

**SCHEDULE 40**

This is Schedule 40 comprising the Form of Guarantee referred to in  
the Agreement for the STEPS Project

between

The Board of Inland Revenue (1)

and

The Commissioners of Customs and Excise (2)

and

The Secretary of State for the Environment, Transport and the Regions (3)

and

Mapeley STEPS Contractor Limited (4)

dated

[ ] 2001

**Part 1**

If an Associate of the STEPS Contractor, or any of the Sponsors (so long as it retains an interest in the equity share capital of the STEPS Contractor), or an Associate of a shareholder in the STEPS Contractor acquires an New Site, that Associate will execute and deliver a Guarantee to the Departments.

**Part 2**

**Form of Guarantee**

**THIS GUARANTEE** is made on

**BETWEEN:**

- (1) **The Board of Inland Revenue** (the "**IR**"); and
- (2) **The Commissioners of Customs and Excise** (the "**C&E**"); and
- (3) **The Secretary of State for the Environment, Transport and the Regions** (the "**SSE**"); and
- (4) **[insert name of Guarantor]**, a company incorporated in [ ] (registered number [ ]) whose registered office is at Bermuda] (the "**Guarantor**"); and
- (5) **[insert name of OpCo]** a company incorporated in England and Wales (registered number [.....]) whose registered office is at [ ] (the "**STEPS Contractor**").

**WHEREAS:**

- (A) The IR, the C&E, the SSE and the STEPS Contractor entered into the STEPS Contract on [ ] 2001.
- (B) At the request of the STEPS Contractor, the Guarantor has agreed to enter into this Guarantee.
- (C) It is intended that this Guarantee shall take effect as a deed.

**IT IS AGREED:**

**1. DEFINITIONS**

- 1.1 In this Guarantee, unless expressly provided to the contrary, references to a clause are to a clause of this Guarantee.
- 1.2 In this Guarantee, terms defined in the STEPS Contract and not redefined in this Guarantee have the same meanings as in that document and, in addition, unless the

context otherwise requires the following words and expressions have the meanings set out opposite them:

- "Guaranteed Obligations"** all obligations and liabilities of the STEPS Contractor to the Departments or the SSE under the STEPS Contract;
- "STEPS Contract"** the contract entered into on [ ] between the IR, the C&E, the SSE and the STEPS Contractor under which the STEPS Contractor agrees to provide serviced accommodation to the Departments, together with any other documents which supplement such agreement or are entered into pursuant to obligations under such agreement, in each case as amended, varied, supplemented, replaced and/or restated from time to time and shall include the Supplemental Agreement dated [ ] between the Departments, the SSE, the STEPS Contractor and the Guarantor, and notwithstanding that the Guaranteed Obligations thereunder may be more onerous than as at the date of this Guarantee.

## **2. GUARANTEE**

Subject to clause 9, in consideration of the Departments entering into the STEPS Contract and of the transfer of certain of the Properties to the Guarantor, the Guarantor irrevocably and unconditionally, as primary obligor:

- (a) undertakes and guarantees to the Departments and to the SSE the full, prompt and complete observance and performance by the STEPS Contractor of the Guaranteed Obligations; and
- (b) undertakes to the Departments and to the SSE that if the STEPS Contractor defaults in the performance of any of the Guaranteed Obligations, the Guarantor shall forthwith on demand procure the performance of such obligations.

## **3. INDEMNITY**

Subject to clause 9, the Guarantor agrees, as a separate and independent primary obligation, to indemnify the Departments and the SSE from time to time on demand from and against any loss, cost, expense or liability incurred by the Departments or by the SSE as a result of the STEPS Contractor failing to perform the Guaranteed Obligations or as a result of any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective against the STEPS Contractor for any reason whatsoever, whether known to the Departments or the SSE or not.

## **4. NATURE OF THE GUARANTOR'S LIABILITY**

- 4.1 The Guarantor shall be liable to the Departments and to the SSE under this Guarantee in all respects as if it were jointly and severally liable with the STEPS Contractor under the STEPS Contract.

- 4.2 The STEPS Contractor joins in this Guarantee to confirm that it will be jointly and severally liable with the Guarantor as set out in clause 4.1.

**5. CONTINUING SECURITY AND CONDITIONS FOR RELEASE**

This Guarantee shall be a continuing guarantee and shall remain in force until all the Guaranteed Obligations have been performed and satisfied and shall be enforceable by the Departments without first being required to take any steps to enforce against the STEPS Contractor.

**6. WAIVER OF DEFENCES**

None of the events set out below shall discharge the liabilities or the obligations of the Guarantor under this Guarantee or impair the rights, powers and remedies of the Departments under this Guarantee:

- (a) any change to the name, constitution, status or membership or any change to the name, constitution, status, members or subsidiaries of the Guarantor;
- (b) the winding-up, dissolution, administration, receivership, or reorganisation of the Guarantor, or any member or subsidiary of the Guarantor or any member or subsidiary of the Guarantor entering into a composition or voluntary arrangement with its creditors generally;
- (c) the winding-up, dissolution, administration, receivership or reorganisation of the STEPS Contractor or any change in its constitution, status, function, control or ownership or the STEPS Contractor entering into a composition or voluntary arrangement with its creditors generally;
- (d) any amendment to, increase in, or variation, waiver or release of, any of the Guaranteed Obligations or any other security or guarantee for the Guaranteed Obligations;
- (e) the existence of any claim or set-off or other rights which:
  - (i) the Guarantor may have against the STEPS Contractor;
  - (ii) the Guarantor may have against the Departments or any other person; or
  - (iii) the STEPS Contractor may have at any time against the Departments,except, in the case of (ii) and (iii) above, where such claim or set-off or other rights arise under the STEPS Contract;
- (f) any failure by the Departments or the SSE to take or perfect, or fully to take or perfect, any other guarantee, indemnity or security intended to be taken for the Guaranteed Obligations;
- (g) any failure by the Departments or the SSE to realise, or fully to realise, the value of, or any release, discharge, exchange or substitution of, any security taken in respect of the Guaranteed Obligations;

- (h) the existence, whether or not known to the Departments or to the SSE, of an Event of Default under the STEPS Contract, any time or other indulgence being granted or being agreed to be granted to the STEPS Contractor or any other person, including any co-guarantor, in respect of its obligations under or pursuant to the STEPS Contract or under any other security for such obligations or any arrangement or compromise entered into by the Departments or the SSE with the STEPS Contractor or any other person, including any co-guarantor;
- (i) any of the obligations of the Guarantor under this Guarantee or under any other document or security taken in respect of any of its obligations being or becoming illegal, invalid, unenforceable, impaired or ineffective in any respect; or
- (j) any other act, event or omission which, but for this clause 6, might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred upon the Departments by this Guarantee or by law.

## **7. THE GUARANTOR'S REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Departments and to the SSE that:

- (a) it is a limited liability company, duly incorporated and validly existing under the laws of the jurisdiction of its incorporation;
- (b) it has full power and authority to enter into this Guarantee and this Guarantee is executed by its duly authorised representative; and
- (c) the entry into and performance by it of this Guarantee does not and will not conflict with its constitutional documents.

## **8. NOTICES**

8.1 All notices under this Guarantee shall be in writing and all certificates, notices or written instructions to be given under the terms of this Guarantee shall be served by sending the same by prepaid first class post, facsimile or leaving the same at:

(a) **The Guarantor:**

Mapeley STEPS Contractor Limited                      Fax: 020 7317 5951  
40 Portman Square  
London  
W1H 6LT

Attention: Robin Priest

(b) **The Departments and the SSE:**

STEPS Management Team  
Barkley House  
PO Box 20  
Castle Meadow Road  
Nottingham NG2 1BA    Fax: 0115 974 0782

*Attention: Marked for the attention of the person who is the Departments' Representative for the time being pursuant to clause 4.1 of the STEPS Contract (and not that person's delegate).*

- 8.2 Any party to this Guarantee may change its nominated address or facsimile number by prior notice to the other party.
- 8.3 Notices sent by first class post shall be deemed to have been delivered on the fifth Business Day after posting.
- 8.4 Notices given by facsimile shall be deemed to have been delivered where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the sender (to be confirmed in writing) that the facsimile has not been received in legible form:
- (a) within two hours after sending, if sent on a Business Day between the hours of 9 am and 4 pm; or
  - (b) by 11 am on the next following Business Day, if sent after 4 pm, on a Business Day but before 9 am on that next following Business Day, or on a day which is not a Business Day.

## **9. EXTENT OF THE GUARANTOR'S OBLIGATIONS**

- 9.1 Subject to clauses 3, 7 and 9.2, nothing in this Guarantee shall result:
- (a) in the Guarantor being subject at any particular time to any obligation whether by way of guarantee or indemnity in respect of the Guaranteed Obligations which is more extensive than the obligations of the STEPS Contractor at such time under the STEPS Contract; or
  - (b) in the Guarantor being subject at any particular time to any liability or obligation to the Departments or to the SSE under this Guarantee in circumstances where the STEPS Contractor is not subject, at that time, to the equivalent obligation or liability to the Departments under the STEPS Contract.
- 9.2 Clause 9.1 shall not relieve the Guarantor from its obligations under clause 3 if:
- (a) the STEPS Contractor is at any time not subject to an obligation to indemnify the Departments or the SSE in respect of a particular matter solely by reason of any Guaranteed Obligation being or becoming void, voidable, unenforceable or ineffective against the STEPS Contractor for any reason whatsoever; and
  - (b) the Guarantor would, at such time, have been under such obligation (notwithstanding the defect in the obligation of the STEPS Contractor) had the Guarantor been a party to the STEPS Contract with full joint and several liability with the STEPS Contractor.

## **10. GOVERNING LAW, JURISDICTION**

- 10.1 This Guarantee shall be governed by and construed in accordance with English law.
- 10.2 The parties to this Guarantee irrevocably agree to submit to the non-exclusive jurisdiction of the courts of England.
- 10.3 The Guarantor hereby:
- (c) designates, appoints and empowers the STEPS Contractor at its registered office at the date of this Guarantee (or such other address in England and Wales as the Guarantor may notify to the Departments) to accept service of process in such jurisdiction in any proceedings arising out of or in connection with this Guarantee; and
  - (d) agrees that the failure by the STEPS Contractor to give notice of such service of process to the Guarantor shall not impair or affect the validity of such service or any judgment based on it.
- 10.4 The Guarantor irrevocably consents to the service of process out of the courts of England in any such proceedings by the posting to it of copies by registered or certified airmail, postage prepaid.

**11. MISCELLANEOUS**

- 11.1 The Guarantor will pay any stamp duty, tax or other impost payable in respect of this Guarantee.
- 11.2 To secure the Guarantor's obligations under sub-clause 34.4(l) of the STEPS Contract, the Guarantor shall grant a First Charge in respect of each of the Charged Properties in favour of the Departments, and deliver those First Charges to the Departments on 30 March 2001 [*Note that if a further Guarantee is required pursuant to Part 1 of this Schedule 40, the First Charge granted pursuant to clause 11.2 shall be in respect of such STEPS Properties as are held by the Guarantor*].

As Witness the parties executed this Guarantee as a deed the day and year first above written.

Signed by )  
 )  
two of the COMMISSIONERS OF INLAND REVENUE )  
pursuant to the authority contained in the Inland )  
Revenue Regulation Act 1890 )

Witnessed by: \_\_\_\_\_

Address:

Signed by )  
 )  
COMMISSIONER OF CUSTOMS AND EXCISE )

pursuant to the authority contained in the )  
Customs and Excise Management Act 1979 )

Witnessed by: \_\_\_\_\_

Address:

Signed by )  
)  
for and on behalf of the SECRETARY OF STATE )  
FOR THE ENVIRONMENT, TRANSPORT AND THE )  
REGIONS pursuant to the authority contained in the )  
Secretary of State for the Environment, Transport and )  
the Regions Order 1997 and the authorisation of the )  
Secretary of State for the Environment, Transport and )  
the Regions of 26 January 1998 and, if applicable, the )  
authorisations of John Gray and Diana Barrett, Senior )  
Civil Service, of 26 January 1998 )

Witnessed by: \_\_\_\_\_

Address:

EXECUTED AND DELIVERED as )  
a deed by **[Guarantor]** )  
acting by )

EXECUTED AND DELIVERED as )  
a deed by **[OpCo]** )  
acting by )

Customs & Excise  
Richard Allen

Environment, Transport & Regions  
John Gray  
Diana Barrett

Inland Revenue  
Dave Hartnett

STEPS Contractor  
Robin Priest

Inland Revenue  
Tim Flesher

STEPS Contractor  
Miltos Kambourides

This page is to be signed by the Parties in accordance with clause 1.2(t) and the Requirements of Writing (Scotland) Act 1995 and not for the purpose of executing this Guarantee.