at any one time to enforce any provision of this appointment shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

20. **SEVERABILITY**

In the event that any term, condition or provision contained in this appointment shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this appointment and the rest of this appointment shall stand, without affecting the remaining clauses.

21. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties agree that, notwithstanding any other provision of this appointment, this appointment shall not purport to confer on any third party any right to enforce any term of this appointment for the purposes of the Contracts (Rights of Third Parties) Act 1999 save that (for the avoidance of doubt) nothing contained herein shall prejudice any claim under any collateral warranty given pursuant to this appointment.

22. **JURISDICTION AND LAW**

The laws applicable to this appointment shall be the laws of England and Wales and it shall be subject to the exclusive jurisdiction of the Courts of England.

23. **COUNTERPARTS**

This appointment may be executed in any number of counterparts, all of which when taken together shall constitute one and the same document.

24. **NO PARTNERSHIP**

Nothing in this appointment shall be construed as creating a partnership between the Employers and they will not conduct themselves in such a way so as to create the impression such a partnership exists.

IN WITNESS whereof the parties hereto have executed this appointment as a deed on the day and year first before written.

THE COMMON SEAL of CUMBRIA COUNTY COUNCIL was hereunto affixed in the presence of:-)
)
)
)

Authorised Signatory

THE COMMON SEAL of MERSEYSIDE FIRE AND RESCUE AUTHORITY was hereunto affixed in the presence of:-)
)
)
)

Authorised Signatory

THE COMMON SEAL of LANCASHIRE COMBINED FIRE AUTHORITY was hereunto affixed in the presence of:-)
)
)

Authorised Signatory

EXECUTED AS A DEED by BALFOUR BEATTY FIRE AND RESCUE NW LIMITED acting by its duly appointed attorney:-)
)
)
)

in the presence of

Witness:

Name:

Address:

EXECUTED AS A DEED by DEXIA CRÉDIT LOCAL acting by its duly appointed attorney:-

in the presence of

Witness:

Name:

Address:

EXECUTED AS A DEED by

GLEEDS MANAGEMENT SERVICES LIMITED

by the signatures of:-

Director .....

Director/Company Secretary .....

SCHEDULE 1 - SERVICES

The Independent Certifier shall:

1 fulfil the role of the Independent Certifier as described in the Project Agreement and the Construction Sub-Contract in respect of the Services and in accordance with all of the provisions of this appointment;

2 familiarise itself with the Project Agreement (including without limitation the Authorities' Requirements and the Contractor's Proposals and any changes implemented from time to time under the Project Agreement and any other relevant documentation or information referred to in the Project Agreement), the Financing Agreements, the FM Agreement and the Construction Sub-Contract provided that such changes are notified to the Independent Certifier to the extent necessary to be in a position to carry out the Services in accordance with the terms of the Project Agreement, the Construction Sub-Contract and this appointment;

3 perform the obligations and duties of the Independent Certifier contained in the Project Agreement;

4 use reasonable endeavours to procure the supply of any necessary and/or relevant data and/or information from the Parties and any third party as advised in writing by the Parties as may be necessary for the Independent Certifier to carry out his duties under this appointment, the Project Agreement, the Construction Sub-Contract, the Financing Agreements and the FM Agreement;

5 following notification by the Contractor pursuant to the Project Agreement and the Construction Sub-Contract (or otherwise) liaise with the relevant Authority, the Contractor and the Facility Agent in anticipation of carrying out such activities as are necessary for it to determine whether or not the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied and notifying the Contractor, the relevant Authority, the Building Contractor and the Facility Agent of any outstanding matters to be attended to before the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied;

6 prepare a checklist by no later than six (6) months after the date of this Appointment for issuing the Acceptance Certificates and the Post Completion Works Acceptance Certificates and in the case of the Initial Phase Acceptance Certificates, by no later than four (4) weeks after the date of this Appointment, and agree the same with the Authorities, the Contractor and the Facility Agent;

7 agree with the Authorities, the Contractor and the Facility Agent the scope and criteria for auditing each Initial Phase Acceptance Certificate, Acceptance Certificate and Post Completion Works Acceptance Certificate to be issued under the Project Agreement;

8 review and comment on commissioning and testing programmes for all of the Stations subject to the relevant information being provided to the Independent Certifier by the Building Contractor's relevant design consultant within a reasonable time prior to the Completion Date for each Station;

9 take such steps as are reasonably required to ensure that the Contractor's commissioning is carried out fully and properly, and report on such commissioning in order to establish that the Contractor's obligations have been met in relation thereto and review and comment on test results for each of the Stations;

10 provide regular monthly reports to the Employers and the Facility Agent in respect of the carrying out of the following areas of the Works subject to the relevant validation certificates being provided to the Independent Certifier by the Building Contractor's design consultant:-

10.1 drainage;

10.2 foundations;

10.3 structural steelwork;

10.4 external walling;

10.5 roofing;

10.6 internal partitions;

10.7 mechanical;

10.8 electrical;

10.9 finishes; and

10.10 external works.

11 provide regular monthly audit reports, (by the fifteenth (15th) day of each month following the relevant monthly period covered by the audit report), for the Authorities, the Contractor and the Facility Agent to include progress reports (including without limitation a comparison of the Building Contractor's anticipated programme and as-built programme) subject to the Contractor supplying to the Independent Certifier the relevant construction programme information updated checklists and outstanding information requirement schedules;

12 visit the Sites as and when required (to be at least monthly) to inspect and comment on the detail of the Works with regard to compliance with the design and construction proposals and Good Industry Practice;

13 attend the regular monthly contract progress meetings (for each region) to the extent necessary to carry out the Services and to report on progress and identify outstanding information required together with reporting on delays and extensions of time to any Services Start Date, any Planned Services Availability Date and/or any Planned Post Completion Works Acceptance Date (as applicable) subject to the Contractor supplying to the Independent Certifier the relevant Construction Programme information;

14 issue the Initial Phase Acceptance Certificates, Acceptance Certificates and Post

Completion Works Acceptance Certificates in the form set out in Schedule 5 to this appointment when the Initial Phase Services Availability Requirements, the Services Availability Requirements or the Post Completion Works Acceptance Requirements (as applicable) have been satisfied in accordance with the Project Agreement;

15 ensure that the Independent Certifier's monthly reports address any issues as they arise and will focus on the following:

15.1 Progress relative to the Construction Programme;

15.2 Compliance with the Authorities' Requirements and the Contractor's Proposals;

15.3 Alternative specifications as notified to the Independent Certifier; and

15.4 Changes to the Project as notified to the Independent Certifier.

16 provide the following certification services as part of the Services:

16.1 Initial Review:

a) review and take note of the Authorities' Requirements as set out in the Project Documents; and

b) following the review, raise any points requiring clarification with the Authorities for discussion and resolution.

16.2 Design/Design Development Stage Activities:

a) review the Building Contractor's proposed design development and drawing issue procedures and programme subject to such information being supplied to the Independent Certifier. Comment as necessary to the Authorities, the Contractor and the Facility Agent;

b) attend certain design review meetings where necessary to supplement written monthly reports; and

c) monitor the submission and progress of statutory and mandatory applications, subject to such programme information being supplied by the Contractor to the Independent Certifier including without limitation:

i) Town & Country Planning Acts;

ii) Building Regulations;

iii) Statutory Undertakers; and

iv) Health and Safety.

16.3 Construction Stage/Completion Stage

a) Check and determine that relevant facilities are provided in accordance with

the requirements and allocations defined in the Authorities' Requirements and the Contractor's Proposals and are available and have been demonstrated satisfactorily to the Independent Certifier and, if so, issue an Initial Phase Acceptance Certificate, an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as applicable) in respect of those facilities.

b) Check and determine that all facilities defined have received an Initial Phase Acceptance Certificate, an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as applicable) and that the certification procedure set out in the Project Agreement and the Construction Sub-Contract has been completed.

c) Checks and certifications in this regard will include without limitation such matters as:

i) checks on accommodation provisions, in terms of type, quantity, capacity, function and size subject to the relevant information being supplied to the Independent Certifier;

ii) checks on fit-out of accommodation and facilities including without limitation in respect to specialist requirements subject to the relevant information being supplied to the Independent Certifier;

iii) observations on site health & safety issues;

iv) ensuring all appropriate obligations to relevant agencies have been discharged including without limitation planning, building regulations, section agreements for highways works, warranties and insurances, outstanding 'identified' legal issues such as rights of way, easements and the like; and

v) obtaining copies of maintenance manuals, health and safety files and the like.

d) Prepare a definitive Snagging List for each Station and carry out an inspection when notified that the Snagging Items in respect of each Station have been made good.

e) Check that the Health & Safety File for each Station is available in accordance with the provisions of the Project Agreement including without limitation all as-built drawings, operating and maintenance manuals, testing and commissioning certificated and related information.

SCHEDULE 2 - FEE

The Fee is the fixed fee of £55,000 for the provision of the Services identified in Schedule 1 together with any services necessary or reasonably incidental to such services.

Trigger for payment of instalment	**Amount of instalment**
Monthly drawdown – Invoice at month end	29 equal payments of £1,897 plus VAT

Any/all work beyond month 30 (inc. post completion work, delays to programme, etc.) to be time charged @ £75/hr.

Additional services (attendance at additional meetings, re-reviews due to changes, re-inspections following any Notice of non-completion, etc.) to be time charged @ £75/hr.

SCHEDULE 3 - KEY PERSONNEL

Relevant Key Personnel	Job title	Area(s) of expertise
Des Mahood	Director	Project Administration
Chris Rogers	Associate Director	Independent Certifier
Chris Aspen	Assistant PM	Independent Certifier

SCHEDULE 4 - DRAFT COLLATERAL WARRANTY

DATED 201

[BENEFICIARY] (1)

and

GLEEDS MANAGEMENT SERVICES LIMITED (2)

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (3)

INDEPENDENT CERTIFIER'S WARRANTY

Relating to North West Fire PFI Project

THIS DEED dated 200[ ] BETWEEN:-

(1) [BENEFICIARY] (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] ("the Beneficiary");

(2) GLEEDS MANAGEMENT SERVICES LIMITED (registered in England under company number 01753465) whose registered office is at 95 New Cavendish Street, London W1W 6XF ("the Independent Certifier"); and

(3) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (registered in England and Wales under company number [insert number]) whose registered office is at [insert address] ("the Contractor").

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Appointment"	means an agreement made between the Authorities, the Contractor, the Facility Agent and the Independent Certifier for services to be carried out by the Independent Certifier on behalf of the Contractor in connection with the Works;
"Authorities"	means 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, Boctle, Merseyside, L30 4YD (the "Authorities");
"Facility Agent"	means [ ]
["Construction Sub-Contract"[1]	means the sub-contract entered into by the Contractor and the Building Contractor for the design, construction and commissioning of the whole or part of the Works;]
["Building Contractor"[2]	means [*Contractor*] (registered in England and Wales under company number [*insert number*]) whose registered office is at [*insert address*];]
"Project Agreement"	means the agreement dated [ ] (including any variation or replacement of such agreement from time to time) entered into between the Authorities and the

[1] This definition may not be required where the Building Contractor is not the Beneficiary.

[2] This definition only required where the Beneficiary is not also the Building Contractor.

	Contractor for the provision of the Project;
"Professional Indemnity Insurance"	means professional indemnity insurance in an amount of not less than ten million pounds sterling (£10,000,000) for any one claim but limited to an aggregate basis in respect of pollution and contamination and to two hundred and fifty thousand pounds sterling (£250,000) in respect of asbestos;
"Services"	means the general and specific duties and obligations of the Independent Certifier under the Appointment;
"Works"	means the design and construction of the works by the Contractor as more particularly described in the Project Agreement.

1.2 **Successors**

Reference to the Beneficiary shall include the person or persons for the time being entitled and subject to the benefit duties and obligations of this Deed.

1.3 **Joint liability**

Where there are two or more persons included in the expressions "Independent Certifier", the term Independent Certifier shall include the plural numbers and any obligation expressed to be made by or with such party hereunder or pursuant hereto shall be deemed to be made and undertaken by such persons jointly and severally.

1.4 **Headings**

The headings in this Deed are inserted for convenience only and shall be ignored in construing the terms.

1.5 **Notices**

All notices under this Deed shall be in writing and shall be delivered personally or addressed to the respective address of the parties set out in this Deed or to the registered office or principal business address of either party for the time being, and if sent by post shall be deemed to have been received on the second working day after the same shall have been posted.

1.6 **References to statutes, etc**

Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consultation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.

1.7 **Genders and numbers**

Words importing one gender include all other genders and words importing the singular include the plural and vice versa.

2. **DUTY OF CARE**

2.1 The Independent Certifier warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Services the reasonable

skill, care and diligence to be expected from a competent and properly qualified Independent Certifier experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Works as those comprised in the Works in the performance of its duties and obligations under the Appointment.

2.2 For the avoidance of doubt the Independent Certifier shall owe no obligation or liability to the Beneficiary by virtue of this Deed which is greater or of longer duration than it would owe to the Beneficiary under the Appointment if the Beneficiary had been named as joint employer under the Appointment and the Independent Certifier shall be entitled in any action or proceedings by the Beneficiary under this Agreement to raise equivalent rights in defence of liability (but excluding set offs or counterclaims) as it would have had if the Beneficiary had been named as the Contractor under the Appointment.

3. PROFESSIONAL INDEMNITY INSURANCE

The Independent Certifier covenants:-

3.1 to take out and maintain Professional Indemnity Insurance for a period of twelve (12) years from the date of completion of the Independent Certifier's duties under the Appointment provided such insurance is available in the market at commercially reasonable rates;

3.2 to inform the Beneficiary or its assignees in writing immediately if any failure or inability to maintain such professional indemnity insurance cover in accordance with 3.1 above in order that the parties can discuss means of best protecting their respective positions in the absence of such insurance; and

3.3 when requested by the Beneficiary (but not more often than is reasonable) to produce written evidence of the Professional Indemnity Insurance cover and confirmation from the Professional Indemnity Insurance provider that the last premium has been paid.

4. ASSIGNMENT

4.1 The benefit of this Deed may be assigned by the Beneficiary to any other person having an interest in the Works provided that:-

4.1.1 the number of assignments under this clause is limited to two only;

4.1.2 the Independent Certifier shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and

4.1.3 the Independent Certifier shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.

4.2 The Independent Certifier will not contend that any assignee is precluded from recovering any loss from any breach of this Agreement (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 intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or that that original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

5. **INDEPENDENT ENQUIRY CLAUSE**

The liability of the Independent Certifier under this Deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the Beneficiary nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Beneficiary of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Beneficiary in respect of the Works nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Beneficiary provided always that nothing in this clause shall modify or affect any rights which the Independent Certifier might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

6. **NON WAIVER**

The Contractor and the Independent Certifier agree with the Beneficiary not to vary or waive or agree to vary or waive the terms of the Appointment in any respect which may have a material effect on the benefit of this Deed without the prior written consent of the Beneficiary such consent not to be unreasonably withheld or delayed.

7. **PARTNERSHIP**

If the Independent Certifier is a partnership each partner including any other person or persons taken into the partnership during the currency of this Deed shall be jointly or severally liable for any breach of this Deed.

8. **JURISDICTION AND LAW**

The laws applicable to this Deed shall be the laws of England and Wales.

9. **WARRANTY IN RESPECT OF CERTIFICATES**

The Independent Certifier warrants and undertakes that it has and will continue to act fairly, reasonably and impartially as between all interested parties in the issuing of any certificates.

IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this Deed.

EXECUTED AS A DEED by

the INDEPENDENT CERTIFIER

in the presence of:-

Director .....

Director/Company Secretary .....

EXECUTED AS A DEED by

the BENEFICIARY in the presence of:-

Alternative A

Authorised Signatory

Authorised Signatory

Alternative B

Director .....

Director/Company Secretary .....

EXECUTED AS A DEED by the

CONTRACTOR in the presence of:-

Director .....

Director/Company Secretary .....

SCHEDULE 5 – CERTIFICATES

Form of [Initial Phase Acceptance certificate/Acceptance Certificate/Post Completion Works Acceptance Certificate]*

in relation to ***NORTH WEST FIRE AND RESCUE SERVICES PRIVATE FINANCE INITIATIVE PROJECT***

To:

Balfour Beatty Fire and Rescue NW Limited

and

Cumbria County Council, Lancashire Combined Fire Authority, Merseyside Fire and Rescue Authority (the "Authorities")

and

"Facility Agent"

and

"Building Contractor"

and

"FM Contractor"

I/We refer to the agreement dated ..... 2011 between the "Authorities" and Balfour Beatty Fire and Rescue NW Limited (the **"Project Agreement"**) and the agreement for the appointment of an independent certifier dated ..... 2010 between (1) the "Authorities", (2) Balfour Beatty Fire and Rescue NW Limited, (3) *"Facility Agent"* and (4) Gleeds Management Services (the **"Independent Certifier Appointment"**).

I, C. A. Rogers, being Associate Director of Gleeds hereby certify that I am satisfied that, in respect of the Station known as ***xxxxxxxxxx,*** the [Initial Phase Services Availability Requirements/Services Availability Requirements/Post Completion Works Acceptance Requirements]* have been satisfied [(save for the Snagging Items listed in the respective snag list)]** and that the [Services Start Date/Services Availability Date/Post Completion Works Acceptance Date]* is, for the purpose of the Project Agreement, the ***xx xxxxx 20xx.***

This certificate is issued pursuant to [Clause20 of]** the Project Agreement and our obligations under the Independent Certifier Appointment.

When used in this certificate, the words which are defined in the Project Agreement have the meanings given to such words in that agreement.

.....

Signed for and on behalf of

GLEEDS

Date of issue .....

Notes:

* Delete as appropriate.

** Relevant only for certification of the Works under clause 20 of the Project Agreement.