

SCHEDULE 12 – SUB-CONTRACTOR DIRECT AGREEMENTS

PART 1 – OPERATING SUB-CONTRACTOR DIRECT AGREEMENT

DATED _____ 2012

SHANKS WASTE MANAGEMENT LIMITED (1)

and

BARNSELY METROPOLITAN BOROUGH COUNCIL (2)

and

DONCASTER BOROUGH COUNCIL (3)

and

ROTHERHAM BOROUGH COUNCIL (4)

and

3SE (BARNSELY, DONCASTER & ROTHERHAM) LIMITED (5)

OPERATING SUB-CONTRACTOR'S

DIRECT AGREEMENT WITH THE COUNCILS

WALKER MORRIS

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THIS DEED is made on

2012

BETWEEN

- (1) **SHANKS WASTE MANAGEMENT LIMITED** a company incorporated under the laws of England and Wales with registered number 02393309, whose registered office is at Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Operating Sub-Contractor**");
- (2) **BARNSELY METROPOLITAN BOROUGH COUNCIL** whose principal office is at The Town Hall, Barnsley, South Yorkshire S70 2TA ("**Barnsley**");
- (3) **DONCASTER BOROUGH COUNCIL** whose principal office is at PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ ("**Doncaster**");
- (4) **ROTHERHAM BOROUGH COUNCIL** whose principal office is at Riverside House, Main Street, Rotherham S60 1AE ("**Rotherham**"); and
- (5) **3SE (BARNSELY, DONCASTER & ROTHERHAM) LIMITED** a company incorporated under the laws of England and Wales with registered number 7820886 whose registered office is at Dunedin House, Auckland Park, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**").

BACKGROUND

- (A) By a contract of even date (the "**Project Agreement**"), Barnsley, Doncaster and Rotherham (together the "**Councils**") the Councils have appointed the Contractor to carry out in relation to the waste management facilities therein described as the "**Facilities**" the performance of operation and maintenance services therein defined as the "**Service**", which expression has the same meaning in this Deed.
- (B) By a contract of even date (the "**Operating Sub-Contract**"), the Contractor has appointed the Operating Sub-Contractor to carry out the operation and maintenance of the Facilities.
- (C) The Operating Sub-Contractor is obliged under the Operating Contract to give a warranty in this form in favour of the Councils.

OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Councils to the Operating Sub-Contractor, receipt of which the Operating Sub-Contractor acknowledges:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions used in this Deed and defined in the Project Agreement shall have the meaning ascribed to them in the Project Agreement, unless otherwise expressly provided herein.
- 1.2 Unless the contrary intention appears a reference to a person includes its successors and assigns.
- 1.3 All references to clauses are references to clauses of this Deed.
- 1.4 All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instruments as amended, supplemented, substituted, novated or assigned.
- 1.5 Any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation entity which taken over the functions or responsibilities of such public organisation.
- 1.6 References to "**parties**" mean the parties to this Deed and references to a "**party**" mean one of the parties to this Deed and includes in each case their respective successors, transferees and assigns.
- 1.7 Headings and sub-headings are for each of reference only and shall not be taken into consideration in the interpretation or construction of this agreement.
- 1.8 "**Person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or associations.
- 1.9 Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted.

2 OPERATING SUB-CONTRACTOR'S WARRANTY AND LIABILITY

The Operating Sub-Contractor warrants to the Councils that:

- 2.1 it has carried out and will continue to carry out and complete its obligations under the Operating Contract in accordance with the Operating Contract; and
- 2.2 in the performance of its obligations under the Operating Contract it will exercise all the reasonable skill and care to be expected of a suitably qualified and competent contractor experienced in carrying out work similar to the Service in relation to projects of a similar size, scope and complexity as the Project.

3 DOCUMENTS

- 3.1 In relation to all drawings, details, plans and other documents of any nature whatsoever and designs and inventions contained in them which have been or are hereafter provided by the Operating Sub-Contractor in the course of performing its obligations under the Operating Contract ("**Documents**") the Operating Sub-Contractor hereby grants (or, if, if such grant cannot legally take place until a later date, agrees to grant) to the Councils 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 Operating Contract or determination of the employment of the Operating Sub-Contractor under the Operating Contract or the completion of its obligations under the Operating Contract or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Services and such other purposes as are reasonably foreseeable including, but without limitation, the maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Facilities (the "**Intellectual Property Rights**"). Such licence will carry the right to grant sub-licences and will be transferable to third parties. The Councils will not use the Documents for any purpose other than that for which they were originally provided to it and other than for such other uses as are reasonably foreseeable, including, but without limitation, the maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Facilities, unless the Operating Sub-Contractor authorises such use and confirms that the Documents are suitable for it. The Operating Sub-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 Operating Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Operating Contract.

- 3.2 The Operating Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Councils or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Councils' expense.
- 3.3 The Operating Sub-Contractor warrants to the Councils that the Documents are its own original work (or created on behalf of it) and that in any event their use in connection with the Service will not infringe the rights of any third party.
- 3.4 The Councils will not hold the Operating Sub-Contractor liable for any use it may make of the Intellectual Property Rights (set out in Clause 3.1 above) 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.

4 INSURANCE

- 4.1 The Operating Sub-Contractor shall maintain insurances as required under, and upon the terms set out in, the Operating Contract.
- 4.2 As and when reasonably required by the Councils the Operating Sub-Contractor will produce for inspection documentary evidence that the insurances referred to in Clause 4.1 are being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5 NOTICES

- 5.1 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 p.m. 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 forty-eight (48) hours after the time of posting if the end of that period falls before 4.45 p.m. on a working day and otherwise on the next working day.

- 5.2 The Operating Sub-Contractor shall comply with all requests by the Councils to either provide information or to procure the attendance of specific officers or employees of the Operating Sub-Contractor or any sub-contractor (and shall include such a provision in any sub-contracts to be entered into) at any Councils' Overview & Scrutiny Meetings at which the Service is to be discussed.

6 ASSIGNMENT

Without prejudice to the provisions of Clause 10 (Step-in Rights), the benefit of and the rights of the Councils under this Deed may be assigned by absolute legal assignment without the consent of the Operating Sub-Contractor or the Contractor and the Councils will notify the Operating Sub-Contractor and the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment provided that the Councils may only exercise their rights to assign under this Clause 6 if the Project Agreement is to be assigned in accordance with the terms of the Project Agreement and the assignment takes place at the same time and to the same assignee as under the Project Agreement. The Operating Sub-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 one of the original Councils hereunder or by reason that the original Councils or any intermediate assignee escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Councils or any intermediate assignee has not suffered any or as much loss.

7 COUNCILS' REMEDIES

- 7.1 The rights and benefits conferred upon the Councils by this Deed are in addition to any other rights and remedies they may have against the Operating Sub-Contractor including without prejudice to the generality of the foregoing any remedies in tort (subject to any applicable limitations thereto in the Operating Contract).
- 7.2 The Operating Sub-Contractor shall have no greater liability under this Deed than it would have had if the Councils were named as the Contractor under the Operating Contract and in the event of any breach of this Deed shall be entitled in any action or proceedings by the Councils to rely on any limitation of the Operating Contract and to raise the equivalent rights in defence of liability, excluding any claims of set off or counterclaim, as it would have against the Contractor under the Operating Contract had the Councils been named as Contractor thereunder.

8 INSPECTION OF DOCUMENTS

The Operating Sub-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 Councils may make or procure be made for their benefit or on their behalf.

9 STANDARDS OF PRODUCTS AND MATERIALS

9.1 The Operating Sub-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 which at the time of use are not permitted by the Operating Contract or are 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 operators of waste management facilities or members of the relevant 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 or shall be used.

9.2 If in the performance of its duties under the Operating Contract the Operating Sub-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 Operating Sub-Contractor will notify the Councils in writing forthwith. This Clause 9.2 does not create any additional duty for the Operating Sub-Contractor to inspect or check the work of others which is not required by the Operating Contract.

10 STEP-IN RIGHTS

10.1 The Operating Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to discontinue or suspend the performance of any duties or obligations under the Operating Contract (which shall not include the exercise by the Operating Sub-Contractor of its statutory right to suspend the carrying out of the Services under the Housing Grants (Construction and Regeneration) Act 1996) or terminate or treat as terminated or repudiated the Operating Contract or its employment under it without first giving to the Councils not less than twenty-eight (28) days' prior written notice specifying the Operating Sub-Contractor's ground for terminating or

treating as terminated or repudiated the Operating Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Operating Contract. Within such period of notice:

- 10.1.1 if the Project Agreement has been or is to be terminated the Councils may give written notice to the Operating Sub-Contractor that the Councils will henceforth become the employer under the Operating Contract to the exclusion of the Contractor and thereupon the Operating Sub-Contractor will admit that the Councils are such employer and the Operating Contract will be and remain in full force and effect as if the Operating Contract had been entered into between the Operating Sub-Contractor and the Councils notwithstanding any of the said grounds; and
 - 10.1.2 if the Councils have given such notice as aforesaid or under Clause 10.3 below, the Councils will as soon as practicable thereafter remedy any outstanding breach by the Contractor which properly has been included in the Operating Sub-Contractor's specified grounds and which is capable of remedy by the Councils (which for the avoidance of doubt includes payments of any amounts owed by the Contractor to the Operating Sub-Contractor); and
 - 10.1.3 if the Councils have given such notice as aforesaid or under Clause 10.3 below, the Councils will from the service of such notice become responsible for all sums properly payable to the Operating Sub-Contractor under the Operating Contract accruing due after the service of such notice but the Councils will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Operating Contract.
- 10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Councils to the Operating Sub-Contractor, the Councils will not be under any obligation to the Operating Sub-Contractor nor will the Operating Sub-Contractor have any claim or cause of action against the Councils unless and until the Councils have given written notice to the Operating Sub-Contractor pursuant to Clause 10.1.1 or Clause 10.3 of this Deed.
- 10.3 The Operating Sub-Contractor further covenants with the Councils that if the Project Agreement is terminated, the Operating Sub-Contractor will, if requested by the

Councils, by notice in writing and subject to Clause 10.1.2 and Clause 10.1.3, accept the instructions of the Councils to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Operating Contract and will if so requested enter into a novation agreement whereby the Councils are substituted for the Contractor under the Operating Contract.

- 10.4 The Contractor acknowledges that the Operating Sub-Contractor will be entitled to rely on a notice given to the Operating Sub-Contractor by the Councils under Clause 10.3 as conclusive evidence that the Project Agreement has been terminated by the Councils.
- 10.5 The Councils may by notice in writing to the Operating Sub-Contractor appoint another person to exercise their rights under this Clause 10 subject to the Councils remaining liable to the Operating Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.6 The Contractor hereby agrees that it will not take any steps which would hinder the Councils from exercising their rights under this Deed and confirms that the rights of the Councils in Clause 10.1 and 10.3 override any obligations of the Operating Sub-Contractor to the Contractor under the Operating Contract.

11 CONTRACTOR'S ACKNOWLEDGEMENT

The Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the Operating Sub-Contractor shall not be in breach of the Operating Contract or any warranty to the Contractor by complying with the obligations imposed upon it under this Deed and that the Contractor agrees in particular with the provisions of Clause 9 (Standards of Products and Materials) of this Deed.

12 VARIATION OF OPERATING SUB-CONTRACT

The Contractor and the Operating Sub-Contractor each agree that they will not, without the prior written consent of the Councils, amend, modify or waive any material provision of the Operating Contract.

13 APPLICABLE LAW AND JURISDICTION

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Deed or its formation) shall be governed by and will be construed in

accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

14 THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

EXECUTED as a DEED by their Parties or their duly authorised representatives and delivered on the date of this Contract

Executed as a deed by)
SHANKS WASTE MANAGEMENT)
LIMITED acting by its director/attorney)
_____:

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

THE COMMON SEAL OF)

BARNSELY METROPOLITAN)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

THE COMMON SEAL OF)

DONCASTER)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised by the Assistant Director of Legal and Democratic Services

Number in seal register

THE COMMON SEAL OF)

ROTHERHAM)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

Executed as a deed by)
3SE (BARNSELY, DONCASTER &)
ROTHERHAM) LIMITED acting by its)
director/attorney)

_____:

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

PART 2 – CONSTRUCTION SUB-CONTRACTOR DIRECT AGREEMENT

DATED _____ 2012

SHANKS WASTE MANAGEMENT LIMITED (1)

and

BARNSLEY METROPOLITAN BOROUGH COUNCIL (2)

and

DONCASTER BOROUGH COUNCIL (3)

and

ROTHERHAM BOROUGH COUNCIL (4)

and

3SE (BARNSLEY, DONCASTER & ROTHERHAM) LIMITED (5)

**CONSTRUCTION SUB-CONTRACTOR'S
DIRECT AGREEMENT WITH THE COUNCILS**

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THIS DEED is made on

2012

BETWEEN

- (1) **SHANKS WASTE MANAGEMENT LIMITED** a company incorporated under the laws of England and Wales with registered number 02393309, whose registered office is at Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Construction Sub-Contractor**");
- (2) **BARNSELY METROPOLITAN BOROUGH COUNCIL** whose principal office is at The Town Hall, Barnsley, South Yorkshire S70 2TA ("**Barnsley**");
- (3) **DONCASTER BOROUGH COUNCIL** whose principal office is at PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ ("**Doncaster**");
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- (5) **3SE (BARNSELY, DONCASTER & ROTHERHAM) LIMITED** a company incorporated under the laws of England and Wales with registered number 7820886 whose registered office is at Dunedin House, Auckland Park, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**").

BACKGROUND

- (A) By a contract of even date (the "**Project Agreement**"), Barnsley, Doncaster and Rotherham (together the "**Councils**") the Councils have appointed the Contractor to carry out in relation to the sites 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 of even date (the "**Construction Contract**"), the Contractor has appointed the Construction Sub-Contractor to carry out in relation to the Sites the design and construction of the Works.
- (C) The Construction Sub-Contractor is obliged under the Construction Contract to give a warranty in this form in favour of the Councils.

OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Councils to the Construction Sub-Contractor, receipt of which the Construction Sub-Contractor acknowledges:

1 DEFINITIONS AND INTERPRETATION

- 1.1 Words and expressions used in this Deed and defined in the Project Agreement shall have the meaning ascribed to them in the Project Agreement, unless otherwise expressly provided herein.
- 1.2 Unless the contrary intention appears a reference to a person includes its successors and assigns.
- 1.3 All references to clauses are references to clauses of this Deed.
- 1.4 All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instruments as amended, supplemented, substituted, novated or assigned.
- 1.5 Any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation entity which taken over the functions or responsibilities of such public organisation.
- 1.6 References to "**parties**" mean the parties to this Deed and references to a "**party**" mean one of the parties to this Deed and includes in each case their respective successors, transferees and assigns.
- 1.7 Headings and sub-headings are for each of reference only and shall not be taken into consideration in the interpretation or construction of this agreement.
- 1.8 "**Person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or associations.
- 1.9 Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted.

2 CONSTRUCTION SUB-CONTRACTOR'S WARRANTY AND LIABILITY

The Construction Sub-Contractor warrants to the Councils that:

- 2.1 it has carried out and will continue to carry out and complete its obligations under the Construction Contract in accordance with the Construction Contract; and
- 2.2 in the performance of its obligations under the Construction Contract it will exercise all the reasonable skill and care to be expected of a suitably qualified and competent contractor experienced in carrying out work similar to the Works in relation to developments of a similar size, scope and complexity as the Project.

3 DOCUMENTS

- 3.1 In relation to all drawings, details, plans and other documents of any nature whatsoever and designs and inventions contained in them which have been or are hereafter provided by the Construction Sub-Contractor in the course of performing its obligations under the Construction Contract ("**Documents**") the Construction Sub-Contractor hereby grants (or, if, if such grant cannot legally take place until a later date, agrees to grant) to the Councils 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 Construction Contract or determination of the employment of the Construction Sub-Contractor under the Construction Contract or the abandonment or completion of the Works or of its obligations under the Construction 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 and repair of the Works (the "**Intellectual Property Rights**"). Such licence will carry the right to grant sub-licences and will be transferable to third parties. The Councils will not use the Documents for any purpose other than that for which they were originally provided to it and other than for such other uses as are reasonably foreseeable, including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, unless the Construction Sub-Contractor authorises such use and confirms that the Documents are suitable for it. The Construction Sub-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 Construction Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Construction Contract.

- 3.2 The Construction Sub-Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Councils or those authorised by the Councils access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Councils expense.
- 3.3 The Construction Sub-Contractor warrants to the Councils that the Documents are its own original work (or created on behalf of it) and that in any event their use in connection with the Works will not infringe the rights of any third party.
- 3.4 The Councils will not hold the Construction Sub-Contractor liable for any use it may make of the Intellectual Property Rights (set out in Clause 3.1 above) 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.

4 INSURANCE

- 4.1 The Construction Sub-Contractor shall maintain insurances as required under, and upon the terms set out in, the Construction Contract.
- 4.2 As and when reasonably required by the Councils the Construction Sub-Contractor will produce for inspection documentary evidence that the insurances referred to in Clause 4.1 is being properly maintained and that payment has been made in respect of the last preceding premium due thereunder.

5 NOTICES

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 p.m. 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 forty-eight (48) hours after the time of posting if the end of that period falls before 4.45 p.m. on a working day and otherwise on the next working day.

6 ASSIGNMENT

Without prejudice to the provisions of Clause 10 (Step-in Rights), the benefit of and the rights of the Councils under this Deed may be assigned by absolute legal assignment without the consent of the Construction Sub-Contractor or the Contractor and the Councils will notify the Construction Sub-Contractor and the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment provided that the Councils may only exercise their rights to assign under this Clause if the Project Agreement is to be assigned in accordance with the terms of the Project Agreement and the assignment takes place at the same time and to the same assignee as under the Project Agreement. The Construction Sub-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 one of the original Councils hereunder or by reason that the original Councils or any intermediate assignee escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Councils or any intermediate assignee has not suffered any or as much loss.

7 COUNCILS' REMEDIES

- 7.1 The rights and benefits conferred upon the Councils by this Deed are in addition to any other rights and remedies they may have against the Construction Sub-Contractor including without prejudice to the generality of the foregoing any remedies in tort (subject to any applicable limitations thereto in the Construction Contract).
- 7.2 The Construction Sub-Contractor shall have no greater liability under this Deed than it would have had if the Councils were named as the Contractor under the Construction Contract and in the event of any breach of this Deed shall be entitled in any action or proceedings by the Councils to rely on any limitation of the Construction Contract and to raise the equivalent rights in defence of liability, excluding any claims of set off or counterclaim, as it would have against the Contractor under the Construction Contract had the Councils been named as Contractor thereunder. Notwithstanding anything herein contained, the Construction Sub-Contractor shall not be liable to the Councils for any breach or breaches of Clause 2 (Construction Sub-Contractor's Warranty and Liability) of this Deed which is or are the subject matter of arbitration or litigation proceedings commenced against the Construction Sub-Contractor unless such proceedings are commenced before the expiry of twelve years from the Completion Date in respect of the entire Works.

- 7.3 The Construction Sub-Contractor shall have no liability to the Councils in respect of any delay to the completion of the Construction Works however so caused, save to the extent that such liability has arisen under the Construction Contract and the Councils have exercised their right to step in under Clause 10 (Step-In Rights).

8 INSPECTION OF DOCUMENTS

The Construction Sub-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 Councils may make or procure be made for their benefit or on their behalf.

9 STANDARDS OF PRODUCTS AND MATERIALS

- 9.1 The Construction Sub-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 which at the time of use are not permitted by the Construction Contract or are 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 or shall be used or incorporated in the Works.
- 9.2 If in the performance of its duties under the Construction Contract the Construction Sub-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 Construction Sub-Contractor will notify the Councils in writing forthwith. This Clause 9.2 does not create any additional duty for the Construction Sub-Contractor to inspect or check the work of others which is not required by the Construction Contract.

10 STEP-IN RIGHTS

- 10.1 The Construction Sub-Contractor will not exercise or seek to exercise any right which may be or become available to it to discontinue or suspend the performance of any

duties or obligations under the Construction Contract (which shall not include the exercise by the Construction Sub-Contractor of its statutory right to suspend the carrying out of the Works under the Housing Grants (Construction and Regeneration) Act 1996) or terminate or treat as terminated or repudiated the Construction Contract or its employment under it without first giving to the Councils not less than twenty-eight (28) days' prior written notice specifying the Construction Sub-Contractor's ground for terminating or treating as terminated or repudiated the Construction Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Construction Contract. Within such period of notice:

- 10.1.1 If the Project Agreement has been or is to be terminated the Councils may give written notice to the Construction Sub-Contractor that the Councils will henceforth become the employer under the Construction Contract to the exclusion of the Contractor and thereupon the Construction Sub-Contractor will admit that the Councils are such employer and the Construction Contract will be and remain in full force and effect as if the Construction Contract had been entered into between the Construction Sub-Contractor and the Councils notwithstanding any of the said grounds; and
- 10.1.2 if the Councils have given such notice as aforesaid or under Clause 10.3 below, the Councils will as soon as practicable thereafter remedy any outstanding breach by the Contractor which properly has been included in the Construction Sub-Contractor's specified grounds and which is capable of remedy by the Councils (which for the avoidance of doubt includes payments of any amounts owed by the Contractor to the Construction Sub-Contractor); and
- 10.1.3 if the Councils have given such notice as aforesaid or under Clause 10.3 below, the Councils will from the service of such notice become responsible for all sums properly payable to the Construction Sub-Contractor under the Construction Contract accruing due after the service of such notice but the Councils will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Construction Contract.

- 10.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Councils to the Construction Sub-Contractor, the Councils will not be under any obligation to the Construction Sub-Contractor nor will the Construction Sub-Contractor have any claim or cause of action against the Councils unless and until the Councils have given written notice to the Construction Sub-Contractor pursuant to Clause 10.1.1 or Clause 10.3 of this Deed.
- 10.3 The Construction Sub-Contractor further covenants with the Councils that if the Project Agreement is terminated, the Construction Sub-Contractor will, if requested by the Councils, by notice in writing and subject to Clause 10.1.2 and Clause 10.1.3, accept the instructions of the Councils to the exclusion of the Contractor in respect of the Works upon the terms and conditions of the Construction Contract and will if so requested enter into a novation agreement whereby the Councils are substituted for the Contractor under the Construction Contract.
- 10.4 The Contractor acknowledges that the Construction Sub-Contractor will be entitled to rely on a notice given to the Construction Sub-Contractor by the Councils under Clause 10.3 as conclusive evidence that the Project Agreement has been terminated by the Councils.
- 10.5 The Councils may by notice in writing to the Construction Sub-Contractor appoint another person to exercise their rights under this Clause 10 subject to the Councils remaining liable to the Construction Sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 10.6 The Contractor hereby agrees that it will not take any steps which would hinder the Councils from exercising their rights under this Deed and confirms that the rights of the Councils in Clause 10.1 and 10.3 override any obligations of the Construction Sub-Contractor to the Contractor under the Construction Contract.
- 10.7 The Construction Sub-Contractor shall comply with all requests by the Council to either provide information or to procure the attendance of specific officers or employees of the Construction Sub-Contractor or any sub-contractor (and shall include such a provision in any sub-contracts to be entered into) at any Council Overview & Scrutiny Meetings at which the Services are to be discussed.

11 CONTRACTOR'S ACKNOWLEDGEMENT

The Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the Construction Sub-Contractor shall not be in breach of the Construction Contract or any warranty to the Contractor by complying with the obligations imposed upon it under this Deed and that the Contractor agrees in particular with the provisions of Clause 9 (Standards of Products and Materials) hereof.

12 VARIATION OF OPERATING SUB-CONTRACT

The Contractor and the Construction Sub-Contractor each agree that they will not, without the prior written consent of the Councils, amend, modify or waive any material provision of the Construction Contract.

13 APPLICABLE LAW AND JURISDICTION

This Deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Deed or its formation) shall be governed by and will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

14 THIRD PARTY RIGHTS

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

EXECUTED as a DEED by the Parties or their duly authorised representatives and delivered on the date of this Contract

Executed as a deed by)
SHANKS WASTE MANAGEMENT)
LIMITED acting by its director/attorney)
_____:)

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

THE COMMON SEAL OF)

BARNSELY METROPOLITAN)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

THE COMMON SEAL OF)

DONCASTER)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

Authorised by the Assistant Director of Legal and Democratic Services

Number in seal register

THE COMMON SEAL OF)

ROTHERHAM)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

Executed as a deed by)
3SE (BARNSELEY, DONCASTER &)
ROTHERHAM) LIMITED acting by its)
director/attorney)

_____:

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness