

**17. SCHEDULE 17:**

**CONSTRUCTION SUB-  
CONTRACTOR'S  
COLLATERAL WARRANTY**

**Part 1: MBT**

**Part 2: Alconbury**

**THIS DEED** is made on

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**BETWEEN**

- (1) **NORTHSTONE (NI) LIMITED** (No N1004078) a company incorporated in England and Wales and whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU ("the Contractor");
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Cambridgeshire Shire Hall, Cambridge, CB3 0AP ("the Beneficiary", which expression includes its permitted successors in title and assigns); and
- (3) **DONARBON WASTE MANAGEMENT LIMITED** (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge CB25 9PG ("the Employer").

**BACKGROUND**

- (A) By a contract dated ("the Project Agreement"), the Beneficiary has appointed the Employer to carry out in relation to the site therein described as "the Sites" the design and construction of the works therein defined as "the Works", which expression has the same meaning in this Deed.
- (B) By a contract dated ("the Contract"), the Employer has appointed the Contractor to carry out in relation to the Sites the design and construction of the Works.
- (C) The Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

**OPERATIVE PROVISIONS**

In consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges:

**1. CONTRACTOR'S WARRANTY AND LIABILITY**

- 1.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its duties and obligations under the Contract in accordance with the Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all the reasonable skill care and diligence to be expected of suitably skilled qualified and experienced professional building contractors performing services and works of similar nature to those undertaken by the Contractor under the Contract.
- 1.2 Without derogation from clause 1.1 and to the extent that under the Contract the Contractor takes responsibility for the design of the Works or the selection of goods, materials, plant or equipment for incorporation in the Works the Contractor warrants that the same have been and/or will be designed or selected with reasonable skill and care.

- 1.3 The Contractor has no liability hereunder which is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as joint employer. The Contractor shall not be entitled to set-off against any liability to the Beneficiary under this Deed any sum of money or other entitlement due to it from the Employer howsoever arising under the terms of the Contract or in equity or at common law.
- 1.4 Upon the expiration of 12 years from the date of Practical Completion (or its equivalent) under the Contract the liability of the Contractor under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Contractor and notified by the Beneficiary to the Contractor in writing prior thereto.

## **2 DOCUMENTS**

- 2.1 In relation to all drawings, reports, calculations, details, plans, models, specifications, photographs, schedules, bills of quantities, and other documents and information of any nature whatsoever (including any computer software used to generate them and any designs and inventions contained in them) which have been or are hereafter provided by the Contractor in the course of performing its obligations under the Contract ("Documents") the Contractor 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, an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Contractor under the Contract or the abandonment or completion of the Works or of its obligations under the Contract 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, refurbishment and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 2.2 The Beneficiary will not hold the Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Contractor authorises such use and confirms that the Documents are suitable for it.
- 2.3 The Contractor 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 Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Contract.
- 2.4 The Contractor 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. The Contractor hereby warrants that it will preserve all such Documents in a safe and accessible place throughout the currency of this Deed.

- 2.5 The Contractor warrants to the Beneficiary that the Documents (save to the extent duly appointed sub-consultants and 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, including use by the Beneficiary in accordance with the licence granted by this clause 2, will not infringe the rights of any third party.

### **3 INSURANCE**

- 3.1 The Contractor hereby covenants with the Beneficiary that it has effected a policy of Professional Indemnity and such other insurance covering the liabilities of the Contractor under the Contract and under this Deed for negligence, with a limit of indemnity of not less than £5,000,000 (five million pounds) for any occurrence or series of occurrences arising out of any each and every event and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works provided that such insurance is generally available in the market to design and build Contractors 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 Contractor's own claims record or other acts omissions matters or things peculiar to the Contractor will be deemed to be within the reasonable rates.
- 3.2 The Contractor shall immediately inform the Beneficiary if for any period such insurance is not or ceases to be available on commercially reasonable terms and shall obtain in respect of such period such reduced level of insurance as is available and would be fair and reasonable in the circumstances for the Contractor to obtain. The Contractor shall co-operate with the Beneficiary to ensure that all reasonable steps are taken to obtain such insurance at reasonable rates.
- 3.3 As and when reasonably required by the Beneficiary the Contractor will produce for inspection documentary evidence that the insurance referred to in clause 3.1 and 3.2 is being properly maintained and that payment has been made in respect of the premiums due thereunder.

### **4 NOTICES**

- 4.1 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 4.45 pm on any day it will be deemed to be served on the next working 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 working day and otherwise on the next working day.

## **5 ASSIGNMENT**

- 5.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only to any person acquiring the whole or substantial part of the Beneficiary's interest in the Project.
- 5.2 In calculating the number of assignments for the purposes of clause 5.1 no account will be taken of assignments to a successor authority assuming the functions of the Beneficiary or assignments by way of security or by way of re-assignment on redemption.
- 5.3 The Beneficiary will notify the Contractor in writing following any assignment specifying the name and address of the assignee and the date of the assignment.
- 5.4 The 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.

## **6 BENEFICIARY'S REMEDIES**

- 6.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

## **7 INSPECTION OF DOCUMENTS**

- 7.1 The Contractor'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 be made for its benefit or on its behalf.

## **8 STANDARDS OF PRODUCTS AND MATERIALS**

- 8.1 Without prejudice to the generality of clause 1.1 and 1.2 of this Deed, the Contractor 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 or used and it will not specify or 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 use are widely known to construction contractors or members of the

relevant design 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.

- 8.2 If in the performance of its duties under the Contract the Contractor 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 Contractor will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by the Contract.

## **9 STEP-IN RIGHTS**

- 9.1 The Contractor warrants to the Beneficiary that it shall not terminate nor treat as terminated its employment under the Contract, nor discontinue the construction of the Works without first giving to the Beneficiary not less than 28 days' prior notice of the Contractor's intention to do so, specifying the grounds for so doing.
- 9.2 If the Beneficiary serves on the Contractor a notice in accordance with clause 9.3, the Contractor shall not terminate nor treat as terminated its employment under the Contract, nor discontinue the construction of the Works but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Contract.
- 9.3 Unless the employment of the Contractor under the Contract shall have terminated previously (and whether or not the Contractor shall have served notice on the Beneficiary pursuant to clause 9.1) if the Beneficiary serves upon the Contractor a notice to do so, the Contractor shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with the Contract.
- 9.4 As against the Employer and the Beneficiary the Contractor shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 9.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 9.5 As from the date of service of notice under clause 9.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Contract, provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Contract happening prior to the date of service of notice by the Beneficiary under clause 9.3.
- 9.6 Within 21 days after serving notice under clause 9.3 or clause 9.9 the Beneficiary shall pay to the Contractor an amount equal to the sum then owing to the Contractor under the Contract for work done and materials delivered.

- 9.7 If the employment of the Contractor under the Contract is terminated before service of any notice under clause 9.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new contract with the Beneficiary or its appointee on the same terms as the Contract but with such revisions as the Beneficiary shall reasonably require to reflect the altered circumstances. Forthwith upon the execution of such new contract, the Beneficiary shall pay to the Contractor an amount equal to the sum which, immediately before termination of the Contractor's employment, was owing to the Contractor by the Employer under the Contract for work done and materials delivered and which remains unpaid.
- 9.8 Upon payment by the Beneficiary in accordance with clause 9.6 and 9.7 of an amount equal to the relevant sum owing from the Employer, the Contractor shall assign to the Beneficiary all the Contractor's rights against the Employer in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Employer.
- 9.9 The Contractor further covenants with the Beneficiary that if the Project Agreement is terminated by the Beneficiary, the Contractor, if requested by the Beneficiary by notice in writing and subject to clause 9.6, will accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Employer under the Contract.
- 9.10 The Beneficiary guarantees to the Contractor the performance of the obligations of any appointee of the Beneficiary nominated under clause 9.3 or 9.7 or 9.9.
- 9.11 Where the Contractor has given rights in relation to the Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.3 or clause 9.7 or clause 9.9 or its equivalent the notice served by the Beneficiary will not prevail over any notice served by such other person but will prevail over any notice served by any other person.
- 9.12 The Employer agrees to the foregoing provisions of this clause 9 and agrees to be bound by them.

## **10 OTHER COLLATERAL WARRANTIES**

- 10.1 Following a written request from the Beneficiary the Contractor will (unless it has already done so) execute and/or procure that its sub-Contractors and/or professional consultants or any of them each execute a deed of collateral warranty in the relevant form specified in the Contract in favour of any person in whose favour the Contract obliged the Contractor to give or procure the giving of such a warranty.

## **11. APPLICABLE LAW AND JURISDICTION**

11.1 This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

**12. THIRD PARTY RIGHTS**

12.1 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 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 stated above.

**EXECUTED** (but not delivered )  
until the date hereof )  
**AS A DEED** by )  
**NORTHSTONE (NI) LIMITED** )  
acting by:- )

Director

Director/Secretary

THE COMMON SEAL OF )  
**CAMBRIDGESHIRE COUNTY** )  
**COUNCIL** was hereunto affixed by )  
order:- )

Authorised Signatory



**EXECUTED** (but not delivered )  
until the date hereof )  
**AS A DEED** by )  
**DONARBON WASTE MANAGEMENT** )  
**LIMITED** )  
acting by:-

Director

Director/Secretary