

**Balfour Beatty Fire and Rescue
North West Fire and Rescue
Building Subcontract**

DATED 23 FEBRUARY 2011

(1) MANSELL CONSTRUCTION SERVICES LIMITED

(2) BORDER CONSTRUCTION LIMITED

BORDER SUB-CONTRACT

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THIS AGREEMENT is made on 23 FEBRUARY February 2011

BETWEEN

- (1) **Mansell Construction Services Limited** (company registration number 1197246) whose registered office is at Roman House, Grant Road, Croydon CR9 6BU ("**Mansell**"); and
- (2) Border Construction Limited (company registration number 654704 whose registered office is Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria CA2 7NA ("**Border**")

Each one a "**party**" and together "**the parties**".

BACKGROUND

- A The Authorities have entered into an agreement with Balfour Beatty Fire and Rescue NW Limited ("the Contractor) on or around the date hereof ("**Project Agreement**") pursuant to their powers under section 1 of the Fire and Rescue Services Act 2004 and sections 111 and 120 of the Local Government Act 1972 (as applied by section 146A of the Local Government Act 1972) for the procurement of new fire stations to be located at various sites in Merseyside, Lancashire and Cumbria.
- B The Project Agreement is entered into under the Government's Private Finance Initiative ("**PFI**").
- C In order to fulfil its obligations under the Project Agreement the Contractor has agreed to appoint Mansell under a contract ("the **Building Contract**") to carry out the works set out in the Building Contract.
- D In order to fulfil its obligations under the Building Contract in relation to certain sites in Cumbria Mansell has agreed to appoint Border to carry out the Works in accordance with the terms of this Agreement.

PART 1 – PRELIMINARY

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

1999 Act	the Local Government Act 1999;
Abandon	not to carry out any Works contemplated by the Construction Programme at a Site for ten(10) consecutive Business Days or during thirty (30) Business Days (whether consecutive or not) in any Contract Year;
Acceptance Certificate	a certificate issued by the Independent Certifier confirming that the Services Availability Requirements have been met;
Adjoining Property	any land and/or property adjoining the Sites or in the neighbourhood of the Sites and each and every part thereof including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
Adjudicator	has the meaning given to it in clause 67.3 (Adjudication);
Advance	has the meaning given to it in the Parallel Loan Agreement;
Affected Party	has the meaning given to it in the definition of Force Majeure Event in this clause 1.1 (Definitions);
Affiliate	in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company, and “holding company” and “subsidiary” shall have the meaning given to them in section 1159 of the Companies Act 2006 save for the purposes of determining whether one entity is an Affiliate of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded ;
Agent	Dexia Credit Local, in its capacity as facility agent for the Senior Lenders under the Senior Financing Agreements;
Agreed Form	in relation to any document, the form of the document agreed between the parties and initialled by or on behalf of the parties for the purpose of identification;
Agreement	this agreement (including its Schedules);
Ancillary Rights	(i) a non-exclusive licence to enter and remain upon

those parts of the Sites that Border and/or any Border Related Party requires access to in order to carry out the Works;

- (ii) such rights of access to and egress from the Sites as are necessary for Border and any Border Related Party to perform their obligations and exercise their rights under this Agreement and in particular for the purposes of implementing the Works including those highlighted on the Site Plans provided that such rights may be varied by the Authorities and such variation will be deemed to be an Authorities Change;
- (iii) rights of free and uninterrupted passage and running of water soil gas electricity telephone and other services including those highlighted on the Site Plans provided that such rights of passage may be varied by the Authorities to such alternative routes as the Authorities may reasonably specify from time to time; and
- (iv) the right where necessary to inspect repair maintain or renew the Services Media and the right (at the cost of Border) to connect into the Services Media and to construct such new Services Media as may from time to time be necessary to serve the Sites provided that the prior written consent of the Authorities is obtained (such consent not to be unreasonably withheld or delayed);

provided that

- (v) the rights are granted insofar as each Authority is capable of granting them and such rights are subject to any restriction in the Title Deeds or otherwise disclosed in writing to Border prior to the Commencement Date; and
- (vi) the rights shall not in any circumstances entitle Border or any Border Related Party to exclusive occupancy or exclusive possession of any part of the Sites (save as may be required by Border and approved by the Authorities (such approval to be procured by Mansell and is not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation) on a temporary basis;

Approved Purposes

has the meaning given to it in clause 69.1 (Project Data);

Approved RDD Item

an item of Reviewable Design Data which has been returned or deemed to have been returned marked "no comment" or "proceed subject to amendment" under the Review Procedure;

Area	has the meaning given in the Project Agreement but only insofar as they relate to the Sites and/or the Stations;
Area Data Sheets	has the meaning given in the Project Agreement but only insofar as they relate to the Sites and/or the Stations;
Asbestos Surveys	has the meaning given in the Project Agreement but only insofar as they relate to the Sites and/or the Stations;
As-Built Drawings	drawings, technical information, models, operation and maintenance manuals and technical information of a like nature to encompass the method of construction, manufacture, operation and maintenance of each element of each Station in sufficient detail to allow a competent person to understand all material elements of the construction of each Station and to maintain, dismantle, reassemble, adjust and operate all plant, equipment, fixtures, structures and construction elements thereof;
Assets	<p>all assets and rights of Border which are necessary to enable each Authority (as applicable) or another contractor to own, operate and maintain each Station in accordance with the Project Agreement including:</p> <ul style="list-style-type: none"> (a) [Not Used]; (b) any equipment; (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how); (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); (e) any other contractual rights; and (f) any Border Intellectual Property Rights, <p>but excluding any assets and rights in respect of which the relevant Authority or the Contractor or Mansell are full legal and beneficial owner;</p>
Associated Companies	means a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company save that for the purposes of determining whether one entity is an Associated Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;

Authorities	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 (together the "Authorities" each an "Authority")
Authorities Change	has the meaning given in the Building Contract but only insofar as they relate to the Sites and/or the Stations ;
Authorities Change Notice	has the meaning given in the Building Contract but only insofar as they relate to the Sites and/or the Stations;
Authorities Equipment	has the meaning given to it in the Project Agreement;
Authorities Planning Conditions	has the meaning given to it in the Project Agreement;
Authorities' Policies	the policies of the Authorities referred to in schedule 15 (Authorities' Policies) to the Building Contract, as any such policies may be amended in line with clause 60 of the Building Contract;
Authorities' Property	has the meaning given in the Project Agreement;
Authorities Related Party	<p>(a) an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authorities (or any one or more of them) acting in the course of his office or employment or appointment (as appropriate);</p> <p>(b) [not used];</p> <p>(c) any person on or at any of the Stations at the express or implied invitation of the Authorities (or any one or more of them);</p> <p>but excluding in each case the Contractor, any party referred to in limbs (a) to (c) (inclusive) of the definition of Contractor Related Party, any party referred to in limbs (a) to (c) (inclusive) of the definition of Mansell Related Party, Mansell, Border, any Border Related Party and any utility company;</p>
Authorities' Representative	the representative appointed by the Authorities pursuant to clause 12 (Authorities' Representative) of the Project Agreement;
Authorities' Requirements	the requirements of the Authorities in respect of the Project set out in Schedule 1 (Authorities' Requirements) to the Project Agreement insofar as they relate to the Sites and/or Stations;

Bank	any substantial and reputable bank, insurance company, surety or other financial institution which has been approved in writing by Mansell;
Base Date	has the meaning given to it in the Project Agreement
Building	any building or other erection at any of the Sites;
Building Contract Dispute	has the meaning given to it in the Building Contract;
Building Contract Works	has the meaning attributed to “Works” under the Building Contract;
Building Contractor Change	has the meaning attributed to it under the Building Contract;
Border Default	has the meaning given to it in clause 41.3.1 (Border Default);
Border's Deductions	has the meaning given in clause 95.2 (Liability for Deductions);
Border's Entitlement	has the meaning given to it in clause 93.1 (Border's Entitlement);
Border Equipment	those items of furniture, fixtures and equipment identified on the room data sheets contained in Part 1, Appendix 2 of the Authorities Requirements insofar as they relate to the Sites and/or the Stations;
Border Intellectual Property Rights	any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by Border or any Border Related Party for the purposes of carrying out the Works and/or otherwise for the purposes of this Agreement;
Border Related Party	<ul style="list-style-type: none"> (a) an officer, servant or agent of Border, or any Affiliate of Border and any officer, servant or agent of such a person; (b) any Border Sub-Contractor or sub-contractor of Border of any tier and any of their officers, servants or agents; and (c) any person on or at any of the Sites at the express or implied invitation of Border; <p>but excluding in each case Mansell and any Mansell</p>

	Related Party;
Border's Representative	the person to be appointed by Border pursuant to clause 12 (Border's Representative);
Border Required Insurances	those insurances required to be taken out by Border pursuant to clause 64 (Requirement to Maintain or Procure);
Border's Site Manager	the manager to be appointed by Border for the purposes of supervision of all day to day activities on the Sites;
Border's Site Rules	Border's rules, applicable on the Sites to the Authorities, the Contractor, Mansell, Border and their respective sub-contractors and suppliers of every tier during the construction of the Stations;
Border Sub-Contract Dispute	has the meaning given to it in clause 67.1
Border's Suspended Sum	has the meaning given to it in clause 41.3.3.1 (Termination on Border Default);
Building Manual	the manual for the Works containing: <ul style="list-style-type: none"> Part 1; a copy of the health and safety file pursuant to the CDM Regulations (excluding those aspects of the same as fall within Part 2); and Part 2 <ul style="list-style-type: none"> (a) all As-Built Drawings; (b) copies of all guarantees, warranties and maintenance agreements relating to the Works; (c) copies of all test certificates relating to the Works; (d) copies of all manufacturers' technical literature relating to the Works; and (e) copies of all operating and maintenance manuals relating to the Works;
Building Regulations	means the Building Regulations 2010 and the Building (Approved Inspectors etc.) Regulations 2010;
Border Sub-Contractor	any person engaged by Border from time to time as may be permitted by this Agreement to procure the provision of the Works (or any of them);
Border Sub-Contract(s)	the contract(s) entered into between Border and the Border Sub-Contractors;

Business Day	a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
CDM Regulations	Construction (Design and Management) Regulations 2007;
Certificate of Title	the certificates of title prepared by or on behalf of Mansell in the form published by the City of London Law Society Land Law Committee entitled "City of London Law Society Land Law Committee Long Form Certificate of Title (Sixth Edition 2008 update)";
Change in Costs	<p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of Border, including, as relevant, the following:</p> <ul style="list-style-type: none"> (a) the reasonable costs of complying with the requirements of clauses 16 (Extensions of Time, Giving of Relief and Payment of Compensation), 59 (Change in Law) and 61 (Authorities Step-In) including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required; (c) the costs of employing additional staff; (d) reasonable professional fees; (e) the effects of costs on implementation of any insurance reinstatement in accordance with this Agreement, including any adverse effect on the insurance proceeds payable to Border (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement; (f) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and (g) Direct Losses or Indirect Losses, including reasonable legal expenses on an indemnity basis;
Change in Law	<p>the coming into effect after the date of this Agreement of:</p> <ul style="list-style-type: none"> (a) Legislation, other than any Legislation which on the date of this Agreement has been published:

	<ul style="list-style-type: none"> (i) in a draft Bill as part of a Government Departmental Consultation Paper; (ii) in a Bill; (iii) in a draft statutory instrument; or (iv) as a proposal in the Official Journal of the European Union;
	(b) any Guidance; or
	(c) any applicable judgment of a relevant court of law which changes a binding precedent;
Change Protocol	has the meaning given to it in clause 60.1 (Authority, Contractor, Mansell and Border Changes);
Collateral Warranty	a collateral warranty executed as a deed between Border and the Authorities and/or between Border and the Contractor and/or between Border and the Funders in the relevant form set out in Schedule 7 (Collateral Warranties) to the Building Contract;
Commencement Date	the date of this Agreement;
Commercially Sensitive Information	has the meaning given in the Project Agreement;
Confidential Information	<ul style="list-style-type: none"> (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Border Intellectual Property Rights and know-how, of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1988; and (b) Commercially Sensitive Information;
Construction Programme	the programme for the carrying out of the Works as contained in the Construction Proposals as amended in accordance with the Review Procedure under and as defined in the Project Agreement;
Construction Proposals	the proposals for the provision of the Stations (as defined in the Building Contract) to satisfy the Stations Requirements, as set out in Schedule 2 (Construction Proposals) to the Building Contract in so far as they relate to or are capable of applying to the Sites and/or Stations;
Contamination	all or any pollutants or contaminants, including any

chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour) and including without limitation genetically modified organisms;

Contract Month	has the meaning given to it in the Project Agreement;
Contract Sum	£13,119,716.93 (thirteen million one hundred and nineteen thousand seven hundred and sixteen pounds and ninety three pence)
Contract Sum Adjustment	means any decrease or increase in the Contract Sum or a separate payment to Border additional to the Contract Sum as at the date of execution of this Agreement (whether pursuant to any term of this Agreement, by way of damages for breach of contract, on the basis of quantum meruit or otherwise) in respect of or in any way connected with the subject matter of this Agreement;
Contract Sum Adjustment Event	means an event which is either: <ul style="list-style-type: none">(a) a Relevant Event; or(b) (in the event that it gives rise to termination of the Project Agreement pursuant to clause 45 of the Project Agreement) a Force Majeure Event; or(c) a breach by the Authorities of the Project Agreement (but only where, as a direct consequence of such breach, the Works are delayed and/or Border has necessarily incurred additional costs (including Costs) or Direct Losses in carrying out and completing the Works); or(d) a FM Contractor Breach (but only where as a direct consequence of such FM Contractor Breach, the Works are delayed and/or Border has necessarily incurred additional Costs or Direct Losses in carrying out and completing the Works);(e) a breach by the Contractor of the Building Contract (but only where as a direct consequence of such Contractor Breach, the Works are delayed and/or Border has necessarily incurred additional costs (including Costs) or Direct Losses in carrying out and completing the Works),

and which, in each case, entitles Mansell to Equivalent Project Relief under the Building Contract in respect of the consequences of such event;

Contract Sum Adjustment Funds	means funds or payments received by Mansell from the Contractor in respect of a Contract Sum Adjustment Event pursuant to the Building Contract;
Contract Year	has the meaning given to it in the Project Agreement;
Contractor Change	has the meaning given in the Building Contract insofar as relates to the Sites and/or the Stations;
Contractor's Representative	has the meaning given in the Project Agreement;
Contractor Related Party	has the meaning given to it in the Building Contract;
Mansell Breach	(a) a breach of any of Mansell's obligations or of any warranty under this Agreement by Mansell or a Mansell Related Party (which is not caused by the Authorities or an Authorities Related Party or by the Contractor or a Contractor Related Party);
Mansell Change	means a change pursuant to clause 60.7;
Mansell Compensation Event	means: <ul style="list-style-type: none"> (a) a Mansell Breach; or (b) any event which is expressed in this Agreement to be a Mansell Compensation Event, including: <ul style="list-style-type: none"> (i) a request by the Authorities' Representative or the Contractor's Representative or Mansell's Representative to open up and inspect the Works pursuant to clause 19.2.1 (Right to Open Up) as set out in clause 19.2.3 (Right to Open Up); (ii) material damage caused to any Site further to Mansell's exercise of rights pursuant to clause 19 (Monitoring and Inspection) as set out in clause 19.9 (Damage); or (iii) suspension of Border's performance of its obligations under this Agreement on Mansell's express instructions;
Mansell Default Termination Sum	the amount payable to Border in accordance with clause 49 (Compensation on Termination for Mansell Default / Voluntary Termination / Force Majeure) of this Agreement;
Mansell Related Party	(a) an officer, servant or agent of Mansell, or any Affiliate of Mansell and any officer, servant or agent of such a person (other than Border and any Border Related Party); <ul style="list-style-type: none"> (b) any sub-contractor of Mansell of any tier and

any of their officers, servants or agents (other than Border and any Border Related Party);

- (c) any person on or at any of the Sites at the express or implied invitation of Mansell (other than Border and any Border Related Party);
- (d) an Authorities Related Party;
- (e) the Authorities;
- (f) a Contractor Related Party; and
- (g) the Contractor;

Contractor's Insurances the Required Insurances as defined in the Building Contract;

Mansell's Representative the person to be appointed by Mansell pursuant to clause 12 (Mansell's Representative);

Costs

- (a) in the case of either party, salaries and wages reasonably incurred and properly paid or payable to employees of the party concerned together with reasonable amounts for payroll burden and overheads and administration, and other cost and expenses (including, in the case of Border, any reasonable internal costs of providing plant and equipment owned by Border, provided that the provision of such plant and equipment has not already been costed for in the Contract Sum and provided further that such costs do not exceed the cost of hiring equivalent items of plant and equipment on the open market at arms length and on reasonable terms) but not including any profit;
- (b) in the case of either party, net sums reasonably incurred and properly paid or payable to third parties (excluding employees of the party concerned) for goods and/or services supplied for the Works or for discharging contractual liabilities in connection with the Works or this Agreement for terminating such contractual liabilities;
- (c) in the case of Mansell, all liability to reimburse the Contractor's financing costs (including, without limitation, all charges, penalties, interest, administration fees and other costs) and all other costs, losses, expenses, damages, and other liabilities owed, suffered or incurred by the Contractor pursuant to any of the Financing Agreements;

- (d) in the case of Mansell, all liability to reimburse the Contractor in respect of costs, losses, expenses, damages, fines, penalties and other liabilities owed, suffered or incurred by the Contractor pursuant to the Project Agreement and/or by virtue of the Project Agreement being terminated or otherwise by virtue of any breach or failure on the part of Mansell;
- (e) in the case of Mansell all costs, losses, expenses, damages, fines, penalties and other liabilities owed, suffered or incurred by Mansell pursuant to the Building Contract and/or by virtue of the Building Contract being terminated or otherwise by virtue of any breach or failure on the part of Mansell;
- (f) in the case of Mansell, all costs, losses, expenses, damages, and other liabilities owed, suffered or incurred by Mansell in respect of action taken by third parties in relation to any infringement or alleged infringement of any right to which they may be entitled and which is disclosed in the Sites Information;
- (g) [Not used]; and
- (h) in the case of Mansell, all fines, penalties, charges and other liabilities owed, suffered or incurred by Mansell as a consequence of action taken against it by any Relevant Authority in connection with the Works;

Criminal Records Bureau	the bureau established pursuant to Part V of the Police Act 1997;
Decant Protocol	the protocol set out in Schedule 25 (Decant Protocol) to the Building Contract insofar as it relates to the Sites and/or the Stations;
Deductions	has the meaning given in the Project Agreement but only insofar as relates to the Sites and/or Stations;
Deductions Adjudicator	the Funders' Technical Adviser or such other party as the parties agree in writing from time to time;
Default Interest Rate	means two per cent (2%) above the six (6) month LIBOR rate;
Defects	any defect in any of the Buildings or the Post Completion Works, or any part of them, or anything installed in the Buildings or the Post Completion Works attributable to: <ul style="list-style-type: none"> (a) defective design;

	<ul style="list-style-type: none"> (b) defective workmanship or defective materials (which, for the avoidance of doubt, shall exclude asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Building; (c) the use of materials in the construction of any Building or any Post Completion Works which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of any such Building or any such Post Completion Works; (d) defective installation of anything in or on the Buildings or the Post Completion Works; (e) defective preparation of the site on which the Building or the Post Completion Works is constructed; or (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;
Defects Liability Period	<ul style="list-style-type: none"> (a) in relation to any Station a period of eighteen (18) months from its Services Availability Date; and (b) in relation to any Post Completion Works a period of eighteen (18) months from the date of issue of the relevant Post Completion Works Acceptance Certificate;
Design Data	all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Stations;
Detailed Programme	the detailed construction programme relating to the Sites and/or Stations in a form approved by Mansell to be provided and updated by Border;
Direct Losses	all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but, to avoid doubt, excluding Indirect Losses;
Disclosed Data	has the meaning given to it in the Project Agreement;
Discriminatory Change in Law	a Change in Law, the terms of which apply expressly to:

	(a) the Project and not to similar projects procured under the PFI;
	(b) Mansell and not to other persons; and/or
	(c) persons who have contracted with the Government, a Local Authority or other public or statutory body to provide services under the PFI and not to other persons;
Dispute Resolution Procedure	the procedure for the resolution of disputes set out in clause 67 (Dispute Resolution);
Disruption Event	a failure by Border to carry out the Works in accordance with this Agreement the result of which is that an Existing Station (or part thereof) cannot reasonably continue to be used for the provision of Fire and Rescue Services;
DPA	the Data Protection Act 1998;
Emergency	an event causing or, in the reasonable opinion of a party, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment in each case on a scale beyond the capacity of the emergency services and requiring the mobilisation and organisation of the emergency services;
Enforcement Regime	means the provisions of clause 92 (Enforcement Regime);
Environmental Information Regulations	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Equalities Legislation	has the meaning given to it in the Project Agreement;
Equality Requirements	The requirements set out in Schedule 19 (Equality Requirements);
Equivalent Project Relief	means any benefits, funds, payment, entitlement, compensation or relief available to Mansell under the Building Contract (but excluding Insurance Relief) which is equivalent to any similar benefits, funds, payment, compensation or relief available to Border under this Agreement in respect of the performance or circumstances affecting the performance of Border's obligations pursuant to this Agreement;
Estimated Change in Contract Sum	in respect of any Relevant Event the aggregate of any Change in Costs;
Excluded Equipment	those items of furniture, fixtures and equipment identified by Mansell to Border not less than six (6) Business Days

	prior to the relevant Services Availability Date as available neither for use in the Stations nor for Border to use for any other purpose;
Existing Building Plans	has the meaning given to it in the Project Agreement but only insofar as relates to the Sites and/or Stations;
Existing Station	has the meaning given to it in the Project Agreement but only insofar as relates to the Sites and/or Stations;
Fees Regulations	The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
Final Certificate	has the meaning in Schedule 6 (Payment Provisions) of this Agreement;
Final Warning Notice	has the meaning given to it in clause 42.2 (Final Notice);
Financial Close	has the meaning given to it in the Project Agreement;
Financial Indebtedness	means indebtedness: <ul style="list-style-type: none"> (a) for principal, interest or any other sum payable in respect of any monies borrowed or raised; (b) under any loan stock, bond, note or other security; (c) under any acceptance credit facility; guarantee facility or letter of credit facility; (d) under any financial lease of real or personal property; (e) under any deferred purchase consideration agreement; (f) under any receivables discounting or sales arrangements; (g) under any other agreement having the commercial effect of a borrowing or raising of money; (h) under any interest or currency swap, interest cap, collar or floor, option, future or any other kind of derivative transaction; or (i) under any guarantee, indemnity, put option or similar obligation entered into by a person in respect of indebtedness of another person which would fall within paragraphs (a) to (h) of this definition;
Financing Agreements	all or any of the agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the financing of the Project (including the Initial Financing Agreements and any

	agreements or instruments entered into or to be entered into by the Contractor or any of its Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);
Fire and Rescue Authorities	means those authorities responsible for delivery of Fire and Rescue Services as defined in the Fire and Rescue Services Act 2004;
Fire and Rescue Services	means the functions of the Fire and Rescue Authorities as defined in the Fire and Rescue Services Act 2004;
FM Agreement	the agreement in the agreed form under the Building Contract between the Contractor and the FM Contractor relating to the Services;
FM Contractor	Balfour Beatty Workplace Limited (company registration number 598379) whose registered office is at Fourth Floor West Block 1, Angel Square, 1 Torrens Street, London, EC1V 1NY or such other facilities management contractor as the Contractor may, pursuant to clause 7 of the Project Agreement, appoint to provide the Services;
FM Contractor Breach	means a breach by the FM Contractor of the terms of the FM Agreement as further provided for in the FM Agreement which adversely affects the performance of the Works;
FM Contractor Related Party	<p>(a) an officer, servant or agent of the FM Contractor, or any Affiliate of the FM Contractor and any officer, servant or agent of such a person;</p> <p>(b) any sub-contractor of the FM Contractor of any tier and any of their officers, servants or agents; and</p> <p>(c) any person on or at any of the Sites at the express or implied invitation of the FM Contractor,</p> <p>but excluding in each case the Contractor, any Contractor Related Party, Mansell and any Mansell Related Party, Border and any Border Related Party;</p>
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

Force Majeure Event	<p>the occurrence after the date of this Agreement of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of the actions of or breach by Border or its sub-contractors; or (c) pressure waves caused by devices travelling at supersonic speeds, <p>which directly causes either party (the “Affected Party”) to be unable to comply with all or a material part of its obligations under this Agreement;</p>
Funders' Technical Adviser	means Appleyards Limited registered number 03935522 and whose registered office is at Appleyards House, 72 Brighton Road, Horsham, West Sussex RH13 5BU;
General Change in Law	a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
Good Industry Practice	that degree of skill, care, prudence and foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced building contractor (engaged in the same type of undertaking as that of Border) under the same or similar circumstances;
Guarantee	means the guarantee to be provided by the Guarantor in the form as set out in Schedule 11 (Guarantee);
Guarantor	means Border Construction (Holdings) Limited of 8 Princes Street, Lochmaben, Lockerbie, Dumfriesshire DG11 1QS, Scottish Company number SC213977;
Guidance	any applicable guidance or directions with which Border is bound to comply;
Health and Safety Regime	the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
HoldCo	means Balfour Beatty Fire and Rescue NW Holdings

Limited (company registration number: 07404085) of 6th Floor, 350 Euston Road, Regent's Place, London NW1 3AX;

Holding Company	has the meaning given to it in section 1159 of the Companies Act 2006 save that for the purposes of determining whether one entity is a Holding Company of another any transfer of shares by way of security or to a nominee of the transferor shall be disregarded;
I C Services	has the meaning given to it in the Project Agreement but only insofar as relates to the Sites and/or Stations;
Indemnified Party	has the meaning given to it in clause 63.4 (Notification of Claims);
Indemnifying Party	has the meaning given to it in clause 63.4 (Notification of Claims);
Independent Certifier	the person appointed jointly by the Authorities, the Contractor and the Agent to act as independent certifier to the Project in accordance with the Independent Certifier's Deed of Appointment;
Independent Certifier's Deed of Appointment	has the meaning given in the Building Contract;
Indirect Losses	loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relate to loss of revenue under this Agreement;
Information	has the meaning given under section 84 of the Freedom of Information Act 2000;
Initial Financing Agreements	has the meaning given to it in the Project Agreement;
Initial Period	means the period of three (3) years immediately following the Services Availability Date at a Station;
Initial Services	has the meaning given to it in the Project Agreement insofar as relates to the Sites and/or Stations;
Initial Services Specification	has the meaning given to it in the Project Agreement;
Insolvency Event	means, in relation to any person, that such person: <ul style="list-style-type: none">(a) ceases to carry on the whole of its business or disposes of all of its assets;(b) becomes the subject of a voluntary arrangement under section 1 of the Insolvency Act 1986;(c) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986

(substituting in that section "£75,000" (Indexed for "750" and "one month" for "three weeks" for the purpose of this Agreement);

- (d) has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertakings, assets or income;
- (e) a court makes an order for its winding-up or an administration order is made against it;
- (f) has passed a resolution for its winding-up;
- (g) is the subject of any process or event similar or analogous to the events set out in (b) to (f) above inclusive happen in relation to it in any jurisdiction outside England and Wales to which the relevant party is subject;

Insurance Relief	means any funds or payment available under the Contractor's Insurances in respect of events which have caused delay to the Project and where the absence of an extension of time for completion in respect of such events has given rise to a claim for liquidated damages for delay made by Mansell against Border under clause 21C of this Agreement;
Interim Payment	any progress payment to be paid in accordance with Schedule 6 (Payment Provisions);
Interim Payment Application	has the meaning given to it in Schedule 6 (Payment Provisions);
Interim Payment Certificate	a certificate issued pursuant to the provisions of Schedule 6 (Payment Provisions);
Joint Insurance Account	has the meaning given to it in the Project Agreement;;
Late Completion Liquidated Damages	means the damages detailed in Schedule 9 (Liquidated Damages);
Legislation	any one or more of the following: <ul style="list-style-type: none">(a) any Act of Parliament;(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;(c) any exercise of the Royal Prerogative; and(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

Liability Limitation	has the meaning given to it in clause 63A (Limits on Liability);
Local Authorities	principal councils (as defined in section 270 of the Local Government Act 1972) or any bodies of government in England established as successors to principal councils in relation to Fire and Rescue Services;
Longstop Date	the date five (5) months after the last Planned Services Availability Date or such later date as may be allowed in accordance with the terms of this Agreement;
Losses	all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands;
Materials	things of all kinds intended to form or forming part of the Works;
Monthly Unitary Payment	has the meaning in the Project Agreement insofar as relates to the Sites and/or Stations;
Necessary Consents	all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of Border's obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party;
New Buildings	any Buildings constructed pursuant to the terms of this Agreement;
New Contractor	the person who has entered or who will enter into a new contract with Mansell in replacement of this Agreement or with the Contractor in replacement of Mansell under the Building Contract or with the Authorities in replacement of the Contractor under the Project Agreement;
Notice of Adjudication	has the meaning given to it in clause 67.2 (Consultantion);
Notice of Completion of Making Good Defects	has the meaning given to it in clause 20A.4 (Defects Liability);
Parallel Loan Agreement	means the agreement to be entered into between Mansell and the Parallel Loan Provider in the form set out in Schedule 12 (Parallel Loan Agreement);
Parallel Loan Provider	means Border Construction (Holdings) Limited of 8 Princes Street, Lochmaben, Lockerbie, Dumfriesshire DG11 1QS, Scottish Company number SC213977;
Party Wall Agreements	means the agreements procured by Border (at its own

	cost) to be entered into in respect of the Sites as listed in Schedule 30 (Party Wall Agreements) together with any additional such agreements which are required to be entered into as a result of the Works as agreed between the parties and between Mansell and the Authorities acting reasonably;
Persistent Breach	means a breach for which a Final Warning Notice has been awarded which has continued for more than twenty six (26) days or recurred three (3) or more times within six (6) months after the date on which such Final Warning Notice is served on Border;
Personal Data	personal data as defined in the DPA which is supplied to Border by Mansell or obtained by Border in the course of performing the Works;
PFI	the Government's Private Finance Initiative or any similar or replacement initiative;
Physical Damage Policies	has the meaning given to it in clause 65.1.2 (Reinstatement and Change of Requirement After Insured Event);
PI Insurance	has the meaning given to it in clause 64.13 (Professional Indemnity Insurance);
Planned Post Completion Works Acceptance Date	in relation to each element of Post Completion Works, the date shown as Planned Post Completion Works Acceptance Date in Schedule 4 (Stations) to the Building Contract or such other later date as may be agreed or determined in accordance with this Agreement;
Planned Services Availability Date	in relation to each Station, the date shown as the Planned Services Availability Date in Schedule 4 (Stations) to the Building Contract or such later date as may be agreed or determined in accordance with the terms of this Agreement;
Post Completion Works	in relation to each Site, those parts of the Works to be completed after the Services Availability Date at that Site in accordance with the Construction Programme and as described in Schedule 2 (Construction Proposals) to the Building Contract;
Post Completion Works Acceptance Certificate	in respect of Post Completion Works at a Site, a certificate issued by the Independent Certifier confirming that the Post Completion Works Acceptance Requirements in respect of that Site have been met;
Post Completion Works Acceptance Date	in relation to any Post Completion Works in respect of a Site, the date on which a Post Completion Works Acceptance Certificate is issued;
Post Completion Works	in relation to Post Completion Works at a Site, the

Acceptance Requirements	satisfaction of the requirements set out in Part 3 (Post Completion Works Acceptance Requirements) of Schedule 5 (Completion Requirements) to the Building Contract (but with references to the Building Contractor interpreted as references to Border);
Post Completion Works Defects Liability Period	the period commencing on the relevant Post Completion Works Acceptance Date and ending on the date 18 months after that date;
Prescribed Rate	two percent (2%) above the six month LIBOR rate;
Principal Border Sub-Contractor	<p>any sub-contractor appointed by Border to undertake the design and construction of any of the following parts of the Works:</p> <p>Mechanical & Electrical Installation;</p> <p>Structural Steel;</p> <p>Lifts;</p> <p>Asbestos Removal;</p> <p>Cladding;</p> <p>Appliance Bay Doors;</p> <p>Substructure Works;</p> <p>Roofing;</p> <p>and such other parts as Mansell may reasonably specify prior to such sub-contractor entering into its sub-contract with Border;</p>
Professional Team	<p>means the architects, structural engineers and mechanical and electrical engineers employed by Border in connection with the Works, and being:</p> <p>(a) [Not used]</p> <p>(b) Blue Sky Design Services Limited (company number 06235182) whose registered office is at 1000 Kings Reach, Yew Street, Stockport SK4 2HD; and</p> <p>(c) Arup Limited (company registration number 02461313) whose registered office is at 13 Fitzroy Street, London W1T 4BQ;</p>
Professional Team Appointments	means the deeds of appointment in respect of the Professional Team in the Agreed Form which are dated on or about the date of this Agreement;
Prohibited Act	(a) offering, giving or agreeing to give to any

servant of the Authorities (or any one or more of them) or the Contractor or Mansell any gift or consideration of any kind as an inducement or reward:

- (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authorities (or any one or more of them) or the Contractor or Mansell; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authorities (or any one or more of them) or the Contractor or Mansell;
- (b) entering into this Agreement or any other contract with the Authorities (or any one or more of them) or the Contractor or Mansell in connection with which commission has been paid or has been agreed to be paid by Border or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Mansell; or
- (c) committing any offence:
- (i) under the Prevention of Corruption Acts 1889-1916;
 - (ii) under the Bribery Act 2010 when that Act comes into force;
 - (iii) under Legislation creating offences in respect of fraudulent acts; or
 - (iv) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authorities (or any one or more of them) the Contractor or Mansell;
- (d) any act or omission which leads to the commission of an offence under section 117 of the Local Government Act 1972;
- (e) defrauding or attempting to defraud or conspiring to defraud the Authorities (or any one or more of them) or the Contractor or Mansell;

Prohibited Employment

has the meaning given to it in the Project Agreement;

Grounds	
Prohibited Grounds	has the meaning given to it in the Project Agreement;
Project	the provision of serviced accommodation to the Authorities at sites including the Sites by the Contractor as contemplated by the Project Agreement including the carrying out of works including the Works and the provision of services including the Services;
Project Agreement	the agreement dated on or about the date of this Agreement between the Authorities and the Contractor relating to the implementation of the Project by the Contractor;
Project Agreement Dispute	a dispute between the Authorities and the Contractor under or in connection with the Project Agreement;
Project Data	<ul style="list-style-type: none"> (a) all Design Data; (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the carrying out of the Works; and (c) any other materials, documents or data acquired, brought into existence or used in relation to the Works or this Agreement;
Project Documents	this Agreement, the Building Contract, any Collateral Warranty, the Parallel Loan Agreement, and the collateral warranties;
Qualifying Change in Law	<ul style="list-style-type: none"> (a) a Discriminatory Change in Law; (b) a Specific Change in Law; or (c) a General Change in Law, which comes into effect during the Service Period and which involves expenditure; <p>which was not foreseeable at the date of this Agreement;</p>
Questionnaire	the questionnaires prescribed by the Certificate of Title in relation to each of the Sites;
Recipient	has the meaning given to it in Schedule 6 (Payment Provisions);
Reinstatement Plan	has the meaning given to it in the Project Agreement insofar as it relates to the Sites and/or Stations;
Reinstatement Works	has the meaning given to it in the Project Agreement insofar as it relates to the Sites and/or Stations;
Related Agreements	<ul style="list-style-type: none"> (a) the Project Agreement;

	<ul style="list-style-type: none"> (b) the FM Agreement; (c) the Financing Agreements; (d) the Building Contract; and (e) the Funders' Direct Agreement entered into by Mansell pursuant to the Building Contract;
Relevant Authority	any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;
Relevant Event	<p>means any:</p> <ul style="list-style-type: none"> (a) Authorities Change; (b) Contractor Change; (c) Qualifying Change in Law; (d) Mansell Compensation Event; (e) Works Compensation Event; or (f) other matter as a result of which there may be an adjustment to the Contract Sum;
Relevant Incident	has the meaning given to it in clause 65.6 (Obligations);
Relevant Proceeds	any amounts standing to the credit of the Joint Insurance Account;
Relevant Surveys	the relevant surveys in relation to each Site for the purposes of clause 18.2.3 (Site Matters) listed in Schedule 24 (Surveys) to the Project Agreement;
Relief Event	<p>any of the following:</p> <ul style="list-style-type: none"> (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event), earthquakes, riot and civil commotion; (b) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services; (c) any accidental loss or damage to the Sites or any roads servicing them; (d) any failure or shortage of power, fuel or

	transport;
	(e) any blockade or embargo which does not constitute a Force Majeure Event;
	(f) any:
	(i) official or unofficial strike;
	(ii) lockout;
	(iii) go-slow; or
	(iv) other dispute,
	generally affecting the construction or facilities management industry or a significant sector of it, or
	(g) the discovery of fossils, antiquities or human remains requiring action in accordance with clause 18.7 (Fossils and Antiquities);
	unless any of the events listed in paragraphs (a) to (g) inclusive arises (directly or indirectly) as a result of any wilful default or wilful act of Border or any Border Related Party;
Replies to Enquiries	has the meaning given to it in the Project Agreement;
Request for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
Required Insurances	the insurances specified in Part 1 of Schedule 14 (Insurances) to the Project Agreement;
Required Period	has the meaning given to it in the Project Agreement;
Reviewable Design Data	the plans, drawings, documents and information relating to the Works listed in paragraph 7 of Schedule 8 (Review Procedure);
Review Procedure	the procedure set out in Schedule 8 (Review Procedure);
Senior Debt	the financing provided by the Senior Lenders under the Senior Financing Agreements;
Senior Financing Agreements	the Initial Financing Agreements or as amended with the prior written approval of the Authorities;
Senior Lender	a person who is providing finance to the Contractor under the Senior Financing Agreements;
Services	has the meaning given to it in the Project Agreement insofar as relates to the Sites and/or Stations;

Services Availability	in relation to any Station, satisfaction of the Services Availability Requirements;
Services Availability Date	in relation to any Station the date determined in accordance with clause 20.2 (Dates on which Services Availability may occur);
Services Availability Requirements	means in relation to a Site or a Station the requirements set out in Part 2 (Completion Requirements - The Works) of Schedule 5 (Completion Requirements) to the Building Contract (but with references to the Building Contractor interpreted as references to Border);
Services Media	all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;
Services Period	has the meaning given to it in the Project Agreement;
Shareholder	any person from time to time holding share capital in the Contractor or HoldCo;
Site Conditions	the conditions of the Sites including (but not limited to) climatic, hydrological, hydrogeological, ecological, environmental, geotechnical and archaeological conditions;
Site Plans	has the meaning given to it in the Project Agreement insofar as relates to the Sites and/or Stations;
Sites	has the meaning given to it in the Project Agreement but only insofar as relates to the fire and/or rescue stations in Carlisle, Patterdale, Penrith and Workington;
Snagging Items	minor defects, deficiencies or omissions which do not prevent the Independent Certifier from issuing an Acceptance Certificate in relation to a Station;
Snagging List	the list to be prepared by the Independent Certifier in accordance with clauses 20.7.1 (Snagging Items) containing particulars of Snagging Items;
Snagging Programme	has the meaning given to it in clause 20.7.1 (Snagging Items);
Specific Change in Law	any Change in Law which specifically refers to the construction, operation and maintenance of premises for use by fire and rescue services or to the holding of shares in companies whose main business is the construction, operation and maintenance of premises for use by fire and rescue services;

Standard Contractor's Investigation Matter	<p>matters that:</p> <ul style="list-style-type: none"> (a) would or should have been revealed by all searches and enquiries (but excluding Replies to Enquiries, the replies to the Questionnaires and replies to written clarifications of the Contractor in each case as set out in Schedule 26 (Replies to Enquiries, Questionnaires and Clarifications) to the Project Agreement) that a prudent and competent solicitor exercising all professional skill and care would have carried out when acting for a contractor proposing to carry out the obligations of the Contractor under the Project Agreement; and/or (b) are contained, mentioned or referred to in documents, drawings, plans or correspondence in the Data Room; and/or (c) are within the actual knowledge of Border (but not including matters of which Border is deemed to have knowledge of under this Agreement but which are not otherwise known to Border);
Start on Site Date	means the date specified as the Start on Site Date for each Station as set out in Schedule 4 (Stations) to the Building Contract or such later date as may be allowed in accordance with the terms of this Agreement;
Station	means a station listed in Schedule 4 (Stations) to the Building Contract being the buildings and other stations to be provided in accordance with the Building Contract located on and consisting of the relevant Site but only insofar as relates to the fire and/or rescue stations in Carlisle, Patterdale, Penrith and Workington;
Stations Requirements	the requirements of the Authorities in relation to the provision of the Stations set out in Part 1 of Schedule 1 (Authorities' Requirements) to the Building Contract;
Submitted Item	has the meaning given to it in paragraph 1.2 of Schedule 8 (Review Procedure);
Supplier	has the meaning given to it in Clause 96.2.3 (Value Added Tax);
Termination Date	the date of early termination of this Agreement in accordance with its terms;
Termination Notice	a notice of termination issued in accordance with this Agreement;
Title Deeds	the registered title of each Authority (as applicable) in respect of each of the Sites set out in Schedule 13 to the Project Agreement;

Unavailability Damages	has the meaning given to it in clause 20A.9 (Defects Liability);
Uninsurable	has the meaning given to it in the Project Agreement;
Unitary Charge	has the meaning given to it in the Project Agreement insofar as relates to the Sites and/or Stations;
VAT	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;
Works	all of the works (including design and works necessary for obtaining access to the Sites) to be undertaken in accordance with this Agreement to satisfy the Authorities' Requirements including for the avoidance of doubt the works involved in the Post Completion Works;
Works Compensation Event	means any "Compensation Event" as defined in and under the Project Agreement insofar as it relates to the Sites and/or the Stations and including any Works Compensation Event identified as such in this Agreement;
Works Period	the period from the Commencement Date to the later of last Services Availability Date; and
Works Delivery Plans	means together the Construction Proposals for the Works and the Construction Programme.

1.2 Interpretation

In this Agreement except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice-versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to any clause, sub-clause, paragraph, Schedule, Recital or Appendix is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or appendix of and to this Agreement;
- 1.2.4 save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- 1.2.5 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 a reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.7 headings are for convenience of reference only;

- 1.2.8 words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words;
- 1.2.9 any reference to any government department, non departmental public body (NDPB), agency or public sector body shall include any successors from time to time which substantially perform any of the functions that had been previously performed by it or its permitted assignees or transferees; and
- 1.2.10 each of the obligations on the part of the Authorities (or any one or more of them) under the Project Agreement are undertaken by them jointly and severally. For the purposes of this Agreement, the action or omissions of an Authority shall be treated as an action or omission of all the Authorities.

1.3 Schedules

The Schedules to this Agreement form part of this Agreement.

1.4 Indexation

In this Agreement, save where otherwise provided, references to amounts expressed to be “indexed” are references to such amounts at Base Date prices multiplied by:

$$\frac{I_1}{I_2}$$

where I_1 is the value of RPIx published for the month two months prior to the relevant calculation date, and I_2 is the value of RPIx for the Base Date.

1.5 Precedence of Documentation

In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between the Authorities’ Requirements and the Construction Proposals, the Authorities’ Requirements shall take precedence. In the event of any inconsistency between Schedules 1 to 31 (inclusive) and Schedule 32 (Project Co-ordination Matrix), Schedules 1 to 31 (inclusive) take precedence.

1.6 Responsibility for Related Parties

Subject to the provisions of this Agreement, Border shall be responsible as against Mansell for the acts and omissions of Border Related Parties as if they were the acts and omissions of Border and Mansell shall be responsible as against Border for the acts and omissions of Mansell Related Parties as if they were the acts and omissions of Mansell. Border shall, as between itself and Mansell, be responsible for the selection of and pricing by any Border Related Party.

1.7 Border Remains Responsible

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Mansell or the Contractor or the Authorities (or any one or more of them), nor the failure of the same, shall unless otherwise expressly stated in this Agreement, relieve Border of any of its obligations under the Project Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the

matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.8 Consents

- 1.8.1 The right of a party under this Agreement to give or withhold its approval, consent, agreement, confirmation or analogous endorsement shall in each case unless otherwise stated be subject to an obligation not to unreasonably withhold or delay the giving or withholding of any such endorsement.
- 1.8.2 If in terms of the Building Contract Mansell requires the prior approval, consent, agreement, confirmation or analogous endorsement of the Contractor or any other third party before Mansell may issue its own approval, consent, agreement, confirmation or analogous endorsement under this Agreement, then where such approval, consent, agreement, confirmation or analogous endorsement of the Contractor or other third party (as the case may be) is not forthcoming and where under the terms of this Agreement Mansell is not entitled to unreasonably delay and/or withhold such approval, consent, agreement, confirmation or analogous endorsement, Mansell shall be deemed not to have unreasonably refused withheld or delayed its approval or consent under this Agreement, provided that Mansell has acted in accordance with the Enforcement Regime to enforce any rights it has against such persons (which, for the purposes of clause 92 (Enforcement Regime), Border hereby requests Mansell so to do), or where it has no such rights provided that Mansell has taken such steps as a prudent man of business would take to obtain the relevant consent or approval.

1.9 Conditions Precedent

Border shall at the same time as executing this Agreement provide Mansell with the executed Guarantee and the provision of the same shall be a condition precedent to this Agreement becoming effective and to any entitlement of Border to be paid under this Agreement.

1.10 Succession

References to a public organisation (other than the Authorities (or any one or more of them)) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authorities (or any one or more of them)) shall include their successors and assignees.

1.11 Mansell to procure

Wherever in this Agreement, the phrase "Mansell shall procure" (or any equivalent thereof) is used in relation to the performance or non-performance of anything by the Authorities, an Authorities Related Party, the Contractor, a Contractor Related Party, the Independent Certifier, or a Mansell Related Party the same shall be deemed to mean that Mansell shall (subject to clause 16.12 (Mansell Entitlement) and clause 92 (Enforcement Regime)) enforce such legal rights as it has under the Building Contract or other contract to which Mansell is a party to obtain such performance or non-performance by the Authorities, an Authorities Related Party, the Contractor, a Contractor Related Party, the Independent Certifier, or a Mansell Related Party as the case may be (and each of the relevant obligations of Mansell under this Agreement shall be construed accordingly).

2 EXCLUSION OF LEGISLATION

2.1 [Not Used]

2.2 Third Party Rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

3 COMMENCEMENT AND DURATION

This Agreement and the rights and obligations of the parties shall take effect on the Commencement Date.

4 COLLATERAL WARRANTIES

4.1 Border shall:

4.1.1 On the date of this Agreement deliver to Mansell the collateral warranties in favour of;

- (a) the Authorities from each member of the Professional Team in the relevant form set out in Schedule 7 (Forms of Collateral Warranty) to the Building Contract;
- (b) the Authorities from Border in the relevant form set out in Schedule 7 (Forms of Collateral Warranty) to the Building Contract;
- (c) the Contractor from Border in the relevant form set out in Schedule 7 (Forms of Collateral Warranty) to the Building Contract;
- (d) the Contractor from each member of the Professional Team in the relevant form set out in Schedule 7 (Forms of Collateral Warranty) to the Building Contract; and
- (e) Mansell from each member of the Professional Team in the form set out in Schedule 14 (Forms of Collateral Warranty to be Provided to Mansell);

4.1.2 not engage any new member of the Professional Team or Principal Border Sub-Contractor in connection with the Project unless such person has delivered to Mansell a duly executed agreement substantially in the form of the relevant collateral warranty set out in Schedule 14 (but with such amendments as Border may reasonably request and Mansell approve such approval not to be unreasonably withheld or delayed) duly executed as a deed and in each case such collateral warranty must be delivered to Mansell before such entity enters onto any Site;

4.1.3 [Not used]

4.1.4 on or before the Commencement Date deliver to Mansell:

- (a) [Not used];
- (b) the Collateral Warranty;
- (c) [Not used];
- (d) evidence of Border's Required Insurances.

4.2 Border shall procure that all Border Sub-Contracts permit Mansell to enforce and take the benefit of them pursuant to the Contracts (Rights of Third Parties) Act 1999.

4.1.5 obtain warranties from any suppliers and manufacturers of the materials and/or equipment provided as part of the Works which a purchaser would ordinarily be provided with and Border shall:

- (a) use all reasonable endeavours to procure that such suppliers' and manufacturers' warranties do not contain any exclusions, limitations, or conditions which are inconsistent with the terms generally obtainable from comparable suppliers and/or manufacturers acting in accordance with Good Industry Practice;
- (b) use all reasonable endeavours to make the benefit of such warranties available to Mansell, the Contractor and (insofar as they are relevant to the Services) the FM Contractor; and
- (c) provide to Mansell copies of such suppliers' and manufacturers' warranties (including any extensions thereof or any extended warranties in relation thereto) as soon as reasonably practicable following receipt,

provided that Border shall not be required to incur any unreasonable additional costs in complying with this clause 4.1.5.

5 GENERAL WARRANTIES AND INDEMNITIES

5.1 Border Warranties

Border warrants and represents to Mansell that on the date hereof:

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Project Documents;
- 5.1.3 all action necessary on the part of Border to authorise the execution of and the performance of its obligations under the Project Documents has been taken or, in the case of any Project Document executed after the date of this Agreement, will be taken before such execution;
- 5.1.4 the obligations expressed to be assumed by Border under the Project Documents are, or in the case of any Project Document executed after the date of this Agreement will be, legal, valid, binding and enforceable to the extent permitted by law and each Project Document is or will be in the proper form for enforcement in England;
- 5.1.5 the execution, delivery and performance by it of the Project Documents does not contravene any provision of:
 - (a) any existing Legislation either in force, or enacted but not yet in force binding on Border;
 - (b) the Memorandum and Articles of Association of Border;
 - (c) any order or decree of any court or arbitrator which is binding on Border; or
 - (d) any obligation which is binding upon Border or upon any of its assets or revenues;

- 5.1.6 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of Border, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of Border to perform its obligations under any Project Document;
- 5.1.7 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of Border to perform its obligations under any Project Document;
- 5.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of Border, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 5.1.9 [Not used]
- 5.1.10 the copies of the Project Documents which Border has delivered or, when executed, will deliver to Mansell are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents;

and Mansell relies upon such warranties and representations.

5.2 Border Undertakings

Border undertakes with Mansell that for so long as this Agreement remains in full force:

it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority may be threatened or pending and immediately after the commencement thereof (or within fifteen (15) Business Days of becoming aware the same may be threatened or pending or with fifteen (15) Business Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against Border) give Mansell notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Project, Border's ability to perform its obligations under this Agreement.

5.3 Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by Border in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

6 MANSELL WARRANTIES

6.1 No Warranty by Mansell

Border acknowledges that subject to clause 6.3 (Fraudulent Statements) and clause 6.9 (Mansell Warranted Data) neither the Authorities nor Mansell give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 No Liability to Border

Subject to clause 6.3 (Fraudulent Statements) and clause 6.9 (Mansell Warranted Data) neither Mansell nor the Contractor nor the Authorities nor any of their agents or employees shall be liable to Border in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

6.2.2 any failure to make available to Border any materials, documents, drawings, plans or other information relating to the Project.

6.3 Fraudulent Statements

Nothing in this clause 6 (Mansell Warranties) shall exclude any liability which Mansell would otherwise have to Border in respect of any statements made fraudulently prior to the date of this Agreement.

6.4 Rights and Remedies

The provisions of this clause 6 are without prejudice to Border's express rights and remedies under or pursuant to this Agreement.

6.5 Not used

6.6 Border's Due Diligence

Border shall, subject to the terms of this Agreement, be deemed to have:

6.6.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and

6.6.2 gathered all information necessary to perform its obligations under this Agreement and other obligations assumed including:

(a) information as to the nature, location and condition of the land (including hydrological, geological, geotechnical, ecological, environmental, climatic and sub-surface conditions);

(b) information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures; and

(c) the information contained in the surveys set out in Schedule 24 (Surveys) to the Project Agreement.

6.7 No Relief

Subject to clause 6.3 (Fraudulent Statements) and clause 6.9 (Mansell Warranted Data) Border shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against Mansell or the Contractor or the Authorities (or any one or more of them) on grounds that any information, whether obtained from Mansell or otherwise (including information made available by the Contractor or the Authorities (or any one or more of them)), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

6.8 Not used

6.9 Mansell Warranted Data

Border acknowledges that the Authorities warrant to the Contractor in the Project Agreement that the information that the Authorities have given in relation to the Sites in the Replies to Enquiries, the replies to the Questionnaires and in replies to written clarifications (in each case as set out in Schedule 26 (Replies to Enquiries, Questionnaires and Clarifications) to the Project Agreement) were and remain true, accurate and complete as at the date of the Project Agreement (provided that the Contractor, Mansell and Border shall not be entitled to rely on such warranty in respect of anything that is a Standard Contractor's Investigation Matter).

7 DOCUMENTS AND CO-OPERATION

7.1 Related Agreements

- 7.1.1 On or before the date of this Agreement Mansell shall supply to Border copies of the Related Agreements and the Independent Certifier's Deed of Appointment (as the same may be amended or replaced from time to time).
- 7.1.2 Border shall be deemed to have studied each of the Related Agreements and the Independent Certifier's Deed of Appointment and shall be deemed to be fully aware of the obligations and liabilities of Mansell thereunder. Without prejudice to the foregoing, Border shall be deemed to be fully aware of the adverse financial and other consequences for Mansell which could arise under the Related Agreements and the Independent Certifier's Deed of Appointment in consequence, in whole or in part, of a breach on the part of Border of its obligations under this Agreement (and, in particular, but without limitation, as a result of the Works failing to be completed in accordance with the Project Agreement).
- 7.1.3 Subject to clause 7.2 of this Agreement, Mansell shall be free, at any time, to enter into, terminate, amend, waive its rights and generally deal with (and/or approve or authorise the Contractor to do so) any of the Related Agreements (excluding this Agreement) and the Independent Certifier's Deed of Appointment on such terms and conditions as it sees fit, provided that (at the time such action is contemplated and effected) the same will not materially and adversely affect the ability of Border to perform its obligations under this Agreement nor materially increase Border's liability under clause 7.4.1 (Undertaking in Respect of Obligations) and clause 91 (Interfaces with the Authorities and other SubMansells and Third Parties).
- 7.1.4 Save in respect of an Authority Change, or Contractor Change Border shall not be bound by any amendment or variation to the provisions of the Project Agreement, Financing Agreements, the Independent Certifier's Deed of Appointment or any other Related Agreement which has the effect of increasing the liability of Border without the written consent of Border to any such amendment or variation being made (such consent not to be unreasonably withheld or delayed).

7.2 Delivery

- 7.2.1 Without prejudice to the provisions of this clause 7, if at any time an amendment is made to any Project Document (other than any Project Document to which the Contractor is not a party), the Independent Certifier's Deed of Appointment or Related Agreement, or the Contractor or Mansell enters into a new Project Document, Independent Certifier's Deed of Appointment or Related Agreement (or any agreement which affects the interpretation or application of any Project Document or Related Agreement or the Independent Certifier's Deed of Appointment), Mansell shall deliver to Border a conformed copy of each such amendment or agreement within twenty (20) Business Days of the date of its execution or creation, certified as a true copy by an officer of Mansell (unless the agreement or the amendment to it does not relate to the Sites or the Stations).

7.2.2 Without prejudice to the provisions of this clause 7 if at any time an amendment is made to any Project Document to which the Contractor or Mansell is not a party or Border enters into:

- (a) a new Project Document to which Mansell is not a party; or
- (b) any other agreement which affects the interpretation or application of any Project Document, the Independent Certifier's Deed of Appointment or Related Agreement in circumstances where the Contractor or Mansell is not a party to such agreement,

Border shall deliver to Mansell a conformed copy of each such amendment or agreement within five (5) Business Days of the date of its execution or creation, certified as a true copy by an officer of Border.

7.3 Breach of Related Agreements

Border shall ensure that the Works are carried out and Border's other obligations are performed in such a manner as not to contravene or cause the Contractor or Mansell to be in breach of any of the Related Agreements or the Independent Certifier's Deed of Appointment, nor prejudice or result in the loss or diminution of any rights or entitlements of the Contractor or Mansell under the Related Agreements or the Independent Certifier's Deed of Appointment nor (subject to clauses 8 (Nature of Land Interests) and 58 (Relief Events)) infringe any right over or in respect of or otherwise relating to any land comprised in and/or adjoining the Sites, to the extent that any such right is disclosed in the Disclosed Data.

7.4 Undertaking in Respect of Obligations

7.4.1 Border covenants with and undertakes to Mansell that no act, default or omission on its part or on the part of any Border Related Party (save for such acts, defaults and/or omissions as Border is expressly entitled or obliged to do or make under this Agreement or as a result from the act, omission or default of Mansell or a Mansell Related Party) shall:

- (a) cause or contribute to any breach by the Contractor or Mansell of any of its obligations under or pursuant to any of the Related Agreements and the Independent Certifier's Deed of Appointment; or
- (b) prejudice, or result in the loss of, any rights or entitlements of the Contractor or Mansell under the Related Agreements and the Independent Certifier's Deed of Appointment.

7.5 Mansell Obligations

Mansell undertakes to Border that it shall not wilfully impede and shall procure that the Authorities and the Contractor shall not wilfully impede Border in the performance of its obligations under this Agreement (having regard always to the interactive nature of the activities of each Authority, the Contractor, Mansell and of Border and to the use of the Sites to provide the Fire and Rescue Services and any other operations or activities carried out by the relevant Authority on or at the Sites for the purposes contemplated by the Project Agreement or any other of each Authority's statutory duties or functions).

7.6 Co-operation

Each party agrees to co-operate, at its own expense (but without being compelled to incur material expenditure), with the other party in the fulfilment of the purposes and

intent of this Agreement. To avoid any doubt, neither party shall be under any obligation to perform any of the other's obligations under this Agreement.

7.7 Professional Team Appointments

Border shall perform its obligations under, and observe all of the provisions of, the Professional Team Appointments and shall not:-

- (a) terminate or agree to the termination of all or part of any Professional Team Appointment;
- (b) make or agree to any material variation of any Professional Team Appointment;
- (c) in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that any counterparty to an Professional Team Appointment in any material respect departs from its obligations (or waives or allows to lapse any rights they may have in a material respect), under any Professional Team Appointment; or
- (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Professional Team Appointment,

unless the proposed course of action (and any relevant documentation) has been submitted to Mansell for review under the Review Procedure and there has been no objection made by the Mansell within thirty (30) Business Days of receipt by Mansell of the submission of the proposed course of action (and any relevant documentation) or such shorter period as may be agreed by the parties, and, in the circumstances specified in clause 7.7(a), Border has complied with clause 70 (Assignment and Sub-Contracting).

PART 2 - LAND ISSUES

8 NATURE OF LAND INTERESTS

8.1 Access to the Sites

From the Commencement Date until the expiry of the last Post Completion Works Defects Liability Period (or if earlier the Termination Date), Mansell will and will procure that the Contractor and each Authority (as applicable) affords the Ancillary Rights to Border and Border Related Parties for the purpose of implementing the Works.

8.2 Compliance with the Title Deeds

Border shall procure that:

- 8.2.1 the carrying out of the Works at each Site by or on behalf of Border (whether before, during or after the completion of the Works) shall be carried out in a manner which does not breach any provisions of the Title Deeds relating to that Site or that Station listed in Schedule 13 (Title Deeds) to the Project Agreement, provided that where a Works Compensation Event occurs (under limb (c) of the definition of Compensation Event as set out in the Project Agreement) Border shall not be in breach of its obligations under this Agreement to any extent caused by the relevant Works Compensation Event;
- 8.2.2 in carrying out the Works at each Site, there shall be no action, or omission to act by Border or any Border Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over a Site or any part of it (save in accordance with the terms of this Agreement).
- 8.2.3 in exercising the Ancillary Rights (other than in respect of the Works), Border and each Border Related Party do not cause any material disruption to the provision of the Fire and Rescue Services. Nothing in this clause 8.2.3 shall relieve Border from its obligations under clause 11.1 (Border's Obligation).

PART 3– TRANSITIONAL ARRANGEMENTS

9 [NOT USED]

10 THE WORKS

10.1 Obligation to Carry Out

Border (and its sub-contractors and/or consultants) shall carry out the design (including the preparation of Design Data) and the construction, completion, commissioning and testing of the Works so that:

- 10.1.1 each Station shall achieve Services Availability on or before the Planned Services Availability Date for that Station provided that a breach of this clause 10.1.1 shall not, of itself, be capable of giving rise to a default under either of clauses 41.1.2(b) or 41.1.2(c);
- 10.1.2 the Works fully comply with and meet all the requirements of this Agreement, the requirements of the Project Agreement insofar as applicable to the Works, the Authorities' Requirements, the Construction Proposals, Good Industry Practice, Guidance, all Necessary Consents and all applicable Authorities' Policies and Legislation. In the event that Border enters into any sub-contract in connection with the Works, it shall ensure that such sub-contractor complies with and meets all the Equality Requirements;
- 10.1.3 new materials only will be used in carrying out the Works (unless Mansell agrees otherwise in writing or the contrary is set out in the Authorities' Requirements) and all goods used or included in the Works will be of satisfactory quality, and there will be used or included in the Works none of those products and materials listed in Schedule 9 (Prohibited Materials) to the Project Agreement nor any products or materials not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to Borders or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- 10.1.4 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 10.1.5 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Agreement and having regard to the activities which are carried out at the Sites;
- 10.1.6 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Sites are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works;
- 10.1.7 adequate retaining and supporting walls are provided to support any Adjoining Property and, where appropriate, the Existing Stations during the carrying out of the Works;
- 10.1.8 the Works are carried out and completed in a manner not likely to prejudice the satisfaction of the Authorities' Requirements; and
- 10.1.9 the Works are carried out in compliance with the Equality Requirements.

10.1A Without prejudice to its other obligations under this Agreement, Border warrants that:

- (a) it has exercised and will continue to exercise in the design of each New Building and Post Completion Works the skill care foresight and diligence to be reasonably expected of a properly qualified and skilled designer in each of the disciplines to which such design relates experienced in carrying out design for projects of a similar size, scope, nature and complexity to the Works;
- (b) the New Buildings and Post Completion Works have been or will be designed, executed and completed in an efficient, effective and safe manner and in accordance with the CDM Regulations and the quality assurance systems referred to in the Construction Proposals; and
- (c) the New Buildings and Post Completion Works have been or will be designed and the Works executed in a manner that is not likely to be injurious to health and safety or to cause damage to property (other than property to be demolished pursuant to the terms of this Agreement),

and Mansell relies upon such warranties, representations and undertakings.

10.2 Overall Responsibility

To avoid doubt, the obligations in clause 10.1 (Obligation to Carry Out) and clause 10.1A are independent obligations. In particular:

10.2.1 the fact that Border has complied with the Stations Requirements but not the Construction Proposals shall not be a defence to an allegation that Border has not satisfied the Construction Proposals provided that the Stations Requirements shall take priority over the Construction Proposals in the event of any discrepancy or inconsistency between them; and

10.2.2 the fact that Border has complied with the Construction Proposals but not the Stations Requirements shall not be a defence to an allegation that Border has not satisfied the Stations Requirements.

10.3 Utilities

10.3.1 Border shall in relation to the services and utilities required or affected as a result of the carrying out of the Works: 10.3.1.1 be responsible for determining the location of such services and utilities as may be at the Site and for the maintenance of access to such services and utilities at the Site;

10.3.1.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Site;

10.3.1.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities not within the Site;

10.3.1.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Site;

10.3.1.5 make connection into services and utilities outside the Site; and

10.3.1.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out of the Works.

10.4 Ownership of Materials

Each item of the Materials shall, to the extent consistent with the Legislation, become the property of Mansell free from liens and other encumbrances upon the earlier of when it is incorporated into the Works and when payment is made therefor.

11 CONSTRUCTION PROGRAMME

11.1 Border's Obligation

11.1.1 Insofar as the carrying out of the Works affects or may affect the provision of Fire and Rescue Services at any Existing Station, Border shall procure that (subject to the terms of this Agreement, and, in particular, subject to clause 11.1.2) the Works are carried out to the extent reasonably practicable in accordance with the Construction Programme so as to minimise any disruption to the provision of Fire and Rescue Services.

11.1.2 Without prejudice to the requirement of Border to notify pursuant to clause 16 (Extensions of Time), if either:

- (a) Border becomes aware at any time that the actual progress of the Works may become or has been significantly delayed or has fallen behind the Construction Programme; or
- (b) it appears to Mansell's Representative at any time that the actual progress of the Works has been significantly delayed or has fallen behind the Construction Programme (and Mansell's Representative requests Border's Representative to do so),

Border's Representative shall submit to Mansell's Representative a report identifying the reasons for the delay and (where Mansell's Representative requires Border's Representative to do so) Border's Representative shall produce and submit to Mansell's Representative a revised Construction Programme showing the manner and the periods in which the Works will be carried out to achieve the Planned Services Availability Date and/or showing the steps which are to be taken to eliminate or reduce the delay.

11.1.3 In the event that any extension of time is granted to Border, the Construction Programme shall, subject to the provisions of clause 15.2, be amended as necessary and/or appropriate.

11.2 Decanting

11.2.1 Border shall fulfil the obligations of Mansell under the Building Contract in relation to and set out in the Decant Protocol in so far as relates to the Sites and/or the Stations and Mansell shall procure that the Contractor complies with its obligations set out in the Decant Protocol (and neither party shall be in breach of such obligations to the extent any failure to do so arises directly from any default of the other party).

11.2.2 In the event the Construction Programme is amended in accordance with this Agreement the parties shall agree (acting reasonably) with the Contractor any necessary changes to the Decant Protocol with the aims of minimising disruption to the Fire and Rescue Services and delay to the relevant Services Availability Date.

11.3 Decanting Equipment

11.3.1 Border shall at its own cost:

- (a) provide Border Equipment;

- (b) install Border Equipment; and
- (c) relocate any Authority Equipment in the Existing Stations to the Stations in accordance with the Decant Protocol.

11.3.2 [Not Used]

11.3.3 The parties shall review whether any items of Border Equipment can be provided from existing supplies owned by the Authorities or the Authorities Related Parties, such review to take into account whether such existing supplies can be accommodated within the existing room layouts and are of a quality and condition reasonably satisfactory to the Contractor in terms of lifecycle and maintenance considerations. Border shall inform Mansell and the relevant Authority when such a review needs to be conducted and any subsequent Authorities Change completed. Following such a review Border acknowledges that the Authorities may issue an Authorities Change Notice and the provisions of clause 60 (Authority, Contractor, Mansell and Border Changes) shall apply. In order for such an Authorities Change Notice to be accepted by Border (provided Border has complied with its obligations under this clause 11.3.3 and clause 60 (Authority, Contractor, Mansell and Border Changes)) the review and the subsequent Authorities Change process must be complete at least five (5) Business Days before orders need to be placed by Border to comply with its obligations under this Agreement.

11.3.4 Following the relevant Services Availability Date, existing furniture fittings and equipment at the relevant Existing Station, other than Excluded Equipment, shall be available to Border without charge.

11.3.5 If Border has failed in its obligations to decant the Authorities Equipment as required under this Agreement within three (3) Business Days Border acknowledges that the Authorities may do so under the Project Agreement and recover the cost of doing so from Mansell as a debt. Border shall indemnify Mansell in the event of any such debt being incurred by Mansell.

11.4 Induction

11.5 Border shall provide an induction to each Station for all staff at the times specified in the Construction Programme and in the manner set out in the Construction Proposals. Border shall have no responsibility to repeat such induction to those staff who do not attend the planned induction for the Station in question.

12 REPRESENTATIVES

12.1 Representatives of Mansell

12.1.1 Mansell's Representative shall be its Regional Director or such other person appointed pursuant to this clause. Mansell's Representative shall have full authority to exercise the functions and powers of Mansell in relation to the Project which are identified in this Agreement as functions or powers to be carried out by Mansell's Representative. Mansell's Representative shall also exercise such other functions and powers of Mansell under this Agreement as may be notified to Border from time to time.

12.1.2 Mansell's Representative shall be entitled at any time, by notice to Border, to authorise any other person to exercise the functions and powers of Mansell delegated to him pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of Mansell's Representative and all references to the "Mansell's Representative" in this Agreement (apart from this clause) shall

be taken as references to such person so far as they concern matters within the scope of such person's authority.

- 12.1.3 Mansell may by notice to Border change Mansell's Representative. Mansell shall (as far as practicable) consult with Border prior to the appointment of any replacement for Mansell's Representative, taking account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to Border in the execution of its obligations under this Agreement).
- 12.1.4 During any period when no Mansell's Representative has been appointed (or when Mansell's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) Mansell shall carry out the functions which would otherwise be performed by Mansell's Representative.
- (a) Save where notified in writing by Mansell before such act or instruction, Border and Border's Representative shall be entitled to treat any act or instruction of Mansell's Representative which is authorised by this Agreement as being expressly authorised by Mansell and Border and Border's Representative shall not be required to determine whether authority has in fact been given.
- (b) Save where notified in writing by Mansell before such act or instruction, Border and Border's Representative shall not be entitled to treat any act or instruction of Mansell's Representative or any other officer, employee or other person engaged by Mansell which is not authorised by this Agreement as being authorised by Mansell and shall be required to determine by notice to Mansell whether an express authority has in fact been given.

12.2 Representative of Border

- 12.2.1 Border's representative shall be its Managing Director or such other person appointed pursuant to this clause. Border's Representative shall have full authority to act on behalf of Border for all purposes of this Agreement. Except as previously notified in writing before such act by Border to Mansell, Mansell and Mansell's Representative shall be entitled to treat any act of Border's Representative in connection with this Agreement as being expressly authorised by Border and Mansell and Mansell's Representative shall not be required to determine whether any express authority has in fact been given.
- 12.2.2 Border may by notice to Mansell, change Border's Representative. Where Border wishes to do so it shall by written notice to Mansell propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of Mansell (not to be unreasonably withheld or delayed).

12.3 Appointment of Representatives

At any time Mansell may appoint more than one Mansell's Representative and Border may appoint more than one Border's Representative provided in each case the appointer provides written confirmation to Border or Mansell as appropriate of the extent of its Representatives' authority.

12.4 Notices

- 12.4.1 Subject to clause 76 (Notices), any notice, information, instructions or public communication given to:

- (a) Mansell's Representative shall be given in writing and shall be deemed to have been given to Mansell; and
- (b) Border's Representative shall be given in writing and shall be deemed to have been given to Border.

12.4.2 Mansell shall not be responsible for and Border shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should Border act on or fail to act on any notice, communication or other purported instruction given by a person alleging to act for and on behalf of Mansell unless such person was Mansell's Representative.

13 SITE MEETINGS

13.1 Border shall procure that representatives of each Authority, the Funders' Technical Adviser and Mansell are afforded a reasonable opportunity to attend site meetings relating to the Works and (whether or not such representatives have attended) that a copy of the minutes of site meetings is promptly supplied to Mansell.

14 DESIGN DEVELOPMENT

14A The provisions of this clause 14 shall be subject to the provisions of clause 91A (FM Agreement Specific Interfaces).

14.1 Obligation to Finalise Design

Border shall develop and finalise the design and specification of the Works in accordance with the Project Agreement and Mansell and/or the Contractor and/or the Authorities may review the Reviewable Design Data in accordance with the Review Procedure and the provisions of this clause.

14.2 Submission of Reviewable Design Data

Border shall (subject to the following provisions of this clause 14) be responsible for performing and observing on behalf of Mansell, all the obligations of Mansell relating to Reviewable Design Data under clause 14 of the Building Contract and the Review Procedure except that Border shall not communicate directly with the Authorities or the Contractor but shall provide all necessary information and documents to Mansell in sufficient time for Mansell to review them before passing them on to the Authorities and/or the Contractor for review.

14.3 No Construction prior to Review

14.3.1 Subject to clause 14.3.2, Border shall not commence or permit the commencement of the construction of the part or parts of the Works to which any Reviewable Design Data relates until it has submitted the relevant Reviewable Design Data for review under the Review Procedure and either it is confirmed by Mansell and/or the Contractor and/or the Authorities that Border is entitled to proceed with construction in accordance with the Review Procedure or Border is disputing the status of such Reviewable Design Data pursuant to paragraph 1.3 of Schedule 8 (Review Procedure).

14.3.2 If Border commences or permits the commencement of construction before Mansell and/or the Contractor and/or the Authorities provides such approval or during such a dispute and it is subsequently determined that Border was not entitled to proceed with construction in accordance with paragraph 4 of Schedule 8 (Review Procedure), then Border shall, at its

own cost, forthwith undo, remove from the Site(s) and replace (in a manner complying with this Agreement) any parts of the Works which it has been determined Border was not entitled to construct.

- 14.3.3 Without prejudice to Mansell's rights under clause 41.3 (Termination on Border Default) and to any other express rights under this Agreement, where Border has been found to have breached any of its obligations pursuant to this clause 14 more than two times in any two month period Border shall procure that its Chief Executive meets with Mansell, the Contractor and the Authorities as soon as reasonably practicable following a Mansell request for such a meeting to discuss how to remedy the breach and avoid any reoccurrence of the breach.
- 14.3.4 If following any meeting that occurs pursuant to clause 14.3.3 the breach discussed at such meeting reoccurs (without prejudice to Mansell's rights under clause 41.3 (Termination on Border Default)) Mansell may by notice to Border proceed to monitor Border's performance in complying with its obligations pursuant to this clause 14 until such time as Border shall have demonstrated to the reasonable satisfaction of Mansell that it will perform (and is capable of performing) its obligations under this clause.
- 14.3.5 If Mansell issues a notice under clause 14.3.4, Border shall keep Mansell indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of Mansell in relation to such increased level of monitoring arising due to the circumstances under clause 14.3.4.

14.4 Approved RDD

With effect from the date on which any item of Reviewable Design Data is or becomes an Approved RDD Item in accordance with the Review Procedure, Border may proceed with the construction of the relevant part or parts of the Works (subject to the need to submit any associated Reviewable Design Data to review) in accordance with that Approved RDD Item.

14.5 Review of Design Data

Border shall allow the Authorities' Representative or the Contractor's Representative or Mansell's Representative at any time a reasonable opportunity to view any items of Design Data, which shall be made available to the Authorities' Representative or the Contractor's Representative or Mansell's Representative as soon as reasonably practicable following receipt of any written request from Mansell's Representative.

14.6 Design Database

Border shall establish and maintain a computerised design database which Mansell's Representative, Contractor's Representative and Authority's Representative, FM Contractor and the Funders' Technical Adviser may access remotely by computer to view drawings comprised within the Design Data (including Reviewable Design Data) and electronically store and print copies of such Design Data. If Mansell's Representative, Contractor's Representative or Authority's Representative, FM Contractor or the Funders' Technical Adviser is unable to access that design database, Border shall procure that the database is made available as soon as reasonably practicable for inspection by Mansell's Representative, Contractor's Representative or Authority's Representative, FM Contractor or the Funders' Technical Adviser or any person authorised by Mansell's Representative, Contractor's Representative or Authority's Representative and FM Contractor.

14.7 Rectification of Construction Proposals

If it should be found that the Construction Proposals do not fulfil the Stations Requirements, Border shall at its own expense amend the Construction Proposals and rectify the Works or any part of the Works affected. Such amendment and rectification shall have the effect that:

- 14.7.1 the Construction Proposals shall satisfy the Stations Requirements; and
- 14.7.2 following the amendment or rectification the structural, mechanical and electrical performance of the Sites will be of an equivalent standard of performance to that set out in the Construction Proposals prior to their amendment or rectification (for the purpose of comparison disregarding the fault which required the amendment or rectification to be made).

14.8 Cooperation with FM Contractor

In exercising its rights or obligations under Schedule 8 (Review Procedure) and in developing the Reviewable Design Data, Border shall not, without Mansell's consent (such consent not to be unreasonably withheld or delayed), amend any Approved RDD Items in any way that would have a material adverse effect on the cost to the FM Contractor of performing its obligations in accordance with, and throughout the term of, the FM Agreement. Border shall pay to Mansell (and indemnify Mansell in respect of) the reasonable additional costs incurred, or to be incurred, by the FM Contractor (and for which Mansell is liable under the Building Contract) as a consequence of an amendment arising pursuant to the operation of this clause within ten (10) Business Days of the date of the parties agreeing on the amount of such additional costs or the date of their determination under the Dispute Resolution Procedure (as the case may be). Mansell shall procure that the FM Contractor shall identify such additional costs at the time the amendment of the Approved RDD Items is proposed and shall procure that the FM Contractor's comments are conveyed to Border in good time, and in accordance with the Review Procedure.

15 CHANGES TO THE CONSTRUCTION PROPOSALS AND THE CONSTRUCTION PROGRAMME

15.1 Proposal to Vary Construction Proposals

- 15.1.1 Without prejudice to clause 14.7 (Rectification of Construction Proposals), Border shall be entitled to propose variations to the Construction Proposals by submitting the relevant variation to Mansell for review under the Review Procedure and/or onward transmission to the Contractor for review under the Review Procedure under the Building Contract and/or to the Authorities for review under the Review Procedure under the Project Agreement, provided that Border shall not be entitled to propose a variation to a Works Delivery Plan (other than where necessitated by a Works Compensation Event or a Qualifying Change in Law or as a direct consequence of an Authorities Change a Contractor Change or a variation to the Works Delivery Plan which is implemented at the request of the Authorities or the Contractor) which would delay any Planned Services Availability Date or would lead to an increase in the Unitary Charge or would adversely affect any quality aspect of the content of the Works Delivery Plan.
- 15.1.2 Border shall be entitled to propose variations to the Construction Programme by submitting the relevant variation to Mansell for review under the Review Procedure and/or onward transmission to the Contractor for review under the Review Procedure under the Building Contract and/or to the Authorities for review under the Review Procedure under the Project Agreement.

15.2 Implementing a Variation to the Construction Proposals or the Construction Programme

Save as provided for in this Agreement, Border shall not implement any variation to the Construction Proposals or the Construction Programme until Mansell consents or is deemed to have consented to the variation in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Construction Proposals or the Construction Programme as the case may be.

16 EXTENSIONS OF TIME, GIVING OF RELIEF AND PAYMENT OF COMPENSATION

16.1 Notice

If at any time Border becomes aware that there will be or is likely to be a delay in the Works such that a Start on Site Date, a Planned Services Availability Date or a Planned Post Completion Works Acceptance Date may not be achieved, or (following the Planned Services Availability Date) such that there is a delay in the achievement of Services Availability or (following the Planned Post Completion Works Acceptance Date) such that there is a delay in the achievement of the Post Completion Works Acceptance Date, Border shall as soon as reasonably practicable and in any event within fifteen (15) Business Days of becoming aware of the likely delay give notice to Mansell to that effect specifying:

16.1.1 the reason for the delay or likely delay; and

16.1.2 an estimate of the likely effect of the delay on the Works including the Start on Site Date, any Planned Post Completion Works Acceptance Date, any Planned Services Availability Date or the Longstop Date (taking into account any measures that Border proposes to adopt to mitigate the consequences of the delay in accordance with clause 16.3 (Duty to Mitigate)).

16.2 Supply of Information

Following service of a notice by Border pursuant to clause 16.1 (Notice), Border shall promptly supply to Mansell any further information relating to the delay which:

16.2.1 is received by Border; or

16.2.2 is reasonably requested by Mansell.

16.3 Duty to Mitigate

Border shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to clause 16.1 (Notice).

16.4 Not Used

16.5 Effect of a Mansell Compensation Event and Works Compensation Event

Border agrees and acknowledges that its entitlement to any payment of compensation, grant of extension of time or giving of relief in respect of any Works Compensation Event (but not any Mansell Compensation Event) under this clause 16 shall be subject to the provisions of clause 93.

16.5.1 If, for any Station, on or before the Services Availability Date for that Station as a direct result of the occurrence of a Mansell Compensation Event or a Works Compensation Event Border will:

16.5.1.1 be unable to commence the Works on or before the Start on Site Date; and/or

16.5.1.2 be unable to achieve Services Availability on or before a Planned Services Availability Date or (following the Planned Services Availability Date but before the relevant Longstop Date) will be delayed in achieving Services Availability; and/or

16.5.1.3 be unable to comply with its obligations under this Agreement; and/or

16.5.1.4 incur costs or lose revenue,

then Border is entitled to apply for an extension of time to the Start on Site Date and/or to the Planned Services Availability Date and/or a Planned Post Completion Works Acceptance Date and/or (following a Planned Services Availability Date) to the Longstop Date and/or relief from its obligations and/or to claim compensation under this Agreement.

16.5.2 If, for any Station where completion of the Works at that Station is scheduled to occur after the Planned Services Availability Date for that Station, as a direct result of the occurrence of a Mansell Compensation Event or a Works Compensation Event Border will be delayed in completing such Works on or before the relevant Planned Post Completion Works Acceptance Date or (following such Planned Post Completion Works Acceptance Date, but before the Longstop Date) will be delayed in completing such Post Completion Works or will be unable to comply with its obligations under this Agreement; and/or Border will incur costs or lose revenue in respect of such Works then Border is entitled to apply for an extension of time to the Planned Post Completion Works Acceptance Date and/or relief from its obligations and/or to claim compensation under this Agreement.

16.6 Procedure for Relief and Compensation

Subject to clause 16.8 (Late Provision of Notice or Information) to obtain relief, extension and/or claim compensation Border must:

16.6.1 as soon as practicable, and in any event within ten (10) Business Days after it became aware that Mansell Compensation Event or Works Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or Border to incur any costs or lose revenue, give to Mansell a notice of its claim for an extension of time to the Start on Site Date and/or the relevant Planned Services Availability Date or (following the relevant Planned Services Availability Date) to the Longstop Date and/or to the Planned Post Completion Works Acceptance Date, payment of any compensation and/or relief from its obligations under this Agreement;

16.6.2 within five (5) Business Days of receipt by Mansell of the notice referred to in clause 16.6.1 (Procedure for Relief and Compensation), give full details of the Mansell Compensation Event or Works Compensation Event as the case may be and the extension of time and/or relief from its obligations under this Agreement and/or any Estimated Change in Contract Sum claimed; and

16.6.3 demonstrate to the reasonable satisfaction of Mansell (in the case of a Mansell Compensation Event) or the Contractor and the Authorities (in the case of a Works Compensation Event) that:

16.6.3.1 the Mansell Compensation Event or Works Compensation Event as the case may be was the direct cause of:

16.6.3.1.1 the Estimated Change in Contract Sum; and/or

16.6.3.1.2 any delay in the commencement of the Works on or before the Start on Site Date; and/or

16.6.3.1.3 any delay in achievement of Services Availability on or before the relevant Planned Services Availability Date or (following the relevant Planned Services Availability Date but before the relevant Longstop Date) any delay in the achievement of Services Availability; and/or

16.6.3.1.4 any delay in the completion of the Post Completion Works on or before the relevant Planned Post Completion Works Acceptance Date or (following the relevant Planned Post Completion Works Acceptance Date) any delay in completing the relevant Post Completion Works; and/or

16.6.3.1.5 [Not used]

16.6.3.1.6 breach of Border's obligations under this Agreement; and 16.6.3.2 the Estimated Change in Contract Sum, time lost, and/or relief from the obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by Border acting in accordance with Good Industry Practice.

16.7 Giving of Relief and Compensation

In the event that Border has complied with its obligations under clause 16.6 (Procedure for Relief and Compensation), then;

16.7.1 in the case of a delay:

16.7.1.1 the Start on Site Date; and/or

16.7.1.2 the relevant Planned Services Availability Date or, following the relevant Planned Services Availability Date, the Longstop Date; and/or

16.7.1.3 the relevant Planned Post Completion Works Acceptance Date;

shall be postponed by such time as shall be reasonable for such a Mansell Compensation Event or Works Compensation Event as the case may be, taking into account the likely effect of the delay;

16.7.2 in the case of an additional cost being incurred by Border: in relation to a Site on or before the later of the Services Availability Date and the Post Completion Works Acceptance Date for that Station, Mansell shall compensate Border for the Estimated Change in Contract Sum as adjusted to reflect the actual costs reasonably incurred (to the extent it could not reasonably have been mitigated) within thirty (30) Business Days of its receipt of a written demand by Border supported by all relevant information;

16.7.3 [Not used]

16.7.4 Mansell shall give Border such relief from its obligations under this Agreement as is reasonable for such a Mansell Compensation Event or Works Compensation Event as the case may be.

16.8 Late Provision of Notice or Information

In the event that information is provided after the dates referred to in clause 16.6 (Procedure for Relief and Compensation) then Border shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the relevant information is delayed.

16.9 Failure to Agree

If the parties cannot agree the extent of any compensation, delay incurred, relief from Border's obligations under this Agreement, or the Authorities or Mansell disagree that a Mansell Compensation Event or Works Compensation Event as the case may be has occurred (or as to its consequences), or that Border is entitled to relief under this clause 16, the parties shall, subject to clause 93 (Border's Entitlement), resolve the matter in accordance with the Dispute Resolution Procedure.

16.10 [Not used]

16.11 [Not used]

16.12 **Mansell Entitlement**

16.13 Even if Border is not entitled to an extension of time or has not claimed an extension of time, Mansell may at any time and from time to time by written notice to Border extend the relevant Planned Services Availability Date and Planned Post Completion Works Acceptance Date for any reason and there will be no additional payment to Border because of the granting of such an extension of time.

17 CDM REGULATIONS

17.1 Responsibility for Design

17.1.1 As between Border and Mansell, Border shall be entirely responsible for the safety of any design which forms part of the Works and for the adequacy, stability and safety of all site operations and methods of construction.

17.1.2 Border shall perform the obligations, requirements and duties of a Designer and a Contractor arising under the CDM Regulations in connection with the Works.

17.2 The Contractor as Client

The parties agree and acknowledge that the Contractor has, pursuant to the Project Agreement, elected to be treated as the only client in respect of the Works pursuant to Regulation 8 of the CDM Regulations.

17.3 Border Appointment as Principal Contractor

17.3.1 [Not used]

17.3.2 Border represents and warrants to Mansell (and shall if requested do so to the Contractor) that it is and shall continue to be competent to perform the obligations, requirements and duties imposed on a designer and a contractor by the CDM Regulations.

17.3.3 [Not used].

17.3.4 Border shall:

- (a) assist Mansell to carry out and comply with all the obligations, requirements and duties of Mansell as the Principal Contractor arising under the CDM Regulations in connection with the Works; and
- (b) ensure that all of the Border Sub-Contractors comply with the requirements of the CDM Regulations and
- (c) do nothing to put Mansell in breach of its obligations as Principal Contractor.

17.3.5 Border warrants that it has allocated or will allocate adequate resources (including financial resources) to enable it to comply with its obligations pursuant to the CDM Regulations.

17.3.6 [Not Used];

17.4 Duties under CDM Regulations

17.4.1 Without limiting the generality of clause 17.3, Border shall:

(a) [Not Used];

(b) assist the CDM Co-ordinator to prepare, maintain and update the Health and Safety File (as defined under the CDM Regulations) in accordance with the CDM Regulations and as often as appropriate to incorporate any relevant new information in relation to the Works;

(c) assist Mansell to prepare and maintain the Construction Phase Plan (as defined under the CDM Regulations) in accordance with the CDM Regulations and Border shall ensure that the Works are carried out in accordance with it;

(d) assist Mansell to prepare a draft of the Health and Safety File (as defined under the CDM Regulations) so that it is avoidable at least two (2) days prior to the Services Availability Date for the relevant Station;

(e)

(f) assist Mansell to provide a certified copy of the full and complete Health and Safety File for each Station within fifteen (15) Business Days of the Services Availability Date for such Station or the date upon which this Agreement is terminated (if earlier), and Border hereby grants or, where applicable, shall procure the grant to Mansell and each Authority of a perpetual, irrevocable, non-exclusive and royalty-free licence (which shall include the right to grant sub-licences) to use, modify and adapt the intellectual property contained or referred to within the Health and Safety File for any purpose directly related to the design, construction, completion, commissioning or testing of the Works;

[Not Used];

(g) insofar as the beneficial ownership of copyright and all other intellectual property and design rights in any information or documents contained at any time in a Health and Safety File will be vested in any person other than Border, procure, as a condition precedent to the appointment of such beneficial owner, that they grant to Mansell an irrevocable, perpetual, royalty-free and non-exclusive licence to use and reproduce the Health and Safety File for any and all purpose connected with the Works. Such licence shall carry the right to grant sub-licences and shall be transferable to the third parties.

18 THE SITES

18.1 Access

If at any time Border requires access to the Sites or any interest in any land which does not form part of the Sites or any additional rights beyond those which Border has in relation to

any part of the Sites, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of Border.

18.2 Site Matters

18.2.1 Subject to the other terms of this Agreement, the Site Conditions shall be the sole responsibility of Border and accordingly (but without prejudice to any other obligation of Border under this Agreement) Border shall be deemed to have:

18.2.1.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Sites and their surroundings and (where applicable) any existing structures or works on, over or under the Sites;

18.2.1.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Sites, the load-bearing and other relevant properties of the Sites, the risk of injury or damage to property affecting the Sites, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;

18.2.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Sites and any accommodation it may require for the purposes of fulfilling its obligations under this Agreement (such as additional land or buildings outside the Sites);

18.2.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authorities, the Contractor or Mansell) with access to or use of, or rights in respect of, the Sites with particular regard to the owners of any land adjacent to the Sites;

18.2.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to third parties; and

18.2.1.6 satisfied itself as to the risk of defects in any existing structures or works (including pipes, cables and electrical and telecommunications equipment)

18.2.2 Subject to the other terms of this Agreement, Border accepts full responsibility for all matters referred to in clause 18.2.1 (Site Matters) and Border shall:

18.2.2.1 not be entitled to make any claim against Mansell and/or the Contractor and/or the Authorities (or any one or more of them) of any nature whatsoever, without prejudice to clause 58 (Relief Events), on any grounds including the fact that incorrect or insufficient information on any matter relating to the Sites was given to it by any person, whether or not a Mansell Related Party a Contractor Related Party or an Authorities Related Party; and

18.2.2.2 be responsible for, and hold Mansell harmless from, cleaning up and otherwise dealing with any Contamination at the Sites so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with, at its own cost, any applicable Legislation and any Necessary Consents (save that Mansell shall not breach any Necessary Consent or do anything which would cause Border to breach any Necessary Consent and Mansell shall, where necessary co-operate with Border to facilitate Border's compliance with any Necessary Consent), orders, notices or directions of any regulatory body (whether made against the Authorities (or any one or more of them), the Contractor, Mansell or Border).

18.2.3 To the extent that unforeseen ground conditions and/or Contamination exist in any parts of the Site which are under existing buildings as at Financial Close and which it is not practical for Border to investigate or survey (as the same are identified and shaded red on the plans set out in Schedule 27 (Existing Building Plans) to the Project Agreement), Border shall not

be responsible for them, unless they were discovered by the Relevant Surveys or would have been identified in the Relevant Surveys had that survey been carried out with the level of skill and care reasonably to have been expected from competent professionals carrying out such survey or would have been identified had Border carried out such additional surveys as it would have been reasonable to expect an experienced contractor to have carried out in the circumstances. If Border is not responsible for such ground conditions and/or Contamination under this clause 18.2.3 then (as against Border) Mansell shall be so responsible.

18.2.4 Where pursuant to clause 18.2.3 Mansell is responsible for any of the matters referred to then, in respect of such matter, the following provisions shall apply:

- (a) where any such matter arises on or before the Services Availability Date or in relation to the Post-Completion Works, the Post Completion Works Acceptance Date. for such Site it shall be deemed to be a Works Compensation Event for the purposes of this Agreement and any work which is required or instructed to be done in consequence of it shall be deemed to be an Authority Change;
- (b) [Not used];
- (c) where any such matter is Contamination (before or after the Services Availability Date) Mansell shall further hold Border harmless from cleaning up and/or otherwise dealing with such Contamination and shall indemnify Border in respect of all Direct Losses incurred by Border resulting from such Contamination.

and Border shall in carrying out any works referred to in clause 18.2.4 do so in accordance with and so that it shall at all times comply with its obligations under this Agreement including (without limitation) complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authorities, the Contractor, Mansell or Border).

18.2.5 To the extent that any part(s) of the Site(s) suffer from or are affected by Contamination arising from a source off Site (whether or not on adjacent land) on or before the Services Availability date for the relevant Site(s) Border shall be responsible for such Contamination on the Site and then the following provisions shall apply:

- (a) the Contamination shall be deemed to be a Relief Event for a reasonable period to be agreed between the parties acting reasonably) the purposes of this Agreement;
- (b) [Not used];
- (c) Border shall:
 - (i) clean up, or otherwise deal with, such Contamination, and take such reasonable steps to prevent the recurrence of the same, all in accordance with Good Industry Practice, all relevant Necessary Consents and Legislation; and
 - (ii) other than where clause 18.2.5(d) applies hold Mansell harmless from, and indemnify Mansell in respect of, all Direct Losses incurred by Mansell and/or the Contractor and/or the Authorities resulting from such Contamination; and

- (d) the Parties acknowledge the provisions of clause 18.2.5(d) of the Project Agreement and agree that:
- (i) where Border is able to demonstrate to Mansell, the Contractor and the relevant Authority that Border does not have the right to take action against third parties in its own name and Border requires action to be taken against such a third party by the relevant Authority or by the Contractor in the name of the relevant Authority pursuant to clause 18.2.5 of the Project Agreement, Border shall notify Mansell that it requires Mansell to require the Contractor to require the relevant Authority to confirm pursuant to clause 18.2.5(d) of the Project Agreement which option the relevant Authority will implement in relation to taking action against such third parties and Mansell shall comply with such request. Where the relevant Authority elects to take action against such third parties itself, Mansell shall procure that the relevant Authority will take such action as Border may (acting reasonably) direct or, where the Contractor is permitted to take action against such third parties in the name of the relevant Authority, Mansell shall procure that the Contractor shall take such action as Border may (acting reasonably) direct; and
 - (ii) Border shall provide such information, advice and assistance as the relevant Authority or the Contractor or Mansell may reasonably require to assist in the exercise of either option under clause 18.2.5(d) of the Project Agreement. Border shall indemnify Mansell in respect of all costs for which it is liable under the Building Contract in respect of the Contractor exercising either option (including, without limitation, any amounts payable by the Contractor pursuant to clause 18.2.5(d) of the Project Agreement). Where the relevant Authority or the Contractor takes action under clause 18.2.5(d)(i), Mansell shall be liable to Border for all losses suffered or incurred by Border as a result of its obligations under this clause 18.2(5), provided that Border's Entitlement in respect of any matter to which this clause 18.2.5(d) applies shall be limited to the amount recovered by Mansell under clause 18.2.5(d) of the Building Contract.

18.3 Necessary Consents and Planning Approval

Subject to clause 18.3A below, Border shall:

- 18.3.1 (subject to clause 18.3.2) at its own expense obtain and maintain all Necessary Consents which may be required for the performance of the Project;
- 18.3.2 at its own expense use all reasonable endeavours to assist the Contractor and/or Mansell to obtain all Necessary Consents that, as a matter of law, Border is not eligible to obtain;
- 18.3.3 be responsible for implementing each Necessary Consent (which it is required to obtain pursuant to clause 18.3.1) within the period of its validity in accordance with its terms;
- 18.3.4 supply free of charge to Mansell's Representative a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained;
- 18.3.5 comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for Border to carry out the Works;

18.3.6 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior consent of Mansell under this Agreement (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the date of this Agreement) or of any condition attached to it but, subject to the compliance by Border with its obligations under this clause, references in this Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

18.3A Mansell shall procure that the Authorities shall discharge the Authorities Planning Conditions. Border shall provide such information, advice and assistance as Mansell may reasonably require in order to comply with and fulfil its obligations under the Building Contract in relation to the planning conditions set out in schedule 22 (Planning Conditions) of the Project Agreement.

18.3B Border shall, acting prudently and expeditiously, draft and take all actions necessary to agree the terms of the Party Wall Agreements on behalf of the Authorities. Where, in the course of procuring a Party Wall Agreement, any notices are required to be issued to a third party or any negotiation is required with such third party in relation to that Party Wall Agreement, Border shall if Mansell so requires act for and on behalf of Mansell and/or the Authorities in relation to the issuing of such notices and negotiations or similar (including but not limited to, the instruction and appointment of a party wall surveyor in terms of the Party Wall etc Act 1996) provided that whether such actions are performed by Border or by Mansell Border shall be fully responsible for any associated costs.

18.3C Mansell shall procure that the relevant Authority shall execute a Party Wall Agreement within fifteen (15) Business Days receipt of such Party Wall Agreement from Border and Mansell shall deliver a copy of the same to Border within five (5) Business Days of receipt from the Contractor under the Building Contract.

18.3D Border shall be wholly responsible for agreeing, executing and enforcing any arrangements with third party landowners which are required for the performance of the Works but which do not constitute Party Wall Agreements (and Border acknowledges that Mansell, the Contractor and the Authorities shall have no responsibility or liability to Border in this respect).

18.4 No Warranty

Except as otherwise expressly provided in this Agreement Border shall take the Sites in their state and condition in all respects as at the date of this Agreement and nothing in this Agreement or otherwise shall constitute or imply a warranty by or on the part of Mansell as to the fitness and suitability of the Sites or any part thereof for the Works or for any other purpose.

18.5 Third Party Rights

Border shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Sites, and Border shall ensure that the Works are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

18.6 Asbestos

18.6.1 Asbestos Liability

Border accepts, in relation to the Buildings other than the New Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for:

- (a) any asbestos identified in the Asbestos Surveys; and
- (b) any asbestos liability that ought reasonably to have been discovered or that could otherwise have been reasonably expected to have been identified or found in the Asbestos Survey given the scope of such Asbestos Surveys,

18.7 provided that where Border is, in the reasonable opinion of Mansell, diligently pursuing the party who is responsible for the Asbestos Survey, then any delay to the Services Availability Date caused by such asbestos shall be treated as a Relief Event, subject to and in accordance with clause 58.

18.6.2 Mansell accepts, in relation to the Buildings other than the New Buildings and subject to clause 93 (Border's Entitlement), entire responsibility for asbestos which has not been identified in the Asbestos Surveys (other than any asbestos liability referred to in clause 18.6.1(b)) and the discovery of any such asbestos shall:

- (a) prior to the Services Availability Date or, in relation to Post Completion Works, the Post Completion Works Acceptance Date for a Station, constitute a Works Compensation Event subject to and in accordance with clause 16 (Extensions of Time, Giving of Relief and Payment of Compensation); and
- (b) after the Services Availability Date for a Station be deemed to be a Relief Event and any work required or instructed to be done in consequence of it shall constitute an Authorities Change.

18.6.3 For the avoidance of doubt, Border accepts, in relation to the New Buildings, entire responsibility (including any financial and other consequences which result whether directly or indirectly) for any asbestos.

18.7 Fossils and Antiquities

18.7.1 As between the parties, it is agreed that all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Sites are or shall become, upon discovery, the absolute property of the Authorities.

18.7.2 Upon the discovery of such item during the course of the Works, Border shall:

18.7.2.1 immediately inform Mansell's Representative, the Contractor's Representative and the Authorities' Representative of such discovery;

18.7.2.2 take all steps not to disturb the object and, if necessary, cease any Works in so far as the carrying out of such Works would endanger the object or prevent or impede its excavation; and

18.7.2.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

18.7.3 Mansell shall procure that the Authorities' or the Contractor's Representative promptly, and in any event within fourteen (14) Business Days, issues an instruction to Mansell specifying

what action they require to be taken in relation to such discovery and Mansell shall promptly copy such notice to Border provided that if no such instruction is forthcoming within such fourteen (14) Business Days period Border may continue to carry out the Works.

- 18.7.4 Border shall promptly and diligently comply with any instruction issued by the Authorities' or Contractor's or Mansell's Representative referred to in clause 18.7.3 at its own cost (except and to the extent that such instruction constitutes an Authority Change or Contractor Change or Mansell Change pursuant to clause 18.7.6 in which case the provisions of clause 60 (Authority, Contractor, Mansell and Border Changes) shall apply).
- 18.7.5 If directed by Mansell's Representative, Border shall allow representatives of Mansell the Contractor or the Authorities to enter the Sites for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authorities, the Contractor or Mansell as the case may be complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of a Station from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of Border's Representative from time to time.
- 18.7.6 If any instruction referred to in clause 18.7.3 includes a requirement for Border to suspend the carrying out of the Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in any Station) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be a Contractor Change (unless such works or instruction do not mirror an instruction received by Mansell under the Building Contract in which case it shall be deemed a Mansell Change) and the provisions of clause 60 (Authority, Contractor, Mansell and Border Changes) shall apply.
- 18.7.7 Mansell shall act promptly and diligently in dealing with its obligations in this clause 18.7 in relation to any find so as to mitigate any effect on Border and/or the Works.

19 MONITORING AND INSPECTION

19.1 Right of Inspection

Border shall procure that the Authorities, the Contractor or Mansell or any representative or adviser of the Authorities, the Contractor or Mansell and the Funders' Technical Adviser shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works) to enter any of the Sites in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed) and to monitor compliance by Border with its obligations under this Agreement.

19.2 Right to Open Up

- 19.2.1 Subject to clause 19.2.2, the Authorities' Representative or the Contractor's Representative or Mansell's Representative shall have the right at any time prior to the Services Availability Date for a Station in respect of the Works to request Border to open up and inspect any part or parts of such Works at that Station where the Authorities' Representative, the Contractor's Representative or Mansell's Representative reasonably believes that such part or parts of the Works is or are defective and Border shall comply with such request.
- 19.2.2 Prior to exercising his right pursuant to clause 19.2.1, Mansell's Representative shall notify Border of his or the Contractor's Representative, the Authorities' Representative intention to exercise such right, setting out detailed reasons.

- 19.2.3 If, following the exercise by the Authorities' Representative, the Contractor's Representative or Mansell's Representative of his right pursuant to clause 19.2.1, the inspection shows that the relevant part or parts of the Works are not defective, any delay caused to the Works by the exercise of such rights shall, subject to (and in accordance with) the provisions of clause 16 (Extensions of Time, Giving of Relief and Payment of Compensation), be treated as a Works Compensation Event (in the case of sole exercise by the Authorities' Representative of his rights under clause 19.2.1 or sole exercise by the Contractor's Representative of his rights under clause 19.2.1 or a joint exercise by two or more of the Authorities' Representative and/or the Contractor's Representative and/or Mansell's Representative of their rights under clause 19.2.1) or a Mansell Compensation Event (in the case of sole exercise by Mansell's Representative of his rights under clause 19.2.1).
- 19.2.4 If, following the exercise by the Authorities' Representative, the Contractor's Representative or Mansell's Representative of his right pursuant to clause 19.2.1, the inspection shows that the relevant part or parts of the Works is or are defective, Border shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by Border at no cost to Mansell and Border shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 19.2.5 If, following the exercise by the Authorities' Representative, the Contractor's Representative or Mansell's Representative of his right pursuant to clause 19.2.1, the Authorities' Representative, the Contractor's Representative or Mansell's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works is or are defective and Border does not agree with such opinion, the matter shall be determined in accordance with clause 67 (Dispute Resolution Procedure).
- 19.2.6 Without prejudice to the rights of Mansell's Representative pursuant to this clause 19.2 the parties acknowledge that the exercise of such rights shall not in any way affect the obligations of Border under this Agreement save as expressly set out in this clause 19.

19.3 Inspection of Stations

The Authorities, the Contractor or Mansell or a representative or advisor of the Authorities or the Contractor or Mansell's Representative may at all reasonable times and on reasonable notice and subject to obtaining the consent of the relevant manufacturer or supplier (which Border shall use all reasonable endeavours to obtain) enter upon any property used by Border as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works.

19.4 Border's Reasonable Assistance

Border shall procure that satisfactory facilities are made available to the Authorities, the Contractor or Mansell and the Authorities' Representative or the Contractor's Representative or Mansell's Representative and that reasonable assistance is given for the purposes of clauses 19.1 (Right of Inspection) and 19.2 (Right to Open Up), subject to Border's and the Border Sub-Contractors' construction obligations not being adversely affected and to Mansell reimbursing Border for any reasonable costs or expenses incurred as a result of the action taken by the Authorities or Mansell under clauses 19.1 (Right of Inspection) and 19.2 (Right to Open Up).

19.5 Health and Safety Requirements

Mansell and Mansell's Representative shall, and Mansell shall procure that the Authorities and the Authorities' Representative and the Contractor and the Contractor's Representative shall at all times comply with all relevant health and safety procedures which shall include any relevant health and safety plans for the construction of the Stations, Border's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of Border's Site Manager from time to time when exercising its rights under this clause 19 (Monitoring and Inspection).

19.6 Supply of Information

Border shall supply to Mansell:

- 19.6.1 and any representative or adviser (including Mansell's Representative) visiting any of the Sites pursuant to clauses 19.1 (Right of Inspection) and 19.3 (Inspection of Stations) such information in respect of the Works as may reasonably be required;
- 19.6.2 a copy of all the minutes of all Site and monthly progress meetings whether or not Mansell's Representative and/or the Contractor's Representative and/or the Authorities' Representative was in attendance together with information relating to the progress of the Works.

19.7 Site Meetings, Monitoring and Inspection

- 19.7.1 Mansell's Representative, the Contractor's Representative and the Authorities' Representative shall have such rights of access to the Site in an Emergency as each (acting reasonably) considers suitable in the circumstances.
- 19.7.2 Without prejudice to the generality of clause 19.7.1 Border shall procure that monthly progress meetings and site meetings are held and that Mansell's Representative, the Contractor's Representative and the Authorities' Representative shall have the right to attend such monthly progress meetings and site meetings and to attend as observer such other meetings as Mansell's Representative, the Contractor's Representative and the Authorities' Representative may reasonably request.

19.8 Increased Monitoring

If, following any viewing, visit or inspection made by the Authorities and/or the Contractor and/or Mansell, it is discovered that there are defects in the Works or that Border has materially failed to comply with the Authorities Requirements or the Construction Proposals, the Authorities, the Contractor and Mansell may (without prejudice to any other right or remedy available to Mansell) by notice to Border increase the level of their monitoring of Border until such time as Border shall have demonstrated to the reasonable satisfaction of Mansell that it is capable of performing and will perform all its obligations under this Agreement and Border shall reimburse Mansell on demand for any costs or expenses incurred by Mansell as a result of any increased level of monitoring undertaken by Mansell pursuant to this clause.

19.9 Damage

Subject to clause 64.14 (Claims) if the Authorities or an Authorities Related Party or the Contractor or a Contractor Related Party or Mansell or a Mansell Related Party causes material damage to the Site in exercising any right under this clause 19 (Monitoring and Inspection), then such damage shall be deemed to be a Works Compensation Event if caused by the Authorities or an Authorities Related Party or the Contractor or a Contractor Related Party or a Mansell Compensation Event if caused by Mansell or any other Mansell

Related Party (and for the purposes of this clause 19.9 “Mansell Related Party” shall exclude the Authority or any Authority Related Party or the Contractor or any Contractor Related Party).

20 NOTIFICATION OF SERVICES AVAILABILITY AND/OR ACCEPTANCE OF POST COMPLETION WORKS

20.1 Inspection of a Station

Border shall give Mansell, the Contractor, the relevant Authority, the Funders' Technical Advisor and the Independent Certifier not less than five (5) Business Days' notice of the date when it proposes to inspect a Station with a view to achieving:

20.1.1 Services Availability in respect of the relevant Station; and/or

20.1.2 completion of the Post Completion Works in respect of the relevant Station;

and on such dates Mansell shall procure that the Independent Certifier shall inspect the Station or the relevant Post Completion Works (as the case may be) and representatives from the relevant Authority, the Contractor, (and, where required by the Contractor or Mansell, the FM Contractor), Mansell and Border and the Senior Lender shall be entitled to make a joint inspection with the Independent Certifier.

20.1A Interface with the Independent Certifier

20.1A.1 Mansell shall:

20.1A.1.1 procure that the Independent Certifier provides a collateral warranty for the benefit of Border in the form set out at Schedule 4 (Draft Collateral Warranty) of the Independent Certifier's Deed of Appointment; and

20.1A.1.2 procure that the Contractor, the Authorities and the Independent Certifier comply with their respective obligations contained in the Independent Certifier's Deed of Appointment.

20.1.A.2 Border shall:

20.1A.2.1 throughout the period of the Independent Certifier's appointment, during normal business hours and on reasonable prior notice, allow the Independent Certifier reasonable access to Border's relevant sites and any relevant information and other written material in the possession of Border as the Independent Certifier shall reasonably require for the Independent Certifier to carry out the IC Services (including the provision of Border's proposed design development and drawing issue procedures and programme required by the Independent Certifier at paragraph 16.2(a) of Schedule 1 (Services) of the Independent Certifier's Deed of Appointment);

20.1A.2.2 appoint one or more appropriate personnel to liaise with the Independent Certifier; and

20.1A.2.3 be entitled to attend any inspection carried out pursuant to clause 20.2 (Inspection of a Station) of the Project Agreement.

20.2 Dates on which Services Availability may occur

The Services Availability Date for any Station shall be the date on which an Acceptance Certificate is issued in respect of that Station, provided that if an Acceptance Certificate is

issued prior to the Planned Services Availability Date for that Station, the Services Availability Date shall be the Planned Services Availability Date.

20.3 Site Clearance

Following issue of an Acceptance Certificate in respect of a Station, Border shall carry out the Post Completion Works at the Site relating to such Station so that such Post Completion Works are completed by the relevant Planned Post Completion Works Acceptance Date provided that in default Mansell and/or the Contractor and/or the Authorities shall be entitled to employ an alternative contractor to carry out such Post Completion Works and shall be entitled to be reimbursed by Border for any costs properly and reasonably incurred in the carrying out of such Post Completion Works.

20.4 [Not used]

20.5 Issue of Acceptance Certificate or Notice of Non Completion

Within five (5) Business Days of any inspection referred to in clause 20.1 (Inspection of a Station) to determine whether the Services Availability Date or completion of the Post Completion Works (as the case may be) has been achieved in relation to a Station, the Independent Certifier shall either:

- (a) issue an Acceptance Certificate confirming that he is satisfied that the Services Availability Requirements have been met in respect of the relevant Station; or
- (b) issue a Post Completion Works Acceptance Certificate confirming that he is satisfied that the relevant Post Completion Works Acceptance Requirements have been met in respect of the relevant Station; or
- (c) issue a notice stating that the Acceptance Certificate or the Post Completion Works Acceptance Certificate (as the case may be) has not been issued and specifying any outstanding matters that must be attended to before an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as the case may be) can be issued in respect of the relevant Station (a "**Notice of Non Completion**"),

provided that if the Services Availability Requirements have been met, the Independent Certifier shall issue an Acceptance Certificate in respect of a Station notwithstanding that there are Snagging Items in respect of the Station.

20.5.2 The parties shall procure that where the Independent Certifier reasonably considers that in relation to a Station the Services Availability Requirements for that Station or the relevant Post Completion Works Acceptance Requirements (as the case may be) have not been met it shall immediately following its inspection pursuant to clause 20.1 issue to the Authorities and the Contractor, which Mansell will promptly supply to Border, a notice (a "**Notice of Non Completion**") detailing all outstanding matters which are required to be attended to before the relevant Station can be considered to have met the Services Availability Requirements for that Station or the relevant Post Completion Works can be considered to have met the relevant Post Completion Works Acceptance Requirements (as the case may be). Following receipt of a Notice of Non Completion Border shall attend to such matters and shall give Mansell and the Independent Certifier further notice in accordance with clause 20.1 (but dealing only with matters raised in the Notice of Non Completion and with a notice period of no less than twenty four (24) hours for the purposes of clause 20.1) so that the procedures in clause 20.5.1 are repeated as often as necessary to ensure that all outstanding matters in relation to the relevant Station are attended to and

an Acceptance Certificate or a Post Completion Works Acceptance Certificate (as the case may be) can be issued in accordance with clause (a) or clause 20.5.1.2.

20.6 Effect of Issue of Acceptance Certificate or Post Completion Works Acceptance Certificate

The issue of an Acceptance Certificate shall indicate only that the Independent Certifier is of the opinion that the relevant Station appears to be in compliance with the Services Availability Requirements or that the relevant Post Completion Works are in accordance with the Post Completion Works Acceptance Requirements (as the case may be) and, without prejudice to the right of either party to make a claim under the Independent Certifier's Deed of Appointment (or the warranty referred to at clause 20.1A.1.1 (Interface with the Independent Certifier)), shall in no way lessen or affect the obligations or liabilities of Border under this Agreement in relation to that Station or any other part of the Works including obligations in respect of Defects, and Border shall pursuant to clause 20.7 (Snagging Items) following the date of issue of the Acceptance Certificate carry out and complete such (if any) of the items on the Snagging List as have not been so completed on the date of issue of the Acceptance Certificate.

20.7 Snagging Items

In the event that an Acceptance Certificate for a Station is expressed to be subject to Snagging Items:

- 20.7.1 the Independent Certifier shall within five (5) Business Days of the issue of the relevant Acceptance Certificate issue to the relevant Authority and the Contractor a list of the relevant Snagging Items for that Station (the "**Snagging List**"), which Mansell will promptly supply to Border. Within three (3) Business Days of receipt from the Independent Certifier by the Contractor of the Snagging List, Border shall provide to Mansell a reasonable programme for making good each Snagging Item set out in the Snagging List and which programme shall require that each Snagging Item shall be made good within twenty (20) Business Days of the date of provision of that programme or within such time as is reasonably practicable. The parties shall seek to agree such programme and in default of agreement shall refer the matter for determination under the Dispute Resolution Procedure. The programme agreed or determined in accordance with this clause 20.7 (Snagging Items) shall be known as the "**Snagging Programme**"; and
- 20.7.2 Border shall procure that each Snagging Item is made good in accordance with the Snagging Programme to the satisfaction of the Independent Certifier. If any Snagging Item has not been rectified by the date set out in the Snagging Programme then Border acknowledges that the relevant Authority, the Contractor or Mansell shall be entitled to effect such repairs as may be necessary and Mansell shall be entitled to recover the costs of doing so from Border as a debt (including any payments required to be made by Mansell to the Contractor under the equivalent provisions in the Building Contract).

20A DEFECTS LIABILITY

20A.1 Where any Defect is present in the Works during the Defects Liability Period for the relevant Station or the Post Completion Works Defects Liability Period for the relevant Post Completion Works:

20A.1.1 Mansell may instruct Border forthwith to make good the same to the standards required by this Agreement, in which case Border shall forthwith comply with such instruction at its own cost within such reasonable period and in accordance with such reasonable instructions as shall be specified by Mansell; or

20A.1.2 in the event of a failure by Border to comply with an instruction issued pursuant to clause 20A.1.1, then Mansell may, by further notice to Border, itself execute and complete or appoint or instruct or the Contractor may appoint or instruct the FM Contractor or any other third party building contractor to execute and complete any remedial, repair or other works as may be necessary to make good any such items and/or Defects, in which event Border shall reimburse Mansell in respect of costs incurred by Mansell or for which Mansell is liable under the Building Contract in relation thereto on demand, provided that Mansell shall be under an obligation to mitigate such costs, such costs being acknowledged by Border as a debt due to Mansell.

20A.2 Without prejudice to clause 20A.1.1, not later than three months after the date of expiry of the Defects Liability Period applicable to each Station or Post Completion Works Defects Liability Period (as the case may be), Mansell shall prepare or cause to be prepared and issued to Border a Schedule of Defects ("Schedule of Defects") specifying any Defects apparent in such Station or in any Post Completion Works in relation to a Station (as the case may be) as at the date of expiry of the Defects Liability Period thereof which have not been made good by Border by such date in accordance with clause 20A.1.1 and, subject always to clause 20A.3, Border shall, at its own expense, as soon as reasonably practicable after the date of issue of such Schedule of Defects (and in any event within a period of three months of such date unless otherwise agreed) make good all such Defects to the reasonable satisfaction of Mansell.

20A.3 Where Border fails to comply with the provisions of clause 20A.2, at the option of Mansell, Border shall, in lieu of its obligation to make good all Defects specified in each Schedule of Defects issued by Mansell pursuant to clause 20A.2, pay to Mansell such amount as represents the full and proper costs of executing the remedial works required in order to make good such Defects to the standards required by this Agreement, as such sum shall be agreed between the parties, or in the event of Dispute, be referred for determination under the Dispute Resolution Procedure.

20A.4 Without prejudice to clauses 20A.7 to 20A.10 (inclusive), in relation to each Station or any Post Completion Works in relation to a Station (as the case may be), where all the Defects which Border is obliged to make good pursuant to clauses 20A.1 and 20A.2 shall have been made good to the reasonable satisfaction of Mansell, Mansell's Representative shall issue a statement to that effect to Border (a "Notice of Completion of Making Good Defects") in respect of such Station or any Post Completion Works in relation to a Station (as the case may be), and the completion of making good all Snagging Items and/or Defects which appeared in such Station or any Post Completion Works in relation to a Station (as the case may be) during the Defects Liability Period applicable thereto shall (without prejudice to clauses 20A.7 and 20A.8) be deemed for the purposes of this Agreement to have taken place on the date specified in such Notice of Completion of Making Good Defects.

- 20A.5 For the avoidance of doubt, the provisions of clauses 20A.1 to 20A.4 (inclusive) shall not in any manner or way serve to mitigate, limit, reduce, satisfy, discharge, negate, avoid or otherwise affect the obligations and/or liability of Border to Mansell specified or referred to elsewhere in this Agreement.
- 20A.6 Subject to clause 20A.9 and subject to Mansell allowing Border or any alternative building contractor access to the relevant part of the relevant Site in a manner which best mitigates and minimises Unavailability Damages and Deductions, Border shall indemnify Mansell from and against any Unavailability Damages or Deductions suffered or incurred by Mansell arising at any Station by virtue of Border rectifying Defects or carrying out any works required to rectify Snagging Items and/or other remedial works.
- 20A.7 Save as otherwise expressly set out in this Agreement Border shall be liable to Mansell in damages in respect of the reasonable costs and losses (including, for the avoidance of doubt, liability for Deductions) incurred by Mansell as a consequence of Defects affecting the Works which arise, appear or become apparent at any time prior to the expiry of a period of twelve (12) years commencing on the Services Availability Date applicable to the relevant Station or the date of issue of a Post Completion Works Acceptance Certificate in respect of any Post Completion Works in relation to a New Building, PROVIDED THAT in respect of each Station or Post Completion Works no action or proceedings under this Agreement in respect of any Defects at a Site arising out of or in connection with or as a result of Border's failure to comply with its obligations under this Agreement shall be commenced after the expiry of a period of twelve (12) years commencing on the Services Availability Date applicable to the relevant New Building or the date of issue of a Post Completion Works Acceptance Certificate in respect of any Post Completion Works.
- 20A.8 At the discretion of Mansell, Border may be afforded a reasonable opportunity to remedy any Defects which appear in a Station or any Post Completion Works in relation to a Station following the expiry of the Defects Liability Period applicable to such Station or any Post Completion Works in relation to a Station (as the case may be) in advance of Mansell instructing a third party building contractor to remedy the same.
- 20A.9 Notwithstanding the issue of an Acceptance Certificate in respect of a Station or a Post Completion Works Acceptance Certificate in respect of any Post Completion Works if following the Services Availability Date applicable to such Station or the issue of a Post Completion Works Acceptance Certificate in respect of such Post Completion Works (as the case may be) Deductions are levied on the Contractor for which Mansell is liable under the Building Contract and, without prejudice to clause 20A.10, such Deductions are caused by or were attributable to any Defect in the Works applicable to such Station or Post Completion Works in relation to a Station (as the case may be), Border shall, subject to the agreement or determination of liability in respect of such Deductions pursuant to clause 95 (Liability for Deductions), pay to Mansell damages ("Unavailability Damages") in respect of such Defect which Unavailability Damages shall:
- 20A.9.1 be a sum equivalent to the sum of the Deductions (if any) relative to such Station made by the Authorities pursuant to clause 37 of the Project Agreement and schedule 6 (Payment Mechanism) of the Project Agreement which was caused by or was attributable to such Defect in the Works; and
- 20A.9.2 subject to the terms of clause 95 (Liability for Deductions), be paid by Border (or be deducted by Mansell from any sums at that time remaining due to Border under this Agreement) within a period of seven (7) Business Days following the issue of a written demand therefor from Mansell together with a copy of any written statement received by Mansell from the Contractor under clause 20A.9.2

of the Building Contract as to how the relevant sum demanded as Unavailability Damages was arrived at.

20A.10 [Not Used]

20A.11 As soon as every Defects Liability Period has expired or Border has made good all Defects that have within such a period appeared in any of the Stations in accordance with this Agreement, whichever is the later, Mansell's Representative shall issue both to Mansell and to Border a written statement (a 'Final Completion Statement') stating that the Works applicable to the Station are finally complete as from that day, provided that the issue of the Final Completion Statement shall be without prejudice to any continuing liability of Border in respect of Defects in the Works, whether under this clause 20A or otherwise at law.

20A.12 Any Dispute as to whether or not a Final Completion Statement should have been issued hereunder shall be referred for determination under and in accordance with the Dispute Resolution Procedure.

21 DELAY AND SUPERVENING UNAVAILABILITY

21.1 Liquidated Damages/Provision of Temporary Accommodation

[Not used]

21.1A If for any reason an Acceptance Certificate shall not have been issued in relation to a Station by the Planned Services Availability Date then from the Planned Services Availability Date until:

- (i) the Services Availability Date; or
- (ii) if earlier, the Termination Date; or
- (iii) the date on which the Services Availability Date would otherwise have occurred if a Works Compensation Event occurs following the Planned Services Availability Date and this delays the Services Availability Date,

Border, at its own cost, shall provide portakabins or other temporary accommodation within the curtilage of the relevant Site which meets the Authorities' Requirements and can be used without interfering with the provision of Fire Rescue Services at the Station to allow the Station to accommodate all necessary personnel.

21.1B Without prejudice to the provisions of Part 7 (Compensation on Termination) of this Agreement and except to the extent set out in clause 21.1, Mansell shall not be entitled to claim liquidated or general damages in respect of the Services Availability Date for any Station occurring after the corresponding Planned Services Availability Date for that Station or in respect of a Post Completion Works Acceptance Date occurring after its corresponding Planned Post Completion Works Acceptance Date.

21.2 Unavailability of Existing Stations

21.2.1 If a Disruption Event occurs at an Existing Station (or part thereof) prior to the Services Availability Date for that Station:

21.2.1.1 where the Disruption Event arises from a breach by Border of the site conduct requirements set out in the Stations Requirements and Construction Proposals and the Disruption Event will cease upon suspension of the part of the Works which are the subject of that breach,

Mansell may require a suspension of that part of the Works. Border shall comply with such request until such time as it can carry out such Works in accordance with this Agreement and shall not be entitled to claim any relief or compensation in respect of any delay to the Works arising in such circumstances;

21.2.1.2 where clause 21.2.1.1 does not apply, Border and Mansell shall agree (acting reasonably) as expeditiously as possible the steps to be taken to ensure any unavailable parts of an Existing Station may be re-provided as soon as practicable. The steps that the parties agree to consider are the following (in the agreed order of preference set out below) or any combination of the following as appropriate:

21.2.1.2.1 remediation of the Disruption Event through temporary and/or permanent measures;

21.2.1.2.2 use of other facilities at the Existing Station;

21.2.1.2.3 use of temporary accommodation at the Existing Station;

21.2.1.2.4 use of accommodation at another station or Authorities' Property;

21.2.1.2.5 use of temporary accommodation at another station or Authorities' property; and/or

21.2.1.2.6 use of commercial facilities (in the case only of specialist facilities which cannot be otherwise provided under this clause).

21.2.2 Border shall be responsible for providing the facilities or accommodation pursuant to clause 21.2.1.2 and shall be responsible for all proper costs arising from all administrative arrangements associated with providing such facilities or accommodation pursuant to clause 21.2.1.2, including, if relevant, the cost of providing temporary facilities or accommodation and/or costs of transportation to and from any facilities or accommodation so provided.

21.2.3 Whenever Border fails to implement any steps in the manner agreed pursuant to clause 21.2.1.2, Mansell may (provided it has first served written notice on Border to that effect) take such steps itself (including by permitting the Contractor to do so) and Border shall reimburse to Mansell the costs incurred by Mansell or for which Mansell is liable in so doing.

21A [Not Used].

21B [Not Used].

22 21C LIQUIDATED DAMAGES FOR DELAY

21C.1 If the:

21C.1.1 Services Availability Date has not occurred on or before the Planned Services Availability Date; or

21C.1.2 the Post Completion Works Acceptance Date has not occurred on or before the Planned Post Completion Works Acceptance Date;

applicable to the relevant Station Mansell or Mansell's Representative may issue a notice in writing to Border to that effect. For the avoidance of doubt, the Planned Services Availability Date and the Post Completion Works Acceptance Date referred to in this clause 21C.1 shall be the Planned Services Availability Date and the Post Completion Works

Acceptance Date ignoring any extension provided pursuant to clause 58 (Relief Events) or clause 45 (Termination on Force Majeure).

21C.2 Following the issue of any notice under clause 21C.1, Border shall, subject to clause 21C.3, pay to Mansell Late Completion Liquidated Damages at the appropriate rate determined in accordance with Schedule 9 (Liquidated Damages) of this Agreement for the period fromas the case may be:

- 21C.2.1 the relevant Planned Services Availability Date until the earlier of:
 - (a) the relevant Services Availability Date for the relevant Station has occurred; or
 - (b) the date of termination of this Agreement; and
- 21C.2.2 the relevant Planned Post Completion Works Acceptance Date until the earlier of:
 - (a) the relevant Post Completion Works Acceptance Date for the relevant Station has occurred; or
 - (b) the date of termination of this Agreement,

PROVIDED THAT, Mansell may deduct the amount so determined from any monies due or to become due to Border under this Agreement (including any balance stated as due to Border in the Final Certificate (as defined in Schedule 6 (Payment Provisions)) or Mansell may recover the same (or any outstanding balance thereof) from Border as a debt.

21C.3 Border's liability pursuant to clause 21C.1 and clause 21C.2 shall not exceed the relevant amount set out for each Station in Part 2 of Schedule 9 (Liquidated Damages). The Late Completion Liquidated Damages payable by Border under this Agreement shall not be subject to Indexation except as provided for in Schedule 9 (Liquidated Damages);

21C.4 The payment or deduction of Late Completion Liquidated Damages as aforesaid shall not relieve Border from its obligation to carry out and complete the Works or from any of its other duties, obligations or liabilities under this Agreement.

21C.5 Subject to clause 20.3, clause 21, clause 21C4 and clause 21C.7 it is agreed that Late Completion Liquidated Damages shall be Mansell's sole and exclusive remedy in relation to the relevant Station for:

- 21C.5.1 the Services Availability Date not occurring on or before the Planned Services Availability Date; and
- 21C.5.2 the Post Completion Works Acceptance Date not occurring on or before the Planned Post Completion Works Acceptance Date,

whether arising as a result of Border's breach of contract, negligence, default or otherwise. Save as aforesaid, the payment by Border of Late Completion Liquidated Damages pursuant to this clause 21C shall be without prejudice to any other rights or remedies available to Mansell under statute, contract or tort in respect of any breach by Border of its obligations under this Agreement.

21C.6 Border hereby agrees and accepts that the Late Completion Liquidated Damages specified in Schedule 9 (Liquidated Damages) represent a genuine and reasonable pre-estimate of

Mansell's loss consequent upon a failure by Border to complete the Works relative to each relevant Station by the Planned Services Availability Date and the Planned Post Completion Works Acceptance Date applicable to such Station and, without prejudice to the foregoing, Border shall at no time dispute the level of any of the Late Completion Liquidated Damages payable under this Agreement nor in any dispute with Mansell contend, allege or infer that the same are unreasonable or a penalty.

21C.7 To the extent that Late Completion Liquidated Damages are paid by Border in relation to any period for which Border subsequently becomes entitled to an extension of time in respect of a Mansell Compensation Event or a Works Compensation Event such Late Completion Liquidated Damages shall be reimbursed to Border by Mansell. Any Late Completion Liquidated Damages so reimbursed shall (subject always to clause 93 (Building Contractor's Entitlement) in the case of a Works Compensation Event) be deducted from any aggregate amount of Late Completion Liquidated Damages paid by Border when calculating whether the caps on liability referred to in clause 21C.3 and/or clause 63A have been reached.

PART 4 - THE SERVICES

22 [NOT USED]

23 [NOT USED]

24 HAZARDOUS SUBSTANCES

24.1 Storage

Border shall ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the Works are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice, and shall ensure that all such materials are properly and clearly labelled on their containers, and shall promptly inform Mansell of all such materials being used or stored at the Sites and shall comply with any other reasonable requirement of Mansell in respect of such materials and equipment.

24.2 COSHH Register

24.3 Border shall maintain a COSHH register in relation to the Works and shall ensure that a copy of each register is held at the relevant Site, at Border's registered office and that a copy is given to Mansell. Mansell shall notify Border of any items that it or any Mansell Related Party is using or storing at any of the Sites and which requires to be included in such register.

25 [NOT USED]

26 [NOT USED]

27 [NOT USED]

28 [NOT USED]

29 USE OF STATIONS

Border acknowledges and agrees that, pursuant to clause 29.1 of the Project Agreement, the Stations shall be made available for use in the following order of priority:

29.1.2 The provision by the Authorities of the Fire and Rescue Services (as defined in the Project Agreement); and

29.1.3 Additional Station Use (as defined in the Project Agreement).

30 [NOT USED]

31 PENSIONS

31.1 Border acknowledges that it has been provided with a copy of the Project Agreement and shall be deemed to be fully aware of the obligations and liabilities of the Contractor under clause 31 (Pensions) thereof and to have full notice, knowledge and understanding of all the provisions of that clause 31 (Pensions). Pursuant to clause 30.18 of the Project Agreement, the provisions of clause 31 (Pensions) of the Project Agreement are required to be imposed upon Border under this Agreement.

- 31.2 Whilst the parties acknowledge their joint expectation that the provisions of clause 31 (Pensions) of the Project Agreement will not apply to Border, Border acknowledges and agrees that (to the extent necessary) it shall comply with the provisions of clause 31 (Pensions) and any associated provisions of the Project Agreement as if Border was named in clause 31 (Pensions) and any associated provisions of the Project Agreement as "the Contractor", provided that such provisions shall be deemed to incorporate any changes which are necessary to reflect Border's status as a sub-contractor of a sub-contractor to the Contractor.
- 31.3 Border shall be liable to Mansell for any Losses suffered by Mansell or the Contractor as a result of any failure by Border to comply with the provisions of clause 31.2 of this Agreement and for which Mansell is liable under the Building Contract.

32 EMPLOYEES – GENERAL

- 32.1 To the extent required by the Authorities, Border shall (and Border shall procure that its sub-contractors shall) comply with the requirements of clause 32.1 of the Project Agreement in respect of any person attending any Site for the purposes of remedying Defects or Snagging Items.

32.2 Conduct of Staff

Whilst engaged at the Sites Border shall comply with the Authorities' Policies relating to the conduct of staff and security arrangements insofar as they are applicable to the Works. Border shall take all reasonable measures by the display of notices or other appropriate means to ensure that all other persons employed on any work in connection with this Agreement and all Border Related Parties have notice that the Authorities' Policies applies to them. Border shall ensure that a similar obligation to this clause is included in any contracts that are entered into with sub-contractors for the provision of the Works.

32.3 Admission to the Sites

- 32.3.1 Border shall at least twenty six (26) Business Days before the date on which Border first carries out any of the Works provide Mansell with a written list of the names and addresses of all employees or other persons who it expects may require admission to each Site in connection with the carrying out of the Works, specifying the capacities in which those employees or other persons are concerned with the Works and giving such other particulars as Mansell may require. Border shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty six (26) Business Days before their inclusion. The decision of Mansell on whether any person is to be refused admission to a Site shall be final and conclusive and Mansell shall not be obliged to give reasons for its decision. For the avoidance of doubt, the provisions of this clause 32.3 shall not apply to those individuals who shall be required by Border or any Border Sub-Contractor to attend on Site to provide emergency reactive services. In the case of such individuals, Border shall or shall procure that any Border Sub-Contractor shall ensure that such individuals are accompanied at all times while on each Site by a member of Border or Border Sub-Contractor's staff who has been properly notified to Mansell in accordance with clause 32.3.1.

32.4 Refusal of Admission

- 32.4.1 Border acknowledges that the Authorities reserve the right to refuse to admit to any Site any person, employed or engaged by Border or a sub-contractor (and may require Border to refuse to admit to any Site any person, employed or engaged by Border or a sub-contractor), whose admission would, in the opinion of the Authorities:

- (a) present a risk to themselves or an Authorities Related Party or property; or
- (b) in the Authorities' absolute discretion would be a threat to security or police operations whether of the Authorities or more generally.

32.4.2 Mansell and/or the Authorities shall not be obliged to give any reasons for refusing to admit any person pursuant to this clause.

32.5 Decision to Refuse Admission

The decision of the Authorities as to whether any person is to be refused admission to the Sites pursuant to the Project Agreement shall be final and conclusive. If the Authorities decline to give reasons and/or where reasons are given but are found to be unreasonable for the Authorities exercising their rights under the Project Agreement Mansell shall indemnify Border and keep Border indemnified (for itself and for the benefit of each relevant Border Sub-Contractor) against all Direct Losses suffered or incurred by Border, provided that Border or the relevant Border Sub-Contractor has used its reasonable endeavours to re-deploy that person elsewhere and/or to mitigate the claim.

32.6 Removal from Sites

Border shall comply with and/or procure compliance with any notice issued by the Authorities from time to time requiring the removal from any of the Sites of any person employed thereon who in the opinion of the Authorities acting reasonably is not acceptable on the grounds of risk to themselves or an Authorities Related Party or property and that such persons shall not be employed again upon the Project without the written consent of Mansell.

32.7 [Not used]

32.8 [Not used]

33 [NOT USED]

34 QUALITY ASSURANCE

34.1 Border shall procure that all aspects of the Works are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in clauses 34.2 and 34.3

34.2 Not later than five (5) Business Days following the Commencement Date, Border shall submit to Mansell's Representative a proposed quality assurance system for the Works complying with ISO 9001 or, where it does not so comply, the system set out in the Construction Proposals.

34.3 Border shall be at all times during the Works Period registered pursuant to BS 5750 or ISO 9001 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to Mansell (acting reasonably)) in relation to the Works.

34.4 Border shall appoint (or shall procure the appointment of) as soon as reasonably practicable following the date of this Agreement a quality manager, who may be directly involved in the day-to-day performance of the Works, and who shall in respect of the Works:

- 34.4.1 ensure the effective operation of and implementation of the aforementioned quality assurance system;
 - 34.4.2 audit the aforementioned quality assurance system at regular intervals and report the findings of such audit to Border and Mansell;
 - 34.4.3 review the aforementioned quality assurance system at intervals agreed with Mansell to ensure their continued suitability and effectiveness; and
 - 34.4.4 liaise with Mansell on all matters relating to quality assurance.
- 34.5 Mansell, the Contractor and the Authorities may carry out periodic audits of the aforementioned quality assurance systems at approximate intervals of three (3) months and may carry out other periodic monitoring, spot checks and auditing of Border's and any Border Related Party's quality systems. Border shall co-operate with Mansell, the Contractor and the Authorities including providing them with all information and documentation which they reasonably require in connection with their rights under this clause 34 and under clause 34 of the Building Contract and under clause 34 of the Project Agreement.

35 CO-OPERATION FOR INVESTIGATION AND SECURITY

- 35.1 Border shall co-operate with any investigation relating to a breach of security which is carried out by or on behalf of the Authorities and:
- 35.1.1 shall use its reasonable endeavours to make its employees (and any other Border Related Parties) identified by Mansell available to be interviewed including making a written statement when required to do so by Mansell or to attend any meetings or hearings held by Mansell for the purposes of the investigation; and
 - 35.1.2 shall, subject to any legal restriction on their disclosure, provide all copies of documents, records or other material of any kind which may reasonably be required by Mansell for the purposes of the investigation. Mansell shall have the right to retain copies of any such material for use in connection with the investigation.
- 35.2 Mansell shall, insofar as is practical, inform Border of any specific or general security information which would reasonably be expected to affect the security of Border or any Border Related Party or their property.
- 35.3 Border shall comply with the Authorities' reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to Border.

36 [NOT USED]

PART 5 - PAYMENT

37 PAYMENT PROVISIONS

37.1 Payment of the Contract Sum shall (subject to clauses 92 and 93) be made by instalments on the terms provided for in Schedule 6 (Payment Provisions).

38 [NOT USED]

39 [NOT USED]

PART 6 - TERMINATION

40 DIRECT AGREEMENT

The provisions set out in this Part 6 of this Agreement are subject to any Collateral Warranty.

40A TERMINATION OF THE PROJECT AGREEMENT

Notwithstanding any other provisions of this Agreement, but subject to the terms of any Collateral Warranty, this Agreement shall terminate upon termination of the Project Agreement for any reason or upon termination of the Building Contract for any reason.

41 41 TERMINATION OF THIS AGREEMENT

41.1A Suspension

41.1A.1 Mansell may instruct Border to suspend or postpone the carrying out of all or part of the Works, and:

41.1A.1.1 where such suspension or postponement is expressly provided for in this Agreement or arises in consequence of any breach or default of Border, Border shall itself bear any cost arising from such suspension and shall not be entitled to any extension of time in respect thereof; and

41.1A.1.2 in other cases, such suspension shall be a Works Compensation Event (if requested by the Authorities under the Project Agreement or by the Contractor under the Building Contract) or a Mansell Compensation Event for the purposes of clause 16 (Extensions of Time, Giving or Relief and Payment of Compensation) (subject to and in accordance with the terms of that clause).

41.2 Termination by Border

41.2.1 If:

- (a) Mansell does not discharge in accordance with this Agreement any amount properly due to Border and which is not disputed (in good faith) under any Interim Payment Certificate which together with any previous unpaid Interim Payment Certificates exceeds a sum in aggregate equal to two hundred and fifty thousand pounds (£250,000) and/or any VAT properly due on that amount after Mansell has been given at least twenty five (25) Business Days notice by Border that such sum is due and has not been received, subject to any deduction that Mansell is entitled to make under this Agreement, Border shall be entitled to give written notice to Mansell requiring it to rectify the default and if Mansell shall fail to rectify the default within a further twenty five (25) Business Days; or
- (b) subject to compliance by Border with Schedule 6 (Payment Provisions), Mansell fails to procure the issue of any Interim Payment Certificate in the periods required under Schedule 6 (Payment Provisions) a value which, together with any previous unpaid Interim Payment Certificates, exceed the sum of two hundred and fifty thousand pounds (£250,000) and the requirement to issue the Interim Payment Certificate is not disputed (in good faith) by Mansell, Border shall be entitled to give written notice to Mansell requiring it to rectify the default and if Mansell shall fail to rectify the default within forty five (45) Business Days;

then on the occurrence of any such event and so long as such event is still subsisting, Border may serve notice on Mansell of the occurrence of such event. If the relevant matter or circumstance has not been rectified or remedied by Mansell or otherwise within twenty five (25) Business Days of such notice Border may (subject to any Collateral Warranty) serve a further notice on Mansell terminating Border's engagement under this Agreement with immediate effect.

41.3 Termination on Border Default

41.1.2 41.3.1 A Border Default shall occur if:

- (a) there occurs an Insolvency Event in respect of Border and/or the Guarantor and/or the Parallel Loan Provider;
- (b) following the Services Availability Date for a Station a breach by Border of any of its obligations under this Agreement which materially and adversely affects the performance of the Fire and Rescue Services at that Station;
- (c) Border repudiates any Collateral Warranty;
- (d) Failure by Border to comply with clause 70.1 (Assignment and Sub-Contracting);
- (e) Border Abandons the Works at any time;
- (f) Border has not commenced the Works by the Start on Site Date;
- (g) the Acceptance Certificate for each Station has not been issued by the Longstop Date;
- (h) Border without reasonable cause wholly or substantially suspends the carrying out of the Works or any part of them;
- (i) Border refuses or neglects to comply with a written notice or instruction from Mansell or Mansell's Representative requiring it to remove any work, Materials or goods not in accordance with this Agreement and by such refusal or neglect the Works are materially affected;
- (j) [Not used];
- (k) Border sells, transfers, leases or otherwise disposes of the whole or any part (which is material and has or would reasonably be expected to have a material adverse effect in the context of the performance of Border's obligations under this Agreement) of its undertakings, properties, rights or assets by a single transaction or a number of transactions (whether related or not and whether at the same time or over a period);
- (l) Border commits a breach of any of its obligations under this Agreement, which materially and adversely affects the carrying out of the Works otherwise than as a consequence of a breach by Mansell of its obligations under this Agreement or a breach by the Contractor of its obligations under the Building Contract or a breach by the Authorities of its obligations under the Project Agreement;
- (m) any act or omission of Border or event affecting Border which materially prejudices the Guarantee, the Parallel Loan Agreement and/or any Collateral Warranty granted or procured by Border pursuant to this Agreement;

- (n) failure by Border to procure a replacement valid and enforceable Guarantee, Parallel Loan Agreement or Collateral Warranty within 10 Business Days of the same becoming unenforceable in whole or in part for any reason;
- (o) a breach by Border of its obligations under this Agreement to take out and maintain insurances in accordance with this Agreement;
- (p) Border fails to pay any sum or sums due to Mansell under this Agreement or the Parallel Loan Provider fails to pay any sums due to Mansell under the Parallel Loan Agreement (in each case where such sums are not in dispute) which, either singly or in the aggregate, exceeds one hundred thousand pounds (£100,000) (indexed) and such failure continues for twenty five (25) Business Days from receipt by Border and/or the Parallel Loan Provider (as is applicable) of a notice of non payment from Mansell;
- (q) termination of the Project Agreement consequent upon any breach of this Agreement by Border;
- (r) Border committing a material breach of its obligations under this Agreement (other than as a consequence of the Authorities (or any one or more of them) committing a material breach of their obligations under the Project Agreement or as a consequence of the Contractor committing a material breach of its obligations under the Building Contract or the Project Agreement or as a consequence of Mansell committing a material breach of its obligations under this Agreement or the Building Contract in all cases save insofar as caused by a breach by Border of its obligations under this Agreement) which results in the criminal investigation, prosecution and conviction of Mansell or any Mansell Related Party, the Contractor or any Contractor Related Party or the Authorities (or any one or more of them) or Border or Border Related Party or the FM Contractor or FM Contractor Related Party under the Health and Safety Regime (an **H&S Conviction**) provided that an H&S Conviction of Mansell or Mansell Related Party, the Contractor or Contractor Related Party the Authorities (or any one or more of them) or Border or a Border Related Party or the FM Contractor or FM Contractor Related Party shall not constitute a Border Default if:
 - (A) Mansell is able pursuant to the terms of the Building Contract to avoid such circumstances being treated as a Mansell Default under the terms of the Building Contract by requiring Border to terminate the involvement in the Project of each relevant Border Related Party (which in the case of an individual director, officer or employee shall be deemed to include Border Related Party of which that person is a director, officer or employee); and
 - (B) within seventy (70) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Border Related Party (which in the case of an individual director, officer or employee shall be deemed to include Border Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by Border in accordance with the terms of this Agreement,

provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Border Related Party under this clause 41.3.1(r), Border acknowledges the provisions of the Building Contract and the Project Agreement relating to the Authorities' ability to determine whether to exercise any right of termination or right to require the termination of the

engagement of a Border Related Party (such determination by the Authorities being binding upon Mansell) which requires the Authorities to:

- (ii) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (iii) give all due consideration, where appropriate, to action other than termination of this Agreement;
- (s) [Not used];
- (t) the Guarantor repudiates the Guarantee;
- (u) the Parallel Loan Provider repudiates the Parallel Loan Agreement; and
- (v) [Not used];
- (w) in relation to Financial Indebtedness of Border, any Financial Indebtedness (i) is not paid or discharged when due or, if such payment is due but there is a grace period originally provided for, payment or discharge is not effected within such grace period or (ii) has been declared due and payable prior to its stated maturity by reason of default, where in either case the amount in question exceeds five hundred thousand pounds (£500,000);
- (x) in relation to Financial Indebtedness of the Guarantor, any Financial Indebtedness while the Guarantee is outstanding (i) is not paid or discharged when due or, if such payment is due but there is a grace period originally provided for, payment or discharge is not effected within such grace period or (ii) has been declared due and payable prior to its stated maturity by reason of default, where in either case the amount in question exceeds five hundred thousand pounds (£500,000);
- (y) a Persistent Breach occurs; or
- (z) Border fails to notify Mansell in writing within 10 days of Border ceasing to be within the control (as such term is defined by section 1124 Corporation Tax Act 2010) of the person(s) who controlled Border on the date of this Agreement, such notice to include the name(s) and address(es) of the person(s) who control Border following that change in control.

41.3.2 Border undertakes that it shall notify Mansell in writing of the occurrence and details of any Border Default and of any event or circumstance which would, with the passage of time or otherwise, constitute or give rise to a Border Default in either case promptly upon Border becoming aware of the occurrence of the same.

41.3.3 Upon the occurrence of a Border Default or within a reasonable time after Mansell becomes aware of the same, Mansell may at its option and without prejudice to any of its rights or remedies and to any rights of action which shall accrue or shall have already accrued to Mansell do any or all of the following:

41.3.3.1 suspend payment of sums otherwise due to Border under this Agreement until Border Default has been remedied to the reasonable satisfaction of Mansell or until termination of Border's engagement pursuant to this Agreement (as the case may be) provided that the amount so suspended shall be first notified to Border with a detailed breakdown and accompanied by the reasons for such suspension and shall be proportionate to the liability which Mansell reasonably estimates that

Mansell has incurred under or in respect of this Agreement as a result of Border Default. Mansell shall either credit an amount equal to the amount so suspended (the "**Border's Suspended Sum**") to an interest bearing deposit account in the name of Mansell (held for the benefit of Border or procure that an amount equal to Border's Suspended Sum is credited to an interest bearing deposit account in the name of the Contractor (held to the benefit of Mansell under the Building Contract)), and, if Border's Suspended Sum becomes payable to Border pursuant to this clause 41, Mansell shall also pay to Border the interest accrued on such Border's Suspended Sum pursuant to the terms of the deposit account;

41.3.3.2 without determining Border's engagement pursuant to this Agreement, by notice in writing having immediate effect suspend performance by Border of such part of the obligations to be performed by it under this Agreement which Mansell considers to have been affected by the Border Default until such time as Border shall have demonstrated to the reasonable satisfaction of Mansell that it will perform and is capable of performing its obligations under this Agreement and will afterwards itself perform or procure a third party to perform such part of the obligations for such period.

41.3.3.3 in the case of any Border Default referred to in clause 41.3.1(b), clause 41.3.1(h), clause 41.3.1(i), clause 41.3.1(k) and clause 41.3.1(l), serve notice on Border notifying Border that it is in default. Such notice must specify:

- (i) the type and nature of Border Default that has occurred, giving reasonable details; and
- (ii) that in the case of any Border Default falling within clause 41.3.1(b), clause 41.3.1(h), clause 41.3.1(i), clause 41.3.1(k) and clause 41.3.1(l), this Agreement will terminate on the day falling forty (40) Business Days after the date Border receives the Termination Notice, unless:
 - (A) in the case of a breach under clause 41.3.1(b) Border puts forward an acceptable rectification programme within sixteen (16) Business Days after the date Mansell receives the notice (and implements such programme in accordance with its terms and rectifies Border Default in accordance with the programme); or
 - (B) in the case of any Border Default under clause 41.3.1(b), clause 41.3.1(h), clause 41.3.1(i), clause 41.3.1(k) and clause 41.3.1(l), Border rectifies Border Default within forty (40) Business Days after the date Mansell receives the Termination Notice; or

41.3.3.4 in the case of any Border Default not referred to in clause 41.3.3.3, serve notice in writing on Border specifying:

- (i) Border Default that has occurred; and
- (ii) Mansell's intention to terminate this Agreement,

and this Agreement will terminate on the date falling forty (40) Business Days after the date Border receives such notice.

41.3.4 In the case of the exercise by Mansell of any of the rights set out in clause 41.3.3 including, without limitation, a partial suspension of the performance by Border under this Agreement in accordance with clause 41.3.3.2 Border shall reimburse Mansell for all reasonable additional

Costs incurred by it in exercising its rights (including, without limitation, the relevant increased administrative expenses of Mansell and including an appropriate sum in respect of increased financing costs and other sums for which Mansell is liable under the Building Contract (but, for the avoidance of doubt, not including any such costs included in heads of loss covered in Late Completion Liquidated Damages), and including general staff costs and overheads, and including the costs of itself carrying out or engaging others to carry out the Works which would have been carried out by Border but, where appropriate, giving credit for amounts in respect of the value transferred but not paid under clauses 41.3.7 and/or amounts which would have been paid to Border had Mansell not exercised its other rights).

41.3.5 The rights of Mansell under this clause 41.3 are in addition and without prejudice to any other right Mansell may have to claim the amount of any loss or damage suffered by Mansell on account of the acts or omissions of Border, whether pursuant to any guarantee given in accordance with the requirements of this Agreement or otherwise.

41.3.6 The rights of Mansell under this clause 41.3 to terminate Border's engagement under this Agreement are in substitution for any rights which Mansell may have at common law to terminate Border's engagement following breach by Border.

41.3.7 On the termination of this Agreement under this clause 41.3:

- (a) if prior to the Services Availability Date of the last Station or the date of issue of an Acceptance Certificate in respect of the last Post Completion Works (as the case may be), insofar as any transfer shall be necessary fully and effectively to transfer property to Mansell, Border shall transfer to and there shall vest in Mansell such part or parts of the Works as shall have been carried out, and such items of the Materials, plant and equipment intended for incorporation into the New Buildings as shall have been procured by Border and if Mansell so elects:
 - (i) all plant, equipment and all Materials on any of the Sites or adjacent to any of the Sites shall remain available to Mansell or its nominee for the purposes of completing the Works at the relevant New Buildings; and
 - (ii) the constructional plant and equipment (including Border's Equipment) shall remain available to Mansell or its nominee for the purposes of completing the Works at the relevant New Buildings;
- (b) Mansell shall have an option to purchase from Border at a fair market value (as between a willing vendor and willing purchaser, with any Disputes as to such fair market value being determined under the Dispute Resolution Procedure) and free from any security interest all or any part of the stocks of Materials and other assets, road vehicles, spare parts and other moveable property owned by Border and reasonably required in connection with carrying out the Works;
- (c) Border shall procure that the benefit of all manufacturer's warranties in respect any items of plant, machinery, apparatus and/or systems included in the Works are assigned or transferred to Mansell or its nominee;
- (d) Border shall deliver to Mansell any records referred to in the Project Agreement required as a consequence of the termination of Border's engagement hereunder;
- (e) if Mansell so elects, Border shall use all reasonable endeavours to make available to Mansell such of its staff as Mansell may require are available on terms no less favourable than those on which such staff are employed as at the date of termination of Border's engagement hereunder;

- (f) Border shall co-operate fully with Mansell and any successor completing the Works in order to achieve a smooth transfer of the Works to a New Contractor, the Contractor, Mansell or the Authorities and to avoid any inconvenience or any risk to the health and safety of the employees of Mansell, the Authorities, any Authorities Related Party and/or members of the public and shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer;
- (g) Border shall as soon as practicable remove from each of the Sites all property not required by Mansell pursuant to clause 41.3.7(a) or acquired by Mansell pursuant to clause 41.3.7(b) and if it has not done so within fifteen (15) Business Days after any notice from Mansell requiring it to do so Mansell may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of Border;
- (h) where relevant, Border shall forthwith deliver to Mansell:
 - (i) any keys to the Buildings;
 - (ii) all operation and maintenance manuals relative to any items of plant, machinery or equipment comprised in the Buildings;
 - (iii) all Materials at that time in Border's possession; and
 - (iv) any computer programmes relating to the Buildings;
- (i) Border shall as soon as practicable vacate all of the Sites and the New Buildings and shall leave the Sites and the New Buildings in a clean, safe and orderly condition;
- (j) Mansell may itself carry out and complete or employ and pay other persons to carry out and complete the Works;
- (k) to the extent permitted by Legislation, Mansell may pay any designer or supplier or sub-contractor for any services provided or Materials or goods delivered or works executed for the purposes of this Agreement before the date of termination of Border's engagement hereunder insofar as:
 - (i) the price thereof has not already been discharged or committed by Border; and
 - (ii) the price does not exceed the total price (disregarding set-off) which should have been paid by Border to such party or parties, and
 - (iii) payments to be made under this clause 41.3.7(k) may be deducted from any sum due or to become due to Border or may be recoverable from Border by Mansell as a debt.

41.3.8 On termination of this Agreement for any reason (but at Mansell's cost where terminated pursuant to clause 41.2):

- (a) up-to-date versions of all operating and maintenance manuals, project specific health and safety manuals including the health and safety files maintained under the CDM Regulations, instructions and drawings referred to in the Building Manual shall be delivered to Mansell;

- (b) all other books and records in the possession of Border which are reasonably required to enable Mansell, the Contractor or the Authorities or a New Contractor to operate and maintain the Buildings shall be delivered to Mansell;
- (c) Mansell (or, if the Building Contract has terminated more or less simultaneously with termination of this Agreement but the Project Agreement remains in force, the Contractor or, if the Project Agreement has terminated more or less simultaneously with termination of this Agreement, the Authorities) shall be entitled (and Border shall ensure that this right is maintained) to purchase all spare parts, tools and moveable property used in the New Buildings (to the extent owned or leased (to the extent possible, Border having used all reasonable endeavours to enable such leased property to be transferred) by Border) free from all liens charges and encumbrances at fair market value as agreed by the parties or in default of agreement within twenty (20) Business Days of termination as determined by the Adjudicator (at the instance of either party) in accordance with the Dispute Resolution Procedure;
- d) each of the parties agrees that it shall execute and deliver all such further instruments and do and perform all such further acts and things as shall be or may be necessary or expedient for the purposes of carrying out the provisions of this Agreement, but without prejudice to the foregoing generality or anything else contained in this Agreement, Border shall at the request of Mansell, promptly execute, deliver and implement the terms of all deeds, instruments, notices, documents, acts or things in such form as Mansell may from time to time require for transferring or vesting any interest of Border in the Works, Border's Equipment, the plant and/or the Materials from time to time brought onto the Sites or any of them for use or incorporation in the New Buildings in or to Mansell or any person nominated by Mansell (including any company which enters into a sub-contract with Mansell to carry out or complete the outstanding elements of the Works following a termination of this Agreement for any reason) or for facilitating such transfer or vesting; and
- (e) without prejudice to clauses 41.3.7(a) to 41.3.7(k) above Border shall co-operate fully with the transfer of responsibility for the Works (or any of the Works) to Mansell, the Contractor, the Authorities or any New Contractor of such works the same or similar to the Works, and for the purposes of this clause 41.3.8(e) the meaning of the term "co-operate" shall include:
 - (i) liaising with the Authorities and/or the Contractor and/or any New Contractor, and providing reasonable assistance and advice concerning the Works and their transfer to the Authorities, the Contractor, Mansell or to such New Contractor;
 - lii) allowing any New Contractor access (at reasonable times and on reasonable notice) to the Site of the relevant Station but not so as to interfere with or impede the provision of the Works and/or Services;
 - (iii) providing to the Authorities, the Contractor, Mansell and/or to any New Contractor all and any information concerning the Sites and the Works which is reasonably required for the efficient transfer of responsibility for their performance but, to avoid doubt, information which is commercially sensitive to Border shall not be provided (and for the purpose of this clause 41.3.8(e)(iii), commercially sensitive shall mean information which would if disclosed to a competitor of Border give that competitor a competitive advantage over Border and thereby prejudice the business of Border; and

- (iv) transferring its rights, title and interest in and to the Assets to the Authorities, the Contractor, Mansell and/or the New Contractor with effect on and from the Termination Date.

42 TERMINATION FOR PERSISTENT BREACH BY THE BORDER

42.1 Warning Notice

If a particular breach has continued for more than thirty (30) days or occurred more than three (3) times in any six (6) month period then Mansell may serve a notice on Border:

- 42.1.1 specifying that it is a formal warning notice;
- 42.1.2 giving reasonable details of the breach; and
- 42.1.3 stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

42.2 Final Notice

If, following service of a warning notice the breach specified has continued beyond fifteen (15) days or recurred one (1) or more times within the six (6) month period after the date of service, then Mansell may serve another notice (a "**Final Warning Notice**") on Border:

- 42.2.1 specifying that it is a Final Warning Notice;
- 42.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) month period prior to the date of service of the Final Warning Notice; and
- 42.2.3 stating that if the breach continues for more than six (6) days or recurs in one (1) or more months within the six (6) month period after the date of service of the Final Warning Notice, this Agreement may be terminated.

42.3 Currency of Warning Notices

A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

43 [NOT USED]

44 TERMINATION ON CORRUPT GIFTS AND FRAUD

44.1 Corrupt Gifts and Fraud

Border warrants that in entering into this Agreement it has not committed any Prohibited Act.

44.2 Termination for Corrupt Gifts and Fraud

- 44.2.1 If Border or any Border Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then Mansell shall be entitled to act in accordance with the provisions of this clause 44.2 (Termination for Corrupt Gifts and Fraud).
- 44.2.2 Notwithstanding clauses 44.2.3 to 44.2.6 if a Prohibited Act is committed by Border or by an employee not acting independently of Border, then Mansell may terminate this Agreement by giving notice to Border.

- 44.2.3 If the Prohibited Act is committed by an employee of Border acting independently of Border, then Mansell may give notice to Border of termination and this Agreement will terminate, unless within twenty six (26) Business Days of receipt of such notice Border terminates the employee's employment and (if necessary) procures the performance of such part of the Works by another person.
- 44.2.4 If the Prohibited Act is committed by a Border Sub-Contractor or by an employee of that Border Sub-Contractor not acting independently of that Border Sub-Contractor, then Mansell may give notice to Border of termination and this Agreement will terminate, unless within sixteen (16) Business Days of receipt of such notice Border terminates the relevant Border Sub-Contract and procures the performance of such part of the Works by another person.
- 44.2.5 If the Prohibited Act is committed by an employee of a Border Sub-Contractor acting independently of that Border Sub-Contractor, then Mansell may give notice to Border of termination and this Agreement will terminate, unless within sixteen (16) Business Days of receipt of such notice the Border Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works by another person.
- 44.2.6 If the Prohibited Act is committed by any other persons not specified in clauses 44.2.2 (Termination for Corrupt Gifts and Fraud) to 44.2.5 (Termination for Corrupt Gifts and Fraud), then Mansell may give notice to Border of termination and this Agreement will terminate, unless within twenty (20) Business Days of receipt of such notice Border procures the termination of such person's employment and of the appointment of their employer (where not employed by Border or the Border Sub-Contractors) and (if necessary) procures the performance of such part of the Works by another person.
- 44.2.7 Any notice of termination under this clause 44.2 (Termination for Corrupt Gifts and Fraud) shall specify:
- 44.2.7.1 the nature of the Prohibited Act;
- 44.2.7.2 the identity of the party whom Mansell believes has committed the Prohibited Act; and
- 44.2.7.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause;
- 44.2.7.4 [Not used]
- 44.2.8 In this clause 44, the expression "not acting independently of" (when used in relation to Border or a Border Sub-Contractor) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of Border or the Border Sub-Contractor (as the case may be).

45 TERMINATION ON FORCE MAJEURE

45.1 Obligations

No party shall be entitled to bring a claim for a breach of obligations under this Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out obligations by that Force Majeure Event provided that the occurrence of a Force Majeure Event shall not entitle Border to an extension of time to any Planned Services Availability Date or otherwise relieve Border from its obligation to meet the Service Availability Requirements by the Planned Services Availability Date. For the

avoidance of doubt (but without prejudice to clauses 45.5 or 45.6), Mansell shall not be entitled to terminate this Agreement for a Border Default if such Border Default arises from a Force Majeure Event.

45.2 [Not used]

45.3 Notification for Force Majeure

On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

45.4 Consultation

As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.

45.5 Unable to Agree

If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Agreement for a period of more than one hundred and twenty (120) Business Days, then, subject to clause 45.6 (Consequences of Termination and subject to Mansell having the right to terminate the Project Agreement), either party may terminate this Agreement by giving twenty (20) Business Days' written notice to the other party.

45.6 Consequences of Termination

If this Agreement is terminated under clause 45.5 (Unable to Agree) or clause 45.7 (Notice to Continue)

- 45.6.1 compensation shall be payable by Mansell in accordance with clause 49; and 45.6.2 Mansell may require Border to transfer all of its title, interest and rights in and to any Assets to Mansell, the Contractor or the Authorities.

45.7 Notice to Continue

If Border gives notice to Mansell under clause 45.5 that it wishes to terminate this Agreement, then Mansell has the option either to accept such notice or to respond in writing on or before the date falling twelve (12) Business Days after the date of its receipt stating that it requires this Agreement to continue. If Mansell gives Border such notice that it requires this Agreement to continue, then Mansell shall pay to Border a reasonable revised amount under any Application for Interim Payment as agreed between the parties from the date after the date on which this Agreement would have terminated under clause 45.5. If the revised amount cannot be agreed the issue shall be determined in accordance with clause 67 (Dispute Resolution) of this Agreement provided that if there is a dispute between Mansell and the Authorities under the Project Agreement on a matter which is the same or substantially the same as the dispute between Border and Mansell the parties agree (subject to Mansell's compliance with clause 93 (Building Contractor's Entitlement)) to be bound by any decision pursuant to the Project Agreement whether agreed between the parties or determined pursuant to clause 67 (Dispute Resolution) of the Project Agreement.

45.8 Mitigation

The parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and Border shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event. Subject to clause 45.7 (Notice to Continue), Border shall not be entitled to any increase to the Contract Sum as a result of the occurrence of any Force Majeure Event.

45.9 Cessation of Force Majeure Event

The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

46 CONSEQUENCES OF TERMINATION

46.1 [Not used]

46.2 Termination of Agreement

Notwithstanding any other provisions of this Agreement, this Agreement shall only terminate in accordance with the express provisions of this Agreement.

46.3 Continuing Obligations

Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of Mansell Default Termination Sum or other payment of compensation on termination pursuant to this Agreement, and notwithstanding the provisions of clause 55.3 (Exclusivity of Remedy):

- 46.3.1 termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement prior to termination;
- 46.3.2 termination of this Agreement shall not affect the continuing rights and obligations of Border and Mansell under clause 8 (Nature of Land Interests), 37 (Payment Provisions), 48 (Transition to Another Building Contractor) Part 7 (Compensation on Termination), clause 62 (Freedom of Information and Confidentiality), clause 63 (Indemnities, Guarantees and Contractual Claims), clause 63A (Limits on Liability), clause 64 (Insurance), clause 65A (Contractor Insurance), clause 65 (Reinstatement and Change of Requirement after Insured Event), clause 67 (Dispute Resolution), clause 69 (Intellectual Property Rights), clause 76 (Notices), clause 81 (Border's Records), clause 83 (Interest on Late Payment) and clause 85 (Governing Law and Jurisdiction) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination;
- 46.3.3 where any compensation is payable to Border in accordance with this Agreement, Border shall provide to Mansell all such information and details as Mansell reasonably requires to comply with Part 7 of the Project Agreement (Compensation on Termination) and at such times as will permit Mansell to reasonably consider Border's application for compensation and to comply with the time limit set out in the relevant clauses of the Project Agreement.

47 [NOT USED]

48 **TRANSITION TO ANOTHER BUILDING CONTRACTOR**

Duty to Co-operate

Without prejudice to clause 41.3.8, during the period of any Termination Notice of this Agreement, and in either case for a reasonable period thereafter, Border shall co-operate fully with the transfer of responsibility for the Works (or any of the Works) to the Authorities or the Contractor or Mansell or any New Contractor of such works the same or similar to the Works, and for the purposes of this clause 48 the meaning of the term "co-operate" shall include:

- 48.1.1 liaising with the Authorities and/or the Contractor and/or Mansell and/or any New Contractor, and providing reasonable assistance and advice concerning the Works and their transfer to the Authorities or to the Contractor or to Mansell or to such New Contractor;
- 48.1.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Stations but not so as to interfere with or impede the provision of the Works;
- 48.1.3 providing to the Authorities and/or to the Contractor and/or to Mansell and/or to any New Contractor all and any information concerning the Sites and the Works which is reasonably required for the efficient transfer of responsibility for their performance but, to avoid doubt, information which is commercially sensitive to Border shall not be provided (and for the purpose of this clause 48.1.3, commercially sensitive shall mean information which would if disclosed to a competitor of Border give that competitor a competitive advantage over Border and thereby prejudice the business of Border); and
- 48.1.4 transferring its rights, title and interest in and to the Assets to Mansell, the Contractor, the Authorities or the New Contractor with effect on and from the Termination Date.

48.2 Transfer of Responsibility

Border shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Works to a New Contractor or to the Authorities or to Mansell, as the case may be, and Border shall take no action at any time while this Agreement is in place or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

PART 7 - COMPENSATION ON TERMINATION

49 COMPENSATION ON TERMINATION FOR MANSELL DEFAULT/VOLUNTARY TERMINATION/FORCE MAJEURE

49.1 On termination of this Agreement pursuant to clause 40A (Termination of the Project Agreement) where such termination of the Project Agreement has not been caused by any act, omission, breach or default of Border clause 41.2 (Termination by Border) or clause 45 (Termination on Force Majeure), Mansell shall pay Border an amount equal to the aggregate of:

49.1.1 the total value of work properly executed at, and of any design work properly carried out before the date on which this Agreement terminated in accordance with its terms, such value to be ascertained in accordance with this Agreement after taking into account amounts previously paid to or otherwise discharged in favour of Border together with any other amounts due to Border under this Agreement;

49.1.2 the cost of any materials and goods reasonably and properly ordered for incorporation in the Works for which Border has paid or is legally bound to pay;

49.1.3 the reasonable costs incurred by Border in removing its temporary buildings, plant and equipment from the Sites, to the extent not previously paid in accordance with this Agreement; and

49.1.4 any Direct Losses and/or Indirect Losses caused to Border as a result of the termination of this Agreement where not previously paid in accordance with this Agreement,

provided that such amounts shall be reduced to the extent that Border fails to use its reasonable endeavours to mitigate such amounts or that such amounts have not been or will not be reasonably and properly incurred by Border as a direct result of termination of this Agreement and provided further that no account shall be taken of any amounts which are not incurred in connection with the Project or any obligations and liabilities of Border arising out of arrangements and/or agreements that are not consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms (the "**Mansell Default Termination Sum** ") and payment of such Mansell Default Termination Sum shall become due to Border from Mansell sixty five (65) days after the date of such termination (the "**Due Date**") and the final date for payment shall be thirty five (35) days after the Due Date.

50 [NOT USED]

51 COMPENSATION ON TERMINATION FOR BORDER DEFAULT

(a) Where this Agreement is terminated pursuant to clause 40A where such termination of the Project Agreement has been caused by any act, omission, breach or default of Border, clause 41.3 (Termination on Border Default), or clause 44.2 (Termination for Corrupt Gifts and Fraud) the following provisions shall apply:

(i) where Mansell itself completes the Works or engages a New Contractor to complete the Works Border shall pay to Mansell the lesser of:

(A) damages, in the amount by which either: (in cases where Mansell itself completes the Works) the cost incurred by Mansell in completing the Works plus a reasonable addition thereto in respect of Mansell's overhead recovery

and profit on the work involved as if Mansell had been carrying out such work for a third party; or (in cases where Mansell engages a New Contractor to complete the Works) the amount by which the cost payable under the New Contractor(s) contract(s) for completion of the Works; exceeds the aggregate of:

- I. the unpaid balance of the Contract Sum, immediately upon signature of that replacement contract (or each replacement contract, as appropriate, and subject to a discount for early receipt, if appropriate); and
- II. amounts given in credit for any value transferred pursuant to clause 41.3.7 (Termination on Border Default) but not paid for by Mansell,

together with the amount of future estimated losses and expenses of "D" as referred to in clause 51(a)(ii); and

(B) a sum not exceeding the Liability Limitation;

(ii) within 90 days of the last Services Availability Date to occur, an account in respect of the matters referred to below shall be set out in a certificate issued by Mansell's Representative:

(A) $X = (B + C + D) - Y$

where:

B = either: (in cases where Mansell itself completes the Works) the cost incurred by Mansell in completing the Works and making good any defects plus a reasonable addition thereto in respect of Mansell's overhead recovery and profit on the work involved as if Mansell had been carrying out such work for a third party but excluding sums in "D" and excluding costs and losses arising from the poor performance of Mansell; or (in cases where Mansell engages a New Contractor to complete the Works) the costs of employing a New Contractor to complete the Works and make good any defects (including Mansell's reasonable costs in engaging the New Contractor and the cost payable under the New Contractor'(s) contract(s) to complete the Works, but excluding sums in "D" and excluding costs and losses arising from the poor performance of any New Contractor);

C = the amount paid to Border up to the date of the account in accordance with this Agreement;

D = all delay costs and losses but only at the same rate as and up to the unused balance of the limitation upon liquidated damages set out in clause 21C and any other Costs and Direct Losses suffered by Mansell caused by Border Default or arising from the termination of this Agreement for a Border Default but excluding sums in "B" and excluding cost and losses arising from the poor performance of either: (in cases where Mansell itself completes the Works) Mansell, including the cost of delayed completion attributable to any failure by Mansell to complete the works in accordance with the programme; or (in cases where Mansell engages a New Contractor to complete the Works) any New Contractor, including the costs of delayed completion attributable to any New Contractor that fails to complete the Works in accordance with its contract and programme. All such costs must be either:

(in cases where Mansell itself completes the Works) borne by Mansell; or (in cases where Mansell engages a New Contractor to complete the Works) recovered by Mansell through the damages regime of the contract between Mansell and any New Contractor; and

Y = the total amount which would have been payable to Border for the Works in accordance with this Agreement (if there had been no Border Default), such amount to be ascertained as if this Agreement had not been terminated, plus any value transferred pursuant to clauses 41.3.7 (Termination on Border Default) and 41.3.8 (Termination on Border Default) but not reflected in such total amount; and

(B) a sum not exceeding the Liability Limitation;

and if the lesser of the sum of X pursuant to the formula in clause 51(a)(ii)(A) and the sum pursuant to clause 51(a)(ii)(B) stated in the certificate exceeds or is less than the amount stated under clause 51(a)(i), the difference shall be a debt payable by Border to Mansell or as a debt payable by Mansell to Border, respectively as the case may be;

(iii) in circumstances where a Border Default gives rise to termination of the Building Contract and/or the Project Agreement (whether or not at the relevant time this Agreement has previously been terminated for such Border Default) clauses 51(a)(i) and 51(a)(ii) shall not apply and Border shall pay to Mansell all Costs and Direct Losses incurred by Mansell caused by Border Default arising from the termination of this Agreement and the Contract and/or the Project Agreement to the extent there is a shortfall between:

(A) Mansell's liabilities on termination (including amounts for which Mansell is liable in respect of the Financing Agreements) and liabilities for the loss of any projected return to the Shareholders; and

(B) the compensation received by Mansell from the Contractor,

up to a maximum sum not exceeding the unused balance remaining of the Liability Limitation.

(b) The aggregate liability of Border under clause 51(a) shall not exceed the Liability Limitation.

52 [Not Used]

53 [Not Used]

54 [NOT USED]

55 MISCELLANEOUS COMPENSATION PROVISIONS

55.1 [Not used]

55.2 [Not used]

55.3 Exclusivity of Remedy

Any and all sums irrevocably paid by Mansell to Border or by Border to Mansell under this Part 7 shall be in full and final settlement of each party's rights and claims against the other

for breaches and/or termination of this Agreement or any Project Document whether under contract, tort, restitution or otherwise but without prejudice to:

55.3.1 [Not used]

55.3.2 any antecedent liability of either party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent that such liability has not already been taken into account in determining or agreeing the compensation due upon termination; and

55.3.3 any liabilities arising in respect of any breach by either party of their obligations under clause 46.3 (Continuing Obligations) of this Agreement which arises or continues after the Termination Date to the extent not taken into account in the calculation of Mansell Default Termination Sum or other payment of compensation on termination pursuant to this Agreement.

56 [NOT USED]

PART 8 - GENERAL

57 LIAISON

57.1 Border shall provide Mansell with such support and assistance as may be required by Mansell to enable Mansell to comply with its obligations in respect of the Works in accordance with the procedure set out in Schedule 10 (Liaison Procedure) to the Project Agreement.

58 RELIEF EVENTS

58.1 Occurrence

If and to the extent that a Relief Event:

58.1.1 is the direct cause of either a failure by Border;

- (a) to commence the Works on or before the Start on Site Date; and/or
- (b) to achieve Services Availability on or before a relevant Planned Services Availability Date or (following the relevant Planned Services Availability Date but before the relevant Longstop Date) is the direct cause of a delay in achievement of Services Availability; and/or
- (c) to achieve completion of the Post Completion Works on or before the relevant Planned Post Completion Works Acceptance Date or (following the relevant Planned Post Completion Works Acceptance Date) is the direct cause of a delay in completion of the relevant Post Completion Works); or

58.1.2 adversely affects the ability of Border to perform any of its obligations under this Agreement,

then Border shall be entitled to apply for relief from any rights of Mansell arising under clause 41.3 (Termination on Border Default). Border agrees and acknowledges that its entitlement to any relief under this clause 58 shall be subject to the provisions of clause 93 (Border's Entitlement).

58.2 Relief

58.3 To obtain relief, Border must:

58.2.1 as soon as practicable, and in any event within sixteen (16) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of Border to perform its other obligations give to Mansell a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

58.2.2 within three (3) Business Days of receipt by Mansell of the notice referred to in clause 58.2.1 (Relief), give full details of the relief claimed; and

58.2.3 demonstrate to the reasonable satisfaction of Mansell that:

58.2.3.1 Border and its Border Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

58.2.3.2the Relief Event directly caused;

58.2.3.2.1the delay in the commencement of the Works on or before the Start on Site Date; and/or

58.2.3.2.2the delay in the achievement of Services Availability on or before the relevant Planned Services Availability Date or (following the relevant Planned Services Availability Date but before the Longstop Date) any delay in the achievement of Services Availability; and/or

58.2.3.2.3any delay in the completion of the Post Completion Works on or before the relevant Planned Post Completion Works Acceptance Date or (following the relevant Planned Post Completion Works Acceptance Date) any delay in completing the relevant Post Completion Works; and/or

58.2.3.2.4[Not used]

58.2.3.2.5the need for relief from obligations;

58.2.3.3the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by Border acting in accordance with Good Industry Practice, without incurring material expenditure; and

58.2.3.4Border is using reasonable endeavours to perform its obligations under this Agreement.

58.3 Consequences

In the event that Border has complied with its obligations under clause 58.2 (Relief), then Mansell shall not be entitled to exercise its right to terminate this Agreement under clause 41.2 (Termination on Border Default) and shall give such other relief as has been requested by Border provided that the occurrence of a Relief Event shall not entitle Border to an extension of time to any Planned Services Availability Date or otherwise relieve Border from its obligation to meet the Service Availability Requirements by the Planned Services Availability Date.

58.4 [Not used]

58.5 Information

58.6 In the event that information required by clause 58.2 (Relief) is provided after the dates referred to in that clause, then Border shall not be entitled to any relief during the period for which the information is delayed.

58.7 Notice

Border shall notify Mansell if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

58.8 Disputes

If the parties cannot agree the extent of the relief required, or Mansell disagrees that a Relief Event has occurred or that Border is entitled to any extension to the Start on Site Date and/or any Planned Services Availability Date and/or (following any Planned Services Availability Date) to the Longstop Date(s) and/or any Planned Post Completion Works Acceptance Date

and/or relief from other obligations under this Agreement, the parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

59 CHANGE IN LAW

59.1 Occurrence

Border shall take all steps necessary to ensure that the Works are performed in accordance with the terms of this Agreement following any Change in Law and that upon the last Services Availability Date the Works comply with all Necessary Consents, all applicable Authorities' Policies and Legislation. Border, save to the extent it is entitled to any compensation pursuant to clauses 59.2 to 59.8 shall be responsible for all additional costs arising from a Change in Law.

59.2 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

59.2.1 any necessary change to the Works;

59.2.2 whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law;

59.2.3 whether relief from compliance with obligations is required, including the obligation of Border to commence the Works by the Start on Site Date, to achieve Services Availability by the Planned Services Availability Date in relation to a Station to complete the Post Completion Works by the relevant Planned Post Completion Works Acceptance Date, and/or meet the Authorities Requirements and/or the Construction Proposals during the implementation of any relevant Qualifying Change in Law; and

59.2.4 [Not used]

59.2.5 any Estimated Change in Contract Sum that directly results from the Qualifying Change in Law,

59.2.6 [Not used]

59.3 in each case giving in full detail the procedure for implementing the change in the Works.

59.3 Parties to Discuss

As soon as practicable after receipt of any notice from either party under clause 59.2 (Qualifying Change in Law), the parties shall discuss and agree the issues referred to in clause 59.2 (Qualifying Change in Law) and any ways in which Border can mitigate the effect of the Qualifying Change in Law, including:

59.3.1 providing evidence that Border has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Border Sub-Contractors to minimise any increase in costs and maximise any reduction in costs; and

59.3.2 demonstrating how any expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by Border.

59.4 [Not used]

59.5 [Not used]

59.6 **Change Agreed**

If the parties agree or it is determined under the Dispute Resolution Procedure that Border is required to incur additional expenditure due to a Qualifying Change in Law then Mansell shall pay to Border an amount equal to that expenditure on or before the date falling twenty five (25) Business Days after the expenditure has been incurred. Border agrees and acknowledges that its entitlement to any payment of compensation or other relief under this clause 59 shall be subject to the provisions of clause 93 (Border's Entitlement). Border agrees and acknowledges that it has no entitlement to any payment of compensation or other relief in respect of a General Change in Law.

59.7 [Not used]

59.8 [Not used]

59.9 [Not used]

59.10 **Payment of Irrecoverable VAT**

Mansell shall pay to Border from time to time as the same is incurred by Border sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within twenty five (25) Business Days of the delivery by Border to Mansell of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this clause 59.10, "Irrecoverable VAT" means input VAT incurred by Border on any supply which is made to it which is used or to be used exclusively in performing the Works or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that Border is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

60 AUTHORITY, CONTRACTOR, MANSELL AND BORDER CHANGES

60.1 Border acknowledges the provisions of clause 60 of the Building Contract and of Schedule 23 to the Project Agreement and the parties agree that the provisions of Schedule 23 to the Building Contract (the "**Change Protocol**") shall have effect in respect of the changes except as otherwise expressly provided in this Agreement.

60.2 Border shall in relation to the Sites and the Stations comply with and fulfil Mansell's obligations under the Change Protocol and clause 60 of the Building Contract including producing and providing to Mansell in good time all necessary prices, quotations and other information in relation to the Sites and the Stations save that in complying with and fulfilling such obligations Border shall (unless otherwise instructed by Mansell) communicate with and provide information to Mansell in good time for onward transmission and not to the Contractor or the Authorities direct.

60.3 Mansell shall promptly pass on to Border all notices and other information received under the Change Protocol and clause 60 of the Building Contract in relation to the Sites and the Stations.

- 60.4 At the written request of Border and subject to Mansell's approval (not to be unreasonably withheld or delayed) Mansell shall exercise its rights under the Change Protocol and clause 60 of the Building Contract so as to propose such Building Contractor Changes as Border may request in relation to the Sites and the Stations. Following Mansell's approval of any such request Border shall (without prejudice to the generality of clause 60.2) provide such information and other assistance as shall enable Mansell to fulfil its obligations and exercise its rights under the Change Protocol and clause 60 of the Building Contract in relation to the Building Contractor Changes proposed at Border's request.
- 60.5 Border shall indemnify Mansell in respect of all expenses, adjustments to the sums payable under the Building Contract, deductions and other costs, damages and losses of every kind incurred by Mansell in relation to Building Contractor Changes proposed at Border's request so that Mansell shall be held harmless by Border in respect of Building Contractor Changes proposed at Border's request but subject to the foregoing and subject to clauses 60.7 and 60.8 and subject to clause 93 and the provisions of this Agreement relating to Equivalent Project Relief the sums payable to Border under this Agreement shall be adjusted in accordance with the adjustments made to the corresponding sums payable to Mansell under the Building Contract in respect of changes to which the Change Protocol and clause 60 of the Building Contract apply in so far as they relate to the Sites and the Stations.
- 60.6 Subject to clause 93 and the provisions of this Agreement relating to Equivalent Project Relief Border shall be granted the same extensions of time for performance of any obligation under this Agreement as are granted to Mansell under the Building Contract in respect of changes to which the Change Protocol and clause 60 of the Building Contract apply in so far as they relate to the Sites and the Stations.
- 60.7 If Mansell wishes to propose a Building Contractor Change in relation to a Site or a Station otherwise than at the request of Border Mansell may do so but in any such case such adjustments shall be made to the payments due under this Agreement as shall be necessary to ensure that Border is placed in no better and no worse financial position than it would have been had such Building Contractor Change not been proposed or implemented. For the avoidance of doubt this may mean that Mansell pays less to Border and benefits from savings or it may mean that Mansell pays more to Border if anticipated savings do not materialise so that for the avoidance of doubt in such cases Mansell rather than Border is bearing the risk and taking any rewards in respect of the Building Contractor Change in question.
- 60.8 If Mansell and Border wish to share the potential risk and reward in relation to any proposed Building Contractor Change so that the savings or any additional costs are shared between them they may do so by agreeing in writing the proportions in which any savings or additional costs are to be shared between them and the sums due under this Agreement shall be adjusted as necessary to give effect to such agreement.

61 AUTHORITIES STEP-IN

61.1 Right to Step-In

Border acknowledges that if the Authorities reasonably believe that they need to take action in connection with the Services:-

61.1.1 because a serious risk exists to the health or safety of persons or property or to the environment;

61.1.2 to discharge a statutory duty; and/or

61.1.3 because an Emergency has arisen,

then the Authorities shall be entitled to take action in accordance with clauses 61.2 (Notice to the Contractor) to 61.5 (Step-In on Contractor Breach) of the Project Agreement.

61.2 Notice to Border

61.2.1 If Mansell receives a notice from the Contractor pursuant to clause 61.2 of the Building Contract that is relevant to the Works or any other obligation of Border under this Agreement, Mansell shall forthwith notify Border with a copy of the Contractor's notice to Mansell.

61.3 Action by Authorities

61.3.1 Border acknowledges that, following service of a notice pursuant to clause 61.2 of the Project Agreement, the Authorities are entitled to take such action as they have notified and any consequential additional action as the Authorities reasonably believe is necessary (together, the "**Required Action**") and Border shall give all reasonable assistance to the Authorities while they are taking the Required Action.

61.3.2 Where the Required Action has been taken otherwise than as a result of a breach by Border of its obligations under this Agreement, Mansell shall or shall procure that the Authorities shall undertake the Required Action in accordance with Good Industry Practice and Mansell shall (on the basis of Border's Entitlement) indemnify Border against all Direct Losses where the Authorities fail to comply with Good Industry Practice.

61.4 Step-In without Border Breach

If Border is not in breach of its obligations under this Agreement and Mansell is not in breach of its obligations under the Building Contract and the Contractor is not in breach of its obligations under the Project Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Border from carrying out the Works:

61.4.1 Border shall be relieved from its obligations to carry out the Works; and

61.4.2 in respect of the period in which the Authorities are taking the Required Action and provided that Border provides the Authorities with reasonable assistance, such assistance shall be at the expense of the Authorities to the extent that incremental costs are incurred.

61.5 Step-In on Border Breach

If the Required Action is taken as a result of a breach of the obligations of Border under this Agreement or Mansell under the Building Contract or the Contractor under the terms

of the Project Agreement, then for so long as and to the extent that the Required Action is taken, and this prevents Border from carrying out any part of the Works:

61.5.1 Border shall be relieved of its obligations to carry out such part of the Works; and

61.5.2 Border shall pay to Mansell an amount equal to all the Authorities' costs of operation in taking the Required Action.

62 FREEDOM OF INFORMATION AND CONFIDENTIALITY

62.1 Duty of Confidentiality

62.1.1 The parties agree that the terms of this Agreement and each Project Document shall, subject to clause 62.1.2 below, not be treated as Confidential Information and may be disclosed without restriction.

62.1.2 Clause 62.1.1 above shall not apply to the provisions of this Agreement or a Project Document designated as Commercially Sensitive Information and listed in Part 1 of Schedule 20 (Confidential Information) to the Project Agreement which shall, subject to clause 62.1.4 below, be kept confidential for the periods specified in that Part.

62.1.3 The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Agreement and the Project Documents or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

62.1.4 Clauses 62.1.2 and 62.1.3 (Duty of Confidentiality) shall not apply to:

62.1.4.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement for the performance of those obligations;

62.1.4.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 62 (Freedom of Information and Confidentiality);

62.1.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between Border and any of its sub-contractors;

62.1.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

62.1.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

62.1.4.6 any provision of information to the parties' own professional advisers or insurance advisers or to the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to Border to enable it to carry out its obligations under this Agreement or

to Mansell to enable it to carry out its obligations under the Building Contract and/or the Contractor and/or HoldCo to enable them to carry out their obligations under the Project Agreement, or may wish to acquire shares in the Contractor and/or HoldCo in accordance with the provisions of the Project Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

62.1.4.7 any disclosure by Mansell of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new contractor, its advisers and lenders should the Authorities decide to re-tender the Project Agreement;

62.1.4.8 any proposed new contractor, its advisers and lenders should the Authorities decide to re-tender the Project Agreement;

62.1.4.9 any registration or recording of the Necessary Consents and property registration required;

62.1.4.10 any disclosure of information by the Authorities to any other department, office or agency of the Government, or their respective advisers or to any person engaged in providing services to the Authorities for any purpose related to or ancillary to the Project Agreement; and

62.1.4.11 any disclosure for the purpose of:

- (a) the examination and certification of the Authorities', or the Contractor's or Mansell's or Border's accounts; or
- (b) any examination pursuant to the 1999 Act of the economy, efficiency and effectiveness with which the Authorities have used their resources; or
- (c) complying with a proper request from either party's insurance advisers, or insurers on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of clause 62.1.4.4) compliance with the FOIA and/or the Environmental Information Regulations; or

62.1.4.12 any disclosure by Mansell which is required under the Building Contract;

provided that, for the avoidance of doubt, neither clauses 62.1.4.11(d) nor 0 shall permit disclosure of Confidential Information otherwise prohibited by clause 62.1.3 where that information is exempt from disclosure under section 41 of the FOIA.

62.1.5 Where disclosure is permitted under clause 62.1.4 (other than clauses 0, 0, 0, 0 and 0) the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.

62.2 Audit

62.2.1 For the purposes of:

- (a) the examination and certification of each Authority's accounts;
- (b) the Local Government Finance Act 1982 (and any other Legislation relating to the inspection, examination and auditing of the Authorities' accounts); and

- (c) an examination pursuant to the 1999 Act of the economy, efficiency and effectiveness of which each Authority has performed its functions;

the District Auditor and the Audit Commission may examine such documents as he may reasonably require which are owned, held or otherwise within the control of Border and any Border Sub-Contractor and may require Border and any Border Sub-Contractor to procure such oral or written explanations as he or it considers necessary

62.2.2 Border shall not make use of this Agreement or any information issued or provided by or on behalf of Mansell in connection with this Agreement otherwise than for the purposes of this Agreement, except with the written consent of Mansell.

62.2.3 Where Border, in carrying out its obligations under this Agreement, is provided with information relating to users of the Station, Border shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless Border has sought the prior written consent of that user and has obtained the prior written consent of the Authorities.

62.2.4 On or before the last day of the Defects Liability Period Border shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to any users of the Stations, including any documents in the possession, custody or control of a Border Sub-Contractor, are delivered up to Mansell.

62.3 Disclose by Audit Commission

62.3.1 The parties acknowledge that the Audit Commission has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament;

62.3.2 The provisions of this clause 62 are without prejudice to the application of the Official Secrets Act 1911 to 1989.

62.4 Freedom of Information

62.4.1 Border acknowledges that each Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate each Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in clauses 62.4.2 to 62.4.7 (inclusive).

62.4.2 Where the Authorities (or any one or more of them) receives a Request for Information in relation to Information that Mansell is holding on their behalf the relevant Authority shall transfer to Mansell such Request for Information that it or they (as applicable) receive as soon as practicable and in any event within five (5) Business Days of receiving a Request for Information and Mansell shall transfer to Border such Request for Information as soon as practicable and in any event within five (5) Business Days of receiving such Request for Information and Border shall:

62.4.2.1 provide Mansell, the Contractor or the relevant Authority (as Mansell may require) with a copy of all such Information in the form that the relevant Authority requires as soon as practicable and in any event within ten (10) Business Days (or such other period as Mansell acting reasonably may specify) of Mansell's request; and

62.4.2.2 provide all necessary assistance as reasonably requested by the relevant Authority in connection with any such Information, to enable the relevant Authority to respond to a

Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

62.4.3 Following notification under clause 62.4.2 and up until such time as Border has provided Mansell with all the Information specified in clause 62.4.2.2, Border may make representations to Mansell or with the consent of Mansell to the Contractor or to the relevant Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that Border acknowledges that the relevant Authority shall be responsible for determining at its absolute discretion:-

62.4.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

62.4.3.2 whether the Information is to be disclosed in response to a Request for Information, and

in no event shall Border respond directly or allow its sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the relevant Authority or Mansell.

62.4.3 Border shall ensure that all Information held on behalf of the Authorities, the Contractor or Mansell is retained for disclosure for at least seven (7) years (from the date it is acquired) and shall permit the Authorities, the Contractor and Mansell to inspect such Information as requested from time to time.

62.4.5 Border shall transfer to Mansell and the Contractor any Request for Information received by Border as soon as practicable and in any event within two Business Days of receiving it.

62.4.6 Border acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that Mansell may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of FOIA and the Environmental Information Regulations.

62.4.7 In the event of a request from the Authorities (or any one or more of them) pursuant to clause 62.4.2 above, Border shall as soon as practicable, and in any event within two (2) Business Days of receipt of such request from Mansell, inform Mansell of Border's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authorities (or any one or more of them) under section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authorities' (or any one or more of them) and the Contractor's and Mansell's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations Mansell shall inform Border in writing whether or not it still requires Border to comply with the request and where it does require Border to comply with the request the ten (10) Business Days period for compliance shall be extended by such number of additional days for compliance as the Authorities are entitled to under Section 10 of the FOIA. In such case, Border shall notify Border of such additional days as soon as practicable after becoming aware of them and shall, subject to clause 93 reimburse Mansell for such costs as Border incurs in complying with the request to the extent Mansell is entitled to reimbursement of such costs pursuant to clause 62.4.7 of the Building Contract.

62.4.8 Border acknowledges that (notwithstanding the provisions of clause 62) the Authorities (or any one or more of them) may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "FOIA Code"), be obliged under the FOIA, or the

Environmental Information Regulations to disclose Information concerning Border or the Works:-

62.4.8.1 in certain circumstances without consulting with Border, or

62.4.8.2 following consultation with Border and having taken its views into account,

provided always that where clause 62.4.8.2 applies, Mansell shall draw any notification received from the Authorities, in accordance with the recommendations of the FOIA Code, under the Project Agreement to the attention of Border prior to any disclosure.

63 INDEMNITIES, GUARANTEES AND CONTRACTUAL CLAIMS

63.1 Border's Indemnity

63.1.1 Border shall, subject to clause 63.2 (Border not Responsible), be responsible for, and shall release and indemnify Mansell or any Mansell Related Party, their employees, agents and contractors on demand from and against all liability for Direct Losses arising from:

63.1.1.1 death or personal injury; and

63.1.1.2 loss of or damage to property (including property belonging to the Authorities, the Contractor and Mansell or for which the Contractor, Mansell or the Authorities are responsible ("Authorities Property")) but excluding the land, buildings, plant, equipment and other assets which are the responsibility of Border to provide under this Agreement; and

63.1.1.3 third party actions, claims and/or demands (other than any which are the subject of the indemnity in clause 63.1.2) including costs, charges and expenses (including legal expenses on an indemnity basis) brought against Mansell or any Mansell Related Party or which Mansell is otherwise liable to indemnify in whole or in part,

which may arise out of, or in consequence of, the design or construction, of the Stations or the Sites or the performance or non-performance by Border of its obligations under this Agreement or the presence on the Authorities' property of Border or Border Related Party.

63.1.2 Border shall, subject to clause 63.2 (Border not Responsible), be responsible for, and shall release and indemnify Mansell or any Mansell Related Party, on demand from and against all liability for Direct Losses and Indirect Losses arising from third party actions, claims and demands (as described in clause 63.1.1.3) brought against the Authorities or the Contractor or Mansell or any Mansell Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by Border of its obligations under this Agreement to the extent that there are no other remedies available to Mansell under this Agreement.

63.2 Border not Responsible

Border shall not be responsible or be obliged to indemnify Mansell:

63.2.1 for any matter referred to in clause 63.1 (Border's Indemnity) that arises as a direct result of Border acting on a written notice issued by Mansell (and, for the purposes of this clause 63.2.1, clause 1.6 (Responsibility for Related Parties) shall not apply) excluding any instruction issued pursuant to clause 64.13A.3 or clause 64.14A.4;

63.2.2 for any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authorities (or any one or more of them) or any Authorities Related Party or, the Contractor or any Contractor Related Party or Mansell or any Mansell Related Party

(other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by Border of its obligations under this Agreement) or by the breach by Mansell of its obligations under this Agreement or by the breach of the Authorities (or any one or more of them) of their obligations under the Project Agreement or by the breach by the Contractor of its obligations under the Building Contract.

63.3 Limitation of Indemnity

An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any other provision of this Agreement.

63.4 Notification of Claims

Where either party (the "**Indemnified Party**") wishes to make a claim under this Agreement against the other (the "**Indemnifying Party**") in relation to a claim made against it by a third party (a "**Third Party Claim**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

63.5 Conduct of Claims

Subject to the rights of the insurers under the Required Insurances, the Indemnifying Party may at its own expense and with the assistance and co-operation of the Indemnified Party have conduct of the Third Party Claim including its settlement and the Indemnified Party shall not, unless the Indemnifying Party has failed to resolve the Third Party Claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

63.6 Costs of Claims

The Indemnifying Party shall, if it wishes to have conduct of any Third Party Claim, give reasonable security to the Indemnified Party for any cost or liability arising out of the conduct of the Third Party Claim by the Indemnifying Party.

63.7 Mitigation

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Agreement.

63.8 [Not used]

64 63A. LIMITS ON LIABILITY

63A.1 In the case of the exercise by Mansell of any of the rights set out in clause 41.3 including, without limitation, termination of this Agreement and/or termination of the Building Contract as a direct consequence of the act or omission of Border, Border shall indemnify Mansell from and against all reasonable costs and Direct Losses suffered or incurred by Mansell following upon the exercise of such rights and/or termination of the Building Contract (but, where appropriate, giving credit for amounts which would have been paid to Border had Mansell not exercised such rights) PROVIDED THAT:

- (a) the total liability of Border to Mansell following termination of this Agreement (whether under clause 40A, clause 41.3 or clause 44.2) whether in respect of such costs and Direct Losses of Mansell or otherwise and inclusive of all Late Completion Liquidated Damages and Unavailability Damages actually paid or payable by Border

pursuant to this Agreement shall not exceed an amount equivalent in aggregate to fifty per centum (50%) of the Contract Sum (the "**Liability Limitation**"); and

- (b) the Liability Limitation shall not apply to or be reduced by:
- (i) any liability arising by reason of any act of fraud or deliberate and wilful default or Abandonment on the part of Border or any Border Related Party;
 - (ii) any liability arising out of the death or personal injury or damage to or loss of property caused by Border's or any Border Related Party's negligence, act, error or omission;
 - (iii) any payments made by Border to the extent corresponding payment are received by Border, or payable to Border (as the case may be) pursuant to insurance policies required to be effected and maintained in accordance with clause 64 (Insurance) or would have been so received or payable to Border but for a breach by Border of clause 64.3;
 - (iv) any liability of Border in respect of any other indemnity provided under this Agreement;
 - (v) any act, omission or default by Border either pursuant to this Agreement or in any other capacity which results in a liability, loss or cost to the FM Contractor pursuant to the FM Agreement including as a result of delay to the Services Availability Date or Post Completion Works Acceptance Date in relation to each Station;
 - (vi) any liability in respect of enforcement or defence (which are not recovered where appropriate) or costs awarded against Mansell in respect of any obligation in this Agreement which requires Mansell to enforce or defend the obligations of any third party for the benefit of Border;
 - (vii) any interest arising from late payments owed by Border under this Agreement;
 - (viii) liabilities arising under this Agreement following termination of this Agreement pursuant to clause 44.2 (Termination for Corrupt Gifts and Fraud); or
 - (ix) any costs or liabilities of Border arising under clause 21.1.3(b) and/or clause 21.1A of this Agreement.

63A.2 With effect from the twelfth (12th) anniversary of the last Post Completion Works Acceptance Date neither party shall have any further right, obligation or liability under this Agreement and neither party shall bring any proceedings against the other save in respect of any Dispute which occurs and is initiated by either party through the Dispute Resolution Procedure prior to the twelfth anniversary of the last Post Completion Works Acceptance Date which has not been settled, determined, abandoned or discharged in accordance with this Agreement by the twelfth (12th) anniversary of the last Post Completion Works Acceptance Date, in respect of which the provisions of this Agreement shall continue in full force and effect until the relevant Dispute is settled, determined, abandoned or discharged in accordance with this Agreement;

64 INSURANCE

64.1 Requirement to Maintain or Procure

Border shall:

64.1.1 take out and maintain or procure the maintenance of any insurances as may be required by law and as provided in clause 64.13 (Professional Indemnity Insurance); and

64.1.2 procure that any insurances required pursuant to clause 64.13A (Public Health Insurance for Asbestos) are taken out;

and any insurances that Border is required to maintain or procure under this Agreement must be effective in each case not later than the date on which the relevant risk commences.

64.2 Application

The provisions of this clause 64 are subject to the provisions of clause 94.

64.3 Obligation on Parties

Neither party to this Agreement shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.

64.4 Claims under the Required Insurances

64.4.1 Border shall:

(a) give Mansell written notification (by letter and e-mail both marked "URGENT" and addressed to Theresa Larkin Head of Corporate Services at the address which Mansell shall from time to time provide in respect of her) promptly on Border becoming aware of the occurrence of any insured risk(s) which may give rise to a claim under any of the Required Insurances, accompanied by full details of the incident or circumstances giving rise to the claim;

(b) [Not used]

(c) give Mansell notification (by letter and e-mail both marked "URGENT" and addressed to Theresa Larkin Head of Corporate Services at the address which Mansell shall from time to time provide in respect of her) within five (5) Business Days of the occurrence of any insured risk(s) which, but for the application of the applicable policy

excess, would have resulted in a claim being made on any of the Required Insurances and (if required by Mansell) give full details of the relevant incident or circumstances; and

(d) [Not used]

64.4.1A Border acknowledges and agrees that:

- (i) Mansell or the Contractor shall be solely entitled to pursue any claim under the Delay in Start Up Insurance referred to in paragraph 2 of Part 1 of Schedule 14 of the Project Agreement on behalf of Mansell in accordance with the requirements of clause 94 (Insurance Relief and Building Contractor's Entitlement) of the Building Contract; and
- (ii) Mansell or the Contractor are entitled to pursue any claim under any other Required Insurance on behalf of Border (taking over conduct of any claim to the exclusion of Border in circumstances where Border is making a claim such taking over to be effective on Border's receipt of a written notice from Mansell or the Contractor confirming that Mansell or the Contractor are exercising their rights under this clause or clause 64.4 of the Building Contract as appropriate) and in such circumstances Mansell shall act in accordance with the requirements of clause 94 or (as appropriate) shall procure that the Contractor acts in accordance with clause 94 (Insurance Relief and Building Contractor's Entitlement) of the Building Contract.

64.4.2 Where Mansell or the Contractor pursues any claim under the Required Insurances on behalf of Border pursuant to clause 64.4.1A and insurance proceeds in respect of such claim are paid to Mansell, such proceeds shall constitute Insurance Relief and shall be payable to Border in accordance with and subject to the provisions of clause 94.

64.4.3 Border shall, in relation to all claims relating to the Required Insurances, give Mansell details of the value and nature of all such claims as may from time to time be required by Mansell provided always that such information shall be supplied by Border no less frequently than once every three (3) months.

64.5 For the avoidance of doubt nothing in this clause 64 shall be interpreted as giving the Sub-Contractor any right to make claims under any insurance policy which is not granted by the policy itself or as imposing on Mansell any obligation to procure any such right for the Sub-Contractor.

64.6 Evidence of Policies

Mansell and Border shall each provide to the other:

64.6.1 save in respect of professional indemnity insurance cover required to be taken out and maintained pursuant to clause 64.13 to which this clause 64.6.1 shall not apply, copies on request of all insurance policies referred to in clauses 64.1 and 65A (Contractor Insurance) (together with any other information reasonably requested by the other relating to such insurance policies) and Mansell and Border shall each be entitled to inspect them during ordinary business hours; and

64.6.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this clause 64 (Insurance) and clause 65A (Contractor Insurance) (as applicable); and

64.6.3 on or before the date of expiry of any insurance required by clauses 64.1 and 65A (Contractor Insurance), satisfactory evidence that the relevant insurance has been renewed or is being renewed.

64.7 Renewal Certificates

Renewal certificates in relation to any of the insurances required by clause 64.1 (Requirement to Maintain or Procure) and clause 65A (Contractor Insurance) shall be obtained as and when necessary and copies (certified in a manner acceptable to Mansell or Border, as the case may be) shall be forwarded to Mansell or Border, as the case may be as soon as is reasonably practicable following receipt of the same.

64.8 Breach

If Border is in breach of clause 64.1 (Requirement to Maintain or Procure), Mansell may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from Border on written demand, together with all expenses incurred in procuring such insurance.

64.9 Notification of Claims under Border Required Insurances

64.9.1 Border shall give Mansell notification (by letter and e-mail both marked "URGENT" and addressed to Theresa Larkin Head of Corporate Services at the address which Mansell shall from time to time provide in respect of her) within eight (8) Business Days after any claim in respect of the Project in excess of ten thousand pounds (£10,000) (indexed) on any of the Border Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Border Required Insurances and (if required by Mansell) give full details of the incident giving rise to the claim;

64.10 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve Border of its other liabilities and obligations under this Agreement.

64.11 Premiums

Save where expressly set out in this Agreement, the insurance premiums for Border Required Insurances and the amount of any loss that would otherwise be recoverable under any of Border Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of Border.

64.11A Save where the claim in question is as a result of any breach by Mansell, Border shall be liable for deductibles and (subject to any equivalent benefits received under the Project Agreement) premia increases which apply to claims made by it or arising out of its actions.

64.12 Mansell Approval

Border Required Insurances shall be effected with insurers approved by Mansell, such approval not to be unreasonably withheld or delayed.

64.13 Professional Indemnity Insurance

Border shall take out and undertakes to procure that each Principal Border Sub-Contractor and the Professional Team take out and maintain in force professional indemnity insurance

(PI Insurance), provided that such insurance is generally available in the market to members of the relevant party's profession at commercially reasonable rates and provided further that payment of any increased or additional premiums required by insurers by reason of the relevant party's own claims record or other acts, omissions, matters or things peculiar to the relevant party will be deemed to be within the reasonable rates and, where such insurance is effected, and to:

- 64.13.1 provide evidence satisfactory to Mansell (as and when reasonably required by Mansell) of the PI Insurance being in full force and effect from the date of this Agreement until the date twelve (12) years from and including the completion of all the Works (such evidence to include details of the cover) including confirmation of territorial limits, levels of excess, insurers, policy number and indemnity limit (which shall be a minimum of ten million pounds (£10,000,000)) either each and every loss or in the aggregate (if in the aggregate then in any one (1) year of insurance a minimum of one (1) automatic reinstatement of the aggregate indemnity limit is required),
- 64.13.2 provide Mansell with notice of:
- 64.13.2.1 any cancellation of the PI Insurance not less than thirty (30) Business Days prior to the relevant cancellation date;
- 64.13.2.2 any adverse material changes to or suspension of cover relevant to the Project not less than thirty (30) days prior to the relevant change or suspension; and
- 64.13.3 inform Mansell as soon as reasonably practicable of any claim under the PI Insurance in respect of the Project of in excess of one million pounds (£1,000,000), provide such information to Mansell as Mansell may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy;

64.13A Public Liability Insurance for Asbestos

64.13A.1 Border shall procure that each specialist asbestos removal sub-contractor engaged for the purposes of the Works shall prior to their start on site have taken out and have in force at that time public liability insurance with an indemnity limit of not less than five million pounds (£5,000,000.00), such insurance to provide cover in respect of all of the anticipated activities of each such specialist asbestos removal sub-contractor in respect of the Works and to include an "indemnity to principals" clause.

- 64.13A.2 On:
- (a) the start on site date for each such specialist asbestos removal contractor; and
 - (b) each renewal date for the insurance cover referred to in clause 64.13A.1,

Border shall request written confirmation (together with reasonable supporting evidence) from each specialist asbestos removal contractor that it is maintaining insurance cover which complies with clause 64.13A.1.

64.13A.3 In the event that Border becomes aware (whether pursuant to clause 64.13A.2 or otherwise) that a specialist asbestos removal sub-contractor engaged by Border for the purposes of the Works has ceased to maintain insurance cover which complies with

clause 64.13A.1 or that such cover is likely to lapse, be withdrawn or not be renewed, Border shall notify Mansell as soon as reasonably practicable and in any event within one (1) Business Day.

64.13A.4 Subject to clause 64.13A.5, where the circumstances described in clause 64.13A.3 arise and the relevant specialist asbestos removal sub-contractor has not completed the works it was contracted to undertake, Mansell may instruct Border to replace the relevant specialist asbestos removal sub-contractor and appoint a replacement specialist asbestos removal sub-contractor in compliance with clause 64.13A.1 save that the replacement specialist asbestos removal sub-contractor shall only be required to provide insurance cover in respect of its appointment. Border shall comply with any such instruction as soon as reasonably practicable following receipt.

64.13A.5 Where:

(a) the circumstances described in clause 64.13A.3 arise due to the insurance cover described in clause 64.13A.1 being no longer generally available in the European market to specialist asbestos removal sub-contractors at commercially reasonable rates; and

(b) the elements of the Works at the relevant Site(s) which the relevant specialist asbestos removal contractor was engaged to perform have not been completed;

Mansell may instruct Border to procure that the relevant specialist asbestos removal contractor (or any replacement appointed by Border) takes out the best public liability insurance in respect of the anticipated activities of such specialist asbestos removal sub-contractor in respect of the Works that is generally available in the European market to specialist asbestos removal sub-contractors at commercially reasonable rates (and Border shall comply with any such instruction as soon as reasonably practicable following receipt).

64.13A.6 Notwithstanding any other provision of this Agreement, neither:

(a) the issue by Mansell of an instruction in accordance with clause 64.13A.3 or clause 64.13A.3; nor

(b) Border's compliance with any such instruction,

shall entitle Border to any additional cost, extension of time or other relief from any other obligation under this Agreement.

64.14 **Claims**

Border shall where it is obliged to effect insurance under this clause not bring any claim or action against Mansell or against any Mansell Related Party (other than any Authorities Related Party against whom Mansell would be entitled to bring a claim or action under clause 64.14 of the Building Contract) in respect of any loss or damage in circumstances where Border is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Agreement) provided that, to avoid doubt, this clause 64.14 shall not by itself prevent Border from claiming against Mansell (or any Mansell Related Party) for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Agreement or to the extent such loss or damage exceeds the maximum level of such insurance required by this Agreement.

64.15 **[Not used]**

64.16 **[Not used]**

64.17 [Not used]

64.18 [Not used]

65A CONTRACTOR INSURANCE

Mansell shall subject to clause 66 and clause 66 of the Building Contract procure that the Contractor shall take out at Financial Close and thereafter maintain in force or procure the taking out and maintenance of the Required Insurances together with the benefits of the endorsements specified in Part 3 of Schedule 14 (Insurances) to the Project Agreement in accordance with clause 64 of the Project Agreement. Border confirms that it has reviewed and is satisfied with such insurances. Border consents to the creation and any exercise of the security rights of the Senior Lenders in respect of those insurance policies maintained by the Contractor.

65 REINSTATEMENT AND CHANGE OF REQUIREMENT AFTER INSURED EVENT

- 65.1.1 The provisions of clauses 65.1 to 65.3 inclusive, shall apply in respect of each New Building or the Post Completion Works (as the case may be) during the period from the Commencement Date until the Services Availability Date applicable to such New Building or the date of issue of a Post Completion Works Acceptance Certificate in respect of such Post Completion Works (as the case may be).
- 65.1.2 Subject to clause 65.1.3, all proceeds of insurance received under any insurance policy referred to in paragraph 1 of Part 1 of Schedule 14 (Insurances) to the Project Agreement (the "**Physical Damage Policies**") shall be applied in the repair, reinstatement, or replacement of each part or parts of the Works in respect of which such proceeds were received.
- 65.1.3 Mansell or the Contractor may in respect of any occasion on which proceeds of insurance in respect of Physical Damage Policies are to be applied pursuant to clauses 65.1 to 65.3, inclusive, propose a Mansell Change or a Contractor Change or a Building Contractor Change in accordance with clause 60 (Authority, Contractor, Mansell and Border Changes).
- 65.1.4 Subject to the other provisions in this clause 65, Border shall, after any inspection required by the insurers in respect of a claim under the Physical Damage Policy or when otherwise so instructed by Mansell, obtain all Necessary Consents (which obligation shall not include an obligation to appeal against any refusal or deemed refusal of any such Necessary Consents) to permit reinstatement of the Works in the form in which it was immediately prior to the damage or destruction or as close as possible to that form having regard to Good Industry Practice and thereafter proceed in accordance with clause 65.1.2 to restore, replace or repair any of the completed or uncompleted Works or any unfixed materials or goods which have been destroyed or damaged, remove and dispose of any debris and proceed (where the Works are at the time incomplete) with the carrying out and completion of the remainder of the Works. Border shall be released from its obligations of replacement and repair to the extent and as from the date that the Senior Lenders notify Border of their intention to retain for their own account any such monies or if no insurance monies are available by reason of the damage having been caused by a Force Majeure Event which is not covered by the Physical Damage Policy.
- 65.1.5 Further Border confirms that it is aware of the provisions of clause 65 of the Project Agreement and clause 65 of the Building Contract and will provide to Mansell (at Border's expense) all necessary assistance and take all steps required by Mansell to enable Mansell to comply with its obligations under the Building Contract.

65.2 Joint Insurance Account

All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or series of related events) in an amount in excess of twenty five thousand pounds (£25,000) indexed shall be paid to the Joint Insurance Account as defined in the Project Agreement.

65.3 Insurance Proceeds

- 65.3.1 In the event that insurance proceeds under the Physical Damages Policies are received after the Termination Date (as defined in this Agreement) but prior to the Termination Date (as defined in the Project Agreement) in respect of a claim which was made prior to the Termination Date (as defined in this Agreement) and in connection with which Border has completed any reinstatement or replacement works, the parties agree that such proceeds shall be paid in accordance with clause 64 of the Project Agreement, provided that Mansell gives credit to Border in respect of any works performed to reinstate or replace the Works consequent upon an event being indemnified under the Required Insurances.
- 65.3.2 In the event of the insurance monies under any of the Required Insurances being wholly or partially irrecoverable by reason solely or in part of any act, default or omission of Border or any Border Related Party or any of its employees, representatives, agents or others for whom Border is responsible in Law then and in every such case Border will (notwithstanding that this Agreement may have been determined by Mansell) pay to Mansell forthwith on demand the whole or the proportionate part or the irrecoverable part (as the case may be) of such insurance monies with interest at the Prescribed Rate from the date when the insurance monies would or should have been payable under the Required Insurances until the date of payment in full by Border PROVIDED THAT, if Border has repaired, reinstated and/or replaced any damage or loss to any of the Sites or the Works to the standard required by this Agreement, Border shall not be required to pay to Mansell irrecoverable insurance monies that would have been applied to such repair, reinstatement and/or replacement works if the insurance monies had been recoverable.

65.4 Management of Claims

- 65.4.1 Mansell and Border shall each nominate an insurance manager, and may replace their respective managers by notice to the other. Border shall procure that its insurance manager, inter alia:
- 65.4.1.1 ensures the prompt notification of incidents to Mansell and ensures the investigation of, and preparation of reports to the insurers and their loss adjusters on, any incident likely to give rise to a claim under the Required Insurances; and
- 65.4.1.2 ensures the prompt notification of all "**material facts**" (as may be required by the insurer in question) in relation to the Required Insurances to Mansell.
- 65.4.2 Mansell shall promptly pass all claims and material facts notified to it to the Contractor for prompt transmissions to the insurers.
- 65.4.3 All claims on any of the Required Insurances shall be made and conducted in accordance with Good Industry Practice and Border shall, and shall procure that its sub-contractors shall, give all reasonable assistance to the Contractor and to Mansell in connection with any claim made on any of the Required Insurances.
- 65.4.4 Mansell shall notify Border of any change in the identity of its or the Contractor's insurance broker from time to time.

65.4.5 Border shall reimburse Mansell on demand in respect of the cost of all excesses and/or deductibles payable in relation to claims made on any of the Required Insurances in relation to events affecting the Works except where any such claim is necessitated by a Mansell Breach or any negligent act or omission on the part of the Contractor or any Contractor Related Party or the Authorities or any Authorities Related Party.

65.4.6 In the event of damage to or destruction of any of the buildings by any of the risks covered by the Required Insurances, Border shall, upon request by Mansell, use reasonable endeavours to assist Mansell to locate and obtain suitable alternative accommodation so that the Authorities can continue to provide fire and rescue services at the affected Station.

65.5 Saving

Neither failure to comply nor full compliance with the provisions of this clause 65 shall limit or relieve Border of its liabilities and obligations under this Agreement and in particular Border's obligation to hold Mansell or any other person harmless or keep it indemnified in compliance with any indemnity provisions contained in this Agreement.

65.6 Obligations

65.6.1 Where a claim is made or proceeds of Project Insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of two hundred and fifty thousand pounds (£250,000) (Indexed):

(a) Border shall deliver to Mansell as soon as practicable and in any event within twenty (20) Business Days after the making of the claim by Mansell a plan prepared by Border (the "**Reinstatement Outline**") for the carrying out of all the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace the Station(s) which is or are the subject of the relevant claim or claims in accordance with clause 65.6 (Obligations) The Reinstatement Outline shall set out:

65.6.1.a.1 if not Border, the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of Mansell; and

65.6.1.a.2 the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior written approval of Mansell (such approval not to be unreasonably withheld or delayed); and

(b) Mansell shall within twenty (20) Business Days of receipt of the Reinstatement Outline notify Border in writing that:

65.6.1.b.1 it is satisfied that the Reinstatement Outline will enable Border to comply with its obligations to carry out the Reinstatement Works within a reasonable timetable, and that the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is approved; or

65.6.1.b.2 the identity of any person (set out in the Reinstatement Outline) that may be appointed to effect the Reinstatement Works is not approved together with its reasons for such non-approval in sufficient detail so as to enable Border to understand the nature and extent of such non-approval and to assess whether Mansell's approval under clause 65.6.1.1.1 has been unreasonably withheld; or

65.6.1.b.3 Mansell does not approve the Reinstatement Outline together with its reasons for such non-approval, in sufficient details so as to enable Border to understand the nature and extent of such non-approval and to assess whether Mansell's approval under clause 65.6.1.1.2 has been unreasonably withheld;

PROVIDED ALWAYS THAT if Mansell does not make one of the said responses within the period specified in clause 65.6.1.2 it shall be deemed to have approved the Reinstatement Outline, save where Mansell has reasonably requested any further information from Border, in which case the time limit outlined in clause 65.6.1.2 will be deemed to commence upon receipt of such information by Mansell.

65.6.2 If Mansell gives notice of non-approval in accordance with clauses 65.6.1.2.2 or 65.6.1.2.3 Border shall amend and re-submit the Reinstatement Outline (the "**Amended Reinstatement Outline**") to Mansell within five (5) Business Days for its consideration and Mansell shall give its approval or non approval within fourteen (14) Business Days of the submission of the Amended Reinstatement Outline to Mansell. If Mansell does not approve the Amended Reinstatement Outline, it shall provide reasons for such non-approval in sufficient detail so as to enable Border to understand the nature and extent of such non-approval and to assess whether Mansell's approval has been unreasonably withheld.

65.6.3 In the event that the Amended Reinstatement Outline or a person proposed to carry out the Reinstatement Works is not approved by Mansell in accordance with clause 65.3.2, either party may submit the Amended Reinstatement Outline to the Dispute Resolution Procedure in order for it to be determined whether Mansell's approval under clause 65.3.2 was unreasonably withheld.

65.6.4 The Reinstatement Outline or the Amended Reinstatement Outline as approved by Mansell pursuant to this clause 65 or as determined pursuant to the Dispute Resolution Procedure shall become the reinstatement plan (the "**Reinstatement Plan**").

65.6.5 If requested by Mansell in writing, Border shall effect the Reinstatement Works in accordance with the Reinstatement Plan, and:

- (a) shall enter into contractual arrangements to effect the Reinstatement Works with the person(s) identified in the Reinstatement Plan;
- (b) Mansell shall procure that Border is paid in accordance with the Reinstatement Plan;
- (c) Mansell agrees and undertakes that, subject to compliance by Border with its obligations under this clause 65, and provided that Border procures that the Reinstatement Works are carried out and completed in accordance with this clause 65 it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
- (d) Mansell undertakes to use all reasonable endeavours to assist Border in the carrying out of the Reinstatement Plan; and
- (e) If any of the Authorities or Contractor are unable to obtain any Necessary Consent for which they (or any one or more of them) are responsible pursuant to the Project Agreement or Building Contract or Border is unable to obtain any other Necessary Consent, required to enable the Reinstatement Works to be carried out (the relevant party having, in each case, made reasonable endeavours to obtain the same), as soon as practicable after the same is refused or becomes otherwise unobtainable, Mansell and Border shall consult with each other in good faith and use their reasonable endeavours to agree reasonable steps to be taken by either party to mitigate the effects

of the inability to carry out the Reinstatement Works and facilitate the continued performance of Border's obligations under this Agreement, Mansell's obligations under the Building Contract and the Contractor's obligations under the Project Agreement, including, but not limited to, considering whether there should be a Change in order to provide premises for the affected Station at another location.

65.7 Works Carried Out

Where insurance proceeds are to be used in accordance with this Agreement to repair, reinstate or replace any part of any Station, Border shall carry out the work in accordance with the Authorities Requirements and the Construction Proposals so that on completion of the work the provisions of this Agreement are complied with.

65.8 Application

The provisions of this clause 65 are subject to the provisions of clause 94 (Insurance Relief and Border's Entitlement).

66 RISKS THAT BECOME UNINSURABLE

66.1 Uninsurable Risks

66.2 Border acknowledges the provisions of clause 66 (Risks that become Uninsurable) of the Project Agreement and the Authorities' options pursuant to that clause 66, including those related to the occurrence of an insurance that is Uninsurable.

67 DISPUTE RESOLUTION

67.1 Disputes

Any dispute arising in relation to any aspect of this Agreement (a "**Border Sub-Contract Dispute**") shall be resolved in accordance with this clause.

67.2 Consultation

If a dispute arises in relation to any aspect of this Agreement, Border and Mansell shall first consult in good faith in an attempt to come to an agreement in relation to the disputed matter provided that both parties shall have the right to refer any dispute or difference to adjudication in accordance with the Housing Grants Construction and Regeneration Act 1996 at any time by giving a written notice of intention to refer a dispute to adjudication ("**Notice of Adjudication**").

67.3 Adjudication

If Border and Mansell fail to resolve the dispute through such consultation within five (5) Business Days, either party (the "**Referring Party**") may refer the matter to an adjudicator selected in accordance with clause 67.4 (Identity of Adjudicator) (the "**Adjudicator**").

67.4 Identity of Adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the panel of experts appointed in accordance with the following:

67.4.1 the parties shall endeavour to secure the appointment of the Adjudicator within three (3) days of the Notice of Adjudication from a list of experts provided by the relevant expert body to be served by the Referring Party with the Notice of Adjudication;

67.4.2 if the parties are unable to agree on the identity of the Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator within seven (7) days of the Notice of Adjudication;

67.4.3 no Adjudicator shall be entitled to accept an appointment to act as an Adjudicator under this Agreement unless he is willing and able also to be appointed as the Adjudicator to adjudicate a dispute (referred to in clause 67.15 below). The Adjudicator must be able to show that he is independent of the parties and the relevant Border Sub-Contractor and any of the major competitors of Border or relevant Border Sub-Contractor. The parties agree that in the event that the Adjudicator is unable to satisfy the provisions of this clause 67.4.3 at any time after his appointment and before his decision they will jointly dismiss the Adjudicator and appoint a different Adjudicator in accordance with clauses 67.4.1 to 67.4.3; and

67.4.4 within seven (7) days of the parties agreeing the identity of the Adjudicator pursuant to clause 67.4.1 or the application to the Chartered Institute of Arbitrators pursuant to clause 67.4.2, the Referring Party shall refer the dispute to the Adjudicator by service upon the Adjudicator of "**the Referral**" which shall:-

67.4.4.1 be addressed to the other party,

67.4.4.2 include a summary of the nature, background and extent of the dispute and the issues arising,

67.4.4.3 include copies of all documents upon which the Referring Party relies,

67.4.4.4 set out the relief, remedy and recourse the Referring Party seeks, and

67.4.4.5 be served upon the other party at the same time as service upon the Adjudicator.

67.4.5 Submission of Arguments

67.4.6 Within five (5) Business Days of receipt of the Referral, the Adjudicator shall give directions as to the submission of all further written submissions. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute.

67.5 Adjudicator's Decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty eight (28) days after the date of receipt of the Referral (or such other period as the parties may agree after the reference). Unless the parties otherwise agree, the Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Referring Party. Unless the parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the English courts, the Adjudicator's decision shall be binding on both parties who shall forthwith give effect to the decision.

67.6 Adjudicator's Costs

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

67.7 Adjudicator as Expert

The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.

67.8 Adjudicator's Powers

The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.

67.9 Confidentiality

All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by clause 62 (Information and Confidentiality), disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Adjudicator's work.

67.10 Liability of Adjudicator

The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

67.11 Reference to the Courts

Either party may (within ninety (90) calendar days of receipt of the Adjudicator's decision or where the Adjudicator fails to give a decision pursuant to clause 67.5) commence legal proceedings in the courts of England and Wales in respect of the subject matter of a dispute which has been the subject of an Adjudicator's decision or review.

67.12 Parties' Obligations

The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this clause and shall give effect forthwith to every decision of the Adjudicator and the courts delivered under this clause.

67.13 Similar Disputes

If any dispute arising under the Building Contract raises issues which relate to a Border Sub-Contract Dispute (a "**Similar Dispute**") then Mansell shall include as part of the submissions made to the adjudicator or to the Courts where the dispute is referred to Arbitration submissions made by Border.

67.14 Jurisdiction over Sub-Contractors

The adjudicator under the Building Contract Dispute (who may for the avoidance of doubt but without limitation be acting under the Project Agreement in cases where there is a "Similar Dispute" as defined in the Building Contract as well as a Similar Dispute under this Agreement) shall not have jurisdiction to determine the Border Sub-Contract Dispute but the

decision of the adjudicator under the Building Contract Dispute shall, subject to clause 67.11 (Reference to the Courts), be binding on Border insofar as it determines the issues relating to the Border Sub-Contract Dispute.

67.15 Sub-Contractors' Submissions

Any submissions made by Border shall:

- 67.15.1 be made within the time limits applicable to the delivery of submissions by Mansell in the Building Contract Dispute; and
- 67.15.2 for the purposes of any Building Contract Dispute concern only those matters which relate to the dispute between the Contractor and Mansell under the Building Contract.

67.16 Costs

Where Border makes submissions in any reference before:

- 67.16.1 the adjudicator in relation to a Building Contract Dispute (who may for the avoidance of doubt but without limitation be acting under the Project Agreement in cases where there is a "Similar Dispute" as defined in the Building Contract as well as a Similar Dispute under this Agreement), such adjudicator's costs of such reference shall be borne as the adjudicator shall specify, or in default, one-third by the Contractor and one-third (1/3) by Mansell and one-third (1/3) by Border; and before the courts, the costs of the litigation shall be in the discretion of the court.

67.17 Liability

Border acknowledges that neither the Contractor nor the Authorities shall have any liability to Border arising out of or in connection with any decision of the adjudicator or courts or in respect of the costs of Border in participating in the resolution of any dispute under this Agreement to the extent relevant to the dispute under the Building Contract or the Project Agreement.

67.18 Access to Documents

Border acknowledges that Mansell is not to allow Border access to any document relevant to issues in dispute between the Authorities and the Contractor or between the Contractor and Mansell save where:

- 67.18.1 the document is relevant also to the issues relating to the Border Sub-Contract Dispute; and
- 67.18.2 Mansell has first delivered to the Contractor and/or the Authorities as appropriate a written undertaking from Border addressed to the Contractor and/or the Authorities as appropriate that Border shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Agreement and that Border shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the courts or any professional adviser engaged by Border to advise in connection with the dispute.

68 ORDERING OF GOODS AND SERVICES

Neither party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other party or any representative of the other party.

69 INTELLECTUAL PROPERTY

69.1 Border shall make available to the Authorities, the Contractor and Mansell free of charge (and hereby irrevocably licences the Authorities, the Contractor and Mansell to use) all Project Data that might reasonably be required by Mansell, the Contractor and the Authorities, and Border shall ensure that it obtains all necessary licences, permissions and Necessary Consents to ensure that it can make the Project Data available to Mansell, the Contractor and the Authorities on these terms, for the purposes of:

69.1.1 the Authorities providing the Stations for fire and rescue and ancillary purposes, the Contractor's duties under the Project Agreement Mansell's duties under the Building Contract and/or any statutory duties which the Authorities may have; and

69.1.2 following termination of the Project Agreement and/or the Building Contract and/or this Agreement, the design or construction of the Stations, the operation, maintenance or improvement of the Stations and/or the provision of works and/or services the same as or similar to the Works,

(together, the "**Approved Purposes**"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

69.2 Intellectual Property Rights

69.2.1 Border hereby grants to each Authority, the Contractor and Mansell, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits of Mansell, the Contractor the Authorities under the Project Agreement, the Building Contract or this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub-licences) to use Border Intellectual Property Rights which are or become vested in Border; and

69.2.2 shall, where any Border Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 69.2.1 above to each Authority, the Contractor and Mansell,

in both cases, solely for the Approved Purposes.

69.3 Vesting of Intellectual Property Rights

Border shall use all reasonable endeavours to ensure that any Border Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest, and remain vested throughout the term of this Agreement, in Border and Border shall enter into appropriate agreements with any Border Related Party (or any third parties) that may create or bring into existence, or from which it may acquire, any Border Intellectual Property Rights.

69.4 Maintenance of Data

To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, Border shall:

69.4.1 use all reasonable endeavours to procure for the benefit of each Authority, the Contractor and Mansell, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable each Authority, the Contractor and Mansell

or their nominees to access and otherwise use (subject to the payment by the relevant Authority, the Contractor or Mansell of the relevant fee, if any) such data for the Approved Purposes. As an alternative, Border may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

69.4.2 enter into the National Computing Centre's then current multi-licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

69.5 Border shall ensure the back-up and storage in safe custody of the data, materials and documents referred to in clause 69.4 in accordance with Good Industry Practice. Without prejudice to this obligation, Border shall submit to Mansell's Representative for approval its proposals for the back-up and storage in safe custody of such data, materials and documents and Mansell shall be entitled to object if the same is not in accordance with Good Industry Practice. Border shall comply, and shall cause all Border Related Parties to comply, with all procedures to which Mansell's Representative has given its approval. Border may vary its procedures for such back-up and storage subject to submitting its proposals for change to Mansell's Representative, who shall be entitled to object on the basis set out above.

69.6 Indemnity

69.6.1 Where a claim or proceeding is made or brought against the Authorities (or any one or more of them) or the Contractor or Mansell which arises out of the infringement of any Border Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any Border Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Border Intellectual Property by or on behalf of the Authorities (or any one or more of them) or the Contractor or Mansell otherwise than in accordance with the terms of this Agreement, Border shall indemnify Mansell at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings and the provisions of clause 63 (Indemnities, Guarantees and Contractual Claims) shall apply.

69.6.2 Where a claim or proceeding is made or brought against Border which arises out of the infringement of any Border Intellectual Property Rights or because the use of any materials, plant, machinery or equipment in connection with the Works or the Project infringes any rights in or to any Border Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Border Intellectual Property Rights by or on behalf of the Authorities (or any one or more of them) or the Contractor or Mansell otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this clause 69 by Border then Mansell shall indemnify Border at all times from and against all Direct Losses and Indirect Losses arising as a result of such claims and proceedings.

69.7 Licence to Border

Mansell hereby grants to Border a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Agreement only and only for purposes directly relating to the Project any intellectual property rights relating to the Project which are or become vested in Mansell.

70 ASSIGNMENT AND SUB-CONTRACTING

70.1 Subject to clauses 70.2 and 70.3 and subject always to the provisions of any Collateral Warranty Border shall not assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Agreement in whole or in part except with the prior written consent of Mansell.

70.2 Mansell shall be entitled to assign or otherwise transfer any benefit or obligation under this Agreement to any party to whom Mansell assigns its interest in the Building Contract without requiring the consent of Border. Mansell shall be entitled to assign, novate or otherwise transfer any benefit or obligation under this Agreement to any Security Trustee (as defined in the Funders' Direct Agreement executed pursuant to the Building Contract) without requiring the consent of Border. Mansell shall notify in writing to Border within ten (10) Business Days of each such assignment.

70.3 Provided that Border notifies Mansell of the identity of any proposed major sub-contractor and considers any reasonable representations made by Mansell in respect of the proposed sub-contractor, then Border may sub-contract any part of the Works without obtaining Mansell's consent.

70.4 The sub-contracting by Border of any part of the Works shall not relieve Border in any way whatsoever from its responsibility for due performance of its obligations under this Agreement in accordance with its terms.

70.5 Transfer of Responsibility

Prior to the date of issue of the last Acceptance Certificate to be issued, Border shall use its reasonable endeavours to assist Mansell in facilitating the smooth transfer of responsibility for the Works to any New Contractor.

70.6 Exception

By entering into this Agreement, Mansell approves the Border Sub-Contractors appointed by Border as at the Commencement Date.

70.7 Border's Obligations

70.8 Border shall perform its obligations under and observe all the terms of any Border Sub-Contract.

71 [NOT USED]

72 [NOT USED]

73 AUDIT ACCESS

Border shall provide to Mansell's Representative all information, documents, records and the like in the possession of, or available to, Border (and to this end Border shall use all reasonable endeavours to procure that all such items in the possession of Border or any Border Sub-Contractor shall be available to it and Border has included or shall include, appropriate terms in all Border Sub-Contracts to this effect) as may be reasonably requested by Mansell's Representative for any purpose in connection with this Agreement.

74 NO AGENCY

74.1 No Partnership or Employment

Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between Mansell and Border.

74.2 Power to Bind

Save as expressly provided otherwise in this Agreement, Border shall not be, or be deemed to be, an agent of Mansell and Border shall not hold itself out as having authority or power to bind Mansell in any way.

74.3 Deemed Knowledge

Without limitation to its actual knowledge, Border shall for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or ought reasonably to be held) by any Border Related Party.

75 ENTIRE AGREEMENT

75.1 Prior Representations etc Superseded

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

75.2 Acknowledgements

Each of the parties acknowledges that:

- 75.2.1 subject to clause 5.1 (Border Warranties), it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Agreement or not) except those expressly repeated or referred to in this Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy available under this Agreement; and
- 75.2.2 this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

76 NOTICES

76.1 Form and Service of Notices

All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

77 Border

The Managing Director

78 Mansell

79

The Regional Director

Marconi Road,
Burgh Road Industrial Estate,
Carlisle,
Cumbria
CA2 7NA

80

Roman House
Sutton Quays Business Park
Off Clifton Road
Sutton Weaver
CHESHIRE
WA7 3EH

81

76.2 Provision of Information to Representatives

Where any information or documentation is to be provided or submitted to Mansell's Representative or Border's Representative it shall be provided or submitted by sending the same by first class post or by hand, or leaving the same at:

Border's Representative

The Managing Director
Marconi Road,
Burgh Road Industrial Estate,
Carlisle,
Cumbria.
CA2 7NA

Mansell's Representative

The Regional Director
Roman House
Sutton Quays Business Park
Off Clifton Road
Sutton Weaver
CHESHIRE
WA7 3EH

76.3 Change of Details

Either party to this Agreement (and either Border's Representative or Mansell's Representative) may change its nominated address or facsimile number by prior notice to the other party.

76.4 Notices by Post

Notices given by post shall be effective upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

- 76.4.1 within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- 76.4.2 by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

77 SEVERABILITY

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

78 WAIVER

78.1 Waiver to be Written

No term or provision of this Agreement shall be considered as waived by any party unless a waiver is given in writing by that party.

78.2 Extent of Waiver

No waiver under clause 78.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

79 PUBLIC RELATIONS AND PUBLICITY

79.1 Restriction

Border shall not by itself, its employees or agents, and shall procure that its Border Sub-Contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement or the Project without the prior written approval of Mansell.

79.2 Photographs

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by Border unless Mansell has given its prior written approval.

80 ADVERTISEMENTS

Border shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of Mansell's Representative, save where otherwise required to comply with Legislation.

81 BORDER'S RECORDS

81.1 Records and Open Book Accounting

Border shall (and shall procure that each Border Sub-Contractor shall) at all times:

- 81.1.1 maintain a full record of particulars of the costs of performing the Works including those relating to the design and construction;
- 81.1.2 upon request by Mansell, provide a written summary of any of the costs referred to in clause 81.1.1, in such form and detail as Mansell may reasonably require to enable Mansell to monitor the performance by Border of its obligations under this Agreement;
- 81.1.3 provide such facilities as Mansell may reasonably require for its representatives and the Authorities' Representatives to visit any place where the records are held and examine the records maintained under this clause.

81.2 **Books of Account**

Compliance with clause 81.1.1 (*Records and Open Book Accounting*) shall require Border to keep (and where appropriate to procure that each Border Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Agreement, showing in detail:

81.2.1 administrative overheads;

81.2.2 payments to Border Sub-Contractors;

81.2.3 capital and revenue expenditure; and

81.2.4 such other items as Mansell may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement,

and Border shall have (and procure that its Border Sub-Contractors shall have) the books of account evidencing the items listed in clauses 81.2.1 to 81.2.4 inclusive, available for inspection by the Authorities, the Contractor and Mansell (and their advisers) upon reasonable notice, and shall promptly present a written report of these to Mansell as and when requested from time to time.

81.3 **Maintenance of Records**

81.3.1 Border shall maintain or procure the maintenance of detailed records relating to the performance of the Works, in each case in accordance with Good Industry Practice, the requirements of clause 34 (Quality Assurance) and any applicable Legislation.

81.3.2 Without prejudice to clause 81.3.1, Border shall procure that the following are maintained:

81.3.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and

81.3.2.2 full records of all maintenance procedures carried out during the term of this Agreement,

and Border shall have the items referred to in clauses 81.3.2.1 (Maintenance of Records) and 81.3.2.2 (Maintenance of Records) available for inspection by the Authorities, the Contractor and Mansell (and their advisers) upon reasonable notice, and shall present a report of them to Mansell as and when requested.

81.4 **Auditor**

Border shall permit all records referred to in this clause 81 (Border's Records) to be examined and copied from time to time by Mansell's Auditor and the Contractor's Auditor and the Authorities' Auditor and their representatives and other representatives of Mansell, the Contractor or the Authorities who reasonably require access to the same.

81.5 **Retention**

The records referred to in this clause 81 (Border's Records) shall be retained for a period of at least five (5) years after Border's obligations under this Agreement have come to an end.

81.6 **Termination or Expiry**

Upon termination or expiry of this Agreement, and in the event that the Authorities wish to enter into another agreement for the operation and management of a project the same as or similar to the Project, Border shall (and shall use reasonable endeavours to ensure that its sub-contractors will) comply with all reasonable requests of the Authorities, the Contractor and Mansell to provide information relating to Mansell's costs of operating and maintaining the Project.

81.7 **[Not used]**

81.8 **Confidentiality**

All information referred to in this clause 81 (Border's Records) is subject to the obligations set out in clause 62 (Freedom of Information and Confidentiality).

82 DATA PROTECTION

82.1 General

82.1.1 In relation to all Personal Data, Border shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Project.

82.1.2 Border and any Border Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the EEA.

82.2 No Disclosure

82.2.1 Border shall not disclose Personal Data to any third parties other than:

82.2.1.1 to employees and Border Sub-Contractors to whom such disclosure is reasonably necessary in order for Border to carry out the Works and/or the Services; or

82.2.1.2 to the extent required under a court order,

provided that disclosure under clause 82.2.1.1 (No Disclosure) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this clause 82.2.1 (No Disclosure) and that Border shall give notice in writing to Mansell of any disclosure of Personal Data which either Border or a Border Sub-Contractor is required to make under clause 82.2.1.2 (No Disclosure) immediately upon becoming aware of such a requirement.

82.2.2 Border shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

82.2.3 Mansell may, at reasonable intervals, request a written description of the technical and organisational methods employed by Border or the Border Sub-Contractors referred to in clause 82.2.2 (No Disclosure). Within fifteen (15) Business Days of such a request, Mansell shall supply written particulars of all such measures detailed to a reasonable level such that Mansell can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

82.3 Border shall indemnify and keep indemnified Mansell against all Direct Losses and Indirect Losses incurred by it in respect of any breach of this clause 82 by Border and/or any act or omission of any Border Sub-Contractor which causes Border to be in breach of this clause 82.

83 INTEREST ON LATE PAYMENT

83.1 Save where otherwise specifically provided, where any payment or sum of money due from Border to Mansell or from Mansell to Border under any provision of this Agreement is not paid on or before the due date, it shall bear interest thereon at the Prescribed Rate from the due date (whether before or after any judgement) until actual payment and it is agreed between the parties that the Prescribed Rate and the provisions of this Agreement relating to the payment of compensation on termination of this Agreement following the occurrence of a Mansell Breach provide Mansell with a substantial remedy pursuant to Sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998. Provided that any sum due from Mansell to Border under this Agreement, but in respect of which an Advance is due from Border to Mansell pursuant to clause 93.5 and the Parallel Loan Agreement, shall not be counted as unpaid by Mansell for the purposes of this clause 83, and provided further that where any failure by Mansell to pay any sum due to Border under this Agreement is caused by a failure by the Authorities to pay a sum due under the Project Agreement, such sum shall not be counted as unpaid by Mansell for the purposes of this clause 83.

84 [NOT USED]

85 GOVERNING LAW AND JURISDICTION

85.1 The Agreement and all non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 67 (Dispute Resolution), the English Courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

86 SOLE REMEDY

86.1 Common Law Rights for Border

86.1.1 Without prejudice to any entitlement of Border:

86.1.1.1 to specific performance of any obligation under this Agreement; or

86.1.1.2 to injunctive relief; or

86.1.1.3 to any other express right of Border pursuant to this Agreement,

Border's sole remedy in relation to any Mansell Compensation Event or Works Compensation Event at any Site that occurs prior to completion of the Works at that Site shall be the operation of clause 16.5 (Effect of a Mansell Compensation Event and Works Compensation Event) provided that nothing in this clause shall prevent either party from recovering monies that are properly owing under the terms of this Agreement as a debt.

86.2 [Not Used]

86.3 **No Breach**

Border shall not be held to be failing to comply with its obligations under this Agreement to the extent that such failure to comply is a result of Mansell's breach of its obligations hereunder.

86.4 Indirect Losses

86.5 Notwithstanding the terms of any other provision of this Agreement, Border agrees that losses suffered by Mansell arising under or in connection with the Project Documents shall not be Indirect Losses. Mansell agrees that losses properly incurred by Border under or in connection with the Border Sub-Contracts relating to the Works shall not be Indirect Losses.

87 NO DOUBLE RECOVERY

87.1 Notwithstanding any other provisions of this Agreement, neither party shall be entitled to recover compensation or make a claim under this Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Agreement or otherwise..

88 COUNTERPARTS

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

89 CONSTRUCTION INDUSTRY SCHEME

89.1 In this clause:

- (a) FA 2004 means the Finance Act 2004 and any statutory amendment or modification thereof;
- (b) construction operations means those operations defined in section 74 of the FA 2004 as construction operations;
- (c) direct cost of materials means the direct cost to Border or to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is made relates as provided in section 61 of FA 2004;
- (d) Regulations means the Income Tax (Construction Industry Scheme) Regulations 2005 (No 2045) or any amendment or re-making thereof and references to any individual "regulation" shall be construed accordingly;
- (e) relevant percentage means the relevant percentage of any payment as mentioned in section 61 of FA 2004;
- (f) Gross Payee is a person registered for gross payment pursuant to section 63(2) of the FA 2004;
- (g) Net Payee is a person registered for payment under deduction of tax pursuant to section 63(3) of the FA 2004; and
- (h) HMRC means Her Majesty's Revenue & Customs.

89.2 Border hereby warrants that it has registered with HMRC pursuant to section 63 of FA 2004 and its registration has not been cancelled.

- 89.3 Border shall as soon as reasonably practicable supply Mansell with its company registration number and its unique taxpayer reference (UTR).
- 89.4 Not later than 14 days before the first payment is due to be made by Mansell to Border Mansell shall (unless regulation (6)4 exempts it from so doing) verify with HMRC pursuant to regulation 6 whether Border (or if appropriate its nominee) is a Gross Payee or a Net Payee.
- 89.5 Where Border is a Net Payee then not later than seven days before the final date for payment of any sum due:
- (a) Border shall give to Mansell a statement showing the direct cost of materials to be included in the payment; and
 - (b) Mansell shall deduct the relevant percentage from that part of the payment which is not in respect of the direct cost of materials.
- 89.6 Where Border complies with clause 89.5(a) and Mansell has no reasonable grounds to believe that any statement provided in compliance with clause 89.5(a) is incorrect then the direct cost of materials shall be deemed for the purposes of clause 89.5(b) above to be as specified in the statement provided.
- 89.7 Where Border fails to comply with clause 89.5(a) or where Mansell has reasonable grounds to believe that any statement provided in compliance with clause 89.5(a) is incorrect Mansell shall make a fair estimate of the direct cost of materials for the purposes of clause 89.5(b) above.
- 89.8 Where Border is a Gross Payee Mansell shall pay any amount due without making any deduction.
- 89.9 Where Border has been a Net Payee and Mansell is notified by HMRC that Border is now a Gross Payee clause 89.8 shall thereupon apply.
- 89.10 Where Mansell is notified by HMRC pursuant to regulation 6(6)(b) that Border is no longer a Gross Payee then clauses 89.6, 89.7 and 89.8 shall thereupon apply.
- 89.11 Where Border is a Net Payee and Mansell has made payments to Border Mansell shall on the 19th day of the month following the month in which payment is made provide Border with a written statement detailing the following information:
- (a) Mansell's name and tax reference;
 - (b) the tax month to which the statement relates;
 - (c) Border's name and UTR (if known);
 - (d) the total amount of any contract payments (as defined in section 60 of the FA 2004) made to Border during the tax month;
 - (e) the total amount included in those payments which Mansell is satisfied represents the direct cost of materials; and
 - (f) the total amount deducted from the payments mentioned in subclause (d) above pursuant to clause 89.5(b) above.

89.12 Where an error or omission has been made by Mansell in calculating the amount deducted under clause 89.5(b) above:

- (a) in the case of an over-deduction Mansell shall within ten (10) Business Days of becoming aware of such over-deduction correct that error by making a payment of the sum over deducted to Border;
- (b) in the case of an under-deduction Mansell may deduct such sum under-deducted from the next payment due to Border provided that not later than five (5) Business Days before such next payment Mansell shall serve a notice on Border specifying the sum to be deducted and its grounds for doing so.

89.13 If compliance with this clause 89 involves Mansell or Border in not complying with any other provisions of this Agreement then the provisions of this clause 89 shall prevail.

90 FM CONTRACTOR BREACHES

90.1 If Border, acting reasonably, considers that a FM Contractor Breach has occurred and promptly notifies Mansell's Representative thereof (which notification shall (a) contain particulars of the FM Contractor Breach claimed, (b) specify the expected effects thereof, (c) state that the Works have thereby been delayed and/or that Border has incurred or is likely to incur Costs and/or Direct Losses in the execution of the Works as a result of such FM Contractor Breach and (d) request Mansell to enforce its rights against the Contractor under the Building Contract in respect of the FM Contractor Breach claimed), the parties shall thereafter implement and comply with the provisions of the Enforcement Regime in order to determine whether such FM Contractor Breach has occurred and, if so, the Contract Sum Adjustment to which Mansell is entitled in respect of such FM Contractor Breach.

90.2 Subject to clauses 90.1, 90.3 and 90.4A, if it is agreed, or determined pursuant to the Enforcement Regime and/or clause 67, that a FM Contractor Breach has occurred and Border has incurred and/or will incur loss and/or expense as a direct result of such FM Contractor Breach, Border shall, subject to clause 93, be entitled to receive such compensation (in the form of a Contract Sum Adjustment) as would place Border in no better or no worse position than it would have been in had the relevant FM Contractor Breach not occurred. Border shall promptly provide Mansell's Representative with any additional information he may require or which may be required under the FM Agreement in order to determine the amount of compensation payable to the Contractor under the FM Contract and Mansell under the Building Contract in respect of any FM Contractor Breach.

90.3 Border shall take all reasonable steps so as to minimise the amount of compensation due to it in accordance with this clause 90 in relation to any FM Contractor Breach and any compensation payable shall:

90.3.1 exclude any amounts incurred or to be incurred as a result of any failure of Border (or any Border Related Party) to comply with this clause 90.3;

90.3.2 be reduced by any amount which Border will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or any amount over the maximum amount insured applicable to any such insurance policy; and

90.3.3 be subject to (a) the provisions of clauses 92 and 93 and (b) Mansell receiving Contract Sum Adjustment Funds in respect of such FM Contractor Breach pursuant to the Building Contract.

90.4 Border shall take all steps and continue to take all steps necessary and consistent with Good Industry Practice and shall use constantly its best endeavours to prevent, avoid or reduce delay in the progress of the Works caused by any FM Contractor Breach (without thereby being obliged to incur additional costs) and Border's rights under this clause 90 shall be conditional upon it so doing.

90.4A Notwithstanding any other provision of this Agreement, the total aggregate liability of Mansell to Border in respect of FM Contractor Breaches (irrespective of whether such FM Contractor Breaches also result in termination of the FM Agreement and/or the Project Agreement and/or the Building Contract) shall be an amount equal to fifty per cent (50%) of the Annual FM Services Payment (as defined in the FM Agreement) attributable to the Stations which is payable to the FM Contractor in respect of the twelve (12) month period commencing on the final Services Availability Date, excluding any Deductions.

90.5 The provisions of this clause 90 are exhaustive of Border's rights, entitlements and remedies in respect of the FM Contractor's Breaches and, for the avoidance of doubt, Border shall not be entitled to any extension of time and/or an amendment to any Planned Services Availability Date as a consequence of any FM Contractor Breach.

91 INTERFACES WITH THE AUTHORITY AND OTHER CONTRACTOR'S SUB-CONTRACTORS AND THIRD PARTIES

91.1 Where, as a result of any breach of the Project Agreement or the Building Contract or any other breach of contract, act, omission, neglect, default or statement by the Authorities, the Authorities' Representative, any Authorities Related Party, the Contractor, the Contractor's Representative or any Contractor Related Party or as a result of a breach of any contract with Mansell (but excluding any Mansell Compensation Event), Border suffers loss or damage, then any monetary benefit claimed by Border as a result shall be treated as a Border's Entitlement and shall be subject to clause 93 (Border's Entitlement).

91.2 Border shall afford reasonable cooperation to Mansell, the Contractor and the FM Contractor and Mansell shall procure that the Contractor and the FM Contractor shall afford reasonable cooperation to Border in the delivery of their respective obligations. Border confirms that it shall not interfere with the obligations of the Contractor or the FM Contractor and Mansell shall procure that the Contractor and the FM Contractor shall not interfere with the obligations of Border.

91.3 Where the FM Contractor and Border concurrently claim a Border's Entitlement and/or is the subject of a Border's Entitlement and such benefit and/or claim (as applicable) relates to the same or similar matters then the provisions of clause 9292 (Enforcement Regime) shall apply.

91.4 Mansell shall when either providing information to Border or passing information from Border do so promptly and in any event in the period set out in this Agreement and where no period is set out, in a period that, taking account of the specific periods in the Related Agreements, permits Border a reasonable period to respond.

- 91.5 Where in the Building Contract and/or Related Agreements any matter is stated to be required to be submitted to the Authorities, the Contractor or other relevant person, or subject to the consent or approval of the Authorities, the Contractor or other relevant person (or any equivalent procedure) (and Mansell is not entitled to proceed with the matter the subject of the submission, approval or consult until such submission, approval or consent is obtained), then to the extent that such matter relates to or impacts upon the obligations of Border under this Agreement, Border shall not proceed with such matter until it is submitted or the relevant consent or approval in accordance with the provisions of this clause 91.5 has been given, or is deemed to have been given or Mansell is otherwise entitled to proceed in accordance with the Building Contract and/or Related Agreements and Mansell has given notice of such entitlement to Border.
- 91.6 Subject to the FM Contractor making reasonable prior appointment with Border, Border shall permit the FM Contractor (and any FM Contractor Related Party nominated by the FM Contractor) to enter upon those Sites where they are not providing the Initial Services at any time prior to the Services Availability Date for the purposes of viewing the Works and undertaking preparatory activities associated with their obligations under the FM Agreement, but for no other purpose, provided that Mansell shall, subject to clauses 92 (Enforcement Regime) and 93 (Border's Entitlement), procure that the FM Contractor and any FM Contractor Related Party shall (a) observe and comply with Border's Site Rules and (b) not cause delay or disruption to the carrying out of the Works by Border or any Border Related Party. Where Works are being carried out on Sites that the FM Contractor is providing Initial Services on, Mansell and Border shall agree a safe system of working in order to prevent conflicts between the requirements of Border in delivering the Works and the FM Contractor in delivering the Initial Services.
- 91.7 The provisions of clauses 14.8 (Design Development) and 91A (FM Agreement Specific Interfaces) shall apply to the interface between Border and the FM Contractor in relation to the Review Procedure.
- 91.8 The provisions of clause 95 (Liability for Deductions) shall apply to situations where liability in respect of Deductions is disputed between Border and the FM Contractor.
- 91.9 The provisions of Annex D to Schedule 6 (Payment Provisions) shall apply in respect of utilities consumption during the Initial Period at each Station.

91A FM AGREEMENT SPECIFIC INTERFACES

91A.1 Design Development

- 91A.1A Where in this clause 91A Border is required to provide information, notifications or any other thing to or to liaise with or receive anything from the FM Contractor or the FM Contractor's Representative Border shall if so required by Mansell provide it to or liaise with or receive it from Mansell.
- 91A.1.1 Notwithstanding the provisions of clause 14 (Design Development), Border shall:
- (a) promptly supply to the FM Contractor copies of all Reviewable Design Data and all other information relating to the design and development of the Works which may (once implemented) have an effect upon the performance of the Services;

- (b) provide the FM Contractor with reasonable prior notice of the performance of those elements of the Works which may (once implemented) have an effect upon the performance of the Services; and
- (c) permit the FM Contractor to witness the performance of those elements of the Works referred to in clause 91A.1.1(b).

91A.1.2 Border confirms that the FM Contractor shall be entitled to make representations on any information supplied to the FM Contractor pursuant to clause 91A.1.1(a) and on any elements of the Works which have been witnessed by the FM Contractor pursuant to clause 91A.1.1(c). Subject to clause 14.8 (Cooperation with FM Contractor), Border shall:

- (a) reasonably take into account any representations from the FM Contractor in the exercise of its obligations under the Review Procedure, provided that such FM Contractor representations are reasonable and made in good faith; and
- (b) provide reasons for the rejection of any such FM Contractor representations which are not adopted by Border.

91A.1.3 Mansell confirms that it will procure that the FM Contractor complies with the terms of clauses 14.2 and 14.3 of the FM Agreement.

91A.2 Meetings and Inspections

(a) Notwithstanding the provisions of clause 16 (Extensions of Time, Giving of Relief and Payment of Compensation), Border shall keep the FM Contractor regularly informed as to the state of progress of the Works, afford the FM Contractor the opportunity to attend all monthly site meetings relating to the Works and (whether or not the representatives of the FM Contractor have attended such meetings) provide to the FM Contractor a copy of the minutes of all monthly site meetings relating to the Works.

91A.3 Notification

Notwithstanding the provisions of clauses 16 (Extensions of Time, Giving of Relief and Payment of Compensation) and 19 (Monitoring and Inspection), Border shall notify Mansell's Representative and the FM Contractor's Representative:

- 91A.3.1 of the date upon which Border (acting reasonably and in good faith) considers that each Station will achieve Services Availability in accordance with the Project Agreement not less than twelve (12) months before the expected date, again at approximately three (3) months before the expected date and again at approximately one (1) month before the expected date;
- 91A.3.2 when, from time to time during the performance of the Works, Border becomes aware that any Planned Services Availability Date or Planned Post Completion Works Acceptance Date has changed, such notice to be issued within eighteen (18) Business Days of the date upon which Border becomes aware; and
- 91A.3.3 when a Services Availability Date or Post Completion Works Acceptance Date has occurred, such notice to be issued as soon as reasonably practicable following the relevant date.

91A.4 Certification

2. 91A.4.1 Border shall reasonably take into account any representations or comments made by the FM Contractor (whether supplied by the FM Contractor or by Mansell) during or following any inspection of a Station pursuant to clause 20.2 (Dates on which Services Availability May Occur) (whether such representations or comments relate to the issue of an Acceptance Certificate or a Post Completion Works Certificate) to the extent that such representations are reasonable and made in good faith.
3. 91A.4.2 If, in relation to any matter on which the FM Contractor is entitled pursuant to clause 91A.4.2 to make representations or comments, the FM Contractor does not make any representation or comment, then, provided that Border gives the FM Contractor not less than three (3) Business Days notice of any relevant inspection pursuant to clause 20.2 (Dates on which Services Availability May Occur) and the FM Contractor has been provided with such information as it may reasonably require to enable it to exercise its rights under Special Condition 14A.2 of the FM Agreement, the FM Contractor shall be deemed to have no comments or representations on that matter.

91A.5 Building Manual

- 91A.5.1 Border shall provide to Mansell a draft copy of the complete Building Manual in relation to any Station no later than six (6) weeks before the anticipated Services Availability Date for such Station.
- 91A.5.2 The parties acknowledge that:
 - (a) The Contractor must have received the final version of Part 1 of the Building Manual in order for an Acceptance Certificate to be issued in respect of a Station; and
 - (b) the Contractor must have received the final version of all other parts of the Building Manual in order for a Post Completion Works Acceptance Certificate.

91A.6 Regime for Snagging Items, Defects and warranty repairs

Border shall establish and implement a regime for responding to Snagging Items, Defects and warranty repairs, in each case in a manner that will allow the FM Contractor to fulfil its obligations under the FM Agreement in respect of such matters.

91A.7 Spares

91A.7.1 As soon as reasonably practicable following the Services Availability Date for a Station:

- (a) Border shall supply to Mansell or as Mansell may direct any spare parts and/or consumables relating to the Works which have been provided to Border by its supply chain; and
- (b) Border shall procure from each member of its supply chain which has provided spare parts or consumables pursuant to clause 91A.7.1(a) an estimate of the likely availability of such spare parts or consumables during the period of ten (10) years following the relevant Services Availability Date.

91A.8 Border Deliverables List

Border shall comply with its obligations under Schedule 31 (Border Deliverables List).

91A.9 Project Co-ordination Matrix

91A.9.1 Border shall comply with its obligations under Schedule 32 (Project Co-ordination Matrix).

91A.9.2 Mansell shall procure (on the basis of Building Contractor's Entitlement) that the FM Contractor complies with its obligations under Appendix 3 (Project Co-ordination Matrix) of the FM Agreement.

92 ENFORCEMENT REGIME

92.1 Subject to clause 92.2, Mansell shall, at the request of Border enforce such rights as it has against the:

92.1.1 Contractor to procure that the Authorities and Authority Related Parties observe and perform the Authorities' obligations under the Project Agreement in so far as they will or may affect Border in its performance of the Works and Border's Entitlements under this Agreement, on the basis and subject to the conditions set out in the Enforcement Regime; and

92.1.2 Contractor to procure that the FM Contractor observes and performs the FM Contractor's obligations under the FM Agreement in so far as they will or may affect Border in its performance of the Works and Border's Entitlement under this Agreement on the basis and subject to the conditions set out in the Enforcement Regime;

92.1.3 enforce such rights as it has against the Contractor to procure that the Contractor observes and performs the Contractor's obligations under the Building Contract in so far as they will or may affect Border in its performance of the Works and Border's Entitlement under this Agreement on the basis and subject to the conditions set out in the Enforcement Regime.

92.2 Clauses 92.2 to 92.10 inclusive shall apply to the conduct by Mansell of claims made by Mansell, at the request of Border, pursuant to any provision of this Agreement, to establish all entitlements under the Building Contract which are necessary:

92.2.1 for Border to become entitled, in turn, to any Border's Entitlement (as Equivalent Project Relief) under this Agreement; or

92.2.2 in order to challenge any liability of Mansell under the Building Contract which is asserted by the Contractor and for which Border in turn is in substance liable, wholly or in part, to Mansell by virtue of this Agreement (including in relation to Deductions); or

92.2.3 in order to exercise any right against the Contractor or to enforce any right, obligation or undertaking by the Contractor under the Building Contract; or

92.2.4 in order to exercise any right of Mansell against the Contractor in relation to the FM Contractor or to enforce any right, obligation or undertaking by the Contractor under or in relation to the FM Agreement.

92.3 Subject to clause 92.4, if Border considers that Mansell is entitled to exercise any right or pursue any remedy against the Authorities or the FM Contractor in any of the circumstances referred to in clauses 92.2.1 to 92.2.4 and that such right or remedy is relevant to the performance of Border's obligations and/or Border's entitlements or liabilities under this Agreement and Border wishes Mansell to enforce Mansell's rights and/or remedies against the Contractor, it shall notify Mansell of the fact, setting out;

92.3.1 the grounds on which it relies ;

92.3.2 the action that it wishes Mansell to take;

92.3.3 the advisers it wishes Mansell to appoint; and

92.3.4 any budgetary constraints that it requires Mansell to observe in pursuing the claim.

92.4 In deciding whether to exercise its rights under clause 92.3 and the actions that it requires Mansell to take in pursuance of each Claim (as defined in clause 92.5), Border shall:

92.4.1 not act frivolously, vexatiously, dishonestly or maliciously;

92.4.2 behave as a prudent man of business; and

92.4.3 only require Mansell to take such steps as such a prudent man of business acting on his own behalf would take,

in each case having regard to the adverse consequences of the breach or non-performance of obligations concerned (assuming, for this purpose, that all such adverse consequences fall on Border or the Contractor whether or not a fact) and the costs of and risks attendant upon the proposed enforcement action.

92.5 Upon receipt of a notice from Border pursuant to clause 92.3, but subject to clause 92.4, Mansell shall:

92.5.1 submit to the Contractor a formal claim or assertion of its rights (in these clauses 92.2 to 92.10 inclusive called a "**Claim**") (prepared by Border on Mansell's behalf with all necessary supporting particulars) for any such entitlement and provided that such Claim as prepared by Border complies with any requirements as to format, content and timing stipulated by this Agreement and/or relevant provisions of the Building Contract, the Project Agreement or the FM Agreement;

92.5.2 diligently pursue the Claim in accordance with the relevant provisions of the Building Contract, Project Agreement or the FM Agreement and in accordance with the instructions

of Border from time to time (which instructions may include an instruction to abandon or otherwise terminate pursuit of the Claim, provided that Mansell shall nevertheless be entitled to continue to pursue the Claim for its own interest but at its own cost and risk as from the day after the date on which pursuit of the Claim would have ceased had Mansell complied with Border's instruction and any procedure taken or omitted by Mansell after the date of Border's instruction, towards the continuing pursuit of the Claim, which is incompatible with that instruction shall be at Mansell's cost and risk);

92.5.3 keep Border fully informed as to the progress of the Claim;

92.5.4 supply copies of all documents and other information given or received in connection with the Claim;

92.5.5 unless it is prevented by Legislation from doing so, have Border participate in negotiations and discuss with Border each step to be taken, provided such steps do not compromise Mansell's rights against the Contractor that are different from Mansell's rights it is enforcing on behalf of Border; and

92.5.6 not waive, release, compromise nor settle any Claim without the prior written consent of Border (which it must give or withhold without unreasonable delay).

92.6 Mansell shall promptly notify Border of any claim that it makes on its own behalf against the Contractor or that it receives from the Contractor that has a bearing upon the Works or the obligations and liabilities of Border under this Agreement. Provided Mansell has so notified Border and has allowed Border, at least ten (10) Business Days to give notice to Mansell in relation to such claim in accordance with the procedures set out in clause 92.3, Mansell shall be free to settle any such claim on such terms as it thinks fit and subject to its rights and obligations under this Agreement, if Border has not given notice to Mansell relative to such claim in accordance with the procedures set out in clause 92.3.

92.7 Border shall bear and discharge (and indemnify Mansell against) all claims, proceedings, loss, damage, costs and expenses (including legal costs, adjudicator's and mediator's fees and other third party costs and expenses) reasonably and properly incurred by Mansell in taking steps pursuant to and in accordance with clause 92.5 but excluding any such claims, rights, proceedings, loss, damage, costs and expenses which arise from Mansell's negligence or breach of this Agreement.

92.8 Border shall not be entitled to recover from Mansell any Costs, Indirect Losses or Direct Losses to the extent that these arise out of or in connection with Mansell pursuing any Claim pursuant to clause 92.2 to 92.10 inclusive of this Agreement save where and to the extent that Mansell is entitled to recover the same from the person and makes recovery of sums in respect of Border's Costs or Losses from a third party against whom a Claim is pursued by Mansell.

92.9 If Mansell is already taking action against the Contractor on its own behalf in respect of the same right or breach of obligation or undertaking covered in a notice from Border under clause 92.3 or if the right or breach of obligation or undertaking by the Contractor also adversely affects Mansell separately from any adverse effect on Border, Border's liability under clauses 92.7 and 92.8 shall extend to such proportion of Mansell's reasonable external costs as is fair and reasonable in the circumstances.

92.10 Without prejudice to anything in clauses 92.2 to 92.9 inclusive, if Border notifies Mansell of any circumstance which it believes amounts to a breach by the Contractor of an obligation that such party owes to Mansell under the Building Contract and that

such breach materially and adversely affects Border in the performance of its obligations under this Agreement and if the Building Contract affords Mansell an appropriate remedy, Mansell will take all reasonable steps (not involving the taking of any formal proceedings under a dispute resolution procedure or before any court or tribunal) to request the party concerned to remedy the breach and to make such other reparations as it may be contractually bound to make.

92.11 Without prejudice to clauses 92.1 to 92.10 and clause 93, Mansell is not responsible or liable (whether in contract, tort, breach of statutory duty or under any other legal theory), as against Border, for any breach of contract, act, omission or statement by the Authorities, the Authorities' Representative or any Authorities Related Party, the Contractor, the Contractor's Representative or any Contractor Related Party. Without prejudice to clause 93, Border's sole remedy in respect of any such breach, act, omission or statement by the Authorities, the Authorities' Representative, any Authorities Related Party the Contractor, the Contractor's Representative or any Contractor Related Party shall be to such Border's Entitlement as may expressly be provided for in this Agreement). This clause 92.11 shall not prejudice any rights or remedies which Border may possess directly against the Authorities the Authorities' Representative, any Authorities Related Party, the Contractor, the Contractor's Representative or any Contractor Related Party.

92.12 Without prejudice to clauses 92.1 to 92.10 and clause 93, Mansell is not responsible or liable (whether in contract, tort, breach of statutory duty or under any other legal theory), as against Border, for any breach of contract, act, omission or statement by the FM Contractor or any FM Contractor Related Party. Border's sole remedy under this Agreement in respect of any such breach, act, omission or statement by the FM Contractor or any FM Contractor Related Party shall be to such Border's Entitlement as may expressly be provided for in this Agreement (and subject to clause 93). This clause 92.12 shall not prejudice any rights or remedies which Border may possess directly against the FM Contractor or any FM Contractor Related Party.

92.13 Where as a result of a breach by the Contractor of the Building Contract Border suffers loss or damage, then subject to clauses 92.1 to 92.10 and clause 93, Border shall be entitled to receive, as a Border's Entitlement, compensation in respect of the same to the extent that it is agreed or determined pursuant to the Building Contract that Mansell is entitled to receive compensation from the Contractor attributable to Border's loss or damage.

92.14 Save where Border's Entitlement is established in respect of a Contract Sum Adjustment Event (other than a Mansell Compensation Event, to which Clause 16 applies) in accordance with clauses 92 and 93, Mansell shall have no liability for any matter or occurrence whatsoever that delays the execution of the Works or causes Border to suffer or incur additional costs (including Costs), Indirect Losses or Direct Losses.

92.15 Without prejudice to clauses 91 and 93 and subject to the provisions of this clause 92, Border hereby irrevocably and unconditionally waives as against Mansell all and any rights to claim any payment or compensation whatsoever (pursuant to any term of this Agreement, by way of damages for breach of contract, in tort, for breach of statutory duty or under any other legal theory) where such claim arises out of or is consequent upon any breach of the:

92.15.1 Project Agreement or the Ancillary Rights by the Authorities or any act, omission, neglect, default or statement of the Authorities, the Authorities' Representative or an Authorities Related Party; or

92.15.2 FM Agreement by the FM Contractor or any act, omission or statement by the FM Contractor or a FM Contractor Related Party; or

92.15.3 Building Contract by the Contractor or any act, omission or statement by the Contractor or a Contractor Related Party.

92.16 Without prejudice to clause 21, where Border would otherwise be expressly liable to make a payment to Mansell by way of compensation (including amounts which, in turn, comprise any compensation payable by Mansell to the Contractor or other Mansell Related Party), Border shall not be entitled to withhold, reduce and/or avoid any such payment to Mansell in reliance on the fact that the amount which is due from Mansell to the Contractor or other Mansell Related Party and/or the entitlement of the Contractor or other Mansell Related Party to payment of such amount (which has arisen as a result of the circumstances giving rise to Border's obligation to pay such compensation to Mansell) is conditional upon the receipt by Mansell of such amount from Border or that Mansell shall escape loss resulting from such withholding, reduction or avoidance of payment by Border by reason of such conditionality.

92.17 Subject to Mansell having complied with clause 92.5, where any matter is referred to the dispute resolution procedure of the Project Agreement or the Building Contract in accordance with this clause 92, Border acknowledges and agrees that any determination made pursuant to the dispute resolution procedure of the Project Agreement or the Building Contract shall be conclusive and have binding effect.

93 BORDER'S ENTITLEMENT

93.1 Notwithstanding any other provision of this Agreement, Border's entitlement to receive any:

93.1.1 Contract Sum Adjustment in respect of any Contract Sum Adjustment Event (other than those Contract Sum Adjustment Events that are Mansell Compensation Events);

93.1.2 indemnification by Mansell in respect of acts or omissions of the Contractor, and/or any Contractor Related Party;

93.1.3 relief, allowance and/or compensation from Mansell in respect of any Qualifying Change in Law and/or Force Majeure Event;

93.1.4 relief, allowance and/or compensation from Mansell in respect of any matter, event or circumstances in respect of which Mansell is or may be entitled to receive relief, allowance and/or compensation from the Contractor under the Building Contract;

93.1.5 payment under clause 37 and Schedule 6;

93.1.6 payment, relief, allowance and/or compensation from Mansell pursuant to any other clause of this Agreement which is stated to be subject to this clause 93, and/or

93.1.7 any other right or benefit in respect of a circumstance under which Border is or becomes entitled which is equivalent to and/or consistent with a right claimed by Mansell under the same circumstance,

herein all referred to as "**Border's Entitlement**", shall be subject to the following provisions of this clause 93.

93.2 Where in this Agreement Border is entitled to a Border's Entitlement Mansell shall, at the request of Border and in accordance with and subject to the provisions of clause 92 (Enforcement Regime), exercise any corresponding rights it may have under the Building Contract in relation to the recovery of Equivalent Project Relief in respect of Border's Entitlement to which Border believes it is entitled. Subject as aforesaid, Border shall (in relation to the benefits relating to the rights and obligations of Border in connection with the Works) be entitled to a fair and reasonable proportion of any contractual benefits in relation to the Works (including any extension of time, rights to payment, relief from the consequences of delayed performance, indemnities or the provision of any materials, facilities or services or the execution of any work) to which Mansell is or becomes entitled to under the Building Contract in relation to the matters referred to in clause 93.1, but:

93.2.1 in respect of extensions of time or relief from any other consequence of delayed performance which may be available to Mansell under the Building Contract only to the extent permitted in clause 93.3;

93.2.2 in respect of right to payment and recovery of any sums in respect of Contract Sum Adjustment Events (other than those Contract Sum Adjustment Events that are Mansell Compensation Events) by means of a Contract Sum Adjustment (including by means of set-off or abatement) and in respect of right to payment under clause 37 and Schedule 6, only to the extent permitted in clauses 93.4, 93.5, 93.7, 93.8 and 93.10.

93.3 The proportion referred to in clause 93.2 shall either:

93.3.1 be subject to clauses 92.1 to 92.10 (Enforcement Regime) inclusive, as certified, agreed or otherwise determined in accordance with the Building Contract; or

93.3.2 (if no procedure exists under the Building Contract for such certification, agreement or determination) be assessed by Mansell's Representative as soon as reasonably practicable by reference to the extent to which such proportion referred to in clause 93.2 relates to the rights and obligations of Border in connection with the Works. Following completion of such assessment the result shall be notified by Mansell's Representative to Border, provided that in the event that the parties fail to agree Mansell's Representative's assessment within eight Business Days of the date of its notification to Border as aforesaid either party shall be entitled to refer the matter for determination under the Dispute Resolution Procedure.

93.4 Save in respect of Mansell Compensation Events (to which the provisions of clause 16 shall apply) and Insurance Relief (to which the provisions of clause 94 shall apply) and subject to clauses 92.2 to 92.10 inclusive, Border shall only be entitled to an extension of time for the performance of its obligations under this Agreement and/or to relief from any other consequence of delayed performance where and to the extent that an extension of time and/or other relief has been agreed or determined pursuant to the Building Contract or an agreement or determination has otherwise been made under or in connection with the Building Contract establishing that Mansell is entitled to Equivalent Project Relief in respect thereof (provided that unless such Equivalent Project Relief includes financial compensation sufficient to hold Mansell harmless from any adverse financial consequences of any extension of time agreed or determined under the Building Contract, the corresponding extension of time to which Border is entitled under this Agreement shall be reduced commensurately to ensure Mansell is held harmless as aforesaid); or

93.5 Save where the same arises due to a Mansell Compensation Event (to which clause 16 (Extensions of Time, Giving of Relief and Payment of Compensation) applies) or due to an event resulting in Insurance Relief (to which the provisions of clause 94

(Insurance Relief and Border's Entitlement) shall apply) Border's entitlement to any Border's Entitlement referred to in clause 93.1 shall arise only where the occurrence of the event giving rise to and the amount of any Border's Entitlement has been established under this Agreement and once the following conditions precedent have, subject to clauses 93.7 and 93.8, been satisfied:

- 93.5.1 where Mansell is entitled to Equivalent Project Relief from the Contractor under the Building Contract, a certificate has been issued under the Building Contract or an agreement has been made between the Contractor and Mansell or it has been determined with binding effect pursuant to the Building Contract that Mansell is entitled, under or in connection with the Building Contract, to receive Equivalent Project Relief from the Contractor which is attributable to Border's Entitlement claimed by Border under this Agreement and Mansell has received from the Contractor the Equivalent Project Relief agreed or determined as aforesaid.
- 93.6 For the avoidance of doubt and without prejudice to clause 92 (Enforcement Regime), where and to the extent that Mansell is not entitled to Equivalent Project Relief from the Contractor under the Building Contract in respect to any claim by Border for any Border's Entitlement referred to in clause 93.1, Border shall not be entitled to any such Border's Entitlement in respect of such claim where and to the extent that Mansell is not entitled to Equivalent Project Relief.
- 93.7 Mansell may at any time waive the conditions precedent referred to in clause 93.5 including retrospectively in respect of previous claims for payment or Contract Sum Adjustments by Border, in which event clause 93.8 shall apply.
- 93.8 If for whatever reason any of the conditions precedent referred to in clause 93.5 is claimed by Border or is found to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part or is changed or amended pursuant to any order or decision of any adjudicator, court tribunal or arbitration or by any provision of any statute and Border demands payment of any sum by way of Border's Entitlement then:
- 93.8.1 the amount of any sum which Mansell pays or becomes obliged to pay to Border in those circumstances shall give rise to an "Advance" and Border shall procure that the Parallel Loan Provider makes an Advance to Mansell upon and subject to the terms of the Parallel Loan Agreement in an amount equal to any such sum paid or due to be paid by Mansell; and
- 93.8.2 Mansell may set-off the liability of the Parallel Loan Provider to make such an Advance against any sum due from Mansell to Border under or pursuant to this Agreement.
- 93.9 In relation to any period before the Parallel Loan Provider makes an Advance required to be made in accordance with this clause, Border shall indemnify Mansell against all Costs incurred by Mansell as a result of Border exercising any right of suspension under Section 112 of the Housing Grants, Construction and Regeneration Act 1996.
- 93.10 In the event of the foregoing provisions of this clause 93 and/or the Parallel Loan Agreement being held to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part (for whatever reason) the final date for payment of the sums claimed by Border shall be deemed to be the date occurring eighteen (18) months after the date that, but for this clause, such amount would have been due to be calculated and to be payable.

93.11 For the avoidance of doubt, Border's rights, remedies and entitlements against Mansell in respect of a Mansell Compensation Event shall not be affected, prejudiced or diminished by the foregoing provisions of this clause 93.

94 INSURANCE RELIEF AND BORDER'S ENTITLEMENT

94.1 Border shall only become entitled to receive Insurance Relief in accordance with the following provisions of this clause 94 and, notwithstanding any other provision of this Agreement, Border's entitlement to receive any Insurance Relief shall be subject to the provisions of this clause 94.

94.2 Where Border (acting reasonably) considers that it is or may be entitled to any Insurance Relief in respect of a Border's Entitlement it shall give notice thereof to Mansell and Mansell shall, at the request of Border, exercise any corresponding rights that Mansell may have against any insurer under, pursuant to or arising from or against the Contractor in respect of the Required Insurances in relation to the recovery of Insurance Relief in respect of Border's Entitlement to which Border believes it is entitled. Subject as aforesaid, Border shall be entitled to receive a proportion of any corresponding Insurance Relief received by Mansell in respect of Border's Entitlement under the Required Insurances but only to the extent permitted in clauses 94.3 to 94.7 inclusive.

94.3 The proportion (of Insurance Relief) referred to in clause 94.2 shall (i) be as certified, agreed or otherwise determined in accordance with the Required Insurances (as the case may be) or (ii) if no procedure exists under the Required Insurances for such certification, agreement or determination, be such fair and reasonable proportion of such corresponding benefits in respect of Border's Entitlement as shall, as soon as reasonably practicable, be assessed by Mansell and notified to Border. Such fair and reasonable proportion of the Insurance Relief shall be assessed having regard to the following factors (but not to the exclusion of other evidence);

- (a) whether and to what extent the relevant Border's Entitlement claimed by Border formed part of the basis of Mansell's claim for Insurance Relief;
- (b) any available evidence as to whether the relevant insurer in fact recognised that the relevant entitlement of the Contractor or Mansell to Insurance Relief, or any element of it, was attributable to Border's Entitlement claimed by Border; and
- (c) any other claims, in addition to the claim for a Mansell entitlement attributable to the relevant Border's Entitlement sought by Border, which were advanced by Mansell or the Contractor, on its own behalf or on behalf of others, in its submissions to the relevant insurer from which the relevant Mansell entitlement to Insurance Relief arose;

in the event that the parties fail to agree Mansell's assessment within fifteen (15) Business Days of the date of its notification to Border as aforesaid either party shall be entitled to refer the matter for determination under the Dispute Resolution Procedure.

94.4 Mansell shall pay to Border the amount of Border's Entitlement (agreed or determined as due to Border pursuant to clauses 94.2 and 94.3) that has been recovered by Mansell from the Contractor or the relevant insurer (as Insurance Relief), on the date occurring five (5) Business Days following the date of receipt by Mansell of the relevant amount due to Border.

- 94.5 Border's entitlement to Insurance Relief for any Border's Entitlement shall only arise (i) where the occurrence of the event giving rise to such Border's Entitlement and the amount of the payment to which Border is entitled in respect thereof has been established under this Agreement and (ii) when Mansell has:
- (a) become entitled to (and has recovered) Insurance Relief in respect of *inter alia* such Border's Entitlement pursuant to the Contractor's Insurances; and
 - (b) recovered a sum which is identifiable as relating to the relevant entitlement of Border under this Agreement or is determined to be such in accordance with the Dispute Resolution Procedure.
- 94.6 If, in respect of any payment or Contract Sum Adjustment to which clause 94.5 applies, any or all of the foregoing provisions of this clause 94 is/are found to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part or is/are changed or amended pursuant to any order or decision of any adjudicator, court tribunal or arbitration or by any provision of any Law and Border demands payment of any sum by way of Border's Entitlement, then the parties shall respectively comply with (and be entitled to enforce) the provisions of the Parallel Loan Agreement in respect of such Contract Sum Adjustment. Mansell shall be entitled, if and to the extent that the Guarantor or Border does not pay an Advance to Mansell in accordance with the Parallel Loan Agreement, to set-off the liability of the Guarantor or Border to pay such Advance against any sum due from Mansell to Border under or pursuant to this Agreement.
- 94.7 In the event of all or any of the foregoing provisions of this clause 94 and/or the Parallel Loan Agreement being held to be ineffective, illegal, unenforceable, invalid, void or voidable in whole or in part (for whatever reason) the final date for payment of the relevant sums claimed by Border in respect of Insurance Relief shall be deemed to be the date occurring twelve (12) months after the last Services Availability Date.

95 LIABILITY FOR DEDUCTIONS

- 95.1 Border acknowledges the provisions of clause 95 of the Building contract. Where any Deduction or threatened Deduction to which that clause relates may relate to a Site and/or a Station Mansell shall so notify Border in writing and shall if so requested by Border and subject to clauses 92 and 93 of this Agreement exercise its rights under that clause for the benefit of Border.
- 95.2 Border shall indemnify and hold harmless Mansell in respect of any liability which Mansell may have under the Building Contract or otherwise in respect of Unavailability Damages and Deductions which relate to any of the Sites and/or the Stations save to the extent that such liability arises from any Mansell Breach ("Border's Deductions").
- 95.3 **[NOT USED].**
- 95.4 **[NOT USED].**
- 95.5 **[NOT USED].**
- 95.6 **[NOT USED].**
- 95.7 Border shall pay any Border's Deductions within two (2) Business Days of the date of issue of a determination under (a) clause 95.4 of the Building Contract or (b) the Dispute Resolution Procedure under the Building Contract (as the case may be) and,

without prejudice to the foregoing, Mansell shall be entitled to deduct Border's Deductions from any monies due or to become due to Border under this Agreement (including any balance stated as due to Border in the Final Certificate) or Mansell may recover the same (or any unpaid balance thereof) from Border as a debt, provided that Border's liability under this Agreement in respect of Border's Deductions shall not exceed the following amounts:

95.7.1 for the period up to and including the date of issue of the Notice of Completion of Making Good Defects, an amount equivalent in aggregate to five per cent (5%) of the Contract Sum; and

95.7.2 thereafter (subject to clause 63A) an amount equivalent in aggregate to five per cent (5%) of the Contract Sum.

95.8 The liability caps set out in clauses 95.7.1 and 95.7.2 are discrete (both as between and within clauses 95.7.1 and 95.7.2) and no unused portion of one (1) cap may be carried forward to increase another cap.

95.9 The parties hereto acknowledge and agree that Border (a) shall not be entitled to dispute or challenge Mansell's entitlement to claim, deduct and/or be paid Border's Deductions whether on the ground that the same are unreasonable, excessive or a penalty and (b) irrevocably waives any right that it may possess at law to dispute or challenge on any such basis Mansell's entitlement to claim, deduct and/or be paid Border's Deductions as aforesaid.

95.10 Mansell acknowledges that, save for the liability of Border to Mansell under the foregoing provisions of this clause 95, Border shall not otherwise be liable under, pursuant to or arising from this Agreement for Deductions incurred by the Contractor in accordance with the Project Agreement.

96 VALUE ADDED TAX

96.1 Contract Sum – exclusive of VAT

Any reference in this Agreement to the Contract Sum shall be regarded as such sum exclusive of any VAT Payment by Mansell to Border of any sum in respect of VAT properly chargeable under or by virtue of the Value Added Tax Act 1994 or any amendment thereof on the supply of goods and services under this Agreement shall be made subject to the provisions of this clause 96.

96.2 Value Added Tax – Supplemental Provisions

Without prejudice to clause 96.1:

96.2.1 all sums payable under this Agreement by a party to this Agreement to any other shall be deemed to be exclusive of VAT;

96.2.2 where Border makes a supply to Mansell pursuant to the terms of this Agreement of services to which Regulation 93 of the Value Added Tax Regulations 1995 relates, and VAT is chargeable by Border in respect of such supply, Mansell shall (at the same time as paying the consideration for such supply or on demand if later) pay to Border (in addition to the consideration for such supply) a sum equal to the amount of such VAT and Border shall not provide a VAT invoice but shall, within five (5) Business Days following receipt of such payment of VAT issue to Mansell a valid receipt of the kind referred to in Regulation 13(4)

of the Value Added Tax Regulations 1995 containing the information required under Regulation 14(1) of such Regulations;

96.2.3 in any other case where a party to this Agreement (the "**Supplier**") makes a supply pursuant to this Agreement to any other (the "**Recipient**"), and VAT is chargeable in respect of such supply, the Supplier shall provide a valid VAT invoice to the Recipient and the Recipient shall (within five (5) Business Days following receipt of such valid VAT invoice) pay to the Supplier (in addition to the consideration for such supply) a sum equal to the amount of such VAT; and

96.2.4 where Border is required by the terms of this Agreement to reimburse Mansell for the costs or expenses of any supplies made to Mansell, Border shall also at the same time pay and indemnify Mansell against all VAT incurred by Mansell in respect of those supplies save to the extent that Mansell is entitled to repayment or credit in respect of such VAT.

96.3 **Overpayment**

Border shall, if so requested by Mansell, furnish such information as may be reasonably required by Mansell as to the amount of VAT properly chargeable in respect of services or goods supplied in accordance with this Agreement. Any overpayment (whether as a result of error or any adjustment in the consideration for any such goods or services supplied hereunder) in respect of the VAT made by Mansell to Border shall be a sum of money recoverable from Border.

96.4 **Deductions from payments**

Save as otherwise provided in this Agreement and save only as may be required by Legislation, all sums payable by either party to the other under this Agreement shall be paid free and clear of all deductions and withholdings whatsoever in respect of tax. If such a deduction or withholding in respect of tax is required by Legislation in respect of any payments made by Border under this Agreement:

96.4.1 Border shall ensure that the deduction or withholding does not exceed the minimum amount legally required;

96.4.2 Border shall pay to the relevant taxation or other authorities within the period for payment permitted by the applicable Legislation the full amount of the deduction or withholding;

96.4.3 Border shall furnish to Mansell within the period for payment permitted by the relevant Legislation, either:

- (a) an official receipt of the relevant taxation or other authorities involved in respect of all amounts so deducted or withheld; or
- (b) if such receipts are not issued by the taxation or other authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

96.4.4 Border shall pay to Mansell an additional amount calculated to ensure that the net amount received by Mansell (taking into account any deduction or withholding require on such additional amount) will equal the full amount which would have been received by it had no such deduction or withholding been made.

96.4.5 If and to the extent that Border pays an additional amount under clause 96.4.4 and Mansell receives and retains the benefit of a refund of tax or credit against tax on its overall net


income which is defined by Mansell as attributable to the tax that was withheld or deducted, then Mansell shall reimburse to Border such amount as shall leave Mansell, after the reimbursement, in no better or worse position that it would have been in if payment of the relevant additional amount had not been required.

THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

SIGNATORIES

Mansell

EXECUTED as a **DEED** by
MANSELL CONSTRUCTION SERVICES LIMITED
acting by its duly appointed attorney

)
)
)


in the presence of:

Witness Name: JONATHAN CROLEY

Witness Signature: J Croley
Witness Address: ASHFORDS LLP
ASHFORD HOUSE
GRENADIER ROAD
EXETER EX1 3LH

Border

EXECUTED as a **DEED** by
BORDER CONSTRUCTION LIMITED
acting by its Director

)
)
)


.....

in the presence of:

Witness Name: JONATHAN CROLEY
Witness Signature: J Croley
Witness Address: ASHFORDS LLP
ASHFORD HOUSE
GRENADIER ROAD
.....
EXETER EX1 3LH

Schedule 1

[NOT USED]

Schedule 2
[NOT USED]

Schedule 3
[NOT USED]

Schedule 4
[NOT USED]

Schedule 5
[NOT USED]

Schedule 6

PAYMENT PROVISIONS

1. Introduction & Definitions

- 1.1 The following provisions shall apply to all payments to be made by or to Border pursuant to clause 37 of this Agreement in relation to the carrying out and completion of the Works.
- 1.2 In this Schedule 6 the following words and expressions shall bear the meanings respectively ascribed to them:

"Assessment Date"	means each of the dates specified in the second column of Annex B to this Schedule 6;
"Assessment Period"	means the period ending on the Assessment Date;
"Assessment Report"	means a report prepared by or on behalf of the Contract Valuer and issued to Mansell pursuant to paragraph 4.6.1.2 hereof which report shall assess the validity and/or correctness of the amounts claimed by Border in each Interim Payment Application by reference to the Payment Activities carried out during the Assessment Period to which such Interim Payment Application relates;
"Contract Valuer"	means Mansell's Representative or such other party or parties as Mansell may substitute therefor from time to time and should the position of the Contract Valuer not be filled at any time any reference in this Agreement to the same shall be deemed to mean Mansell's Representative;
"Date of Submission"	means, in respect of each Interim Payment Application the date on which Mansell receives the relevant Interim Payment Application from Border;
"Detailed Breakdown"	means a written statement comprising a detailed breakdown of the proportion of the Contract Sum which is attributable to the Works carried out, attributing a value to each of the Payment Activities identified in the Level 2 Programme applicable to such Works and which is to be prepared by Border and submitted to Mansell in

	accordance with paragraph 4.2.2 hereof;
"Final Certificate"	means a certificate to be issued pursuant to paragraph 5.1 of this Schedule 6;
"Insurance Reinstatement Works"	means any new construction work or any work of repair, renewal, replacement, reinstatement or refurbishment which Mansell instructs Border to undertake and which is required as a result of any loss or damage affecting the Works, or any part thereof, occasioned by any one or more of the risks covered by the Required Insurances;
"Interim Payment"	means, in relation to each Assessment Period, the amount (expressed in Pounds Sterling) specified in the Interim Payment Certificate applicable to such Assessment Period as the same shall be determined in accordance with paragraph 4.6 hereof;
"Interim Payment Application"	means an application for payment made by Border under this Agreement duly prepared, completed and issued by Border in accordance with the provisions of this Schedule 6 and this Agreement;
"Interim Payment Certificate"	means in each case a statement (in the form of the draft interim payment certificate reproduced in Annex A to this Schedule 6) to be issued by Mansell's Representative pursuant to the provisions of paragraph 4.6 hereof, specifying the Interim Payment payable in respect of the Payment Activities undertaken by Border in the immediately preceding Assessment Period together with any other amounts properly due to Border pursuant to the express provisions of this Agreement;
"Level 2 Programme"	means, in respect of the Works a copy of the Construction Programme relative to such Works which, in accordance with the provisions of paragraph 4.3.1 hereof, has been elaborated upon and marked by Border to indicate the value of each Payment Activity shown on it;
"Payment Activities"	means, in respect of the Works those activities comprised in the Works to be undertaken by Border at the Sites and which shall be separately identified in the Level 2 Programme and the Detailed Breakdown applicable to such Works;

"Progress Report"	shall have the meaning ascribed to it in paragraph 4.4 hereof;
"Provisional Certificate"	shall have the meaning ascribed to it in paragraph 6 hereof;
"Provisional Statement"	shall have the meaning described to it in paragraph 5.2 hereof;
"Senior Lenders' Representative"	means any representative from time to time of the Senior Lenders whose name and address has been or shall be notified in writing to Border by Mansell or the Senior Lenders;
"Site Assessment Meeting"	means a meeting to be convened at the Site by Mansell's Representative within ten (10) Business Days of the Date of Submission of each Interim Payment Application in accordance with the provisions of paragraph 4.6.1 hereof; and
"Supporting Information"	shall have the meaning ascribed to it in paragraph 4.5.4 hereof.

1.3 References in this Schedule 6 to paragraphs and Annexes shall be construed as references to the paragraphs and Annexes of this Schedule 6, unless the context otherwise requires.

2. **Contract Sum**

2.1 Subject to the express provisions of this Agreement, the Contract Sum is declared to be a lump sum for the carrying out and completion of the Works.

2.2 The composition of the Contract Sum shall be more particularly specified in the Detailed Breakdown to be prepared by Border in respect of the Works and submitted to Mansell in accordance with paragraph 4.2.2 hereof.

3. **Terms of Payment of the Contract Sum**

3.1 *Interim Payments*

Mansell shall pay to Border, for Works properly carried out, Interim Payments on account of the Contract Sum agreed or determined in accordance with paragraph 4 hereof.

3.2 *Limit on Cumulative Payments*

The amount payable as an Interim Payment in respect of Work properly carried out by Border at the Sites in any relevant Assessment Period in accordance with paragraph 3.1 above (excluding any additional payment made in respect of VAT and any other amount properly payable by Mansell to Border under this Agreement) when aggregated with previous Interim Payments made on the same basis (subject to the express provisions of this Agreement) shall not exceed the cumulative amounts of the Contract Sum attributed to the period from the date of this Agreement up to and including that Assessment Period as shown in the fourth column of Annex B to this Schedule 6.

4. Calculation of Interim Payments

The procedure for the determination of amounts payable as Interim Payments shall be in accordance with the following:

4.1 *General*

4.1.1 Measurement for payment purposes of the value of the Works properly carried out by Border shall be made (subject to paragraph 4.8) against:

4.1.1.1 the Works properly performed at each Site;

4.1.1.2 the Level 2 Programme for the relevant Works prepared in accordance with paragraph 4.3.1 (which shall, for the purposes of this Schedule 6, be read in conjunction with Annex B to this Schedule 6);

4.1.1.3 the other Supporting Information referred to below and the provisions of this Schedule 6.

4.2 *Valuation of Programme Weighted Activities*

4.2.1 The parties agree that a value for each Payment Activity shown on the Level 2 Programme for the Works shall be specified in the Detailed Breakdown to be prepared and issued by Border in respect of relevant Works in accordance with paragraph 4.2.2 hereof.

4.2.2 Not less than twenty five (25) Business Days prior to the commencement of the Works at each of the Sites, Border shall prepare and deliver to Mansell a Detailed Breakdown (in a form reasonably acceptable to Mansell) attributing a value to each Payment Activity identified in the Level 2 Programme.

4.2.3 Border shall not be entitled to submit Interim Payment Applications to Mansell in respect of Works carried out at any of the Sites unless and until Border has delivered a Detailed Breakdown in respect of such Works to Mansell in compliance with paragraph 4.2.2 hereof.

4.3 *Elaboration of Construction Programme - Level 2 Programmes*

4.3.1 Border shall, not less than twenty five (25) Business Days prior to the commencement of the Payment Activities identified in each Level 2 Programme, submit to Mansell for their approval (which approval shall not be unreasonably withheld or delayed) a copy of the Construction Programme which Border shall have elaborated upon in sufficient detail to identify the Payment Activities in the Works and upon which Border shall have marked the value of each Payment Activity shown in such Construction Programme (the "**Level 2 Programmes**"). In respect of any Payment Activity for which a value stated in the Level 2 Programme has been calculated by reference to the area of the relevant Site which is the subject of the relevant Payment Activity (e.g. paintwork and finishes), the Level 2 Programme shall specify the rate per square metre applicable thereto and, without prejudice to paragraphs 4.4, 4.5 and 4.6 hereof, each Progress Report submitted by Border pursuant to paragraph 4.4 hereof shall include Border's assessment of the area completed by it within the relevant Site during the Assessment Period which is the subject of an Interim Payment Application.

4.3.2 Border shall take account of any reasonable written representations made by Mansell (as appropriate) in relation to each Level 2 Programme submitted to them by Border as aforesaid.

4.4 *Ascertainment of Actual Progress - Progress Reports*

At least 3 Business Days before the Assessment Date Border shall prepare and submit or cause to be prepared and submitted to Mansell's Representative and the Contract Valuer (if different) a written report (in a form reasonably acceptable to Mansell's Representative) containing Border's assessment of his progress during the immediately preceding Assessment Period against each Payment Activity (each of which reports are herein referred to as a "**Progress Report**").

4.5 *Application for Interim Payments*

4.5.1 Subject as aforementioned, from and after the date of this Agreement, Border may make application to Mansell (by means of Interim Payment Applications) for Interim Payments by reference to the percentage of each Payment Activity which has been completed by Border during the relevant Assessment Period.

4.5.2 Subject as aforesaid, Interim Payment Applications shall be submitted in accordance with this paragraph 4.5 hereof.

4.5.3 Without prejudice to paragraph 4.6 hereof, Border shall be entitled to submit its Interim Payment Application(s) to Mansell's Representative and the Contract Valuer (if different) at any time prior to the date which is 3 Business Days before the end of the Assessment Period to which such Interim Payment Application(s) relate, failing which the same shall be deemed to have been submitted on or before the date which is 3 Business Days before the next following Assessment Date.

4.5.4 In order to be validly submitted for the purposes of this Schedule 6, each Interim Payment Application to be submitted by Border to Mansell's Representative and the Contract Valuer (if different) shall be accompanied by:

4.5.4.1 a copy of the Progress Report relative to the relevant Assessment Period;

4.5.4.2 a copy of the relevant Level 2 Programme(s) (duly marked by Border to indicate its reasonable assessment of the percentage of each Payment Activity completed by it during the relevant Assessment Period); and

4.5.4.3 such other relevant data as may reasonably be required in order to substantiate that Border's programme status is consistent with the amount claimed by Border in the relevant Interim Payment Application,

(which foregoing items listed in this paragraph 4.5.4 are collectively herein referred to as the "**Supporting Information**").

4.6 *Interim Payment Assessment Procedure*

4.6.1 With effect from the Assessment Date of each Interim Payment Application provided that Border has complied with the provisions of paragraph 4.5 above the following shall occur:

4.6.1.1 [Not used].

4.6.1.2 within a period of seven (7) Business Days following the relevant Assessment Date the Contract Valuer shall prepare and submit to Mansell its Assessment Report in relation to such Interim Payment Application;

4.6.1.3 not later than fifteen (15) Business Days after the Assessment Date of the relevant Interim Payment Application, Mansell shall deliver, or cause to be delivered, to Border:

4.6.1.3.1 a copy of the relevant Assessment Report (which may incorporate any amendments or comments of Mansell's Representative); and

4.6.1.3.2 notice of the Site Assessment Meeting to be held to review and discuss, amongst other things, the progress of the Works, the relevant Interim Payment Application and the relevant Assessment Report (which meeting shall be held no later than fifteen (15) Business Days after the Assessment Date);

4.6.1.4 at each Site Assessment Meeting the parties' representatives present (who may include the Contractor's Representative, the Senior Lender's Representative or the Authorities' Representative) shall inter alia:

4.6.1.4.1 discuss and approve the minutes of the previous Site Assessment Meeting (if any);

4.6.1.4.2 discuss progress made as at the relevant Assessment Date in relation to all aspects of the Works;

4.6.1.4.3 discuss the relevant Interim Payment Application(s);

4.6.1.4.4 discuss the relevant Assessment Report(s);

4.6.1.4.5 discuss the omission of the value of any work which is not in accordance with this Agreement; and

4.6.1.4.6 undertake an inspection of the Works or any part thereof (as required),

and the business of each Site Assessment Meeting will be formally recorded in a minute to be prepared by the Contractor's Representative or Mansell's Representative and issued to Border as soon as reasonably practicable thereafter;

4.6.1.5 Mansell's Representative shall within five (5) Business Days after each Site Assessment Meeting determine the sum properly due to Border in respect of the relevant Assessment Period taking into account:

4.6.1.5.1 the content of the relevant Interim Payment Application(s);

4.6.1.5.2 the Supporting Information submitted by Border relative thereto;

4.6.1.5.3 the content of the relevant Assessment Report(s);

4.6.1.5.4 the outcome of the relevant Site Assessment Meeting (including the outcome of any inspection of the Works undertaken by or on behalf of Mansell); and

4.6.1.5.5 [Not used];

and where Mansell's Representative determines (acting reasonably) that any sum or sums is or are properly payable to Border under this Agreement Mansell's Representative shall issue an Interim Payment Certificate for such sum or sums to Border provided that:

4.6.1.5.5 Mansell's Representative may exclude particular sums from the relevant Interim Payment Certificate until Mansell's Representative is satisfied (acting reasonably) that Border has satisfied the conditions (if any) set against payment of such sums in terms of the relevant Interim Payment Certificate and as required by this Agreement;

4.6.1.5.6 Mansell's Representative shall have power to omit from any Interim Payment Certificate proposed to be issued by it the value of any work done, materials supplied or services rendered not in accordance with this Agreement and for that purpose or for any other fair and proper reason may by an Interim Payment Certificate delete, correct or modify any sum previously included in an Interim Payment Certificate issued by it provided always that prior to such omission, deletion, correction or modification, Mansell's Representative shall give to Border a written statement as to any such amounts omitted, with reasons for such omission; and

4.6.1.5.7 Mansell's Representative shall be entitled to withhold issue of the Interim Payment Certificate until the Senior Lender's Representative has approved such Interim Payment Certificate or the entitlement to the amounts such interim Payment Certificate has been established under the Project Agreement (subject to clauses 4 and 13 of the Building Contract and clauses 4 and 13 of this Agreement) as appropriate depending on the source of funds for the Works covered by the said Interim Payment Certificate), provided that Mansell shall procure that the Senior Lender's Representative shall approve such Interim Payment Certificate where the Works to which the Interim Payment Certificate relate have been properly carried out in accordance with this Agreement; and

4.6.1.6 within a period of five (5) Business Days following the issue of the Interim Payment Certificate(s) as aforesaid, Mansell shall make payment of the Interim Payment(s) specified therein to Border and Border shall deliver to Mansell a duly receipted VAT invoice therefor addressed to Mansell.

4.6.2 The cumulative amount certified for payment for the Works in the Interim Payment Certificate(s) (excluding any additional payment made in respect of any VAT and any other amount properly payable by Mansell to Border under this Agreement) shall not, at any time, exceed the maximum cumulative amount in respect of construction payments for the relevant Assessment Period as identified in the fourth column of Annex B to this Schedule 6.

4.6.3 Mansell may in any Interim Payment Certificate make any correction or modification that should properly have been made in respect of any previous Interim Payment Certificate.

- 4.6.4 Where in this Agreement it is provided that an amount is to be added to or deducted from the Contract Sum or dealt with by adjustment of the Contract Sum, then as soon as such amount is ascertained in whole or in part such amount shall be taken into account in the next Interim Payment Certificate to be issued following such whole or partial ascertainment.
- 4.6.5 Border shall allow Mansell's Representative access during normal Business Hours to all such Supporting Information as Mansell's Representative may reasonably require for the purpose of satisfying himself that the sum claimed by Border in any Interim Payment Application is an amount to which Border is entitled under this Agreement.
- 4.6.6 Notwithstanding the other provisions of this Schedule 6, Interim Payments shall not become due and payable to Border under this Agreement unless and until Mansell or Mansell's Representative issues an Interim Payment Certificate to Border in respect of the same pursuant to paragraph 4.6 hereof.

4.7 *Activities undertaken ahead of Programme*

For the purpose of calculating Interim Payments, achieved progress against any Payment Activity will be counted towards the accumulated progress provided that the accumulated value of the Works carried out at the Sites (excluding the value of any additional payment made in respect of any VAT and any other amount properly payable by Mansell to Border under this Agreement) to the end of the relevant Assessment Period does not exceed the cumulative amount attributed to the relevant Assessment Period as shown in the fourth column of Annex B to this Schedule 6. Without prejudice to the foregoing, where materials are delivered to Site (but not yet incorporated into the Works) Border shall, where the accumulated value of the Work carried out at the Sites (excluding the value of any additional payment made in respect of any VAT and any other amount properly payable by Mansell to Border under this Agreement) to the end of an Assessment Period does not exceed the cumulative amount attributed to the relevant Assessment Period as shown in the fourth column of Annex B to this Schedule 6 be entitled to include in its Interim Payment Application for such Assessment Period the cost of any materials delivered to the Site incurred by Border prior to or during the relevant Assessment Period provided that the amount of such cost when added to the accumulated value of the other work carried out at the Sites (excluding the value of any additional payment made in respect of any VAT and any other amount properly payable by Mansell to Border under this Agreement) to the end of the relevant Assessment Period does not exceed the cumulative amount attributed to the relevant Assessment Period as shown in the fourth column of Annex B to this Schedule 6.

4.8 *Design Costs and Materials on Site*

If Border wishes design costs, cost of materials delivered to any Site, and/or other preliminary or advance payments to be included in any Interim Payment, such costs must be incorporated into and shown as a separate Payment Activity in each Level 2 Programme.

4.9 *Changes*

Without prejudice to the provisions of clauses 6014 (Design Development), 15 (Changes to the Construction Proposals and the Construction Programme) and 60 (Authority, Contractor, Mansell and Border Changes) of this Agreement, if Border is required to carry out a Change in accordance with clauses 6014 (Design Development), 15 (Changes to the Construction Proposals and the Construction Programme) and 60 (Authority, Contractor, Mansell and Border Changes) of this Agreement, Border shall add to the Construction Programme (and its corresponding Level 2 Programme) the period for completing the relevant Change together with (in the case of the relevant Level 2 Programme) a value

apportioned to such Change and submit the same to Mansell's Representative for his approval. Payment in respect of the Change shall then proceed in accordance with paragraphs 4.6, 4.7 and 4.8 hereof.

4.10 *Insurance Reinstatement Works*

The following provisions of this paragraph 4.10 shall apply in respect of payment for Insurance Reinstatement Works:

4.10.1 Mansell shall determine whether to follow the options in paragraphs 4.10.2.1 or 4.10.2.2 (where applicable) below on the occurrence of an event indemnified under the Required Insurances.

4.10.2 If:

4.10.2.1 Mansell proposes a Mansell Change pursuant to clause 65.1.3 and confirms Border's Estimate in respect of that Mansell Change in accordance with clause 60 (Authority, Contractor, Mansell and Border Changes) ; or

4.10.2.2 a Reinstatement Plan is adopted pursuant to clause 65.6.4,

then Border shall procure the carrying out of the Insurance Reinstatement Works and the Relevant Proceeds shall be applied to finance such Insurance Reinstatement Works. Otherwise Mansell shall instruct Border as to how to proceed.

4.10.3 From time to time in the course of executing the Insurance Reinstatement Works Border may make applications for payment to Mansell by reference to the value of the Insurance Reinstatement Works which have been completed by Border.

4.10.4 The payment application procedure set out in paragraph 4.6 of this Schedule 6 shall apply mutatis mutandis to any application for payment made pursuant to paragraph 4.10.3 of this Schedule 6, save that:

4.10.4.1 Annex B of this Schedule 6 shall not apply and the Assessment Date shall be the date any Interim Payment Application in respect of the Insurance Reinstatement Works is issued to Mansell; and

4.10.4.2 Border is not required to produce a Level 2 Programme, or equivalent, but shall provide such information in support of its applications for payment as Mansell and/or a representative of the insurer may reasonably require.

4.10.5 Within a period of 10 Business Days following the issue of an Interim Payment Certificate for sums due in respect of Insurance Reinstatement Works (the expiry of such period being the final date for such payment for the purposes of Annex C to this Schedule 6) Mansell shall make payment of the amount specified therein to Border and Border shall deliver to Mansell a duly receipted VAT invoice therefor addressed to Mansell.

5. **Final Certificate & Provisional Certificates**

5.1 The following provisions of this paragraph 5.1 shall apply to the issue of a Final Certificate in respect of the Works:

5.1.1 Not earlier than the date of expiry of the Defects Liability Period for the relevant Station or phase of Post Completion Works (as the case may be), Border shall submit to Mansell a statement of final account for the same together with supporting

documentation showing in sufficient detail the value which Border considers to be due to it under and in accordance with this Agreement, up to the Services Availability Date for the relevant Station and in the case of Post Completion Works, up to the relevant Post Completion Works Acceptance Date.

- 5.1.2 Within three (3) months and seven (7) days after receipt of each statement of final account referred to above and of all information reasonably required by Mansell or Mansell's Representative for its verification, Mansell's Representative shall issue a Final Certificate stating the Contract Sum and any other sums due under this Agreement in respect of such Station or the relevant phase of Post Completion Works (as the case may be) less all amounts previously paid by Mansell and less all sums to which Mansell is entitled under this Agreement up to the relevant Services Availability Date or Post Completion Works Acceptance Date and stating the balance, if any, due from Mansell to Border or from Border to Mansell as the case may be.
- 5.1.3 Mansell's Representative shall be entitled to withhold issue of a Final Certificate until the Senior Lender's Representative or the Authorities' Representative (as appropriate depending on the source of funds for the Works covered by the said Final Certificate) and the Contractor's Representative has approved such Final Certificate, provided that Mansell shall procure that the Senior Lender's Representative or the Authorities' Representative (as appropriate) and the Contractor's Representative shall approve such Final Certificate where the Works to which the Final Certificate relate have been properly carried out in accordance with this Agreement.
- 5.1.4 The balance of any payment shall be paid to Border and the balance of any over-payment shall be paid by Border to Mansell, in either case within twenty five (25) Business Days of the date of issue of the relevant Final Certificate by Mansell's Representative.
- 5.1.5 Subject to paragraphs 5.1.3 and 5.1.4 hereof, each Final Certificate shall have effect in any proceedings arising out of or in connection with this Agreement (whether by expert determination, adjudication or otherwise) as:
 - 5.1.5.1 conclusive evidence that any necessary effect has been given to all terms of this Agreement which require that an amount is to be added to or deducted from the Contract Sum or an adjustment is to be made to the Contract Sum save where there has been any accidental inclusion or exclusion of any work, services, materials or figure in any computation or any arithmetical error in any computation, in which event such Final Certificate shall have effect as conclusive evidence as to all other computations; and
 - 5.1.5.2 conclusive evidence that all and any such extensions of time, as are due under this Agreement have been given; and
 - 5.1.5.3 save in relation to clause 58 (Relief Events), conclusive evidence that the reimbursement of direct loss and/or expense, if any, to Border pursuant to this Agreement is in final settlement of all and any claims which Border has or may have for breach of contract, duty of care, or statutory duty arising under this Agreement or otherwise in relation to the Works.
- 5.1.6 If any proceedings have been commenced by either party in respect of the Works comprised in a Station or a phase of Post Completion Works before the associated Final Certificate has been issued such Final Certificate shall have effect as conclusive evidence as provided in this paragraph 5.1 after either:

5.1.6.1 such proceedings have been concluded, whereupon the relevant Final Certificate shall be subject to the terms of any award or judgment in or settlement of such proceedings; or

5.1.6.2 a period of 2 months and 21 days during which Border has not taken any further step in such proceedings followed by a period of 14 days during which Mansell has not taken any further steps in such proceedings, whereupon the Final Certificate shall be subject to any terms agreed in partial settlement;

whichever shall be the earlier.

5.1.7 If the proceedings referred to in paragraphs 5.1.5 and 5.1.6 have been commenced by Border within twenty five (25) Business Days or by Mansell within 35 Business Days after the relevant Final Certificate has been issued, such Final Certificate shall have effect as conclusive evidence as provided in paragraph 5.1.5 hereof save only in respect of all matters to which those proceedings relate.

5.1.8 Each Final Certificate issued by Mansell's Representative in respect of the Works shall, when grouped together and provided with a summary sheet, be deemed to be the single Final Certificate for the purposes of the Works.

5.2 Subject and without prejudice to paragraph 5.1 hereof, within one (1) month and twenty one (21) days following the date of expiry of the Defects Liability Period applicable to the relevant Works, Border shall be entitled to submit to Mansell a provisional statement of final account in respect of such Works (the "**Provisional Statement**") together with supporting documentation showing in sufficient detail the value which Border considers to be due to it under and in accordance with this Agreement up to the Service Availability Date in respect of the relevant Station or up to the Post Completion Works Acceptance Date in respect of the relevant Post Completion Works (as the case may be).

6. As soon as reasonably practicable after receipt of each Provisional Statement referred to in paragraph 5.2 and of all information reasonably required by Mansell or Mansell's Representative for its verification, Mansell's Representative shall issue a provisional, non-binding, statement (a "**Provisional Certificate**") stating Mansell's assessment of the proportion of the Contract Sum attributable to such Works less all amounts previously paid by Mansell in respect of such Works and less all sums to which Mansell is entitled under this Agreement in respect of such Works up to the relevant Service Availability Date or Post Completion Works Acceptance Date as the case may be and including a provisional, non-binding, statement of the balance, if any, due from Mansell to Border or from Border to Mansell as the case may be in respect of such Works, provided that no payment shall be made to or by either party except in accordance with paragraph 5.1 hereof following the issue of the relevant Final Certificate.

7. Retention

- 7.1 Notwithstanding any other provision of this Agreement Mansell shall be entitled to deduct three percent (3%) from any payments otherwise due to Border under this Agreement and to hold such sum ("the Retention") until it is released to Border pursuant to the following provisions of this paragraph 7.
- 7.2 On the date on which the final Services Availability Date has occurred Mansell shall release half of the Retention to Border.
- 7.3 Within 25 days of the issue of the final Final Certificate (or if later on the "Expiry Date" as defined in any retention bond provided by Mansell to the Contractor pursuant to the Building Contract) Mansell shall release the remainder of the Retention to Border.
- 7.4 For the avoidance of doubt Mansell shall at any time be entitled to deduct from the Retention any sum which under the other provisions of this Agreement: Mansell is entitled to receive from Border but which has not been paid by Border when due; or Mansell is entitled to deduct or withhold from payments due to Border.
- 7.5 For the avoidance of doubt Mansell's interest in the Retention shall not be fiduciary either as trustee for Border or for any other person or in any other capacity; the relationship of Mansell and Border with regard to the Retention shall solely be that of debtor and unsecured creditor subject to the terms of this Agreement and Mansell shall have no obligation to invest the Retention of any part of it.

Annexes:

Annex A - Interim Payment Certificate

Annex B - Schedule of Cumulative Payments

Annex C - Housing Grants, Construction & Regeneration Act

Annex D - Utilities

Annex A - draft Interim Payment Certificate

[TO BE TYPED ON MANSELL NOTEPAPER]

To:

[Border]

Our ref:

Date:

INTERIM PAYMENT CERTIFICATE

No:

Assessment Period :

Contract Details:	<input type="checkbox"/>
Mansell:	<input type="checkbox"/>
Border:	<input type="checkbox"/>
Date of Contract:	[] [] 200[<input type="checkbox"/>

Works: []

Interim Payment Application details:
Border reference no:
Assessment Period applied for:
Date of Submission:
Amount claimed (exclusive of VAT): £

Date of Site Assessment Meeting:
Gross Valuation (as at Assessment Date): £
Less Amount previously certified (exclusive of VAT): £
Balance due for payment (exclusive of VAT): £
Add VAT @ 20% £
Total Interim Payment in respect of Assessment Period: £

For the purposes of the above Contract, as Mansell's Representative, I hereby certify the Interim Payment for the Assessment Period of to be the sum of £ (inclusive of VAT).

Signed:
Mansell's Representative

Annex B - Schedule of Cumulative Payments

Number	Assessment Date	Interim Payment	Cumulative Interim Payment
1	25-Mar-11	323,520.81	323,520.81
2	29-Apr-11	135,191.83	658,712.64
3	27-May-11	1,528,172.48	1,786,885.12
4	24-Jun-11	285,070.33	2,271,955.45
5	29-Jul-11	956,059.34	3,228,014.79
6	26-Aug-11	696,451.03	3,924,465.81
7	30-Sep-11	978,542.81	4,903,008.62
8	28-Oct-11	998,043.30	5,901,051.93
9	25-Nov-11	953,105.11	6,854,157.04
10	30-Dec-11	862,893.29	7,717,050.33
11	27-Jan-12	833,132.44	8,550,182.77
12	24-Feb-12	452,476.61	9,002,659.38
13	30-Mar-12	539,589.27	9,542,248.65
14	27-Apr-12	502,346.98	10,044,595.63
15	25-May-12	559,697.47	10,604,293.09
16	29-Jun-12	365,802.01	10,970,095.10
17	27-Jul-12	171,946.92	11,142,042.03
18	31-Aug-12	134,717.59	11,276,759.61
19	28-Sep-12	258,040.38	11,534,800.00
20	26-Oct-12	377,176.90	11,911,976.89
21	30-Nov-12	568,678.41	12,480,655.31
22	28-Dec-12	304,494.42	12,785,149.73
23	25-Jan-13	259,167.09	13,044,316.81

24	22-Feb-13	52,237.10	13,096,553.91
25	28-Mar-13	23,163.02	13,119,716.93

Annex C - Housing Grants, Construction & Regeneration Act

1. General

1.1 References in this Schedule 6 Annex C to a section of the Act are references to such section of the Housing Grants, Construction and Regeneration Act 1996.

1.2 References in this Schedule 6 Annex C to a paragraph are references to such paragraph of this Annex.

2. Payment

2.1 For the purposes of Section 110(1) of the Act, the final dates for payments of any sums becoming due in respect of any Interim Payment Certificate under this Agreement shall be the date for payment set out in paragraph 4.6.1.6 of this Schedule 6.

2.2 Each party to this Agreement from whom a payment becomes due under this Agreement shall give notice to the other party to whom the payment is due not later than five days after the date on which the payment becomes due, or would have become due if:

2.2.1 the other party had carried out his obligations under this Agreement; and

2.2.2 no set-off or abatement were permitted by reference to any sum claimed to be due under one or more other contracts,

specifying the amount (if any) of the payment made or proposed to be made, and the basis on which that amount is calculated.

2.3 No party to this Agreement may withhold payment after the final date for payment of a sum due under this Agreement unless he has given an effective notice of intention to withhold payment, provided that:

2.3.1 the notice mentioned in paragraph 2.2 may suffice as a notice of intention to withhold payment if it complies with the following requirements; and

2.3.2 to be effective such notice must specify the amount proposed to be withheld and the ground for withholding payment (or if there is more than one ground, each ground and the amount attributable to each),

and must be given not later than two (2) days before the final date for payment ascertained in accordance with paragraph 2.1

3. Reckoning of Time

For the purposes of this Schedule 6 (Payment Provisions) and Schedule 12 (Parallel Loan Agreement), time shall be reckoned in accordance with Section 116(1) of the Act.

Annex D – Utilities

1 For the purposes of this Annex D only, the following definitions shall apply:

"Consumption Target" means the targets for the consumption of Utilities detailed in the table at paragraph 3 to this Annex D; and

"Utility" means any gas, electricity and water supplies (including foul water and surface drainage services) provided at the Stations and **"Utilities"** shall be construed accordingly.

2 During the Initial Period for each Station the Contractor shall procure that the actual consumption of Utilities shall be monitored by the FM Contractor in accordance with the procedure set out in Schedule 6 (Payment Mechanism) to the Project Agreement with a view to establishing the actual consumption of Utilities during the Initial Period and ascertaining whether and to what extent the actual consumption of Utilities during the Initial Period is in excess of the Consumption Target.

3 For the purpose of this Annex D the Consumption Target for each Utility shall be:

	<u>Units</u>	<u>Cumbria Stations</u>				
		<u>Carlisle East</u>	<u>Carlisle West</u>	<u>Patterdale</u>	<u>Penrith</u>	<u>Workington</u>
<u>Area</u>	<u>(m²)</u>	<u>1259.6</u>	<u>563.35</u>	<u>167.3</u>	<u>2622</u>	<u>1259.6</u>
<u>Gas Consumption Benchmark Estimate</u>	<u>(kWh/m²)</u>	<u>107</u>	<u>107</u>	<u>0</u>	<u>63.6</u>	<u>107</u>
<u>Total Annual Gas Consumption Estimate</u>	<u>(kWh)</u>	<u>134777</u>	<u>60278</u>	<u>0</u>	<u>166759</u>	<u>134777</u>
<u>Electricity Consumption Benchmark Estimate</u>	<u>(kWh/m²)</u>	<u>169.4</u>	<u>169.4</u>	<u>104.9</u>	<u>124.1</u>	<u>169.4</u>
<u>Total Annual Electricity Consumption Estimate</u>	<u>(kWh)</u>	<u>213376</u>	<u>95431</u>	<u>17550</u>	<u>325390</u>	<u>213376</u>
<u>Water Consumption Benchmark Estimate</u>	<u>(m³/m²/yr)</u>	<u>0.78</u>	<u>0.78</u>	<u>0.02</u>	<u>0.50</u>	<u>0.78</u>
<u>Total Annual Water Consumption Estimate</u>	<u>(m³)</u>	<u>982</u>	<u>439</u>	<u>3</u>	<u>1308</u>	<u>982</u>

<u>Estimated Carbon Dioxide Emissions</u>	<u>(kgCO₂)</u>	<u>140876</u>	<u>63006</u>	<u>9547</u>	<u>207696</u>	<u>140876</u>
<u>Estimated Carbon Emissions</u>	<u>(kgC)</u>	<u>38332</u>	<u>17144</u>	<u>2597</u>	<u>56512</u>	<u>38332</u>
<u>Estimated Annual Cost of Gas</u>	<u>(£)</u>	<u>£5,067.33</u>	<u>£3,422.40</u>	<u>£0.00</u>	<u>£5,773.49</u>	<u>£5,067.33</u>
<u>Estimated Annual Cost of Electricity</u>	<u>(£)</u>	<u>£17,326.15</u>	<u>£7,749.04</u>	<u>£1,425.04</u>	<u>£26,421.68</u>	<u>£17,326.15</u>

4. If the monitoring carried out by the FM Contractor pursuant to paragraph 2 of this Annex D provides any indication that the actual consumption of Utilities during the Initial Period is in excess of the Consumption Target, the parties shall investigate the matter to determine the cause of such excess either in the manner agreed between them or in such manner as may be determined in accordance with clause 67 (Dispute Resolution).
5. If following any investigation pursuant to paragraph 4 above it is agreed between the parties that any breach of a Consumption Target arises then, to the extent this is as a consequence of the design and construction of the Stations by Border, Border shall compensate Mansell to the extent (and 3 Business Days before the times) that Mansell is obliged under the Building Contract to compensate the Contractor for any costs, losses or expenses incurred by the Contractor during the Initial Period as a result of such breach.
6. For the avoidance of doubt, any compensation payable by Border to Mansell in accordance with paragraph 5 shall be on a lump sum basis and not an instalment basis.

Schedule 7
[NOT USED]

Schedule 8

REVIEW PROCEDURE

1 REVIEW PROCEDURE

- 1.1 The provisions of this Schedule shall apply whenever any item, documents or course of action are required to be reviewed, approved or otherwise processed in accordance with the Review Procedure.
- 1.1A Border acknowledges and agrees that Mansell shall consult certain third parties in order to formulate its comments on any Submitted Item supplied by Border and that (without prejudice to clause 91A.1.2) Mansell may incorporate comments from such parties in any comments which Mansell supplies to Border in respect of a Submitted Item.
- 1.2 Each submission under the Review Procedure shall be accompanied by a copy of the document to be reviewed (including, where applicable, any Reviewable Design Data) or a statement of the proposed course of action (the entire contents of a submission being referred to in the Schedule as a **“Submitted Item”**). In relation to each Submitted Item, the following procedure shall apply:
 - 1.2.1 Border shall procure that each item of Reviewable Design Data is provided to Mansell’s Representative not less than thirty (30) Business Days prior to the date that the activity or work that is the subject of the Reviewable Design Data is due to occur;
 - 1.2.2 as soon as possible and, if the Submitted Item comprises:
 - (a) an item of Reviewable Design Data;
 - (b) a revised Construction Programme; or
 - (c) a document or proposed course of action submitted in the case of an emergency;
 - 1.2.3 within twenty (20) Business Days of the date of receipt of a submission (or re-submission, as the case may be) of the Submitted Item to Mansell’s Representative (or such other period as the parties may agree), Mansell’s Representative shall return one (1) copy of the relevant Submitted Item to Border endorsed “no comment” or (subject to and in accordance with paragraph 1.3) “comments” as appropriate; and
 - 1.2.4 if Mansell’s Representative fails to return a copy of any Submitted Item (including any re-submitted Submitted Item) duly endorsed in accordance with paragraph 1.2, within twenty (20) Business Days (or within such other period as the parties may agree in writing) of the date of its submission to Mansell’s Representative, then Mansell’s Representative shall be deemed to have returned the Submitted Item to Border endorsed “no comment” (and, in the case of the Reviewable Design Data, endorsed “Level A - no comment”).
- 1.3 If Mansell’s Representative raises comments on any Submitted Item in accordance with this paragraph 1.3 he shall state the ground upon which such comments are based and the evidence or other information necessary to substantiate that ground. To the extent that Mansell’s Representative comments on a Submitted Item other than on the basis set out in this Schedule, or fails to comply with the provisions of this paragraph, Border may, in its discretion, either:

- 1.3.1 request written clarification of the basis for such comments and, if clarification is not received within ten (10) Business Days of such request by Border, refer the matter for determination in accordance with the Dispute Resolution Procedure; or
- 1.3.2 at its own risk, and without prejudice to clause 14 (Design Development) proceed with further design or construction disregarding such comments.

2 FURTHER INFORMATION

2.1 Border shall submit any further or other information, data and documents that Mansell's Representative reasonably requires in order to determine whether he has a basis for raising comments or making objections to any Submitted Item in accordance with this Schedule. If Border does not submit any such information, data and documents, Mansell's Representative shall be entitled to:

- 2.1.1 comment on the Submitted Item on the basis of the information, data and documents which have been provided; or
- 2.1.2 object to the Submitted Item on the grounds that insufficient information, data and documents have been provided to enable Mansell's Representative to determine whether he has a legitimate basis for commenting or objecting in accordance with this Schedule.

3 GROUNDS OF OBJECTION

3.1 The expression "raise comments" in this paragraph shall be construed to mean "raise comments or make objections" unless the contrary appears from the context. Mansell's Representative may raise comments in relation to any Submitted Item on the grounds set out in the paragraph above or on the grounds that the Submitted Item would (on the balance of probabilities) breach any Law or not be in accordance with any necessary consent, but otherwise may raise comments in relation to a Submitted Item only as follows:

3.1.1 in relation to any Submitted Item:

- (a) Mansell's ability to perform its obligations under this Agreement or the Project Building Contract and/or the Contractor's ability to perform its obligations under the Building Contract or the Project Agreement or the Authorities' ability to perform its obligations under the Project Agreement would (on the balance of probabilities) be adversely affected by the implementation of the Submitted Item; or
- (b) the implementation of the Submitted Item would (on the balance of probabilities) adversely affect any right of Mansell under this Agreement or the Building Contract and/or the Contractor under the Building Contract or the Project Agreement and/or the Authorities under the Project Agreement or any of their abilities to enforce any such right;
- (c) the Submitted Item has been submitted in breach of the requirements of this Agreement or the implementation of the Submitted Item would result in Border committing a breach of the requirements of this Agreement.

3.1.2 in relation to any Submitted Item submitted pursuant to clause 7 (Documents and Co-operation):

- (a) Mansell's ability to perform its obligations under this Agreement or the Building Contract and/or the Contractor's ability to perform its obligations under the Building Contract or the Project Agreement and/or the Authorities' ability to perform its

obligations under the Project Agreement would be adversely affected by the proposed course of action;

- (b) the Authorities' ability to provide the Fire and Rescue Services or to carry out any of their statutory functions would (on the balance of probabilities) be adversely affected by the proposed course of action;
- (c) the proposed course of action would be likely to result in an increase to Mansell's liabilities or potential or contingent liabilities under this Agreement or the Building Contract and/or the Contractor's liabilities or potential contingent liabilities under the Building Contract or the Project Agreement and/or the Authorities' liabilities or potential or contingent liabilities under the Project Agreement;
- (d) the proposed course of action would adversely affect any right of Mansell under this Agreement or the Building Contract and/or the Contractor under the Building Contract or the Project Agreement and/or the Authorities under the Project Agreement or either's ability to enforce any such right;
- (e) Border's ability to perform its obligations under this Agreement or Mansell's ability to perform its obligations under the Building Contract would be materially adversely affected by the proposed course of action;
- (f) the proposed course of action would reduce any cap on any indemnity in this Agreement or the Building Contract; or
- (g) the proposed course of action would be likely to significantly reduce the direct or indirect liabilities of Border, Mansell or FM Contractor,

3.1.3 in relation to Reviewable Design Data submitted pursuant to clause 14 (Design Development):

- (a) the Submitted Item is not in accordance with Schedule 1; or
- (b) the Submitted Item is not in accordance with the Construction Proposals.

3.1.4 in relation to any proposed variation to the Construction Proposals relating to the Works:

- (a) the Submitted Item would increase the likelihood of deductions being made pursuant to clause 37 (Payment Provisions) and Schedule 6 (Payment Mechanism) to the Project Agreement following the relevant Services Availability Date;
- (b) would result in a decrease or worsening of the quality of the Sites following the relevant Services Availability Date; or
- (c) save where such proposed variation is necessitated due to a Qualifying Change in Law a Compensation Event or a Mansell Change, would lead to an increase in the Unitary Charge;

3.1.5 in relation to the submission of any revised Construction Programme on the ground that the revised Construction Programme:

- (a) would not (on the balance of probabilities) enable any part of the Works to be completed by the relevant Planned Services Availability Date;
- (b) would materially increase the cost or disruption to Mansell or the Authorities of any decanting from or within an Existing Station;

- (c) would materially increase the disruption to the provision of Fire and Rescue Services by the Authorities; or
- (d) would render Mansell, the Contractor or the Authorities unable to comply with the Decant Protocol without material additional expense or disruption.;

4 EFFECT OF REVIEW

4.1 Any Submitted Item which is returned or deemed to have been returned by Mansell's Representative endorsed "no comment" (and in the case of Reviewable Design Data, endorsed "Level A - no comment") may be complied with or implemented (as the case may be) by Border.

4.2 In the case of any Submitted Item other than Reviewable Design Data, if Mansell's Representative returns the Submitted Item to Border endorsed "comments", Border shall comply with such Submitted Item after amendment in accordance with the comments unless Border disputes that any such comment is on grounds permitted by this Agreement, the Building Contract or the Project Agreement, in which case Border or Mansell's Representative may refer the matter for determination in accordance with clause 67 (Dispute Resolution).

4.3 In the case of a Submitted Item comprising Reviewable Design Data, if Mansell's Representative returns the Submitted Item endorsed other than "Level A - no comment", Border shall:

4.3.1 where Mansell's Representative has endorsed the Submitted Item "Level B - proceed subject to amendment as noted", either proceed to construct or proceed to the next level of design of the part of the Works to which the Submitted Item relates but take into account any amendments required by Mansell's Representative in his comments;

4.3.2 where Mansell's Representative has endorsed the Submitted Item "Level C - subject to amendment as noted", not act upon the Submitted Item, amend the Submitted Item in accordance with Mansell's Representative's comments and re-submit the same to Mansell's Representative in accordance with paragraph 4.4;

4.3.3 where Mansell's Representative has endorsed the Submitted Item "Level D - rejected" not act upon the Submitted Item, amend the Submitted Item and re-submit the Submitted Item to Mansell's Representative in accordance with paragraph 4.4,

unless Border disputes that any such comment or proposed amendment is on grounds permitted by this Agreement, the Building Contract or the Project Agreement, in which case Border or Mansell's Representative may refer the matter for determination in accordance with the Dispute Resolution Procedure and, save as permitted by the provisions of clause 14.3, Border shall not act on the Submitted Item until such matter is so determined or otherwise agreed.

4.4 Within five (5) Business Days of receiving the comments of Mansell's Representative on any Submitted Item comprising Reviewable Design Data, Border shall (except in the case contemplated in paragraph 4.3.1) send a copy of the Submitted Item as amended to Mansell's Representative pursuant to paragraph 4.3 and the provisions of paragraphs 1.2.1, 4.1 and 4.3 shall apply (changed according to context) to such re-submission.

- 4.5 The return or deemed return of any Submitted Item endorsed "no comment" (or in the case of Reviewable Design Data endorsed "Level A - no comment" or otherwise endorsed in accordance with paragraphs 4.3.1 or 4.3.2) shall mean that the relevant Submitted Item may be used or implemented for the purposes for which it is intended but, save to the extent expressly stated in this Agreement such return or deemed return of any Submitted Item shall not otherwise relieve Border of its obligations under this Agreement nor is it an acknowledgement by Mansell that Border has complied with such obligations.

5 DOCUMENT MANAGEMENT

- 5.1 Border shall issue four (4) copies of all Submitted Items to Mansell's Representative and compile and maintain a register of the date and contents of the submission of all Submitted Items.
- 5.2 Border shall compile and maintain a register of the date or receipt and content of all Submitted Items that are returned or deemed to be returned by Mansell's Representative.
- 5.3 No review, comment or approval by Mansell shall operate to exclude or limit Border's obligations or liabilities under this Agreement (or Mansell's rights under this Agreement).

6 VARIATIONS

- 6.1 No approval or comment or any failure to give or make an approval or comment under this Schedule shall constitute a Mansell Change save to the extent provided in this Schedule.
- 6.2 If, having received comments from Mansell's Representative, Border considers that compliance with those comments would amount to a Mansell Change, Border shall, before complying with the comments, notify Mansell of the same and, if it is agreed by the parties or determined pursuant to the Dispute Resolution Procedure that a Mansell Change would arise if the comments were complied with, Mansell may, if it wishes, implement Mansell Change and it shall be dealt with in accordance with clause 60 (Authority, Contractor, Mansell and Border Changes). Any failure by Border to notify Mansell that it considers compliance with any comments of Mansell's Representative would amount to a Mansell Change shall constitute an irrevocable acceptance by Border that any compliance with Mansell's Representative's comments shall be without cost to Mansell and without any extension of time.
- 6.3 No alteration or modification to the design, quality and quantity of the Works arising from the development of detailed design or from the co-ordination of the design shall be construed or regarded as a Mansell Change.

7 REVIEWABLE DESIGN DATA

The "Reviewable Design Data" shall, in relation to each Station, constitute the plans, sections, drawings, specifications, samples, mock-ups and other materials specified in relation to that Station as set out in Appendix 1 (Reviewable Design Data) to this Schedule 8 to be provided or selected by the relevant member of the Professional Team or the Building Contractor. Where it is not practical to produce samples, visits will be arranged by the Building Contractor to manufacturers' and suppliers' premises to view the process and standard of goods to be supplied. Product information shall accompany all samples and where appropriate drawings and/or schedules marked up with the location of their use.

APPENDIX 1

Reviewable Design Data

Carlisle East RDD list

- (a) Materials requiring approval under any relevant planning permission condition;
- (b) Security design proposals
- (c) Operational and wayfinding signage
- (d) External signage
- (e) colour schemes in respect of floors and walls throughout the facility
- (f) Lock suiting / number of keys required
- (g) Position of operational fire protection equipment and agreement of Building Fire Strategy
- (h) Positioning of additional CCTV monitoring locations
- (i) Location of alerter mast / ducting requirements
- (j) Final electrical socket, fixed wiring point and data socket positions
- (k) Revise site layout to the rear subject to Planning
- (l) Fixing and fitting vehicle extract
- (m) Location UPS remote alarm
- (n) PA System. A list of rooms to be agreed
- (o) Details of card / fob programming and distribution for visitors, guests and users
- (p) Detail Section Through access / egress to appliance bays
- (q) Male / female divider location for separation in locker room
- (r) Fitting out of tambour units with either shelves or lateral filing rails
- (s) Layout of BA Compressor Room and associated fittings
- (t) Positions of thermal image camera brackets in Fire House
- (u) Positions of fixed item of Gym Equipment
- (v) Position of Wig Wag traffic light operator
- (w) Fixing Locations of Authority Supplied Wall Mounted Fittings (100 Per Station)

Carlisle West RDD list

- (a) Materials requiring approval under any relevant planning permission condition;
- (b) Security design proposals
- (c) Operational and wayfinding signage
- (d) External signage
- (e) colour schemes in respect of floors and walls throughout the facility

- (f) Lock suiting / number of keys required
- (g) Position of operational fire protection equipment and agreement of Building Fire Strategy
- (h) Positioning of additional CCTV monitoring locations
- (i) Location of alerter mast / ducting requirements
- (j) Final electrical socket, fixed wiring point and data socket positions
- (k) Fixing and fitting vehicle extract
- (l) Location UPS remote alarm
- (m) CCTV Location single image monitor
- (n) PA System. A list of rooms to be agreed
- (o) Male / female divider location for separation in locker room
- (p) Fitting out of tambour units with either shelves or lateral filing rails
- (q) Position of fixed item of Gym Equipment
- (r) Fixing Locations of Authority Supplied Wall Mounted Fittings (100 Per Station)

Patterdale RDD list

- (a) Materials requiring approval under any relevant planning permission condition;
- (b) Security design proposals
- (c) Operational and wayfinding signage
- (d) External signage
- (e) colour schemes in respect of floors and walls throughout the facility
- (f) Lock suiting / number of keys required
- (g) Position of operational fire protection equipment and agreement of Building Fire Strategy
- (h) Positioning of additional CCTV monitoring locations
- (i) Location of alerter mast / ducting requirements
- (j) Final electrical socket, fixed wiring point and data socket positions
- (k) Fixing and fitting vehicle extract
- (l) PA System. A list of rooms to be agreed
- (m) Possible alternative internal layout to appliance bay to reduce heating requirements
- (n) Fitting out of tambour units with either shelves or lateral filing rails
- (p) Fixing Locations of Authority Supplied Wall Mounted Fittings (100 Per Station)

Penrith RDD list

- (a) Materials requiring approval under any relevant planning permission condition;
- (b) Security design proposals
- (c) Operational and wayfinding signage
- (d) External signage
- (e) colour schemes in respect of floors and walls throughout the facility
- (f) Lock suiting / number of keys required
- (g) Position of operational fire protection equipment and agreement of Building Fire Strategy
- (h) Positioning of additional CCTV monitoring locations

- (i) Location of alerter mast / ducting requirements
- (j) Final electrical socket, fixed wiring point and data socket positions
- (k) Fixing and fitting vehicle extract
- (l) Location UPS remote alarm
- (m) Details of card / fob programming and distribution for visitors, guests and users
- (n) CCTV Location single image monitor
- (o) PA System. A list of rooms to be agreed
- (p) Male / Female divider location for segregation to locker room
- (p) Fitting out of tambour units with either shelves or lateral filing rails
- (q) Layout of BA Compressor Room and associated fittings
- (r) Positions of thermal image camera brackets in Fire House
- (s) Positions of fixed item of Gym Equipment
- (t) Position of Wig Wag traffic light operator
- (u) Layout of storage racking in PE 50
- (v) Location of Resilience Unit Aerials and Mast
- (w) Fixing Locations of Authority Supplied Wall Mounted Fittings (100 Per Station)

Workington RDD list

- (a) Materials requiring approval under any relevant planning permission condition
- (b) Security design proposals
- (c) Loaded floor plans
- (d) Site plans
- (e) Operational and wayfinding signage
- (f) External signage
- (g) colour schemes in respect of floors and walls throughout the facility
- (h) Lock suiting / number of keys required
- (i) Position of operational fire protection equipment and agreement of Building Fire Strategy
- (j) Positioning of additional CCTV monitoring locations
- (k) Location of alerter mast / ducting requirements
- (l) Final electrical socket, fixed wiring point and data socket positions
- (k) Fixing and fitting vehicle extract
- (l) Location UPS remote alarm
- (m) Details of card / fob programming and distribution for visitors, guests and users
- (n) CCTV Location single image monitor
- (o) PA System. A list of rooms to be agreed
- (p) Male / female divider location for separation in locker room
- (q) Fitting out of tambour units with either shelves or lateral filing rails
- (r) Layout of BA Compressor Room and associated fittings
- (s) Positions of thermal image camera brackets in Fire House
- (t) Positions of fixed item of Gym Equipment
- (u) Fixing Locations of Authority Supplied Wall Mounted Fittings (100 Per Station)

Schedule 9

LIQUIDATED DAMAGES

8 Part 1 (Daily Rates)

The Late Completion Liquidated Damages to be paid by Border pursuant to clause 21C of the Building Contract shall be the adjusted Late Completion Liquidated Damages rate per calendar day ("**ALD**") calculated as set out below:

$$ALD = LDas + LDbs + LDap + LDbp$$

Where:

LDas = the element of the daily Unitary Charge which is not subject to indexation as provided in the Base Case (as defined in the Project Agreement) as set out in the column headed "*SAD LADs not subject to Indexation (LDas)*" in Table 1 (Service Availability Date LADs) below;

LDbs = the element of the daily Unitary Charge which is subject to indexation as provided in the Base Case (as defined in the Project Agreement) as set out in the column headed "*SAD LADs subject to Indexation (LDbs)*" in Table 1 (Service Availability Date LADs) below:

LDap = the element of the daily Unitary Charge which is not subject to indexation as provided in the Base Case (as defined in the Project Agreement) as set out in the column headed "*PCW LADs not subject to Indexation (LDap)*" in Table 2 (Post-Completion Works LADs) below; and

LDbp = the element of the daily Unitary Charge which is subject to indexation as provided in the Base Case (as defined in the Project Agreement) as set out in the column headed "*PCW LADs subject to Indexation (LDbp)*" in Table 2 (Post-Completion Works LADs) below.

Table 1

(Service Availability Date LADs)

Station	SAD Daily LD (100%)	SAD LADs not subject to Indexation (LDas)	SAD LADs subject to Indexation (LDbs)
	£	£	£
Carlisle West	648	434	214
Carlisle East	1,285	861	424
Patterdale	259	174	86
Penrith	2,082	1,395	687
Workington	1,192	799	393
Total	5,466	3,663	1,804



C.S.



Table 2

(Post-Completion Works LADs)

Station	PCW Daily LD (100%)	PCW LADs not subject to Indexation (LDap)	PCW LADs subject to Indexation (LDbp)
	£	£	£
Carlisle West	N/A	N/A	N/A
Carlisle East	N/A	N/A	N/A
Patterdale	247	165	81
Penrith	N/A	N/A	N/A
Workington	N/A	N/A	N/A
Total	247	165	81

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Part 2

(Late Completion Liquidated Damages Cap)

Where the Services Availability Date has not occurred on or before the relevant Planned Services Availability Date and, where relevant, the Post Completion Works Acceptance Date has not occurred on or before the relevant Planned Post Completion Works Acceptance Date and such delay is attributable to circumstances other than the issue of a Suspension Notice, the aggregate cap on Late Completion Liquidated Damages to be paid by Border pursuant to clause 21A shall be:

Station	Planned Services Availability Date	Liquidated Damages Cap
		£
Carlisle West	16/01/2012	513,167
Carlisle East	05/03/2012	954,473
Patterdale	07/11/2011	223,447
Penrith	11/06/2012	1,342,876
Workington	18/03/2013	435,174
Total	-	3,469,137.



Schedule 10

[NOT USED]

Schedule 11

GUARANTEE

BORDER SUB-CONTRACT GUARANTEE

[●] February 2011

**Border Construction (Holdings) Limited
and**

Mansell Construction Services Limited

**in relation to
NORTH WEST FIRE & RESCUE PFI PROJECT**

THIS GUARANTEE is made as a deed on

February 2011

BY:

(1) **Border Construction (Holdings) Limited** incorporated in Scotland (Registered Number 00213977) whose registered office is situated at 8 Princes Street, Lochmaben, Lockerbie, Dumfriesshire DG11 1QS (the **Guarantor**);

to

(2) **Mansell Construction Services Limited** incorporated in England and Wales (Registered Number 01197246) whose registered office is at Rowan House, Grant Road, Croydon CR9 6BU (who and whose successors and assigns hereunder are hereinafter referred to as **Mansell**)

WHEREAS:

(A) Balfour Beatty Fire and Rescue NW Limited has entered into an agreement with Cumbria County Council, Lancashire Combined Fire Authority and Merseyside Fire and Rescue Authority dated of even date herewith (the **Project Agreement**) for *inter alia* the provision of the Works and Services during the Contract Period.

(B) Certain design and construction obligations under the Project Agreement have been sub-contracted to Mansell under a contract of even date herewith (the **Building Contract**).

(C) Mansell has engaged Border Construction Limited incorporated in England and Wales (Registered Number 00654704) whose registered office is at Marconi Road, Carlisle, Cumbria CA2 7NA (hereinafter called Border) under a contract dated on or around the date of this Guarantee (hereinafter called the **Border Sub-Contract**) in respect of the carrying out of the Works.

(D) The Guarantor has agreed to guarantee the due performance by Border of Border's obligations under the Border Sub-Contract (the **Guaranteed Agreements**) in the manner hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

1. In this Guarantee (including the above Recitals) all capitalised words and expressions used herein shall have the same meanings as are respectively assigned to them in the relevant Guaranteed Agreement and/or the Project Agreement (but in case of any conflict or ambiguity the meaning specified in the Guaranteed Agreements shall in each and every case prevail).
2. In consideration of Mansell entering into the Guaranteed Agreements with Border, the Guarantor hereby irrevocably and unconditionally guarantees to Mansell on Mansell's demand in writing the due and punctual performance by Border of each and all of the obligations, duties and undertakings of Border under and pursuant to the Guaranteed Agreements when and if and to the extent that such obligations, duties and undertakings shall properly become due and performable according to the terms of any Guaranteed Agreement and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by Border to Mansell pursuant to any Guaranteed Agreement and/or as a result of any breach thereof (including all Mansell's properly and reasonably incurred expenses, to include properly and reasonably incurred legal fees and taxes, in connection with Mansell enforcing any of the above) and the Guarantor undertakes to Mansell fully to perform and observe or procure the performance and observance of all duties, obligations and undertakings under the Guaranteed

Agreements if Border shall fail in any respect to perform and observe the same, failing which the Guarantor will pay to Mansell any sum or sums arising directly out of any failure by Border to perform each and all of the obligations, duties and undertakings of Border when and if and to the extent that such obligations, duties and/or undertakings properly become due and performable according to the terms of the Guaranteed Agreements and all such sums of money and liabilities due, owing or incurred or payable and unpaid by Border to Mansell pursuant to the terms of the relevant Guaranteed Agreement and/or as a result of any breach thereof (including all Mansell's properly and reasonably incurred expenses, to include properly and reasonably incurred legal fees and taxes in connection with Mansell enforcing any of the above) PROVIDED THAT subject to clauses 6, 7 and 10 hereof, in no circumstances shall the obligations or liability of the Guarantor to Mansell under this Guarantee (except in relation to any properly and reasonably incurred expenses, legal fees and taxes referred to in this clause 2) exceed the obligations or liability of Border to Mansell under the Guaranteed Agreements and, without prejudice to the foregoing, Mansell shall have no greater rights against the Guarantor than if the Guarantor had been a party to the Guaranteed Agreements and jointly and severally liable with Border, and as between the Guarantor and Mansell all the defences, set-offs and/or counterclaims which would have been available to the Guarantor if the Guarantor had been a party to the Guaranteed Agreements and jointly and severally liable with Border or otherwise available to Border at law (if and to the extent that those defences are not specific to Border and would be available to the Guarantor if the Guarantor had been party to the Guaranteed Agreements in place of Border) shall be available to the Guarantor in respect of its liabilities under this Guarantee and the Guarantor hereby confirms for the benefit of Mansell that a decision of the Adjudicator given in accordance with the Dispute Resolution Procedure set out in the relevant clause of each Guaranteed Agreement shall bind the Guarantor to the same extent that such decision is binding on Border under that Guaranteed Agreement.

3. Under this Guarantee the Guarantor shall not be exonerated nor shall the liability of the Guarantor nor the rights, powers and remedies conferred upon Mansell be lessened, impaired, discharged, diminished or otherwise adversely affected by virtue of time being given to Border by Mansell or by virtue of any concession, forbearance or arrangement granted or made by Mansell to or with Border or by virtue of anything that Mansell or Border may do or omit or neglect to do (including, without limitation, the assertion or failure or delay to assert any right or remedy or the pursuit of any rights or remedies by Mansell or the giving by Border of any security or the release, modification or exchange of any such security or the liability of any person) which, but for this provision, might exonerate the Guarantor.
4. The Guarantor hereby authorises Border and Mansell to make any addition or variation to the Guaranteed Agreements, the due and punctual performance of which addition or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee. The obligations of the Guarantor under this Guarantee shall in no way be affected by any addition or variation to any Guaranteed Agreement.
5. This Guarantee is a continuing guarantee and accordingly shall remain in full force and effect until all obligations, duties and undertakings now or hereafter to be carried out or performed by Border under the Guaranteed Agreements shall have been satisfied or performed in full and this Guarantee is in addition to and not in substitution for any other security which Mansell may at any time hold for the performance of such obligations and may be enforced by Mansell without first having recourse to any such security.
6. The liability of the Guarantor and the rights of Mansell in relation to this Guarantee shall not be discharged or impaired by reason of the insolvency, winding-up, dissolution, administration, receivership or reorganisation of Border (or any party comprising Border) or any change in its or their status, function, control or ownership or by any other act, event

(including, without limitation, any constituent member of Border ceasing, for any reason, to be a party to the arrangements among the parties comprising Border) or omission which might, but for the provisions of this Guarantee, operate to discharge, impair, diminish or otherwise affect any of the obligations or liabilities of the Guarantor hereunder or any of the rights, remedies or powers conferred upon Mansell and any discharge or release by Mansell in favour of the Guarantor or agreement between the Guarantor and Mansell concerning any obligations or liabilities of the Guarantor hereunder which shall be deemed to have been given or entered into by Mansell on the express condition that it would be void if given or entered into in reliance upon any act or thing (including, without limitation, any payment to Mansell by Border) which is subsequently avoided or reduced by or in pursuance of any provision or rule of law including (without limitation) any provisions or enactments relating to bankruptcy, insolvency or liquidation for the time being in force.

7. The Guarantor shall not by paying any sum due hereunder or by any means or on any ground claim or recover by the institution of proceedings or the threat of proceedings or otherwise recover such sum from Border or claim any set-off or counterclaim against Border or prove in competition with Mansell to claim for any money or liabilities due or incurred by Border to Mansell or have the benefit of any security which Mansell holds or may hold for any money or liabilities due or incurred by Border to Mansell and if the Guarantor receives any sums from Border in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies in trust for Mansell so long as any sums are payable (contingently or otherwise) under this Guarantee.
8. Without prejudice to clause 5 hereof, Mansell shall not be obliged before enforcing any of its rights or remedies conferred upon it by this Deed or by law:
 - (a) to grant any time or indulgence to Border;
 - (b) to take any legal proceedings or action or obtain judgment against Border in any court; or
 - (c) to make or file any claim in bankruptcy, liquidation, winding-up or dissolution of Border; or
 - (d) to pursue or exhaust any other right or remedy against Border and the liabilities of the Guarantor under this Deed may be enforced by Mansell against the Guarantor irrespective of whether any legal proceedings are being or have been taken against Border.
9. If at any time any provision hereof is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.
10. Any sums due and payable under this Guarantee shall be paid in full, free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges.
11. Mansell shall be entitled with the prior written consent of the Guarantor and upon giving notice in writing to the Guarantor to assign the benefit of this Guarantee.
12. Any notice, request, demand or other communication to be given or made under this Guarantee shall be delivered to the registered office address of the addressee and marked for the attention of the Company Secretary.
13. The Guarantor hereby warrants and represents that:

- (a) it is a company incorporated in Scotland with power and authority to enter into this Guarantee and to exercise its rights and perform its obligations hereunder;
 - (b) the obligations expressed to be assumed by it in this Guarantee are legal and valid obligations binding on it in accordance with the terms hereof; and
 - (c) it has taken all action required to enter into this Guarantee and to authorise the execution and delivery of this Guarantee and the performance of its obligations under this Guarantee.
14. Nothing in this Guarantee shall, or is intended to, create rights and/or benefits by reason of the Contracts (Rights of Third Parties) Act 1999 (the **Contracts Act**) or otherwise in favour of any person who is not a party to this Guarantee (a **third party**) and no term or provision of this Guarantee shall be, or is intended by any party hereto to be, enforceable by any third party by reason of the Contracts Act, provided that nothing in this clause 14 shall prejudice the rights of Mansell or its assigns pursuant to the operation of clause 70 (Assignment and Subcontracting) of the Border Sub-Contract.
15. Not used.
16. The obligations and liabilities of the Guarantor under this Guarantee shall be released and discharged absolutely upon the date of issue of the last Acceptance Certificate save in respect of any breach of the Border Sub-Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before the date of issue of the last Acceptance Certificate.
17. This Guarantee shall be governed by and construed in accordance with the laws of England and Wales.
18. The parties submit to the non-exclusive jurisdiction of the courts of England and Wales as regards any claim or matter arising in relation to this Guarantee.

IN WITNESS whereof this Guarantee has been executed and delivered by the parties as a deed on the date stated at the beginning of this Guarantee.

SIGNATORIES

The Guarantor

EXECUTED as a **DEED** by)
[●])
acting by its duly appointed attorney)

in the presence of:

- Witness Name:
- Witness Signature:
- Witness Address:
- Witness Occupation:

Mansell

EXECUTED as a **DEED** by)
[●])
acting by its duly appointed attorney)

in the presence of:

- Witness Name:
- Witness Signature:
- Witness Address:
- Witness Occupation:

Schedule 12

PARALLEL LOAN AGREEMENT

BORDER LOAN AGREEMENT

February 2011

**Mansell Construction Services Limited
and**

Border Construction (Holdings) Limited

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THIS DEED is made the day of February 2011

BETWEEN:

- (3) **MANSELL CONSTRUCTION SERVICES LIMITED** incorporated in England and Wales **01197246** whose registered office is at Roman House Grant Road Croydon CR9 6BU (**Mansell**); and
- (2) **BORDER CONSTRUCTION (HOLDINGS) LIMITED** incorporated in Scotland **SC213977** whose registered office is at 8 Princes Street Lochmaben Lockerbie Dumfriesshire PG11 1QS (the **Lender**).

WHEREAS:

- (A) Balfour Beatty Fire and Rescue NW Limited (the **Contractor**) has entered or is about to enter into an agreement (the **Project Agreement**) with Cumbria County Council, Lancashire Combined Fire Authority and Merseyside Fire and Rescue Authority (together the **Authorities**) to carry out certain works and to perform certain services at the Sites under the Private Finance Initiative (the **Project**).
- (B) The Contractor and Mansell have or are about to enter into an agreement (the **Building Contract**) under which Mansell will supply and perform certain services to be supplied by the Contractor to the Authorities pursuant to the Project Agreement.
- (C) Mansell has entered or is about to enter into an agreement (the **Border Sub-Contract**) with Border Construction Limited (incorporated in England and Wales Company Number: 654704) (**Border**) under which Border will supply and perform certain services to be supplied by Mansell to the Contractor pursuant to the Building Contract.
- (D) The Contractor has entered into or is about to enter into certain financing agreements in connection with the Project (the **Financing Agreements**).
- (E) The Lender has agreed, in certain circumstances, to make advances to Mansell on the terms and subject to the conditions set out in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise defined in this Agreement, terms defined in the Border Sub-Contract shall have the same meaning when used in this Agreement.

Secured Creditors has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

Senior Finance Liabilities Discharge Date has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

Senior Finance Liabilities has the meaning given to it in the Security Trust and Intercreditor Deed (as referred to in Schedule 16 Part 2 of the Project Agreement).

1.2 Interpretation

- (a) This Agreement shall consist of the recitals and the clauses.

- (b) In the event of inconsistencies between the terms of this Agreement and the terms of the Border Sub-Contract the terms of this Agreement shall prevail.
- (c) Any reference to a clause shall mean a clause of this Agreement, unless otherwise stated.
- (d) The clause titles or headings appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

2. COMMENCEMENT AND DURATION

This Agreement shall become effective on the date hereof and shall continue until all amounts repayable hereunder have been discharged in full and Mansell has no actual or contingent liabilities under clause 93 of the Border Sub-Contract.

3. THE LOAN

3.1 If:

- (a) at any time Border has claimed or received payment from Mansell of any sum of money (the **Original Sum**):
 - (i) by way of a Border Entitlement in accordance with the Building Contract; and/or
 - (ii) pursuant to any other provision of the Border Sub-Contract which says that Border is only entitled to be paid when and/or to the extent that Mansell is entitled to be paid when and/or to the extent that Mansell is entitled to Equivalent Project Relief from a third party,

and Border has insisted on its claim for payment in circumstances where Mansell has not received funds in respect of the payment from the Contractor or from any provider of any of the Insurances to enable it to discharge its obligation to Border,

then:

- (b) at the same time as the final date for payment of the Original Sum becomes payable to Border, the Lender shall advance to Mansell a sum equal to the amount demanded, claimed or received (as the case may be) by Border (the **Advance**).

3.2 Any Advance made pursuant to clause 3.1(b):

- (a) shall be unsecured;
- (b) subject to clause 5.3, shall not bear interest; and
- (c) shall be repayable immediately by Mansell to the Lender if (but only if) and to the extent that the conditions precedent in clause 93.5 of the Border Sub-Contract are met and Border would be entitled to payment of the same pursuant to clause 93.5 of the Border Sub-Contract.

4. UNDERTAKING OF THE LENDER

4.1 In respect of any Advances outstanding (but which are not due for repayment pursuant to clause 3.2(c)) the Lender shall not:

- (a) assign or purport to assign to any person the whole or any part of any such Advances;

- (b) purport to set off at any time any amount of such Advances against any amount payable by it to Mansell;
- (c) attempt to obtain repayment or prepayment of such Advance otherwise than in accordance with the terms of this Agreement;
- (d) ask, demand, accelerate, sue, claim or prove for, take or receive from Mansell in any manner whatsoever the whole or any part of such Advance other than in accordance with the terms of this Agreement; or
- (e) in respect of such Advance petition for, or vote in favour of, any resolution or take any other action whatsoever for, or which may lead, to the administration, winding-up or dissolution of Mansell or the termination of the Border Sub-Contract.

4.2 The Lender acknowledges that a failure to make any Advance in accordance with this Agreement may cause Mansell to suffer or incur Losses. For the avoidance of doubt, such Losses shall be recoverable to the maximum extent of the Advance demanded by Mansell from the Lender (subject to the application of the usual principles of mitigation of loss).

5. PAYMENTS

5.1 On each date on which this Agreement requires an amount to be paid by any party, that party shall make the same available to the other party by payment in sterling and in immediately available, freely transferable, cleared funds to such account of such other party as such other party shall from time to time have specified for this purpose.

5.2 All payments required to be made by either party hereunder shall be calculated without reference to any set-off or counterclaim and shall be made free and clear of and without any deduction for or on account of any set-off or counterclaim.

5.3 In the event of failure of Mansell to make payment pursuant to clause 3.2(c) Mansell shall pay interest upon the amount due or on any outstanding balance thereof at 3% above the Prescribed Rate.

6. BENEFIT OF AGREEMENT

This Agreement shall be binding upon and enure to the benefit of each party hereto and its successors and assignees provided always that neither party shall assign or transfer all or any of its rights and obligations hereunder without the prior written consent of the other save that:

- (a) Mansell shall be entitled to assign its rights and interest in this Agreement to Balfour Beatty Group Limited or Balfour Beatty Plc; and
- (b) in the event that Mansell assigns its rights and interest in the Border Sub-Contract to a third party (hereinafter the Assignee), Mansell and the Lender shall enter into a new loan agreement on the same terms as this Agreement with the Assignee.

7. LAW

This Agreement and all non-contractual obligations arising in connection with it shall be governed by and construed in all respects in accordance with English law and the English courts shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first above written.

SIGNATORIES

Mansell

EXECUTED as a **DEED** by)
MANSELL CONSTRUCTION)
SERVICES LIMITED)
acting by itsduly appointed attorney)

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Witness Occupation:

The Lender

EXECUTED as a **DEED** by)
BORDER CONSTRUCTION)
(HOLDINGS) LIMITED)
acting by itsDirector)

in the presence of:

Witness Name:

Witness Signature:

Witness Address:

Witness Occupation:

Schedule 13

[NOT USED]

Schedule 14

FORM OF COLLATERAL WARRANTY TO BE PROVIDED TO MANSELL

Part 1 (Professional Team to Mansell)

DATED _____ 2011

OVE ARUP & PARTNERS LIMITED
And
BORDER CONSTRUCTION LIMITED
and
MANSELL CONSTRUCTION SERVICES LIMITED

DUTY OF CARE DEED
relating to North West Fire PFI Project

THIS DEED is made on
BETWEEN:-

2011

- (1) OVE ARUP & PARTNERS LIMITED (Company Number 02461313) whose registered office is at 13 Fitzroy Street, London, W1T 4BQ (the "Consultant");
- (2) BORDER CONSTRUCTION LIMITED (registered in England No. 654704) whose registered office is at Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria CA2 7NA ("Building Contractor")
- (3) MANSELL CONSTRUCTION SERVICES LIMITED (registered in England and Wales under Company Number 01197246) whose registered office is at Roman House, Grant Road, Croydon CR9 6BU (" Beneficiary")

BACKGROUND

- (A) By a project agreement dated _____ (the "Project Agreement") the Authorities have appointed Balfour Beatty Fire and Rescue NW Limited ("the Contractor") to carry out, in relation to the Sites, the provision of serviced accommodation to the Authorities at each and every Station as contemplated by the Project Agreement including the carrying out of the Works and the provision of the Services design and construction of the Works.
- (B) By a design and build contract dated _____ (the "Building Contract") the Contractor has appointed the Beneficiary to carry out in relation to the Sites the design and construction of the Works.
- (C) By a design and build subcontract dated _____ ("the Building Subcontract") the Beneficiary has appointed the Building Contractor to carry out works in relation to identified Sites
- (D) The Consultant has been appointed by the Building Contractor under a deed of appointment dated _____ (the "Appointment") to provide services in relation to the Works.
- (E) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

1. **DEFINITIONS AND INTERPRETATIONS**

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

"Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. **OPERATIVE PROVISIONS**

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

3. **CONSULTANT'S WARRANTY AND LIABILITY**

- 3.1. The Consultant warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the

Appointment in relation to works of similar scope, nature and complexity to the Works.

- 3.2. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have if the Beneficiary were named as joint employer under the Appointment. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Building Subcontract, the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Consultant and notified by the Beneficiary to the Consultant in writing prior thereto.

4. DOCUMENTS

- 4.1. The Consultant hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, a royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Consultant's obligations under the Appointment or the termination of the Appointment or the determination of the Consultant's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Beneficiary will not hold the Consultant liable for any use they may make of the Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Consultant authorises such use and confirms the Documents are suitable for it. The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or hereunder or as otherwise required to enable it to fulfil its obligations under the Appointment.
- 4.2. The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Beneficiary's expense.
- 4.3. The Consultant warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub- contractors have been used to prepare the same) are his own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

5. INSURANCE

- 5.1. The Consultant hereby covenants with the Beneficiary to:-
- 5.1.1. take out Professional Indemnity insurance cover with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and (for the avoidance of doubt), provided further that payment of any increased or

- additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the reasonable rates;
- 5.1.2. provide evidence (as and when reasonably required by the Beneficiary) satisfactory to the Beneficiary of the Professional Indemnity insurance (referred to in clause 5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover);
 - 5.1.3. provide the Beneficiary with copies of all notices under the Professional Indemnity Insurance (referred to in clause 3.1) relating to the Works;
 - 5.1.4. provide the Beneficiary with notice of:-
 - 5.1.4.1. any cancellation of the Professional Indemnity Insurance (referred to in clause 5.1.1) not less than ninety (90) days prior to the relevant cancellation date;
 - 5.1.4.2. any material changes to or suspension of cover relevant to the Works;
 - 5.1.4.3. any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the Professional Indemnity Insurance;
 - 5.1.4.4. any act, omission or event which may adversely affect the terms and the scope of the Professional Indemnity Insurance relevant to the Works or invalidate or render it unenforceable;
 - 5.1.5. provide such information to the Beneficiary as the Beneficiary may reasonably require in relation to any claim or circumstance notified to it under the Professional Indemnity Insurance in respect of the Works and any potential breach to the aggregate limit of the policy;
 - 5.1.6. disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Works or any part of the Works.

6. LIABILITY OF PARTNERS

- 6.1. Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

7. NOTICES

- 7.1. Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

8. ASSIGNMENT

- 8.1. The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Beneficiary

will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. BENEFICIARY' REMEDIES

9.1. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies they may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

10. INSPECTION OF DOCUMENTS

10.1. The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for their benefit or on their behalf.

11. STANDARDS OF PRODUCTS AND MATERIALS

11.1. The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.

11.2. If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

12. STEP-IN RIGHTS IN FAVOUR OF THE BENEFICIARY

12.1. The Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than thirty (30) days' prior written notice specifying the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:-

12.1.1. the Beneficiary may give written notice to the Consultant that the Beneficiary will thenceforth become the employer under the Appointment

- to the exclusion of the Building Contractor and thereupon the Consultant will admit that the Beneficiary is the Building Contractor under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds;
- 12.1.2. if the Beneficiary have given such notice as aforesaid or under clause 12.3 below, the Beneficiary shall accept liability for the Building Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Consultant's specified grounds and which is capable of remedy by the Beneficiary; and
- 12.1.3. if the Beneficiary have given such notice as aforesaid or under clause 12.3 below, the Beneficiary will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Appointment.
- 12.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant, the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary have given written notice to the Consultant pursuant to clause 12.1.1 or clause 12.3 of this Deed.
- 12.3. The Consultant further covenants with the Beneficiary that if the Building Subcontract is terminated by the Beneficiary the Consultant, if requested by the Beneficiary by notice in writing and subject to clause 12.1.2 and clause 12.1.3, will accept the instructions of the Beneficiary to the exclusion of the Building Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing enter into a novation agreement whereby the Beneficiary are substituted for the Building Contractor under the Appointment.
- 12.4. If two (2) or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Consultant.
- 12.5. The Building Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Beneficiary under clause 12.3 as conclusive evidence that the Building Subcontract has been terminated by the Beneficiary.
- 12.6. The Beneficiary may by notice in writing to the Consultant appoint another person to exercise their rights under this clause 12 subject to the Beneficiary remaining liable to the Consultant as guarantor for their appointee in respect of their obligations under this Deed.

13. **SUB-CONSULTANTS**

- 13.1. Following a written request from the Beneficiary the Consultant will (unless it has already done so) and/or procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

14. **APPLICABLE LAW AND JURISDICTION**

- 14.1. This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

15. **THIRD PARTY RIGHTS**

15.1. This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Building Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written:-

SIGNED AS A DEED by

OVE ARUP & PARTNERS LIMITED

acting by

Director

Director/Secretary

SIGNED AS A DEED by

BORDER CONSTRUCTION LIMITED

acting by

Director

Director/Secretary

SIGNED AS A DEED by

MANSELL CONSTRUCTION SERVICES LIMITED

acting by

Director

Director/Secretar

DATED _____ 2011

BLUE SKY DESIGN SERVICES LIMITED
And
BORDER CONSTRUCTION LIMITED
And
MANSELL CONSTRUCTION SERVICES LIMITED

DUTY OF CARE DEED
relating to North West Fire PFI Project

THIS DEED is made on
BETWEEN:-

2011

- (1) BLUE SKY DESIGN SERVICES LIMITED (Company Number 06235182) whose registered office is at Building 1000, Kings Reach, Yew Street, Stockport, SK4 2HG (the "Consultant");
- (2) BORDER CONSTRUCTION LIMITED (registered in England No. 654704) whose registered office is at Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria CA2 7NA ("Building Contractor")
- (3) MANSELL CONSTRUCTION SERVICES LIMITED (registered in England and Wales under Company Number 01197246) whose registered office is at Roman House, Grant Road, Croydon CR9 6BU ("the Beneficiary")

BACKGROUND

- (A) By a project agreement dated _____ (the "Project Agreement") the Authorities have appointed the Balfour Beatty Fire and Rescue NW Limited ("Contractor") to carry out, in relation to the Sites, the provision of serviced accommodation to the Authorities at each and every Station as contemplated by the Project Agreement including the carrying out of the Works and the provision of the Services design and construction of the Works.
- (B) By a design and build contract dated _____ (the "Building Contract") the Contractor has appointed the Beneficiary to carry out in relation to the Sites the design and construction of the Works.
- (C) By a design and build subcontract dated _____ ("the Building Subcontract") the Beneficiary has appointed the Building Contractor to carry out works in relation to identified Sites
- (D) The Consultant has been appointed by the Building Contractor under a deed of appointment dated _____ (the "Appointment") to provide services in relation to the Works.
- (E) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Beneficiary.

1. DEFINITIONS AND INTERPRETATIONS

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

"Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. OPERATIVE PROVISIONS

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

3. CONSULTANT'S WARRANTY AND LIABILITY

- 3.1. The Consultant warrants to the Beneficiary that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the

performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.

- 3.2. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have if the Beneficiary were named as joint employer under the Appointment. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Building Subcontract, the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Consultant and notified by the Beneficiary to the Consultant in writing prior thereto.

4. DOCUMENTS

- 4.1. The Consultant hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, a royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Consultant's obligations under the Appointment or the termination of the Appointment or the determination of the Consultant's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Project including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Beneficiary will not hold the Consultant liable for any use they may make of the Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Consultant authorises such use and confirms the Documents are suitable for it. The Consultant will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Appointment or hereunder or as otherwise required to enable it to fulfil its obligations under the Appointment.
- 4.2. The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Beneficiary' expense.
- 4.3. The Consultant warrants to the Beneficiary that he has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Documents (save to the extent duly appointed sub- contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

5. INSURANCE

- 5.1. The Consultant hereby covenants with the Beneficiary to:-
- 5.1.1. take out Professional Indemnity insurance cover with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the

European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and (for the avoidance of doubt), provided further that payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the reasonable rates;

- 5.1.2. provide evidence (as and when reasonably required by the Beneficiary) satisfactory to the Beneficiary of the Professional Indemnity insurance (referred to in clause 5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover);
- 5.1.3. provide the Beneficiary with copies of all notices under the Professional Indemnity Insurance (referred to in clause 5.1.1) relating to the Works;
- 5.1.4. provide the Beneficiary with notice of:-
 - 5.1.4.1. any cancellation of the Professional Indemnity Insurance (referred to in clause 3.1) not less than ninety (90) days prior to the relevant cancellation date;
 - 5.1.4.2. any material changes to or suspension of cover relevant to the Works;
 - 5.1.4.3. any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the Professional Indemnity Insurance;
 - 5.1.4.4. any act, omission or event which may adversely affect the terms and the scope of the Professional Indemnity Insurance relevant to the Works or invalidate or render it unenforceable;
- 5.1.5. provide such information to the Beneficiary as the Beneficiary may reasonably require in relation to any claim or circumstance notified to it under the Professional Indemnity Insurance in respect of the Works and any potential breach to the aggregate limit of the policy;
- 5.1.6. disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Works or any part of the Works.

6. **LIABILITY OF PARTNERS**

- 6.1. Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

7. **NOTICES**

- 7.1. Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the

time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

8. ASSIGNMENT

8.1. The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Beneficiary will notify the Consultant in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Consultant will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

9. BENEFICIARY' REMEDIES

9.1. The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies they may have against the Consultant including without prejudice to the generality of the foregoing any remedies in negligence.

10. INSPECTION OF DOCUMENTS

10.1. The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for their benefit or on their behalf.

11. STANDARDS OF PRODUCTS AND MATERIALS

11.1. The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.

11.2. If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or

authorised or approved the specification or use by others of any such products or materials the Consultant will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

12. **STEP-IN RIGHTS IN FAVOUR OF THE BENEFICIARY**

- 12.1. The Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Beneficiary not less than thirty (30) days' prior written notice specifying the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:-
- 12.1.1. the Beneficiary may give written notice to the Consultant that the Beneficiary will thenceforth become the employer under the Appointment to the exclusion of the Building Contractor and thereupon the Consultant will admit that the Beneficiary is the Building Contractor under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds;
- 12.1.2. if the Beneficiary have given such notice as aforesaid or under clause 12.3 below, the Beneficiary shall accept liability for the Building Contractor's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Consultant's specified grounds and which is capable of remedy by the Beneficiary; and
- 12.1.3. if the Beneficiary have given such notice as aforesaid or under clause 12.3 below, the Beneficiary will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Appointment.
- 12.2. Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Consultant, the Beneficiary will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Beneficiary unless and until the Beneficiary have given written notice to the Consultant pursuant to clause 12.1.1 or clause 12.3 of this Deed.
- 12.3. The Consultant further covenants with the Beneficiary that if the Building Subcontract is terminated by the Beneficiary the Consultant, if requested by the Beneficiary by notice in writing and subject to clause 12.1.2 and clause 12.1.3, will accept the instructions of the Beneficiary to the exclusion of the Building Contractor in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing enter into a novation agreement whereby the Beneficiary are substituted for the Building Contractor under the Appointment.
- 12.4. If two (2) or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Consultant.

- 12.5. The Building Contractor acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by the Beneficiary under clause 12.3 as conclusive evidence that the Building Subcontract has been terminated by the Beneficiary.
- 12.6. The Beneficiary may by notice in writing to the Consultant appoint another person to exercise their rights under this clause 12 subject to the Beneficiary remaining liable to the Consultant as guarantor for their appointee in respect of their obligations under this Deed.

13. **SUB-CONSULTANTS**

- 13.1. Following a written request from the Beneficiary the Consultant will (unless it has already done so) and/or procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

14. **APPLICABLE LAW AND JURISDICTION**

- 14.1. This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

15. **THIRD PARTY RIGHTS**

- 15.1. This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Building Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written:-

SIGNED AS A DEED by
BLUE SKY DESIGN SERVICES LIMITED
acting by
Director/Secretary

Director

SIGNED AS A DEED by
BORDER CONSTRUCTION LIMITED
acting by
Director/Secretary

Director

SIGNED AS A DEED by
MANSELL CONSTRUCTION SERVICES LIMITED
acting by
Director/Secretary

Director

EXECUTED AS A DEED by BLUE SKY)
DESIGN SERVICES LIMITED acting by a)
Director and its Secretary/two Directors:-)

Director

Director/Secretary

EXECUTED AS A DEED by BORDER)
CONSTRUCTION LIMITED acting by a)
Director and its Secretary/two Directors:-)

Director

Director/Secretary

Add execution clauses as appropriate for
- Mansell Construction Services Limited
- projectCo
- Authorities

The common seal of)
CUMBRIA COUNTY COUNCIL)
was hereunto affixed in the presence)
of:)

Seal

.....
Signature of duly authorised officer
.....
Full name (BLOCK CAPITALS)
.....
Position/title

EXECUTED AS A DEED by
LANCASHIRE COMBINED AUTHORITY
acting by a Director and its Secretary/two
Directors:-

Director

Director/Secretary

EXECUTED AS A DEED by
MERSEYSIDE FIRE AND RESCUE

AUTHORITY acting by a Director and its
Secretary/two Directors:-

Director

Director/Secretary

Dated

2011

[●] [*CONSULTANT*] (1)

MANSELL CONSTRUCTION SERVICES LIMITED (2)

BORDER CONSTRUCTION LIMITED (3)

**DUTY OF CARE DEED
relating to the North West Fire and Rescue Project**

THIS DEED is made on

2011

BETWEEN

- (1) [●] [**Name**] incorporated in England and Wales [●] [**Company Number**] whose registered office is at [●] [**Address**] (the "**Consultant**");
- (2) **MANSELL CONSTRUCTION SERVICES LIMITED** incorporated in England and Wales registered company number 01197246 whose registered office is at Roman House, Grant Road, Croydon, Surrey, CR9 6BU ("**Mansell**"); and
- (3) **BORDER CONSTRUCTION LIMITED** incorporated in England and Wales registered company number 00654704 whose registered office is at Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria, CA2 7NA ("**Border**").

BACKGROUND

- (A) By a design and build sub-contract dated on or about the date of this deed (the "**Border Sub-Contract**") Mansell has appointed Border to carry out in relation to certain sites the design and construction of certain works ("the **Works**").
- (B) the consultant has been appointed [by Border] under a deed of appointment dated day of 20[●] (the "**Appointment**") to provide services in relation to the works [which appointment has been novated to Border].
- (C) the consultant is obliged under the appointment to give a warranty in this form in favour of Mansell.

1. DEFINITIONS AND INTERPRETATIONS

Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Border Sub-Contract.

2. OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by Mansell to the Consultant, receipt of which the Consultant acknowledges:

3. CONSULTANT'S WARRANTY AND LIABILITY

- 3.1 The Consultant warrants to Mansell that it has carried out and will continue to carry out its duties under the Appointment in accordance with the Appointment and that it has exercised and will continue to exercise in the performance of those duties the reasonable skill care and diligence to be expected of a properly qualified member of its profession experienced in carrying out duties such as its duties under the Appointment in relation to works of similar scope, nature and complexity to the Works.
- 3.2 The Consultant shall be entitled in any action or proceedings by Mansell to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against Border under the Appointment. Upon the expiration of 12 years from the date of completion of the Works in accordance with the Border Sub-Contract, the liability of the Consultant under this Deed shall cease and

determine, save in relation to any claims made by Mansell against the Consultant and notified by Mansell to the Consultant in writing prior thereto.

4. PROJECT DATA

- 4.1 The Consultant hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to Mansell with effect from the date of this Deed or in the case of Project Data not yet in existence with effect from the creation thereof, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Consultant's obligations under the Appointment or the termination of the Appointment or the determination of the Consultant's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Project Data for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. Mansell will not hold the Consultant liable for any use it may make of the Project Data for any purpose other than that for which they were originally provided by it unless the Consultant authorises such use and confirms the Project Data are suitable for it. The Consultant will not grant to any third party the right to use any of the Project Data save under any warranty it is obliged to give under the Appointment or hereunder or as otherwise required to enable it to fulfill its obligations under the Appointment.
- 4.2 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give Mansell or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at Mansell's expense.
- 4.3 The Consultant warrants to Mansell that he has used the standard of skill, care and diligence as set out in clause 1.1 to see that the Project Data (save to the extent duly appointed sub- contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

5. INSURANCE

- 5.1 The Consultant hereby covenants with Mansell to:
- 5.1.1 take out Professional Indemnity insurance cover with a limit of indemnity of not less than £10,000,000 (ten million pounds sterling) for any one occurrence or series of occurrences arising out of any one event in relation to the Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Works, provided that such insurance is generally available in the market to members of the Consultant's profession at commercially reasonable rates and (for the avoidance of doubt), provided further that payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things peculiar to the Consultant will be deemed to be within the reasonable rates.
- 5.1.2 provide evidence (as and when reasonably required by Mansell) to Mansell of the Professional Indemnity insurance (referred to in clause

5.1.1) being in full force and effect from the date of the Appointment (such evidence to include details of the cover).

5.1.3 provide Mansell with notice of:

- (a) any cancellation of the Professional Indemnity insurance referred to in clause 5.1.1 not less than thirty (30) days prior to the relevant cancellation date; and
- (b) any adverse material changes to or suspension of cover relevant to the Works not less than thirty (30) days prior to the relevant change or suspension; and
- (c) any claim under the Professional Indemnity insurance referred to in clause 5.1.1 in respect of the Works in excess of one million pounds (£1,000,000) as soon as reasonably practicable and provide such information to Mansell as Mansell may reasonably require in relation to such claim and provide notice of any potential breach of the aggregate limit of the policy.

6. LIABILITY OF PARTNERS

Where the Consultant is a partnership, references in this Deed to the "Consultant" will be deemed to include reference to each and every present and future partner of such partnership and the liability of each and every such partner under this Deed will be deemed to be joint and several.

7. NOTICES

Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

8. ASSIGNMENT

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

9. MANSELL'S REMEDIES

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

10. INSPECTION OF PROJECT DATA

The Consultant's duty and obligations under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which Mansell may make or procure to be made for its benefit or on its behalf. This clause is without prejudice to the Consultant's right to plead a defence of contributory negligence.

11. STANDARDS OF PRODUCTS AND MATERIALS

11.1 The Consultant warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified for use and it will not specify for use and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of specification are widely known to members of the Consultant's profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.

11.2 If in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Consultant will notify Mansell in writing forthwith. This clause does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment.

12. STEP-IN RIGHTS IN FAVOUR OF MANSELL

12.1 The Consultant will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Appointment or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to Mansell not less than 30 days' prior written notice specifying the Consultant's ground for terminating or treating as terminated or repudiated the Appointment or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Appointment. Within such period of notice:

12.1.1 Mansell may give written notice to the Consultant that Mansell will thenceforth become the client under the Appointment to the exclusion of Border and thereupon the Consultant will admit that Mansell is the client under the Appointment and the Appointment will be and remain in full force and effect notwithstanding any of the said grounds;

12.1.2 if Mansell has given such notice as aforesaid or under clause 12.3 below, Mansell shall accept liability for Border's obligations under the Appointment and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been

included in the Consultant's specified grounds and which is capable of remedy by Mansell; and

- 12.1.3 if Mansell has given such notice as aforesaid or under clause 12.3 below, Mansell will from the service of such notice become responsible for all sums properly payable to the Consultant under the Appointment accruing due after the service of such notice but Mansell will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Appointment.
- 12.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by Mansell to the Consultant, Mansell will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against Mansell unless and until Mansell has given written notice to the Consultant pursuant to clause 12.1.1 or clause 12.3 of this Deed.
- 12.3 The Consultant further covenants with Mansell that if the Border Sub-Contract is terminated the Consultant, if requested by Mansell by notice in writing and subject to clause 12.1.2 and clause 12.1.3, will accept the instructions of Mansell to the exclusion of Border in respect of its duties under the Appointment upon the terms and conditions of the Appointment and will if so requested in writing enter into a novation agreement whereby Mansell is substituted for Border under the Appointment.
- 12.4 If two or more valid notices are received on the same day any notice served by Mansell shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Consultant.
- 12.5 Border acknowledges that the Consultant will be entitled to rely on a notice given to the Consultant by Mansell under clause 12.3 as conclusive evidence that the Border Sub-Contract has been terminated.
- 12.6 Mansell may by notice in writing to the Consultant appoint another person to exercise its rights under this clause 10 subject to Mansell remaining liable to the Consultant as guarantor for its appointee in respect of its obligations under this Deed.

13. SUB-CONSULTANTS

Following a written request from Mansell the Consultant will (unless it has already done so) and/or procure that its sub-consultants execute a deed of collateral warranty in the relevant form specified in the Appointment in favour of any person in whose favour the Appointment obliged the Consultant to give or procure the giving of such a warranty.

14. APPLICABLE LAW AND JURISDICTION

This Deed and any non-contractual obligations arising out of or in connection with it will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

15. THIRD PARTY RIGHTS

This Deed and any non-contractual obligations arising out of or in connection with it is enforceable by the original parties to it and by their successors in title and permitted

assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by the Consultant acting by a Director and its Secretary/two Directors:

Director

Director/Secretary

EXECUTED AS A DEED by **BORDER CONSTRUCTION LIMITED** acting by its director

.....

in the presence of:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

EXECUTED AS A DEED by **MANSELL CONSTRUCTION SERVICES LIMITED** acting by its director

.....

in the presence of:

..... Witness Signature

..... Witness Name

..... Witness Address

.....

Part 2 (Principal Border Sub-Contractors to Mansell)

DATED _____ 2011

[THE SUB-CONTRACTOR] (1)

and

BORDER CONSTRUCTION LIMITED (2)

and

MANSELL CONSTRUCTION SERVICES LIMITED (3)

COLLATERAL WARRANTY

relating to North West Fire and Rescue PFI Project

save in relation to any claims made by Mansell against the Sub-Contractor and notified by the Contactor to the Sub-Contractor in writing prior thereto.

4. PROJECT DATA

- 4.1 The Sub-Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to Mansell with effect from the date of this Deed or in the case of Project Data not yet in existence with effect from the creation thereof, a royalty free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Sub-Contractor's obligations under the Sub-Contract or the termination of the Sub-Contract or the determination of the Sub-Contractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Project Data for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. Mansell will not hold the Sub-Contractor liable for any use they may make of the Project Data for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Sub-Contractor authorises such use and confirms the Project Data is suitable for it. The Sub-Contractor will not grant to any third party the right to use any of the Project Data save under any warranty it is obliged to give under the Sub-Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Sub-Contract.
- 4.2 The Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give Mansell or those authorised by it access to the Project Data and to provide copies (including copy negatives and CAD disks) thereof at Mansell's expense.
- 4.3 The Sub-Contractor warrants to Mansell that it has used the standard of skill, care and diligence as set out in clause 3.1 to see that the Project Data (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

5. INSURANCE

The Sub-Contractor hereby covenants with Mansell to:-

- 5.1 take out Professional Indemnity Insurance cover with a limit of indemnity of not less than ten million pounds (£10,000,000) for any one (1) occurrence or series of occurrences arising out of any one (1) event in relation to the Sub-Contract Works and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until twelve (12) years after practical completion of the Sub-Contract Works, provided that such insurance is generally available in the market to members of the Sub-Contractor's trade or profession at commercially reasonable rates and (for the avoidance of doubt), provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Sub-Contractor will be deemed to be within the reasonable rates;
- 5.2 provide evidence (as and when reasonably required by Mansell) satisfactory to Mansell of the Professional Indemnity Insurance (referred to in clause 3.1) being in full force and effect from the date of the Sub-Contract (such evidence to include details of the cover);

- 5.3 [Not used];
- 5.4 provide Mansell with notice of:-
- 5.4.1 any cancellation of the Professional Indemnity Insurance (referred to in clause 3.1) not less than thirty (30) days prior to the relevant cancellation date;
 - 5.4.2 any material changes to or suspension of cover relevant to the Sub-Contract Works;
 - 5.4.3 any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the Professional Indemnity Insurance;
 - 5.4.4 any act, omission or event which may adversely affect the terms and the scope of the Professional Indemnity Insurance relevant to the Sub-Contract Works or invalidate or render it unenforceable;
- 5.5 provide such information to Mansell as Mansell may reasonably require in relation to any claim or circumstance notified to it under the Professional Indemnity Insurance in respect of the Sub-Contract Works and any potential breach to the aggregate limit of the policy; and
- 5.6 disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Sub-Contract Works or any part of the Sub-Contract Works.

6. **NOTICES**

Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Business Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Business Day and otherwise on the next Business Day.

7. **ASSIGNMENT**

The benefit of and the rights of Mansell under this Deed may be assigned without the consent of the Sub-Contractor on two (2) occasions only and Mansell will notify the Sub-Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Sub-Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

8. **MANSELL'S REMEDIES**

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

9. INSPECTION OF PROJECT DATA

The Sub-Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Project Data or attendance at site meetings or other enquiry or inspection which Mansell may make or procure to be made for its benefit or on its behalf.

10. STEP-IN RIGHTS IN FAVOUR OF MANSELL

- 10.1 The Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Sub-Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to Mansell not less than thirty (30) days' prior written notice specifying the Sub-Contractor's ground for terminating or treating as terminated or repudiated the Sub-Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:-
- 10.1.1 Mansell may give written notice to the Sub-Contractor that Mansell will thenceforth become the sub-contractor's client under the Sub-Contract to the exclusion of Border and thereupon the Sub-Contractor will admit that Mansell is the sub-contractor's client under the Sub-Contract and the Sub-Contract will be and remain in full force and effect notwithstanding any of the said grounds;
- 10.1.2 if Mansell has given such notice as aforesaid or under clause 10.3 below, Mansell shall accept liability for Border's obligations under the Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the previous client which properly has been included in the Sub-Contractor's specified grounds and which is capable of remedy by Mansell; and
- 10.1.3 if Mansell has given such notice as aforesaid or under clause 10.3 below, Mansell will from the service of such notice become responsible for all sums properly payable to the Sub-Contractor under the Sub-Contract accruing due after the service of such notice but Mansell will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Sub-Contract.
- 10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by Mansell to the Sub-Contractor, Mansell will not be under any obligation to the Sub-Contractor nor will the Sub-Contractor have any claim or cause of action against Mansell unless and until Mansell has given written notice to the Sub-Contractor pursuant to clause 10.1.1 or clause 10.3 of this Deed.
- 10.3 The Sub-Contractor further covenants with Mansell that if the Border Sub-Contract is terminated by Mansell, the Sub-Contractor, if requested by Mansell by notice in writing and subject to clause 10.1.2 and clause 10.1.3, will accept the instructions of Mansell to the exclusion of Border in respect of its duties under the Sub-Contract upon the terms and conditions of the Sub-Contract and will if so requested in writing enter into a novation agreement whereby Mansell is substituted for Border under the Sub-Contract.
- 10.4 If two (2) or more valid notices are received on the same day any notice served by the Lender(s) shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Sub-Contractor.

- 10.5 Border acknowledges that the Sub-Contractor will be entitled to rely on a notice given to the Sub-Contractor by Mansell under clause 10.3 as conclusive evidence that the Border Sub-Contract has been terminated by Mansell.
- 10.6 Mansell may by notice in writing to the Sub-Contractor appoint another person to exercise their rights under this clause 10 subject to Mansell remaining liable to the Sub-Contractor as guarantor for their appointee in respect of their obligations under this Deed.
- 10.7 Upon request by Mansell, the Sub-Contractor agrees to co-operate with Mansell in determining the duties performed or to be performed by the Sub-Contractor and to provide a copy of the Sub-Contract and any variations thereto and details of all monies paid and due under the Sub-Contract.

11. **[NOT USED]**

12. **APPLICABLE LAW AND JURISDICTION**

This Deed and any non-contractual obligations arising out of or in connection with it will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

13. **THIRD PARTY RIGHTS**

This Deed and any non-contractual obligations arising out of or in connection with it is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED AS A DEED by [SUB-)
CONTRACTOR] acting by a Director and)
its Secretary/two Directors:-)

Director

Director/Secretary

EXECUTED AS A DEED by)
BORDER CONSTRUCTION LIMITED)
acting by a Director:-)

Director

EXECUTED AS A DEED by MANSELL)
CONSTRUCTION SERVICES LIMITED)
acting by a Director:-)

Director

Schedule 15

[Not Used]

Schedule 16

[Not Used]

Schedule 17

[Not Used]

Schedule 18
[Not Used]

Schedule 19

EQUALITY REQUIREMENTS

1. RACE DISCRIMINATION AND THE PROMOTION OF RACE EQUALITY AND DIVERSITY

- 1.1 Border (including its agents and employees) shall not, and shall procure that any Border Related Party shall not:-
- 1.1.1 discriminate directly or indirectly (and in relation to disability for a reason related to disability or failure to make reasonable adjustments) or by way of victimisation or harassment against any person on Prohibited Employment Grounds; and/or
 - 1.1.2 discriminate directly or indirectly or by way of victimisation or harassment against any person on Prohibited Grounds; and/or
 - 1.1.3 contravene Part IV of the Race Relations Act 1976 (Other Unlawful Acts) and/or Part IV of the Sex Discrimination Act 1975 (Other Unlawful Acts),

where appropriate.

- 1.2 Border (including its agents and employees) shall, and shall procure that any Border Related Party shall, for purposes of ensuring compliance with paragraphs 1.1.1 to 1.1.3 above, in relation to staff engaged in the provision of the Works observe as far as possible the provisions of:
- 1.2.1 the Commission for Racial Equality's Code of Practice in Employment;
 - 1.2.2 the Disability Rights Commission's Statutory Code of Practice on Employment and Occupation and the Code of Practice on the Disability Equality Duty; and
 - 1.2.3 any other relevant code of practice introduced by a commission or other body set up by Parliament to promote, monitor and enforce Equalities Legislation

including but not limited to, those provisions recommending the adoption, implementation, and monitoring of an equal opportunities policy.

- 1.3 Border shall, and shall procure that any Border Related Party shall, in performing its/their obligations under this Agreement, comply (to the extent permitted by law) with the provisions of:
- 1.3.1 Section 71(1) of the Race Relations Act 1976, as if they were a body within the meaning of Schedule 1A to the Race Relations Act 1976;
 - 1.3.2 Section 52(1) of the Equality Act 2006 as if they were a body within the meaning of Section 52(2) of the Equality Act 2006; and
 - 1.3.3 Sections 21B and 49A of the Disability Discrimination Act 1995, as if they were a body within the meaning of Section 49B of the Disability Discrimination Act 1995.
- 1.4 Border shall, and shall procure that any Border Related Party shall, notify the Authorities' Representative and the Contractor's Representative and Mansell's Representative forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against Border or any Border Related Party under the Equalities Legislation.

- 1.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to Border's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, Border shall, and shall procure that any Border Related Party shall, free of charge:-
- 1.5.1 provide any information requested in the timescale allotted;
 - 1.5.2 attend any meetings as required and permit any of its staff to attend;
 - 1.5.3 promptly allow access to and investigation of any documents or data deemed to be relevant;
 - 1.5.4 allow itself and any of its staff to appear as witness in any ensuing proceedings; and
- 1.5.5 cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

Schedule 20
[NOT USED]

Schedule 21
[NOT USED]

Schedule 22

[NOT USED]

Schedule 23

[NOT USED]

Schedule 24

[NOT USED]

Schedule 25

[NOT USED]

Schedule 26

[NOT USED]

Schedule 27

[NOT USED]

Schedule 28

[NOT USED]

Schedule 29

[NOT USED]

Schedule 30

PARTY WALL AGREEMENTS

Cumbria

Site	Details of party walls/issues which may require Party Wall Agreements
Carlisle East	3 m notice in respect to work to existing boundary walls and retaining walls. Notice to 3 adjoining owners: Jewsons, Carlisle City Council and WM Coulthard Ltd. Party Wall Agreement required.
Carlisle West	3 m notice in respect to new retaining wall along the appliance entrance road to the northeast to 1 residential owner / tenant. 4 weeks notice. Party Wall Agreement required. Notice will be required in relation to the construction of the retaining wall to the north west boundary of the Site.
Patterdale	3/6 m foundation notice in respect of new fire station building and its foundations adjacent existing buildings. Notice to both the Old Police Station and the Mountain Rescue. 4 weeks notice required. Party Wall Agreement required.
Workington	Possible line of junction notice required in respect civil and fencing work to the south, east and west of the Site.

Schedule 31

BORDER DELIVERABLES LIST

1. Provision of Training

Prior to the Planned Services Availability Date in respect of each Station Border shall provide specialist training to the FM Contractor in relation to the operation and maintenance of the relevant Station, which shall include:

- (a) operation of the fire panel;
- (b) operation of any specialist equipment (for example lifting equipment, access equipment and man safe systems);
- (c) operation of the BMS;
- (d) operation of any CCTV and security systems;
- (e) operation of climate control systems;
- (f) operation of any back up systems (for example UPS/generators); and
- (g) operation of any de-mountable partition systems.

2. Provision of Information

At all reasonable times during the carrying out of the Works, Border shall on reasonable advance notice make available to the FM Contractor at Border's principal offices (the location of which shall be notified in writing by Border to Mansell and unless Mansell requires otherwise to the FM Contractor's Representative) prior to the Services Availability Date of any Station or the date of a Post Completion Works Acceptance Certificate in respect of any Post Completion Works, accurate and sufficiently complete information to gain a full understanding with respect to progress of the Works and the events affecting the performance of the Works to the extent such information is reasonably required to enable the FM Contractor to comply with its obligations under the FM Agreement and any related sub-contract(s).

Schedule 32

PROJECT COORDINATION MATRIX

Note:

In this Schedule 32 (Project Co-ordination Matrix):

1. references to "BBCap" shall be deemed to be references to the Contractor;
2. references to "BBW" shall be deemed to be references to the FM Contractor; and
3. references to "MCSL" shall be deemed to be references to Mansell save in so far as relates to the Sites and/or the Stations where they shall be deemed to be references to Border.

Ref	Item	Responsible Party	Comments
1.0	Construction		
1.1	Design and construction of the works, in accordance with the latest output specification	MCSL	Specifications to accord with agreed Standard M&E and Building Specifications. In the event of conflict with the latest output specification, the MCSL will notify BBCap.
1.2	Energy and water for the construction works	MCSL	
1.3	[Not Used]		
1.4	Appointment of CDM Coordinator & fees	SPC	
1.5	Principal contractor role	MCSL	
1.6	Planning consent costs – capital works	MCSL	MCSL to ensure that detailed planning consents are received prior to Financial Close in accordance with the FC programme including any JR period.
1.7	Building control fees	MCSL	
1.8	Archaeology reports if required and the cost of any survey work deemed necessary by that report	MCSL	

Ref	Item	Responsible Party	Comments
1.9	Geotechnical survey, asbestos survey, condition and dilapidations surveys and any other surveys as required	MCSL	Warranted geotechnical and condition surveys have been provided by the Authorities. Level 2 asbestos surveys have been carried out by MCSL who receives a warranty in its favour directly from the asbestos surveyor.
1.10	Obtainment of crane oversailing rights where these may become applicable.	MCSL	
1.11	Obtainment of party wall agreements including fees	MCSL	Where they have not already been obtained by the Authorities.
1.12	Obtainment of rights to light	MCSL	
1.13	Utilities connection fees	MCSL	Utilities shall comprise gas, water, electricity, telecommunications and broadband. (Excluding the Redcare connection to the line)
1.14	Provision of operating manuals and Health & Safety File in accordance with CDM requirements	MCSL	
1.15	Metering for utilities to be installed	MCSL	Metering to provide sufficient information to operate the payment mechanism. Water metering to comply with NWFRS requirements. BBW will assist in specifying sub metering points if required
1.16	Sprinklers & other fire safety equipment	MCSL	
1.17	Perimeter fencing	MCSL	
1.18	Landscaping	MCSL	
1.19	Training facilities	MCSL	As specified in the Output Specification.
2.0	FF&E		

Ref	Item	Responsible Party	Comments
2.1	Fixed FF&E as detailed in the ISDS requirements	MCSL	MCSL is responsible for the design and procurement of all new furniture, fittings and equipment for all the project facilities as detailed in the Output Spec and the Area Data Sheets.
2.2	Loose FF&E as detailed in the ISDS requirements	MCSL	MCSL is responsible for the design and procurement of all new furniture, fittings and equipment for all the project facilities as detailed in the Output Spec and the Area Data Sheets.
3.0	FM services		
3.1	Hard and soft FM services to the new community fire stations, in accordance with the Output Specification	BBW	In the event of conflict with the Output Specification, BBW will notify BBCap.
3.2	BBW to take risk on energy consumption in line with the figures as defined by MCSL	BBW	<p>MCSL to consult with BBW during the bid stage to agree estimated figures.</p> <p>Authorities take tariff and standing charge risk</p> <p>Consumption risk during the Initial Services Period is a pass through cost to the Authorities</p> <p>Consumption risk during Initial Services and post Initial Services period is as defined in the subcontracts.</p>
3.3	On site accommodation for BBW as requested	MCSL	MCSL to ensure that accommodation is provided to meet the requirements of BBW who thereafter will be responsible for maintenance and life cycle.

Ref	Item	Responsible Party	Comments
3.4	Where temporary accommodation is provided, Initial Services to the temporary accommodation, inclusive of reactive maintenance	BBW	In accordance with the Part 2 of the Authorities Requirements
4.0	Lifecycle replacement		
4.1	Lifecycle replacement costs, including landscaping/ planting but excluding specialist firefighting and communications equipment	BBW	In accordance with the Output Specification
4.2	Management of lifecycle fund	BBW	
4.3	Lifecycle replacement costs for temporary accommodation	MCSL	MCSL to recover these costs from the temporary station provider under defects rectification procedures
4.4	Lifecycle replacement of loose furniture	NWFRS	
5.0	Demolition and asbestos removal		
5.1	Demolition, including asbestos removal, of existing fire stations, where required	MCSL	In accordance with the Output Specification. Asbestos removal to be undertaken by the MCSL.
6.0	Insurance		
6.1	Comprehensive PFI insurance, inclusive of insurance of temporary accommodation	SPC	
6.2	PII for design & construction of the facilities	MCSL	
6.3	Insurance during the decant for equipment and furniture to be decanted to the temporary and new stations	MCSL	MCSL assume that the insurance will be provided as part of the scope of the removals/decant specialist
7.0	Temporary accommodation and decanting		

Ref	Item	Responsible Party	Comments
7.1	Provision of temporary accommodation where required	MCSL	In accordance with the Output Specification
7.2	Services supply to temporary accommodation	MCSL	In accordance with the Authorities Requirements.
7.3	Moving of Authorities' furniture and equipment to the temporary and completed facilities and responsibility for associated costs	MCSL	In accordance with the Authorities' decanting schedules
7.4	Disposal of redundant FF&E and other Authorities' items from existing stations and temporary accommodation following the decant	MCSL	In accordance with the Authorities' decanting schedules
7.5	Builders' clean at handover/ removal of any waste resultant from decant	MCSL	MCSL to agree with BBW (and advise the SPC) the precise condition of the buildings with respect to cleaning at hand over
7.6	Deep clean at handover	BBW	Builders' clean initially by MCSL
8.0	SPC costs and overheads		
8.1	SPC's project development costs	SPC	
8.2	Annual SPC high level management and overhead costs	SPC	
8.3	Day to day SPC responsibilities, operations management, office running and office support	BBW	In accordance with BBW HoTs
9.0	Vending equipment		

Ref	Item	Responsible Party	Comments
9.1	<p>Services to vending machines: MCSL is responsible for the installation of the power, utilities, drainage or any other necessary services to these vending machines.</p> <p>BBW is responsible for the operation and continued provision of the power, utilities, drainage or any other necessary services to these vending machines.</p>	<p>MCSL</p> <p>BBW</p>	<p>Note: BBW are assuming it is not free vending, and therefore a vending supplier will manage the cash.</p>
9.2	<p>Cooled Drinking Water Stations including consumables As required by the Authorities Requirements to meet completion requirements.</p>	<p>MCSL</p>	<p>MCSL is responsible for the installation of the power, utilities, drainage or any other necessary services to water stations, if required by ISDS.</p> <p>BBW responsible for ongoing maintenance and consumables.</p>
10.0	Kitchens		
10.1	<p>Supply and installation of kitchens and associated facilities (including fixed and loose equipment)</p>	<p>MCSL</p>	<p>In accordance with the Output Specification</p>
10.2	<p>Maintenance of kitchens and associated facilities (including fixed and loose equipment)</p>	<p>BBW</p>	<p>As required by the Output Specification</p>
10.3	<p>Lifecycle of kitchens and associated facilities (fixed furniture only)</p>	<p>BBW</p>	
10.4	<p>Cleaning of the kitchens</p>	<p>BBW</p>	<p>As required by the Output Specification</p>
10.5(a)	<p>Commissioning of the kitchen equipment followed by the Building Contractors cleaning to the new kitchens/kitchen equipment.</p>	<p>MCSL</p>	<p>In accordance with the Output Specification</p>

Ref	Item	Responsible Party	Comments
10.5(b)	Hygienic cleaning of the new kitchens/kitchen equipment post Commissioning of the kitchen equipment	BBW	
11.0	Sanitary provisions		
11.1	Toilet roll holders as per the appropriate ADS	BBW	BBW to supply and fix – MCSL to instruct when this can be installed
11.2	Soap dispensers as per the appropriate ADS	BBW	BBW to supply and fix – MCSL to instruct when this can be installed
11.3	Hand driers as per the appropriate ADS	MCSL	
11.4	Paper towel dispensers as per the appropriate ADS	BBW	BBW to supply and fix – MCSL to instruct when this can be installed
11.5	Toilet hygiene monitors	BBW	
12.0	Signage		
12.1	Stations signs	MCSL	
12.2	Room Name & No. as specified	MCSL	
13.0	General		
13.1	Emergency Escape Signage (including Internal Emergency Direction Signage) to comply with Building Regulations and other applicable legislation	MCSL	
13.2 (a)	Provision of sprinklers, fire extinguishers and other fire fighting equipment as required by legislation and/ or to meet Authorities requirements/ Independent Testing requirements	MCSL	
13.2(b)	Ongoing maintenance of sprinklers, fire extinguishers and other fire fighting equipment as required by legislation and/ or to meet Authorities requirements	BBW	
13.3	Fire Blankets	BBW	

Ref	Item	Responsible Party	Comments
13.4	Obtain Fire Certificate/ Fire risk assessment	MCSL	MCSL will liaise with Building Control to obtain the Fire Certificate or Fire risk assessment as applicable (this is part of handover documentation from MCSL to BBW).
13.5	Access Equipment for Window Cleaning / Routine Maintenance.	MCSL	Any safety fixings eye bolts, anchor points for safety harnesses etc required as part of design to be provided by MCSL, which will be reviewed as part of CDM by MCSL.
13.6	First Aid Signage as required for Completion Requirements	MCSL	
13.7	Helpdesk hardware & software	BBW	
14.0	Miscellaneous		
14.1	White Lining as per site plan	MCSL/BBW	Initial lining only by MCSL
14.2	Direction / Operational Signage as required for Completion Requirements	MCSL/ BBW	Signage required for independent testing certificate e.g. Fire, Health and Safety etc to be MCSL. Operational signage beyond this BBW
14.3	Waste Disposal Signage	MCSL	As above
14.4	Entrance Signage	MCSL	
14.5	External Cycle Racks	MCSL	
14.6	External Bin Stores	MCSL	
14.7	Refuse Disposal - recycling containers	BBW	
14.8	Refuse Disposal – external bins and skips	NWFRS	