

DATED 29 February February 2000

COLLATERAL WARRANTY

Between

(1) CURRIE & BROWN CONSULTING LIMITED

and

**(2) THE MAYOR AND BURGESSES OF THE LONDON
BOROUGH OF WALTHAM FOREST**

and

(3) NEWSCHOOLS (LEYTON) LIMITED

relating to
INDEPENDENT TECHNICAL ADVISORS' APPOINTMENT



MCGRIGOR DONALD

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TABLE OF CONTENTS

Clause	Heading	Page No.
1	DEFINITIONS AND INTERPRETATION.....	1
2	WARRANTY OF PERFORMANCE	2
3	COPYRIGHT	2
4	INSURANCE OBLIGATIONS	3
5	TERMINATION OF INDEPENDENT TECHNICAL ADVISOR'S APPOINTMENT	3
6	TRANSFER OF BENEFIT OF THIS DEED	3
7	VARIATIONS AND WAIVER	3
8	SEVERANCE.....	3
9	AGENCY	4
10	NO PARTNERSHIP	4
11	NOTICES	4
12	DGFT NOTIFICATION.....	5
13	DISPUTE RESOLUTION PROCEDURE	5
14	GOVERNING LAW.....	5
15	CONCURRENCE.....	5
16	COUNTERPARTS	6

THIS DEED OF WARRANTY is made the 29th day of February 2000

between

- (1) **NEWSCHOOLS (LEYTON) LIMITED**, (Registered in England and Wales under Company No 3885037) whose registered office is at Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW (the "**Provider**");
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WALTHAM FOREST** whose address is at Town Hall, Forrest Road, London E17 4UL and, subject to Clause 29.3 of the Project Agreement, its statutory successors (the "**Council**")
- (3) **CURRIE & BROWN CONSULTING LIMITED**, a company incorporated under the laws of England and Wales (Reg No 01347474) whose registered office is at The Red House, High Street, Redbourn, St Albans, Herts AL3 3LE (the "**Independent Technical Advisor**")

WHEREAS:

- (A) The Provider has agreed to appoint the Independent Technical Advisor to undertake certain tasks pursuant to the Project Agreement and the Building Contract and the Provider, and the Independent Technical Advisor have entered into an appointment (the "Independent Technical Advisor's Appointment"), for the purposes of setting out the terms upon which the Independent Technical Advisor is appointed.
- (B) The Provider and the Building Contractor have entered into the Building Contract and the Provider and the Services Contractor have entered into the Services Contract and the Independent Technical Advisor has full knowledge of the provisions of the Building Contract and the Services Contract respectively.
- (C) The Provider and the Independent Technical Advisor have agreed to enter into this Deed in favour of the Council.

NOW THIS DEED WITNESSETH as follows

1 DEFINITIONS AND INTERPRETATION

- 1.1 Save as otherwise expressly provided, terms and expressions defined in the Project Agreement and the Independent Technical Advisor's Appointment respectively shall bear the same meanings where used in this Deed (including the Recitals) and, in addition (unless the context otherwise requires) the following terms have the following meanings:

"**Parties**" means the parties to this Deed and "**Party**" shall be construed accordingly;

- 1.2 This Deed shall constitute a collateral warranty in favour of the Council as referred to in Clause 10 of the Independent Technical Advisor's Appointment.

1.3 Interpretation

- 1.3.1 All references to Clauses are (unless the context otherwise requires) references to clauses of this Deed.

1.3.2 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision.

1.3.3 Any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation.

2 WARRANTY OF PERFORMANCE

The Independent Technical Advisor warrants to and undertakes with the Council that:

2.1 it has complied and will continue to comply with all its express and implied obligations under the Independent Technical Advisor's Appointment;

2.2 in providing the Technical Services under the Independent Technical Advisor's Appointment, the Independent Technical Advisor has exercised and will continue to exercise reasonable care, skill and diligence to be reasonably expected of a properly qualified and competent professional advisor holding itself out as competent and experienced in rendering like services in connection with projects of a similar size, nature, scope and complexity as the Project;

2.3 the Independent Technical Advisor has performed and will continue to perform the Technical Services promptly and efficiently; and

2.4 provided that the Independent Technical Advisor shall owe no greater duty to the Council under this Deed than if the Council had been named as client with the Provider under the Independent Technical Advisor's Appointment, with the Independent Technical Advisor owing its duties to each client separately.

3 COPYRIGHT

3.1 The Independent Technical Advisor grants to the Council and any appointee of the Council an irrevocable non-exclusive, royalty-free licence to use and reproduce and to grant sub-licences of all documents and other material related to the Technical Services in which the Independent Technical Advisor has copyright which have been or are to be written, originated or prepared or provided by or on behalf of the Independent Technical Advisor relating to the Technical Services and all amendments and additions thereto (whether in existence or to be made) and any works, designs or inventions of the Independent Technical Advisor incorporated or referred to therein, (the "**Copyright Material**") provided that the Copyright Material shall not be used for any purpose other than in connection with the Project or as otherwise authorised to be used by the Independent Technical Advisor.

3.2 The Independent Technical Advisor warrants to the Council that the Copyright Material is the original work of the Independent Technical Advisor, that the copyright therein is vested or will vest in the Independent Technical Advisor and that it has granted no rights thereof to any person other than the Council and the Provider.

4 **INSURANCE OBLIGATIONS**

Without prejudice to any other obligation it may have regarding insurance, the Independent Technical Advisor hereby covenants with the Council that:

- 4.1 it will comply with its insurance obligations under the Independent Technical Advisor's Appointment;
- 4.2 it will provide to the Council (within 10 Business Days of the Council's written request, made not more than once in each year), written confirmation from an independent firm of insurance brokers that the Independent Technical Advisor has such insurance in force, for a period to be specified in the written confirmation; and
- 4.3 it will notify the Council as soon as possible if it becomes aware of any reason why any amount payable under such policy or policies might be reduced or avoided.
- 4.4 If professional indemnity insurance ceases to become available in the London insurance market on commercially reasonable rates and terms then the Independent Technical Advisor shall notify the Council.

5 **TERMINATION OF INDEPENDENT TECHNICAL ADVISOR'S APPOINTMENT**

The Independent Technical Advisor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated the Independent Technical Advisor's Appointment or discontinue or suspend the performance of any of its duties or obligations thereunder or treat the Independent Technical Advisor's Appointment as having been determined without first giving to the Council not less than 10 Business Days prior written notice of its intention so to do specifying the Independent Technical Advisor's grounds for terminating or treating as terminated the Independent Technical Advisor's Appointment or discontinuing or suspending its performance thereof or treating the Independent Technical Advisor's Appointment as having been determined.

6 **TRANSFER OF BENEFIT OF THIS DEED**

The Council may at any time, by way of absolute legal assignment, transfer the benefit of this Deed to any person upon written notice thereof being given to the other parties hereto but without the consent of the other parties hereto being required PROVIDED THAT the benefit of this Deed may not be transferred more than twice without the prior written consent of the Independent Technical Advisor.

7 **VARIATIONS AND WAIVER**

This Deed may not be varied except as a Deed signed by the Parties. No waiver by any Party of any default or defaults by any other Party in the performance of any of the provisions of this Deed shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character

8 **SEVERANCE**

If any provisions of this Deed shall be declared invalid, unenforceable or illegal, such invalidity or unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Deed.

9 **AGENCY**

Save as otherwise provided in this Deed, no Party shall hold itself as having authority or power to bind any other Party in any way.

10 **NO PARTNERSHIP**

The Parties shall at all times be independent and nothing in this Deed shall be construed as creating any partnership between any of the Parties or any relationship of employer and employee between any of the Parties.

11 **NOTICES**

- 11.1 Except as otherwise stated, all notices or other communications required in connection with this Deed shall be in writing and sent by hand, by first class prepaid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as any Party may notify to the other Parties by not less than five Business Days' prior written notice.

Council

London Borough of Waltham Forest
Town Hall
Forest Road
London E17 4UL
Facsimile No.: 0181 925 5511
Attention: The Chief Executive

Provider

NewSchools (Leyton) Limited
Woodcote Grove
Ashley Road
Epsom
Surrey
KT18 5BW
Facsimile No: 01372 740055
Attention: The Company Secretary

Independent Technical Adviser

Currie & Brown Consulting Limited
9 King Street
London EC2V 8EA

Facsimile No: 0171 726 2390
Attention: Steve Prior

- 11.2 Subject to Clause 11.3:

- 11.2.1 a letter delivered by hand shall be effective when it is delivered to the addressee;
- 11.2.2 a letter sent by first class prepaid post shall be deemed received on the second Business Day after it is put in the post; and

- 11.2.3 a facsimile transmission shall be effective upon completion of transmission.
- 11.3 A notice or other communication received on a day which is not a Business Day or after 5pm on any Business Day shall be deemed to be received on the next following Business Day.

12 DGFT NOTIFICATION

- 12.1 If any Party considers that it is necessary to make a notification, the Parties shall co-operate fully in making, as soon as practicable after the date of execution of this Agreement, notification to the Director General of Fair Trading (the "DGFT") for guidance and/or for a decision under Chapter I or Chapter II of the Competition Act 1998 in respect of this Agreement and any agreement, arrangement or concerted practice of which it forms part.
- 12.2 The Parties shall prepare and make at their own expense any such notification and any necessary additional submissions to the DGFT on a joint basis and consult with each other regularly regarding the progress of such notification and shall in good faith use all reasonable endeavours to provide promptly such further information as may be required in relation to such notification and take all steps and provide all such assistance to the other in good faith as may be necessary (and lawful) successfully to obtain such guidance and/or decision.
- 12.3 If the DGFT requires changes to be made to this Agreement before he will give such guidance and/or decision, the Parties shall negotiate in good faith to amend this Agreement whilst retaining its essential characteristics.

13 DISPUTE RESOLUTION PROCEDURE

- 13.1 Any dispute arising under this Deed shall be resolved in accordance with the Dispute Resolution Procedure set out in Clause 28 of the Project Agreement or Schedule 2 of the Building Contract which shall form an integral part of this Deed, so that any reference to "Parties" thereunder shall be construed as reference to the Parties under this Deed.
- 13.2 If a dispute arising under this Deed raises issues which are substantially the same as or connected with issues arising in a dispute between the Provider and the Council under the Project Agreement, if the related dispute has already been referred for determination pursuant to the same, the dispute arising under this Deed may be referred at the option of either the Independent Technical Advisor or the Provider for determination with the related dispute pursuant to the Project Agreement.
- 13.3 The Independent Technical Advisor and the Council shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all disputes which arise under this Deed.

14 GOVERNING LAW

Subject to Clause 13, this Deed shall be governed and construed in all respects in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation to this Deed.

15 CONCURRENCE

The Provider joined in this Deed to confirm its concurrence to the arrangements in the Deed and to the entry into this Deed by the Independent Technical Advisor.

COUNTERPARTS

This Agreement may be executed in any number of counterparts or duplicates each of which shall be an original but such counterparts or duplicates shall together constitute one and the same agreement.

IN WITNESS WHEREOF this document has been executed as a Deed the day and year first before written.

Executed as a Deed for and on behalf
of NEWSCHOOLS (LEYTON) LIMITED acting
by:

Name..... DAVID CLEMENTS
Director

Name..... MILTON FERNANDES
Director/Secretary

Signature :

Signature :

Executed as a Deed for and on behalf
of CURRIE & BROWN CONSULTING LIMITED
by:

Name.....
Director

Name.....
Director/Secretary

Signature :

Signature :

THE COMMON SEAL of the MAYOR AND
BURGESSES OF THE LONDON BOROUGH OF
WALTHAM FOREST was hereunto affixed in the
Presence of

HEAD OF LEGAL SERVICES

~~Executed as a Deed for and on behalf
of NEWSCHOOLS (LEYTON) LIMITED acting
by:~~

~~Name.....
Director~~

~~Name.....
Director/Secretary~~

~~Signature~~

~~Signature~~

~~Executed as a Deed for and on behalf
of CURRIE & BROWN CONSULTING LIMITED
by:~~

~~Name.....
Director~~

~~Name.....
Director/Secretary~~

~~Signature~~

~~Signature~~