

DATED _____ 2012

SISTEMA ECODECO UK LIMITED (1)

and

BARNSELY METROPOLITAN BOROUGH COUNCIL (2)

and

ROTHERHAM BOROUGH COUNCIL (3)

and

DONCASTER BOROUGH COUNCIL (4)

and

SHANKS WASTE MANAGEMENT LIMITED (5)

and

ECODECO S.R.L. (6)

SUBCONTRACTOR'S DEED OF WARRANTY

**In favour of the Councils relating to a development known as the BDR Municipal Waste PFI
Project**

WALKER MORRIS

Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
Fax: 0113 2459412

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BETWEEN:

- (1) **SISTEMA ECODECO UK LIMITED** a company registered in England and Wales under company number 05049191 whose registered office is at Matrix House, 12-16 Lionel Road, Canvey Island, Essex SS8 9DE (the "**Subcontractor**");
- (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**");
- (5) **SHANKS WASTE MANAGEMENT LIMITED** a company registered in England and Wales under company number 02393309 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**"); and
- (6) **ECODECO S.R.L.** a company registered in Italy under fiscal code 01255650168 whose registered office is at Milan, Corso di Porta Vittoria n. 4 (the "**Licensor**"),

Barnsley, Doncaster and Rotherham together (the "**Councils**") each a Party and together the Parties.

WHEREAS:

- (A) On the same date as this Deed, the Project Company has entered into a project agreement (the "**Project Agreement**") with the Councils for, *inter alia*, the construction and operation of the ITSAD Facility, the taking over and operation of the transfer station at Grange Lane in Barnsley, the production of solid recovered fuel derived from waste for thermal treatment at Ferrybridge, provisions of certain works and services at the TLS Facility at Grange Lane in Barnsley, and the provision of certain other waste management functions with a view to assisting the Councils in discharging their statutory obligations and in meeting their statutory targets including carrying out the Subcontract Works and the provision of the Service (the "**Project**").
- (B) The Project Company and the Contractor have entered into a construction contract ("**Construction Contract**") under which the Contractor has agreed to carry out and complete the works ("**Works**") required for the purposes of the Project.

- (C) The Contractor and the Subcontractor have entered into a technology subcontract (the "**Subcontract**"), under which the Subcontractor has agreed to design or complete the design of and to deliver, install, commission and test the Subcontract Works as part of the Works.

It is agreed in consideration of the sum of one pound (£1.00) paid by the Councils to the Subcontractor, receipt of which the Subcontractor acknowledges:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

Acceptance Tests means the applicable tests described in Schedule 9 (Acceptance Tests) of the Construction Contract and the Project Agreement;

AD Facility means the anaerobic digestion facility and associated infrastructure to be built at the Site which forms part of the Works;

Contract Waste has the meaning set out in the Subcontract;

Intellectual Property Rights means copyright, domain names, design rights, database rights, semi-conductor topographical rights, patents, trade marks (registered or unregistered), service marks, registered designs or any applications thereof, and all other intellectual or industrial property rights of a similar nature and whether subsisting in the United Kingdom or any other part of the world;

Insurance means professional indemnity insurance:

- (a) limit of indemnity: not less than five million euro (€5,000,000) for any occurrence or series of occurrences arising out of each and every event and in the aggregate for each year of insurance;
- (b) to be maintained until ten (10) years after certification that the Acceptance Tests for the ITS Facility have been passed (or, if earlier, ten (10) years after termination of the employment of the Subcontractor under the Subcontract);

ITS Facility

means the twin line mechanical biological treatment plant (together with all its supporting infrastructure) with a process capacity of two hundred and fifty thousand (250,000) tonnes per annum designed to shred and biodry incoming wastes and including a high recycling refinement paragraph to recover Recyclable Materials (including but not limited to metals, plastics, glass and stone, fines) and to produce solid recovered fuel derived from waste) to be designed, constructed, tested and commissioned at the Site pursuant to the Project Agreement;

ITSAD Facility

means the ITS Facility and the AD Facility including associated plant and amenities to be designed, constructed, tested and commissioned at the Site pursuant to the Project Agreement;

Overview & Scrutiny Meetings

means meetings of the Council's Overview & Scrutiny panel(s) held in accordance with the provisions of the Local Government Act 2000;

Prohibited Materials

means any materials which by their nature or application contravene any British Standard or EU equivalent current at the time of specification, or which contravene the recommendations of Ove Arup & Partners' publication Good Practice in the Selection of Construction Materials (1997).

Project Company

means 3SE (Barnsley, Doncaster & Rotherham) Limited a company registered in England and Wales under company number 7820886 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU;

Recyclable Materials

means any waste materials capable of being separated from Contract Waste that can be presented to the market for beneficial use;

| | |
|--------------------------|--|
| Service | means the whole of the services or any element of them to be provided pursuant to the Project Agreement which are necessary to undertake in order to comply with Schedule 1 (Output Specification), Schedule 3 (Service Delivery Plan) and Schedule 5 (Performance and Monitoring) to the Project Agreement and the other provisions of the Project Agreement; |
| Site | means Bolton Road, Rotherham, United Kingdom; |
| Subcontract Works | means the design, delivery, installation, commissioning and testing of certain elements of the ITS Facility in accordance with the terms of the Subcontract; and |
| TLS Facility | means the waste transfer station at the Grange Lane in Barnsley and all supporting infrastructure including associated plant and amenities. |

1.2 In this Deed:

- 1.2.1 Project includes part of the Project;
- 1.2.2 person includes firms companies, corporations, partnerships, trusts, authorities and other incorporated and/or unincorporated associations;
- 1.2.3 any term importing one gender shall include any other gender;
- 1.2.4 any term importing the singular includes the plural and vice versa;
- 1.2.5 any reference to any clause is a reference to such clause of this Deed; and
- 1.2.6 clause headings do not form part of or affect the interpretation of this Deed.

2 DUTY OF CARE

The Subcontractor warrants and undertakes to the Councils that the Subcontractor has carried out or will carry out and complete the Subcontract Works in accordance with and subject to the terms of the Subcontract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Subcontract and (without qualification to or derogation from the foregoing) has exercised and will exercise all reasonable skill and care and diligence expected of suitably qualified, experienced and competent subcontractor undertaking

similar duties and obligations in relation to projects of the same scope, size and complexity as the Project.

3 DESIGN WARRANTY

3.1 Without derogation from Clause 2, the Subcontractor warrants to the Councils that it has carried out and will continue to carry out its duties under the Subcontract in accordance with the Subcontract and that it has exercised and will continue to exercise, in carrying out the design of the Subcontract Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to a project of a similar size and scope to the Subcontract Works. In particular and without limiting the generality of the foregoing the Subcontractor covenants with the Councils that it has carried out and will carry out and complete the Subcontract Works in accordance with the Subcontract and duly observe and perform all its duties and obligations thereunder.

3.2 For the purposes of Clause 3.1, the Subcontractor shall be responsible for any design or the selection of any goods, materials, equipment or plant, if such design or selection is produced or made by the Subcontractor or by any other person on the Subcontractor's behalf.

4 PROHIBITED MATERIALS

The Subcontractor warrants to the Councils that the Subcontractor has not specified and shall not specify for use and has not used and shall not use in the Project any Prohibited Materials.

5 INTELLECTUAL PROPERTY RIGHTS

5.1 Subject to the following provisions of this Deed, all Intellectual Property Rights in the drawings, designs, charts, specifications, plans, software and any other documents, information or materials in any medium which have been created and/or developed by the Subcontractor in the course of performing its obligations under the Subcontract (the "**Documents**") will remain vested in the Subcontractor or in the Licensor.

5.2 The contractual conditions for the use of the Intellectual Property Rights by the Contractor and by the Councils are stated in the operational licence agreement, attached in Schedule 1 (Operational Licence Agreement), which forms part of this Deed.

6 DESIGN PROGRAMME

The Subcontractor warrants to the Councils that it has supplied and shall supply any Documents in accordance with any programme agreed or accepted by the Subcontractor or at such times as may reasonably be required so as not to delay or disrupt the execution and completion of the Works.

7 INSURANCE

7.1 The Subcontractor warrants to the Councils that there is Insurance in force covering the liabilities of the Subcontractor under the Subcontract and under this Deed. The Subcontractor agrees to maintain the Insurance provided such Insurance is available on commercially reasonable terms having regard (inter alia) to premiums required and policy terms available.

7.2 When reasonably required to do so by the Councils the Subcontractor shall provide to the Councils documentary evidence that the Insurance required under Clause 7.1 is being maintained.

8 ATTENDANCE AT MEETINGS

8.1 Subject to having no less than 10 (ten) business days notices, the Subcontractor shall comply with all requests by the Council to either provide information relating to its obligation under the Subcontract or to procure the attendance of specific officers or employees of the Subcontractor at any Council Overview & Scrutiny Meetings at which the Service is to be discussed.

9 ASSIGNMENT

9.1 The Councils may assign all or any of their rights under this Deed to any person by absolute assignment provided that no more than two (2) such assignments shall be permitted.

9.2 In this Deed references to the Councils include where the context admits its permitted assignees, but not so as to permit more than two (2) assignments under Clause 9.1.

9.3 The Subcontractor shall not contend in any proceedings that any person to whom the Councils assign or have assigned their rights under this Deed or any of them in accordance with Clause 9.1 shall be precluded from recovering therein any loss incurred by such assignee resulting from any breach of this Deed (whenever happening)

by reason that such person is an assignee and not a named promisee hereunder or by reason that the Councils named herein or any intermediate assignee of the Councils escaped loss resulting from such breach by reason of the disposal of their interest in the same.

10 LIABILITY OF THE SUBCONTRACTOR

10.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Subcontractor to the Councils.

10.2 No approval or inspection of the Project or of any designs or specifications or the testing of any work or materials by or on behalf of the Councils and no omission to inspect or test shall negate or diminish any duty or liability of the Subcontractor arising under this Deed.

11 LIMITATION

The Subcontractor shall have no greater obligation or liability to the Councils under this Deed in respect of the Subcontract Works than the Subcontractor would have had to the Councils under the Subcontract if the Councils had jointly appointed the Subcontractor under the Subcontract.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

13 EXPIRY OF DEED

This Deed shall cease to have effect twelve (12) years after certification that the Acceptance Tests for the ITS Facility have been passed (or, if earlier, twelve (12) years after termination of the employment of the Subcontractor under the Subcontract) save so far as concerns any matter in respect of which legal proceedings shall have been commenced against the Subcontractor prior to the expiry of such period.

14 SERVICE OF NOTICE

14.1 Any notice required to be given under this Deed shall be hand delivered or sent by prepaid registered or recorded delivery post to the party concerned at its address set out in this Deed or to such other addresses as may be notified by such party for the purposes of this clause.

14.2 Any notice given pursuant to this Clause 14 shall, if sent by registered post or recorded delivery, be deemed to have been received five (5) business days after being posted.

15 GOVERNING LAW

This Deed shall be governed by and construed according to English law and the English courts shall have jurisdiction with regard to all matters arising under it.

16 COUNTERPARTS

This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

EXECUTED AS A DEED by the Parties or their duly authorised representatives but not delivered until the date of this Deed.

EXECUTED as a DEED by)

SISTEMA ECODECO UK LIMITED)

acting by:)

.....

Director

.....

Director/Company Secretary

THE COMMON SEAL of)

BARNSLEY 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)
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

Signed as a deed on behalf of **ECODECO S.r.l.**, a company incorporated in Italy, by Enrico Friz the Managing Director, being a person who, in accordance with the laws of that territory, and is acting under the authority of the company

.....

Authorised signatory

.....

Director

.....

Director/Company Secretary

SCHEDULE 1 - OPERATIONAL LICENCE AGREEMENT

DATED _____ 2012

BARNSLEY METROPOLITAN BOROUGH COUNCIL (1)

and

DONCASTER BOROUGH COUNCIL (2)

and

ROTHERHAM BOROUGH COUNCIL (3)

and

SHANKS WASTE MANAGEMENT LIMITED (4)

and

4RECYCLING LIMITED (5)

SUB-CONTRACTOR'S

DIRECT AGREEMENT WITH THE COUNCILS

WALKER MORRIS

Kings Court

12 King Street

LEEDS

LS1 2HL

Tel: 0113 2832500

Fax: 0113 2459412

Ref: DJK/NMT/CKH

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BETWEEN

- (1) **BARNSELY METROPOLITAN BOROUGH COUNCIL** whose principal office is at The Town Hall, Barnsley, South Yorkshire S70 2TA ("**Barnsley**");
- (2) **DONCASTER BOROUGH COUNCIL** whose principal office is at PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ ("**Doncaster**");
- (3) **ROTHERHAM BOROUGH COUNCIL** whose principal office is at Riverside House, Main Street, Rotherham S60 1AE ("**Rotherham**")

(together the "**Beneficiary**") which expression includes its permitted successors in title and assigns; and

- (4) **SHANKS WASTE MANAGEMENT LIMITED** registered in England and Wales under company number 02393309 and whose registered office is at Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Employer**"); and
- (5) **4RECYCLING LIMITED** (registered in England and Wales under company number 05747690 and whose registered office is at Unit 1a Caradon Road Haigh Park Road Stourton, Leeds West Yorkshire LS10 1RT (the "**Contractor**");

BACKGROUND

- (A) Pursuant to a contract of even date between 3SE (Barnsley, Doncaster & Rotherham) Limited ("**Project Company**") and Barnsley Metropolitan Borough Council, Doncaster Borough Council and Rotherham Borough Council) (each a "**Council**" and together the "**Councils**") the Council has procured the services of the Project Company to provide certain waste management services functions with a view to assisting the Council in discharging its statutory obligations and meeting its statutory targets ("**Project Agreement**").
- (B) By a contract of even date the Project Company has appointed the Employer to carry out certain services in relation to the Project including but not limited to the delivery of an offtake as part of the Service.
- (D) By a contract of even date (the "**Sub-Contract**"), the Employer has appointed the Contractor to carry out certain off take services being part of the Service (the "**Sub-Contract Services**").

(E) The Contractor agrees to give a warranty in this form to 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. 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, this Deed shall be interpreted in accordance with the terms of the Project Agreement.

2. CONTRACTOR'S WARRANTY AND LIABILITY

The Contractor warrants to the Beneficiary that:

2.1 it has carried out and will continue to carry out and complete its obligations under the Sub-Contract in accordance with the Sub-Contract; and

2.2 without prejudice to the provisions of Clause 2.1:

2.2.1 in the performance of the Sub-Contract Services the Contractor has and will exercise all reasonable skill and care to be expected of a suitably qualified and competent contractor experienced in carrying out services similar to the Sub-Contract Services in relation to projects of a similar size, scope and complexity as the project;

2.2.2 the Sub-Contract Services on completion shall comply in all respects with the requirements of the Sub-Contract.

2.3 The Contractor shall be entitled in any action or proceedings by the Beneficiary to raise the equivalent rights in defence of liability (except for set off or counterclaim) as it would have against the Employer under the Sub-Contract, and shall have no liability under this Deed that is of greater or longer duration than it would have had if the Beneficiary had been a party to the Sub-Contract as "Employer". Notwithstanding anything herein contained, upon the expiry of twelve (12) Years from the completion

of the Contractor's obligation under the Sub-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.

3. DOCUMENTS

- 3.1 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 completion of the Contractor's obligations under the Sub-Contract or the termination of the Sub-Contract or the determination of the Contractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce 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 Contractor in the course of performing its obligations under the Sub-Contract for any purpose whatsoever connected with the Service and for such other uses as are reasonably foreseeable but excluding all Excluded Documents which shall remain the absolute property of the Contractor (the "**Documents**"). Such licence will carry the right to grant sub-licences and will be transferable to third parties. 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 and for such other uses as are reasonably foreseeable unless the Contractor authorises such use and confirms the Documents are suitable for it.
- 3.2 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 thereof at the Beneficiary's expense as may be appropriate.
- 3.3 The Contractor warrants to the Beneficiary that the Documents are its own original work and that in any event their use in connection with the Service will not infringe the rights of any third party.
- 3.4 For the purpose of this clause 3, "Excluded Documents" means any part of any document (including any intellectual property rights vesting in it now or in the future)

which is an ecological or agricultural benefit statement; and/or a risk assessment procedure or tool (either computer based or otherwise); and/or a calculation spreadsheet; and/or a landbank assessment tool (whether computer based or otherwise); and /or a client's contact detail (to include names, email addresses and phone numbers) and/ or the Contractors standard operating procedures and/ or method statements which may be provided by or on behalf of the Contractor at any time for any purpose whatsoever in connection with the Project and which shall not be copied, reproduced, disclosed or used without the express written permission of the Contractor;

4. INSURANCE

- 4.1 The Contractor shall maintain insurances as required under, and upon the terms set out in, the Sub-Contract.
- 4.2 As and when reasonably required by the Beneficiary the Contractor will produce for inspection documentary evidence that the insurance 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, 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 provided that if any notice sent by hand is sent after 4.45 p.m. on any day it will be deemed to be served on the next Business 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 4.45pm on a Business Day and otherwise on the next Business Day.

6. ASSIGNMENT

Without prejudice to the provisions of Clause 9 (Step-in Rights), the benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor and the Beneficiary will notify the Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. 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 assignee 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 assignee has not suffered any or as much loss.

7. BENEFICIARY REMEDIES

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 tort.

8. INSPECTION OF DOCUMENTS

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.

9. STEP-IN RIGHTS IN FAVOUR OF THE BENEFICIARY

9.1 The 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 of its duties or obligations under the Sub-Contract or terminate or treat as terminated or repudiated the Sub-Contract or its employment under it without first giving to the Beneficiary not less than twenty-eight (28) days' prior written notice specifying the Contractor's ground for terminating or treating as terminated or repudiated the Sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Sub-Contract. Within such period of notice:

9.1.1 the Beneficiary may give written notice to the Contractor that the Beneficiary will from the later of the date of termination or the date of the written notice become the Employer under the Sub-Contract to the exclusion of the Employer and thereupon the Contractor will admit that the Beneficiary is such employer and the Sub-Contract will be and remain in full force and effect as if the Sub-Contract had been entered into between the Contractor and the Beneficiary notwithstanding any of the said grounds

- 9.1.2 if the Beneficiary has given such notice as aforesaid or under Clause 9.3, the Beneficiary shall accept liability for the Employer's obligations under the Sub-Contract and will as soon as practicable thereafter remedy any outstanding breach by the Employer which properly has been included in the Contractor's notice pursuant to Clause 9.1 and which is capable of remedy by the Beneficiary; or
- 9.1.3 if the Beneficiary has given such notice as aforesaid or under Clause 9.3, the Beneficiary will from the service of such notice become responsible for all sums properly payable to the Contractor under the Sub-Contract and for the performance and observance of the other duties and obligations on the part of the Employer under the Sub-Contract accruing due after the service of such notice but the Beneficiary will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Employer under the Sub-Contract.
- 9.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Contractor, the Beneficiary will not be under any obligation to the Contractor nor will the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given written notice to the Contractor pursuant to Clause 9.1 or Clause 9.3 of this Deed.
- 9.3 The Contractor further covenants with the Beneficiary that if the Project Agreement is terminated by the Beneficiary, the Contractor will, if requested by the Beneficiary, by notice in writing and subject to Clause 9.1 and Clause 9.3 accept the instructions of the Beneficiary to the exclusion of the Employer in respect of its duties under the Sub-Contract and will if so requested in writing enter into a novation agreement whereby the Beneficiary is substituted for the Employer under the Sub-Contract.
- 9.4 The Employer acknowledges that the Contractor will be entitled to rely on a notice given to the Contractor by the Beneficiary under Clause 9.1 or Clause 9.3 and the Employer consents to the provisions of this Clause 9.
- 9.5 The Beneficiary may by notice in writing to the Contractor appoint another person to exercise its rights under this Clause 9 subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.

- 9.6 Where the Beneficiary serves notice under Clause 9.1 or Clause 9.3 and any such notice is also served by the Senior Lenders then any notice served by the Senior Lenders shall be deemed to have first priority. Only the notice deemed to have first priority shall take effect and no other relevant notice will bind the Contractor.
- 9.7 The Employer hereby agrees that it will not take any steps which would hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in Clause 9.1 and Clause 9.3 override any obligations of the Contractor to the Employer under the Sub-Contract.
- 9.8 Notwithstanding anything contained in this Deed and notwithstanding any payment which may be made by the Beneficiary to the Contractor, the Contractor shall not have any obligation to and will not be under any duty to obey any direction or instruction from the Beneficiary unless and until the Beneficiary has given written notice to the Contractor under Clause 9.1 and Clause 9.3.
- 9.9 The Contractor shall owe no greater duties or obligations and have no greater liability (whether in scope or duration or amount) to the Beneficiary under this Deed than it would have owed to the Beneficiary under the Sub-Contract if the Beneficiary had been a party to the Sub-Contract as joint employer with the Employer.
- 9.10 For the avoidance of doubt the Beneficiary acknowledges and agrees that the Contractor has the right to terminate the Sub-Contract in accordance with the provisions of clauses 3A.7; 7B; 14A and 15.9 of the Sub-Contract and to the extent that the Contractor exercises such right and seeks to terminate the Sub-Contract accordingly the provisions of this clause 9 shall not apply to the proposed termination.

10. VARIATION OF SUB-CONTRACT

The Employer and the Contractor each agree that they will not, without the prior written consent of the Beneficiary (such consent not to be unreasonably withheld or delayed), amend, modify or waive any material provision of the Sub-Contract.

11. APPLICABLE LAW AND JURISDICTION

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

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.

13. COUNTERPARTS

This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

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

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)
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

EXECUTED AND DELIVERED)

As a Deed by

4RECYCLING LIMITED)

Acting by the signatures of:)

Director

.....
Director/Secretary

DATED _____ 2012

BIRSE CIVILS LIMITED (1)

and

BARNSLEY METROPOLITAN BOROUGH COUNCIL (2)

and

ROTHERHAM BOROUGH COUNCIL (3)

and

DONCASTER BOROUGH COUNCIL (4)

and

SHANKS WASTE MANAGEMENT LIMITED (5)

SUB-SUB-CONTRACTOR'S DEED OF WARRANTY

**in favour of the Councils relating to a development known as the BDR Municipal Waste PFI
Project**

WALKER MORRIS

Kings Court
12 King Street
LEEDS
LS1 2HL
Tel: 0113 2832500
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THIS DEED is made on

2012

BETWEEN:

- (1) **BIRSE CIVILS LIMITED** a company incorporated under the laws of England and Wales with company number 00637008 whose registered office is at 3 Grimston Grange, Sherburn Road, Tadcaster, North Yorkshire LS24 9BX (the "**Sub-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**");

Barnsley, Doncaster and Rotherham together (the "**Councils**") and each a Council; and

- (5) **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**")

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) The Councils and the Contractor have entered into a contract (the "**Project Agreement**" as defined below) under which the Contractor has agreed to carry out and complete the Works and to deliver the Service required for the purposes of the Project.
- (A) The Contractor and the Construction Sub-Contractor have entered into a construction contract (the "**Construction Contract**"), under which the Contractor has agreed to carry out and complete the Works required for the purposes of the Project.
- (B) The Construction Sub-Contractor and the Sub-sub-Contractor have entered into a construction contract (the "**Sub-sub-Contract**"), under which the Sub-sub-Contractor has agreed to design or complete the design of and to supply and erect or install the Sub-sub-Contract Works as part of the Works.

It is agreed in consideration of the sum of one pound (£1.00) if demanded paid by the Councils to the Sub-sub-Contractor, receipt of which the Sub-sub-Contractor acknowledges:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

"Contractor" means 3SE (Barnsley, Doncaster and Rotherham) Limited, a company registered in England and Wales under company number 07820886 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU;

"Documents" means all drawings, CAD materials, plans, designs, diagrams, details, specifications technical data, bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Sub-sub-Contractor for any purpose whatsoever in connection with the Project;

"Insurance" means professional indemnity insurance:

1.1.1 with a limit of indemnity not less than ten million pounds (£10,000,000) for any occurrence or series of occurrences arising out of each and every event and in the aggregate for each year of insurance with a minimum of one (1) automatic reinstatement of the aggregate indemnity limit in any one (1) year of insurance;

1.1.2 to be maintained until twelve (12) years after practical completion of the whole of the Works;

"Overview & Scrutiny Meetings" means meetings of the Councils' Overview & Scrutiny panel(s) held in accordance with the provisions of the Local Government Act 2000;

"Prohibited Materials" means any materials which by their nature or application are not in conformity with (save where they exceed) current relevant British Standards, British Codes of Practice European Standards or European Codes of Practice (whichever are the higher standard) or which are 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;

"Project" has the meaning given in the Project Agreement;

"Project Agreement" means the agreement entered into between the Councils and the Contractor and dated on or about the date of this Deed;

"Service" has the meaning given in the Project Agreement;

"Site" means the Site (Bolton Road) as defined in the Project Agreement;

"Sub-sub-Contract Works" means the design, construction, testing and commissioning of the buildings required for an intelligent transfer station at Bolton Road together with all supporting infrastructure at the Site; and

"Works" has the meaning given in the Project Agreement.

1.2 In this Deed:

1.2.1 Project includes part of the Project;

1.2.2 person includes a firm, companies, corporations, partnerships, trusts, authorities and other incorporated and/or unincorporated associations;

1.2.3 any term importing one gender shall include any other gender;

1.2.4 any term importing the singular includes the plural and vice versa;

1.2.5 any reference to any clause is a reference to such clause of this Deed; and

1.2.6 clause headings do not form part of or affect the interpretation of this Deed.

2 DUTY OF CARE

2.1 The Sub-sub-Contractor warrants and undertakes to the Councils that the Sub-sub-Contractor has carried out or will carry out and complete the Sub-sub-Contract Works in accordance with and subject to the terms of the Sub-sub-Contract and has observed and performed and will observe and perform all of its duties and obligations expressed in or arising out of the Sub-sub-Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise the reasonable skill and care and diligence expected of a suitably qualified, experienced and competent sub-contractor undertaking similar duties and obligations in relation to projects of the same scope, size and complexity as the Project.

2.2 The Sub-sub-Contractor shall owe a duty of care to the Councils in carrying out its duties and obligations under the Sub-sub-Contract.

3 DESIGN WARRANTY

- 3.1 Without derogation from Clause 2, the Sub-sub-Contractor warrants to the Councils that it has carried out and will continue to carry out its duties under the Sub-sub-Contract in accordance with the Sub-sub-Contract and that it has exercised and will continue to exercise, in carrying out the design of the Sub-sub-Contract Works, the level of skill and care reasonably to be expected from an appropriately qualified and competent professional designer providing those services in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing the Sub-sub-Contractor covenants with the Councils that it has carried out and will carry out and complete the Sub-sub-Contract Works in accordance with the Sub-sub-Contract and duly observe and perform all its duties and obligations thereunder.
- 3.2 For the purposes of Clause 3.1, the Sub-sub-Contractor shall be responsible for any design or the selection of any goods, materials, equipment or plant, if such design or selection is produced or made by the Sub-sub-Contractor or by any other person on the Sub-sub-Contractor's behalf.

4 PROHIBITED MATERIALS

The Sub-sub-Contractor warrants to the Councils that the Sub-sub-Contractor has not specified and shall not specify for use in the Project any Prohibited Materials.

5 COPYRIGHT

- 5.1 The Sub-sub-Contractor grants and agrees to grant to the Councils with full title guarantee an irrevocable, non-exclusive, royalty-free licence (such licence to remain in full force and effect notwithstanding completion of the Sub-sub-Contractor's obligations under the Sub-sub-Contract or the termination of the Sub-sub-Contract or the termination of the Sub-sub-Contractor's engagement under it or any dispute thereunder or hereunder) to use and reproduce any Documents for any purpose relating to or connected with the Sub-sub-Contract Works provided that the Sub-sub-Contractor shall not be liable for any use of any of the Documents for any purpose other than that for which the same was originally prepared and provided by the Sub-sub-Contractor. Such licence shall carry the right to grant sub-licences and shall be freely transferable to third parties.

- 5.2 Insofar as ownership with full title guarantee of copyright and any other intellectual property right in any Document prepared or provided by the Sub-sub-Contractor in connection with the Project is vested in any person other than the Sub-sub-Contractor, including, without limitation, any sub-consultant, the Sub-sub-Contractor shall use reasonable endeavours to procure for the Councils the benefit of such licence as is referred to in Clause 5.1 for the purposes referred to therein.
- 5.3 The Sub-sub-Contractor shall, if so requested at any time, execute such Documents and perform such acts as may be required fully and effectively to assure to the Councils or any third party the rights referred to in this Clause 5.
- 5.4 The Sub-sub-Contractor warrants to the Councils that the use of the Documents for the purposes of the Project will not infringe the intellectual property rights of any third person in relation to the Documents.

6 DESIGN PROGRAMME

The Sub-sub-Contractor warrants to the Councils that it has supplied and shall supply any Documents in accordance with any programme agreed or accepted by the Sub-sub-Contractor or at such times as may reasonably be required so as not to delay or disrupt the execution and completion of the Sub-sub-Contract Works.

7 INSURANCE

- 7.1 The Sub-sub-Contractor warrants to the Councils that there is Insurance in force covering the liabilities of the Sub-sub-Contractor under the Sub-sub-Contract and under this Deed. The Sub-sub-Contractor agrees to maintain the Insurance provided such Insurance is available on commercially reasonable terms in the UK market having regard (inter alia) to premiums required and policy terms available.
- 7.2 When reasonably required to do so by the Councils the Sub-sub-Contractor shall provide to the Councils documentary evidence that the insurance required under Clause 7.1 is being maintained.

8 DEEDS OF WARRANTY

- 8.1 The Sub-sub-Contractor shall, as the Councils may at any time or times require, promptly execute and deliver a deed or deeds in the terms of this Deed, mutatis mutandis, but excluding Clause 5 and Clause 8, in favour of each or any person having

or acquiring a mortgage or charge over or a freehold or leasehold interest in the Project or any part of it up to a maximum of three (3) times.

- 8.2 If the Sub-sub-Contractor fails to execute and deliver any such deed pursuant to Clause 8.1 within seven (7) days of the Councils' written request the Councils may execute such deed on the Sub-sub-Contractor's behalf and the Sub-sub-Contractor hereby appoints the Councils as the Sub-sub-Contractor's attorney for the purposes of executing any such deed. The Sub-sub-Contractor agrees to ratify and confirm any act done by the Councils pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4 of the Powers of Attorney Act 1971.

9 ASSIGNMENT

- 9.1 The Councils may assign all of their rights under this Deed to any person by absolute assignment provided that no more than two (2) such assignments shall be permitted.
- 9.2 In this Deed references to the Councils include where the context admits its permitted assignees, but not so as to permit more than two (2) assignments under Clause 9.1.
- 9.3 The Sub-sub-Contractor shall not contend in any proceedings that any person to whom the Councils assign or have assigned their rights under this Deed or any of them in accordance with Clause 9.1 shall be precluded from recovering therein any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named promisee hereunder or by reason that the Councils named herein or any intermediate assignee of the Councils escaped loss resulting from such breach by reason of the disposal of their interest in the same.

10 LIABILITY OF THE SUB-SUB-CONTRACTOR

- 10.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-sub-Contractor to the Councils.
- 10.2 No approval or inspection of the Project or of any designs or specifications or the testing of any work or materials by or on behalf of the Councils and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-sub-Contractor arising under this Deed.

11 LIMITATION

- 11.1 If the Sub-sub-Contractor breaches its obligations under this Deed then, notwithstanding any other provision of this Deed, the Sub-sub-Contractor's liability to the Councils will be limited to the cost of repair, renewal and/or reinstatement of any damage to, or defect in, the Sub-sub-Contract Works arising directly out of any breach or failure by the Sub-sub-Contractor to observe and perform the provisions of this Deed. The Sub-sub-Contractor shall not be liable for any other indirect losses incurred by the Councils.
- 11.2 The Sub-sub-Contractor shall have no greater obligation or liability to the Councils under this Deed in respect of the Sub-sub-Contract Works either in terms of nature, extent or duration than the Sub-sub-Contractor would have had to the Councils under the Sub-sub-Contract if the Councils had jointly appointed the Sub-sub-Contractor with the Construction Sub-Contractor under the Sub-sub-Contract. In any claim, action or proceedings raised by the Councils under this Deed, the Sub-sub-Contractor shall be entitled to rely on any limitation in the Sub-sub-Contract and shall have available to it the same defences, set-offs and counterclaims under this Deed as are or would be available to the Sub-sub-Contractor in any claim, action or proceedings instituted by the Construction Sub-Contractor under the Sub-sub-Contract.
- 11.3 Notwithstanding any other provision of this Deed, the Sub-sub-Contractor shall not be liable to the Councils under this Deed for any delay in carrying out completion of the Sub-sub-Contract Works or any part or parts thereof howsoever caused.

12 SUB-CONTRACTORS

- 12.1 Following a written request from the Councils the Sub-sub-Contractor will (unless it has already done so) use reasonable endeavours to procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Sub-sub-Contract in favour of any person in whose favour the Sub-sub-Contract obliged the Sub-sub-Contractor to give or procure the giving of such a warranty.

13 STEP-IN RIGHTS

- 13.1 The Sub-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 Sub-sub-Contract (which shall not include the exercise by the Sub-sub-Contractor of its statutory right to suspend the carrying out of the Sub-sub-

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

- 13.1.1 if the Sub-sub-Contract has been or is to be terminated the Councils may give written notice to the Sub-sub-Contractor that the Councils will henceforth become the employer under the Sub-sub-Contract to the exclusion of the Construction Sub-Contractor and thereupon the Sub-sub-Contractor will admit that the Councils are such employer and the Sub-sub-Contract will be and remain in full force and effect as if the Sub-sub-Contract had been entered into between the Sub-sub-Contractor and the Councils notwithstanding any of the said grounds; and
 - 13.1.2 if the Councils have given such notice as aforesaid or under Clause 13.3 below, the Councils will as soon as practicable thereafter remedy any outstanding breach by the Construction Sub-Contractor which properly has been included in the Sub-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 Construction Sub-Contractor to the Sub-sub-Contractor); and
 - 13.1.3 if the Councils have given such notice as aforesaid or under Clause 13.3 below, the Councils will from the service of such notice become responsible for all sums properly payable to the Sub-sub-Contractor under the Sub-sub-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 Construction Sub-Contractor under the Sub-sub-Contract.
- 13.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Councils to the Sub-sub-Contractor, the Councils will not be under any obligation to the Sub-sub-Contractor nor will the Sub-sub-Contractor have any claim or cause of action against the Councils unless and until the Councils have

given written notice to the Sub-sub-Contractor pursuant to Clause 13.1.1 or Clause 13.3 of this Deed.

13.3 The Sub-sub-Contractor further covenants with the Councils that if the Construction Sub-Contract is terminated, the Sub-sub-Contractor will, if requested by the Councils, by notice in writing and subject to Clause 13.1.2 and Clause 13.1.3, accept the instructions of the Councils to the exclusion of the Construction Sub-Contractor in respect of the Sub-sub-Contract Works upon the terms and conditions of the Sub-sub-Contract and will if so requested enter into a novation agreement whereby the Councils are substituted for the Construction Sub-Contractor under the Sub-sub-Contract.

13.4 The Construction Sub-Contractor acknowledges that the Sub-sub-Contractor will be entitled to rely on a notice given to the Sub-sub-Contractor by the Councils under Clause 13.3 as conclusive evidence that the Construction Sub-Contract has been terminated.

13.5 The Councils may by notice in writing to the Sub-sub-Contractor appoint another person to exercise their rights under this Clause 13 subject to the Councils remaining liable to the Sub-sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.

13.6 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 13.1 and 13.3 override any obligations of the Sub-sub-Contractor to the Construction Sub-Contractor under the Sub-sub-Contract.

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

15 EXPIRY OF DEED

This Deed shall cease to have effect twelve (12) years after Practical Completion (as defined in the Sub-sub-Contract) (or, if earlier, twelve (12) years after termination of the employment of the Sub-sub-Contractor under the Sub-sub-Contract) save so far as concerns any matter in respect of which legal proceedings shall have been commenced against the Sub-sub-Contractor prior to the expiry of such period.

16 SERVICE OF NOTICE

16.1 Any notice required to be given under this Deed shall be hand delivered or sent by prepaid registered or recorded delivery post to the Party concerned at its address set out in this Deed or to such other addresses as may be notified by such party for the purposes of this Clause 16.

16.2 Any notice given pursuant to this Clause 16 shall, if sent by registered post or recorded delivery, be deemed to have been received forty-eight (48) hours after being posted.

17 GOVERNING LAW

This Deed shall be governed by and construed according to English law and the English courts shall have jurisdiction with regard to all matters arising under it.

18 COUNTERPARTS

This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

EXECUTED AS A DEED by the Parties or their duly authorised representatives but not delivered until the date of this Deed.

Executed as a deed by)
BIRSE CIVILS 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)
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

DATED _____ 2012

JONES CELTIC BIOENERGY LIMITED (1)

and

BARNSLEY METROPOLITAN BOROUGH COUNCIL (2)

and

ROTHERHAM BOROUGH COUNCIL (3)

and

DONCASTER BOROUGH COUNCIL (4)

and

SHANKS WASTE MANAGEMENT LIMITED (5)

SUB-SUB-CONTRACTOR'S DEED OF WARRANTY

**in favour of the Councils relating to a development known as the BDR Municipal Waste PFI
Project**

WALKER MORRIS

Kings Court
12 King Street
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| 12 | JURISDICTION AND GOVERNING LAW | ERROR! BOOKMARK NOT DEFINED. |
| 13 | COUNTERPARTS | ERROR! BOOKMARK NOT DEFINED. |

THIS DEED is made on

2012

BETWEEN:

- (1) **JONES CELTIC BIOENERGY LIMITED** a company incorporated in Ireland under company number 503569 and having its registered office at Waterways House, Grand Canal Quay, Dublin 2, Ireland (the "**Sub-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**");

Barnsley, Doncaster and Rotherham together (the "**Councils**") and each a Council; and

- (5) **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, Manor Farm, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Construction Sub-Contractor**"),

each a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) The Councils and the Contractor have entered into a contract (the "**Project Agreement**" as defined below) under which the Contractor has agreed to carry out and complete the Works and to deliver the Service required for the purposes of the Project.
- (B) The Contractor and the Construction Sub-Contractor have entered into a construction contract (the "**Construction Contract**"), under which the Contractor has agreed to design or complete the design of and to carry out and complete the Works required for the purposes of the Project.
- (C) The Construction Sub-Contractor and the Sub-sub-Contractor have entered into a technology contract (the "**Sub-sub-Contract**"), under which the Sub-sub-Contractor has agreed to perform certain Sub-sub-Contract services to design or complete the design of and to supply and erect or install the Sub-sub-Contract Works as part of the Works and to perform certain other obligations in connection with the Project.

It is agreed in consideration of the sum of one pound (£1.00) if demanded paid by the Councils to the Sub-sub-Contractor, receipt of which the Sub-sub-Contractor acknowledges, as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Deed unless the context otherwise requires:

"Approved Purposes" has the meaning given in the Project Agreement;

"Contractor" means 3SE (Barnsley, Doncaster and Rotherham) Limited, a company registered in England and Wales under company number 07820886 whose registered office is at Dunedin House, Auckland Park, Milton Keynes, Buckinghamshire MK1 1BU;

"Documents" means all drawings, CAD materials, plans, designs, diagrams, details, specifications technical data, bills of quantities, reports and other design information which have been or are hereafter written, prepared or provided by or on behalf of the Sub-sub-Contractor for any purpose whatsoever in connection with the Project;

"Insurance" means professional indemnity insurance:

1.1.1 with a limit of indemnity not less than ten million pounds (£10,000,000) for any occurrence or series of occurrences arising out of each and every event and in the aggregate for each year of insurance with a minimum of one (1) automatic reinstatement of the aggregate indemnity limit in any one (1) year of insurance;

1.1.2 to be maintained until twelve (12) years after issue of the Defects Certificate (as defined in the Sub-sub-Contract);

"Overview & Scrutiny Meetings" means meetings of the Councils' Overview & Scrutiny panel(s) held in accordance with the provisions of the Local Government Act 2000;

"Prohibited Materials" means any materials which by their nature or application are not in conformity with (save where they exceed) current relevant British Standards, British Codes of Practice European Standards or European Codes of Practice (whichever are the higher standard) or which are 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;

"Project" has the meaning given in the Project Agreement;

"Project Agreement" means the agreement entered into between the Councils and the Contractor and dated on or about the date of this Deed;

"Service" has the meaning given in the Project Agreement;

"Site" means the Site (Bolton Road) as defined in the Project Agreement;

"Sub-sub-Contract Works" means the design, construction, testing and commissioning of the AD Facility (as defined in the Project Agreement) at the Site; and

"Works" has the meaning given in the Project Agreement.

1.2 In this Deed:

1.2.1 Project includes part of the Project;

1.2.2 person includes firms, companies, corporations, partnerships, trusts, authorities and other incorporated and/or unincorporated associations;

1.2.3 any term importing one (1) gender shall include any other gender;

1.2.4 any term importing the singular includes the plural and vice versa;

1.2.5 any reference to any clause is a reference to such clause of this Deed; and

1.2.6 clause headings do not form part of or affect the interpretation of this Deed.

2 DUTY OF CARE

2.1 The Sub-sub-Contractor warrants and undertakes to the Councils that it has performed and/or subject to the terms of the Sub-sub-Contract shall perform its duties and obligations under the Sub-sub-Contract subject to and in accordance with the terms thereof, and that in doing so it has exercised and/or shall exercise all the professional skill, care and diligence to be expected of suitably qualified, experienced and competent sub-contractors undertaking similar duties and obligations in relation to projects of the same scope, size and complexity as the Project.

2.2 The Sub-sub-Contractor shall owe a duty of care to the Councils in carrying out its duties and obligations under the Sub-sub-Contract.

3 PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Sub-sub-Contractor warrants to the Councils that it has and shall maintain in force a policy of Insurance covering the liabilities of the Sub-sub-Contractor for negligence under the Sub-sub-Contract and this Deed. The Sub-sub-Contractor agrees to maintain such Insurance at all times until twelve (12) years after the issue of the Defects Certificate (as defined in the Sub-sub-Contract) provided such Insurance is generally available in the market to members of the Sub-sub-Contractor's profession at commercially reasonable rates having regard (inter alia) to premiums required and policy terms obtainable and provided further that payment of any increased or additional premia required by insurers by reason of the Sub-sub-Contractor's own claims record or other acts, omissions, matters or things peculiar to the Sub-sub-Contractor will be deemed to be within the reasonable rates.
- 3.2 If for any period Insurance is not available in accordance with Clause 3.1 or otherwise, the Sub-sub-Contractor shall forthwith inform the Councils, and shall obtain in respect of such period such reduced level of professional indemnity insurance as is available and as would be fair and reasonable in the circumstances for the Sub-sub-Contractor to obtain.
- 3.3 As and when required to do so by the Councils, the Sub-sub-Contractor shall provide to the Councils documentary evidence that the Insurance required under this Deed is being maintained.

4 ASSIGNMENT

- 4.1 The Councils may assign all or any of their rights under this Deed to any person by absolute assignment provided that no more than two (2) such assignments shall be permitted. The Councils will give the Sub-sub-Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 4.2 In this Deed references to the Councils include where the context admits their permitted assignees, but not so as to permit more than two (2) assignments under Clause 4.1.
- 4.3 The Sub-sub-Contractor shall not contend in any proceedings that any person to whom the Councils assign or have assigned their rights under this Deed or any of them in accordance with Clause 4.1 shall be precluded from recovering therein any loss incurred by such assignee resulting from any breach of this Deed (whenever happening)

by reason that such person is an assignee and not a named promisee hereunder or by reason that the Councils named herein or any intermediate assignee of the Councils escaped loss resulting from such breach by reason of the disposal of their interest in the same.

5 COPYRIGHT

- 5.1 The Sub-sub-Contractor hereby grants to the Councils, free of charge, an irrevocable, non-exclusive, transferable (but only to the persons referred to in Clause 67.2.1(a) of the Project Agreement) licence (such licence to remain in full force and effect notwithstanding completion of the Sub-sub-Contractor's obligations under the Sub-sub-Contract or the termination of the Sub-sub-Contract or the determination of the Sub-sub-Contractor's engagement under it or any dispute thereunder or hereunder) to use and reproduce any Documents solely for the Approved Purposes (as defined in the Project Agreement) provided that the Sub-sub-Contractor shall not be liable for any use of any of the Documents for any purpose other than that for which the same was originally prepared and provided by the Sub-sub-Contractor.
- 5.2 Insofar as any other intellectual property right in any Document prepared or provided by the Sub-sub-Contractor in connection with the Project is vested in any person other than the Sub-sub-Contractor, including, without limitation, any sub-consultant, the Sub-sub-Contractor shall procure for the Councils the benefit of such licence as is referred to in Clause 5.1 for the purposes referred to therein.
- 5.3 The Sub-sub-Contractor shall, if so requested at any time, execute such documents and perform such acts as may be required fully and effectively to assure to the Councils or any third party the rights referred to in this Clause 5.
- 5.4 The Sub-sub-Contractor warrants to the Councils that the use of the Documents for the purposes of the Project will not infringe the intellectual property rights of any third person in relation to the Documents.

6 LIABILITY OF THE SUB-SUB-CONTRACTOR

- 6.1 Nothing herein shall operate to exclude any obligation or liability which would otherwise be implied whether by the law of contract, tort, equity or otherwise.
- 6.2 The responsibility of the Sub-sub-Contractor under this Deed shall not be reduced or in any way released or limited by any enquiry or inspection by or on behalf of any person

notwithstanding that such enquiry or inspection may give rise to a claim by the Councils against a third party.

6.3 The rights and benefits conferred upon the Councils by this Deed are in addition to any other rights and remedies that the Councils may have against the Sub-sub-Contractor including, (without prejudice to the generality of the foregoing), any remedies in negligence.

6.4 The Sub-sub-Contractor shall have no greater obligation or liability to the Councils under this Deed in respect of the Sub-sub-Contract Works than the Sub-sub-Contractor would have had to Councils under the Sub-sub-Contract if the Councils had jointly appointed the Sub-sub-Contractor under the Sub-sub-Contract.

7 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

This Deed is not intended to confer any rights on any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

8 EXPIRY OF DEED

This Deed shall cease to have effect twelve (12) years after issue of the Defects Certificate (as defined in the Sub-sub-Contract) (or, if earlier, twelve (12) years after termination of the employment of the Sub-sub-Contractor under the Sub-sub-Contract) save so far as concerns any matter in respect of which legal proceedings shall have been commenced against the Sub-sub-Contractor prior to the expiry of such period.

9 SUB-CONTRACTORS

9.1 Following a written request from the Councils the Sub-sub-Contractor will (unless it has already done so) and/or procure that its sub-contractors execute a deed of collateral warranty in favour of any person in whose favour the Sub-sub-Contract obliged the Sub-sub-Contractor to give or procure the giving of such a warranty.

9.2 The Sub-sub-Contractor shall comply with all reasonable requests by the Councils to either provide information or to procure the attendance of specific officers or employees of the Sub-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 Sub-sub-Contract Works are to be discussed.

10 SERVICE OF NOTICE

- 10.1 Any notice required to be given under this Deed shall be hand delivered or sent by pre-paid registered or recorded delivery post to the Party concerned at its address set out in this Deed or to such other addresses as may be notified by such Party for the purposes of this Clause 10.
- 10.2 Any notice given pursuant to this Clause 10 shall, if sent by registered post or recorded delivery, be deemed to have been received forty-eight (48) hours after being posted.

11 STEP-IN RIGHTS

- 11.1 The Sub-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 Sub-sub-Contract (which shall not include the exercise by the Sub-sub-Contractor of its statutory right to suspend the carrying out of the Sub-sub-Contract Works under the Housing Grants (Construction and Regeneration) Act 1996) or terminate or treat as terminated or repudiated the Sub-sub-Contract or its employment under it without first giving to the Councils not less than twenty-eight (28) days' prior written notice specifying the Sub-sub-Contractor's ground for terminating or treating as terminated or repudiated the Sub-sub-Contract or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Sub-sub-Contract. Within such period of notice:
- 11.1.1 if the Sub-sub-Contract has been or is to be terminated the Councils may give written notice to the Sub-sub-Contractor that the Councils will henceforth become the employer under the Sub-sub-Contract to the exclusion of the Construction Sub-Contractor and thereupon the Sub-sub-Contractor will admit that the Councils are such employer and the Sub-sub-Contract will be and remain in full force and effect as if the Sub-sub-Contract had been entered into between the Sub-sub-Contractor and the Councils notwithstanding any of the said grounds; and
- 11.1.2 if the Councils have given such notice as aforesaid or under Clause 11.3 below, the Councils will as soon as practicable thereafter remedy any outstanding breach by the Construction Sub-Contractor which properly has been included in the Sub-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 Construction Sub-Contractor to the Sub-sub-Contractor); and

- 11.1.3 if the Councils have given such notice as aforesaid or under Clause 11.3 below, the Councils will from the service of such notice become responsible for all sums properly payable to the Sub-sub-Contractor under the Sub-sub-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 Construction Sub-Contractor under the Sub-sub-Contract.
- 11.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Councils to the Sub-sub-Contractor, the Councils will not be under any obligation to the Sub-sub-Contractor nor will the Sub-sub-Contractor have any claim or cause of action against the Councils unless and until the Councils have given written notice to the Sub-sub-Contractor pursuant to Clause 11.1.1 or Clause 11.3 of this Deed.
- 11.3 The Sub-sub-Contractor further covenants with the Councils that if the Construction Sub-Contract is terminated, the Sub-sub-Contractor will, if requested by the Councils, by notice in writing and subject to Clause 11.1.2 and Clause 11.1.3, accept the instructions of the Councils to the exclusion of the Construction Sub-Contractor in respect of the Sub-sub-Contract Works upon the terms and conditions of the Sub-sub-Contract and will if so requested enter into a novation agreement whereby the Councils are substituted for the Construction Sub-Contractor under the Sub-sub-Contract.
- 11.4 The Construction Sub-Contractor acknowledges that the Sub-sub-Contractor will be entitled to rely on a notice given to the Sub-sub-Contractor by the Councils under Clause 11.3 as conclusive evidence that the Construction Sub-Contract has been terminated.
- 11.5 The Councils may by notice in writing to the Sub-sub-Contractor appoint another person to exercise their rights under this Clause 11 subject to the Councils remaining liable to the Sub-sub-Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 11.6 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 11.1 and 11.3 override any obligations of the Sub-sub-Contractor to the Construction Sub-Contractor under the Sub-sub-Contract.

11.7 The Parties agree that if any notice served under this Deed conflicts with a notice served by the Agent (as defined in the Project Agreement) in accordance with the Funders Direct Agreement (as defined in the Construction Contract) and/or a notice served by the Contractor in accordance with the Project Company Direct Agreement (as defined in the Construction Contract) the notices shall be prioritised in the following order:

11.7.1 first, a notice served by the Agent under the Funders Direct Agreement;

11.7.2 second, a notice served by the Contractor under the Project Company Direct Agreement; and

11.7.3 third, a notice served by the Councils in accordance with the terms of this Deed.

12 JURISDICTION AND GOVERNING LAW

This Deed shall be governed by and construed according to English law and each party hereby irrevocably submits and agrees to the exclusive jurisdiction of the Courts of England to resolve any actions, proceedings, controversy or claim of whatever nature arising out of or relating to this Deed or breach thereof.

13 COUNTERPARTS

This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

14 EXISTING AGREEMENT

On the date of this deed, the Sub-sub-Contractors warranty in favour of the Councils entered into by the parties hereto on 30 March 2012 shall automatically terminate.

IN WITNESS WHEREOF the Parties have executed and delivered this document as a deed the day and date first before written:

THE COMMON SEAL OF)

JONES CELTIC BIOENERGY)

LIMITED)

Was affixed to this Deed and this)

Deed was delivered:)

Director).....

Director/Secretary).....

Authorised Signatories

THE COMMON SEAL OF)

BARNSLEY 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)
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