

DATED 23 FEBRUARY 2011

BALFOUR BEATTY PLC
and
BALFOUR BEATTY FIRE AND RESCUE NW LIMITED

in relation to
NORTH WEST FIRE AND RESCUE PFI PROJECT

BUILDING CONTRACT GUARANTEE

Ashfords
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THIS GUARANTEE is made as a deed on 23 FEBRUARY 2011

BY:

(1) **BALFOUR BEATTY PLC** incorporated in England and Wales (Registered Number 00395826) whose registered office is situated at 4th Floor, 130 Wilton Road, London SW1V 1LQ (the **Guarantor**);

to

(2) **BALFOUR BEATTY FIRE AND RESCUE NW LIMITED** incorporated in England and Wales (Registered Number 07403391) whose registered office is at 6th Floor, 350 Euston Road, Regent's Place, London NW1 3AX (who and whose successors and assigns hereunder are hereinafter referred to as the **Contractor**).

WHEREAS:

(A) The Contractor has entered into an agreement with Cumbria County Council, Lancashire Combined Fire Authority and Merseyside Fire and Rescue Authority (together the "**Authorities**") dated of even date herewith (the **Project Agreement**) for *inter alia* the provision of the Works and Services during the Contract Period.

(B) The Contractor has engaged Mansell Construction Services Limited (company registration number 01197246) whose registered office is at Roman House, Grant Road, Croyson, Surrey, CR9 6BU (hereinafter called the **Building Contractor**) under a contract dated on or around the date of this Guarantee (hereinafter called the **Building Contract**) in respect of the carrying out of the Works.

(C) The Guarantor has agreed to guarantee the due performance by the Building Contractor of the Building Contractor's obligations under the Building Contract (the **Guaranteed Agreement**) 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 the Contractor entering into the Guaranteed Agreement with the Building Contractor, the Guarantor hereby irrevocably and unconditionally guarantees to the Contractor on the Contractor's demand in writing the due and punctual performance by the Building Contractor of each and all of the obligations, duties and undertakings of the Building Contractor under and pursuant to the Guaranteed Agreement when and if and to the extent that such obligations, duties and undertakings shall properly become due and performable according to the terms of the 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 the Building Contractor to the Contractor pursuant to the Guaranteed Agreement and/or as a result of any breach thereof (including all expenses, to include legal fees and taxes, incurred by the Contractor in connection with the Contractor enforcing any of the above) and the Guarantor undertakes to the Contractor fully to perform and observe or procure the performance and observance of all duties, obligations and

undertakings under the Guaranteed Agreement if the Building Contractor shall fail in any respect to perform and observe the same, failing which the Guarantor hereby indemnifies the Contractor in respect of any claim, demand, proceedings or liability, loss, damage, costs and/or expenses arising directly out of any failure by the Building Contractor to perform each and all of the obligations, duties and undertakings of the Building Contractor 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 Agreement and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by the Building Contractor to the Contractor pursuant to the terms of the Guaranteed Agreement and/or as a result of any breach thereof (including all expenses, to include legal fees and taxes incurred by the Contractor in connection with the Contractor enforcing any of the above) PROVIDED THAT subject to clauses 6, 7 and 10 hereof, in no circumstances shall the liability of the Guarantor to the Contractor under this Guarantee (except in relation to any expenses, legal fees and taxes referred to in this clause 2) exceed the liability of the Building Contractor to the Contractor under the Guaranteed Agreement and, without prejudice to the foregoing, as between the Guarantor and the Contractor, all the defences available to the Building Contractor in respect of its liabilities under the Guaranteed Agreement or otherwise available to the Building Contractor at law (if and to the extent that those defences are not specific to the Building Contractor and would be available to the Guarantor if the Guarantor had been party to the Guaranteed Agreement in place of the Building Contractor) shall be available to the Guarantor in respect of its liabilities under this Guarantee and the Guarantor hereby confirms for the benefit of the Contractor that a decision of the Adjudicator given in accordance with the Dispute Resolution Procedure set out in the relevant clause of the Guaranteed Agreement shall bind the Guarantor to the same extent that such decision is binding on the Building Contractor under the 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 the Contractor be lessened, impaired, discharged, diminished or otherwise adversely affected by virtue of time being given to the Building Contractor by the Contractor or by virtue of any concession, forbearance or arrangement granted or made by the Contractor to or with the Building Contractor or by virtue of anything that the Contractor or the Building Contractor 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 the Contractor or the giving by the Building Contractor 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 the Building Contractor and the Contractor to make any addition or variation to the Guaranteed Agreement, 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 the 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 the Building Contractor under the Guaranteed Agreement shall have been satisfied or performed in full and this Guarantee is in

addition to and not in substitution for any other security which the Contractor may at any time hold for the performance of such obligations and may be enforced by the Contractor without first having recourse to any such security.

6. The liability of the Guarantor and the rights of the Contractor in relation to this Guarantee shall not be discharged or impaired by reason of the insolvency, winding-up, dissolution, administration, receivership or reorganisation of the Building Contractor or any change in its status, function, control or ownership or by any other act, event (including, without limitation, the Building Contractor ceasing, for any reason, to be a party to the arrangements among the parties comprising the Building Contractor) 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 the Contractor and any discharge or release by the Contractor in favour of the Guarantor or agreement between the Guarantor and the Contractor concerning any obligations or liabilities of the Guarantor hereunder which shall be deemed to have been given or entered into by the Contractor 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 the Contractor by the Building Contractor) 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 the Building Contractor or claim any set-off or counterclaim against the Building Contractor or prove in competition with the Contractor to claim for any money or liabilities due or incurred by the Building Contractor to the Contractor or have the benefit of any security which the Contractor holds or may hold for any money or liabilities due or incurred by the Building Contractor to the Contractor and if the Guarantor receives any sums from the Building Contractor in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies in trust for the Contractor so long as any sums are payable (contingently or otherwise) under this Guarantee.

8. Without prejudice to clause 5 hereof, the Contractor 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 the Building Contractor;
 - (b) to take any legal proceedings or action or obtain judgment against the Building Contractor in any court; or
 - (c) to make or file any claim in bankruptcy, liquidation, winding-up or dissolution of the Building Contractor; or
 - (d) to pursue or exhaust any other right or remedy against the Building Contractor and the liabilities of the Guarantor under this Deed may be enforced by the Contractor against the Guarantor irrespective of whether

any legal proceedings are being or have been taken against the Building Contractor.

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 without set-off or counterclaim and 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. The Contractor shall be entitled, without requiring the prior consent of the Guarantor and upon giving notice in writing to the Guarantor to assign the benefit of this Guarantee and/or charge the benefit of this Guarantee by way of security in accordance with the Financing Agreements.
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 England 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 the Contractor or its assigns pursuant to the operation of clause 71 (Assignment and Subcontracting) of the Building Contract.
15. This Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.
16. 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
BALFOUR BEATTY PLC
acting by its duly appointed attorney

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in the presence of:

Witness Name: *JONATHAN CROLEY*

Witness Signature: *J Croley*

Witness Address: **Ashfords** *LP*

Witness Occupation: **Solicitors**
Tower Wharf
Cheese Lane
Bristol BS2 0JJ

The Contractor

EXECUTED as a **DEED** by
BALFOUR BEATTY FIRE AND RESCUE NW LIMITED
acting by its duly appointed attorney

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in the presence of:

Witness Name: *BRIAN WARREN*

Witness Signature: *Brian Warren*

Witness Address: *ASHFORDS LLP, GRENADISE ROAD, AXETON, EX1 3HH*

Witness Occupation: *SOLICITOR*