

DATED 23 FEBRUARY 2011

BORDER CONSTRUCTION LIMITED (1)

and

GLEEDS MANAGEMENT SERVICES LIMITED (2)

and

BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (3)

INDEPENDENT CERTIFIER'S WARRANTY

Relating to North West Fire PFI Project

THIS DEED dated 23 FEBRUARY 2011 BETWEEN:-

- (1) BORDER CONSTRUCTION LIMITED (registered in England and Wales under company number 00654704) whose registered office is at Marconi Road, Burgh Road Industrial Estate, Carlisle, Cumbria, CA2 7NA ("the Beneficiary");
- (2) GLEEDS MANAGEMENT SERVICES LIMITED (registered in England under company number 01753465) whose registered office is at 95 New Cavendish Street, London W1W 6XF ("the Independent Certifier"); and
- (3) BALFOUR BEATTY FIRE AND RESCUE NW LIMITED (registered in England and Wales under company number 07403391) whose registered office is at 6<sup>th</sup> Floor, 350 Euston Road, Regent's Place, London, NW1 3AX ("the Contractor").

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

- "Appointment" means an agreement made between the Authorities, the Contractor, the Facility Agent and the Independent Certifier for services to be carried out by the Independent Certifier on behalf of the Contractor in connection with the Works;
- "Authorities" means CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA, LANCASHIRE COMBINED FIRE AUTHORITY of Lancashire Fire and Rescue Service Headquarters, Garstang Road, Fulwood, Preston, PR2 3LH and MERSEYSIDE FIRE AND RESCUE AUTHORITY of Merseyside Fire and Rescue Service Headquarters, Bridle Road, Bootle, Merseyside, L30 4YD (the "Authorities");
- "Facility Agent" means DEXIA CRÉDIT LOCAL, of Shackleton House, 4 Battle Bridge Lane, London, SE1 2RB which expression shall include its successors and assigns;
- "Project Agreement" means the agreement dated 23 FEBRUARY 2011 (including any variation or replacement of such agreement from time to time) entered into between the Authorities and the Contractor for the provision of the Project;
- "Professional Indemnity Insurance" means professional indemnity insurance in an amount of not less than ten million pounds sterling (£10,000,000) for any one claim but limited to an aggregate basis in respect of pollution and contamination and to two hundred and fifty thousand pounds sterling (£250,000) in respect of asbestos;

“Services” means the general and specific duties and obligations of the Independent Certifier under the Appointment;

“Works” means the design and construction of the works by the Contractor as more particularly described in the Project Agreement.

## 1.2 **Successors**

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

## 1.3 **Joint liability**

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

## 1.4 **Headings**

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

## 1.5 **Notices**

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

## 1.6 **References to statutes, etc**

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

## 1.7 **Genders and numbers**

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

## 2. **DUTY OF CARE**

2.1 The Independent Certifier warrants and undertakes that it has exercised and will continue to exercise in the performance and discharge of the Services the reasonable skill, care and diligence to be expected from a competent and properly qualified Independent Certifier experienced in providing services in relation to projects of a similar scope, type, scale and complexity to the Works as those comprised in the Works in the performance of its duties and obligations under the Appointment.

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

### 3. **PROFESSIONAL INDEMNITY INSURANCE**

The Independent Certifier covenants:-

- 3.1 to take out and maintain Professional Indemnity Insurance for a period of twelve (12) years from the date of completion of the Independent Certifier's duties under the Appointment provided such insurance is available in the market at commercially reasonable rates;
- 3.2 to inform the Beneficiary or its assignees in writing immediately if any failure or inability to maintain such professional indemnity insurance cover in accordance with 3.1 above in order that the parties can discuss means of best protecting their respective positions in the absence of such insurance; and
- 3.3 when requested by the Beneficiary (but not more often than is reasonable) to produce written evidence of the Professional Indemnity Insurance cover and confirmation from the Professional Indemnity Insurance provider that the last premium has been paid.

### 4. **ASSIGNMENT**

- 4.1 The benefit of this Deed may be assigned by the Beneficiary to any other person having an interest in the Works provided that:-
- 4.1.1 the number of assignments under this clause is limited to two only;
- 4.1.2 the Independent Certifier shall be entitled to receive notice of such assignment in writing upon the assignment taking place; and
- 4.1.3 the Independent Certifier shall at the reasonable cost and expense of the Beneficiary do all things as may be reasonably necessary to effect any such assignment.
- 4.2 The Independent Certifier will not contend that any assignee is precluded from recovering any loss from any breach of this Agreement (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediary beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Works or that that original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

### 5. **INDEPENDENT ENQUIRY CLAUSE**

The liability of the Independent Certifier under this Deed shall not be modified released, diminished or in any way affected by any independent inspection, investigation or enquiry into any relevant matter which may be made or carried out by or for the

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

6. **NON WAIVER**

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

7. **PARTNERSHIP**

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

8. **JURISDICTION AND LAW**

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

9. **WARRANTY IN RESPECT OF CERTIFICATES**

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

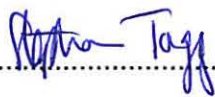
IN WITNESS whereof this document is executed as a deed and is delivered on the date stated at the beginning of this Deed.

EXECUTED AS A DEED by

the INDEPENDENT CERTIFIER


in the presence of:-

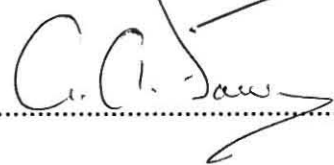
  
.....  
Director

  
.....  
Director/Company Secretary

EXECUTED AS A DEED by

the BENEFICIARY in the presence of:-

  
.....  
Director

  
.....  
Director/Company Secretary

EXECUTED AS A DEED by  
the CONTRACTOR



acting by:

its duly authorised attorney

Duly authorised attorney

in the presence of:

Name of witness:

JOANNA SPALDING

Address of witness:

**Ashfords** <sup>Solicitors</sup> UP  
Tower Wharf  
Cheese Lane  
Bristol BS2 0JJ

Occupation of witness:

Signature of witness:

