23 FEBRUARY

DATED 2011

BLUE SKY DESIGN SERVICES LIMITED

and

CUMBRIA COUNTY COUNCIL

and

LANCASHIRE COMBINED FIRE AUTHORITY

and

MERSEYSIDE FIRE AND RESCUE AUTHORITY

and

MANSELL CONSTRUCTION SERVICES LIMITED

DUTY OF CARE DEED

relating to North West Fire PFI Project

THIS DEED is made on 23 FEBRUARY 2011

BETWEEN:-

(1) BLUE SKY DESIGN SERVICES LIMITED (Company Number 06235182) whose registered office is at Building 1000, Kings Reach, Yew Street, Stockport, SK4 2HD (the "Consultant");

(2) CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA, LANCASHIRE COMBINED FIRE AUTHORITY of Lancashire Fire and Rescue Service Headquarters, Garstang Road, Fulwood, Preston, PR2 3LH and MERSEYSIDE FIRE AND RESCUE AUTHORITY of Merseyside Fire and Rescue Service Headquarters, Bridle Road, Bootle, Merseyside, L30 4YD (the "Authorities"); and

(3) 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 "Building Contractor").

BACKGROUND

(A) By a project agreement dated 23 FEBRUARY 2011 (the "Project Agreement") the Authorities have appointed the Contractor to carry out, in relation to the Sites, the provision of serviced accommodation to the Authorities at each and every Station as contemplated by the Project Agreement including the carrying out of the Works and the provision of the Services design and construction of the Works.

(B) By a design and build contract dated 23 FEBRUARY 2011 (the "Building Contract") the Contractor has appointed the Building Contractor to carry out in relation to the Sites the design and construction of the Works.

(C) The Consultant has been appointed by the Building Contractor under a deed of appointment dated 23 FEBRUARY 2011 (the "Appointment") to provide services in relation to the Works.

(D) The Consultant is obliged under the Appointment to give a warranty in this form in favour of the Authorities.

1. **DEFINITIONS AND INTERPRETATIONS**

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

"Lender(s)"	means any organisation providing funding to the Contractor in connection with the carrying out of the Works.

1.2 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 Authorities 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 Authorities to raise equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Building Contractor under the Appointment. Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Building Contract, the liability of the Consultant under this Deed shall cease and determine, save in relation to any claims made by the Authorities against the Consultant and notified by the Authorities 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 Authorities with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, 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 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. The Authorities 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 Authorities or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authorities' expense.

4.3 The Consultant warrants to the Authorities 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 Authorities 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 claim 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 Authorities) satisfactory to the Authorities 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 Authorities 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 Authorities with notice of:-

(a) 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;

(b) any material changes to or suspension of cover relevant to the Works;

(c) 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;

(d) 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;

(e) provide such information to the Authorities as the Authorities 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;

(f) 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**

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 4.45pm 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

The benefit of and the rights of the Authorities under this Deed may be assigned without the consent of the Consultant on two (2) occasions only and the Authorities 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. AUTHORITIES' REMEDIES

The rights and benefits conferred upon the Authorities 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

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 Authorities 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 Authorities 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 AUTHORITIES

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 Authorities 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 Authorities may give written notice to the Consultant that the Authorities will thenceforth become the Building Contractor under the Appointment to the exclusion of the Building Contractor and thereupon the Consultant will admit that the Authorities 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 Authorities have given such notice as aforesaid or under clause 12.3 below, the Authorities 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 Authorities; and

12.1.3 if the Authorities have given such notice as aforesaid or under clause 12.3 below, the Authorities 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 Authorities 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 Authorities to the Consultant, the Authorities will not be under any obligation to the Consultant nor will the Consultant have any claim or cause of action against the Authorities unless and until the Authorities 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 Authorities that if the Project Agreement is terminated by the Authorities the Consultant, if requested by the Authorities by notice in writing and subject to clause 12.1.2 and clause 12.1.3, will accept the instructions of the Authorities 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 Authorities 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 Authorities under clause 12.3 as conclusive evidence that the Project Agreement has been terminated by the Authorities.

12.6 The Authorities may by notice in writing to the Consultant appoint another person to exercise their rights under this clause 12 subject to the Authorities remaining liable to the Consultant as guarantor for their appointee in respect of their obligations under this Deed.

13. **SUB-CONSULTANTS**

Following a written request from the Authorities 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 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 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:-

EXECUTED AS A DEED by BLUE SKY DESIGN SERVICES LIMITED acting by a Director and its Secretary/two Directors:-)

C.D. Russell

Director

~~Director~~/Secretary

John Connolly

EXECUTED AS A DEED by MANSELL CONSTRUCTION SERVICES LIMITED acting by ~~a Director and its Secretary/two Directors:-~~ its duly authorised attorney)

~~Director~~

~~Director/Secretary~~

WITNESS NAME: JONATHAN CROLEY

WITNESS SIGNATURE: J Croley

WITNESS ADDRESS Ashfords LLP Solicitors
Tower Wharf
Cheese Lane
Bristol BS2 0JJ

The common seal of)

CUMBRIA COUNTY COUNCIL)

was hereunto affixed in the presence)

of:)

Seal

C Wilson C25488

Signature of duly authorised officer

C WILSON .....

Full name (BLOCK CAPITALS)

GROUP SOLICITOR .....

Position/title

EXECUTED AS A DEED by
LANCASHIRE COMBINED FIRE
AUTHORITY acting by a Director and its
Secretary/two Directors:-

Anthony Harold

~~Director~~

Director/~~Secretary~~ Authorised Signatory

181

EXECUTED AS A DEED by
MERSEYSIDE FIRE AND RESCUE
AUTHORITY acting by a Director and its
Secretary/two Directors:-

~~Director~~

Director/~~Secretary~~ Authorised Signatory