

SCHEDULE 25 – PARENT COMPANY GUARANTEE

PART 1 – CONSTRUCTION CONTRACT

DATED

2012

SHANKS GROUP PLC (1)

and

3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED (2)

**PARENT COMPANY GUARANTEE IN RESPECT OF THE CONSTRUCTION CONTRACT
RELATING TO THE BDR WASTE MANAGEMENT PFI PROJECT**

WALKER MORRIS

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THIS GUARANTEE is made as a deed on

2012

BETWEEN:

- (1) **SHANKS GROUP PLC** a company incorporated under the laws of Scotland with registered number SC077438, whose registered office is at 16 Charlotte Square, Edinburgh, United Kingdom EH2 4DF (the "**Guarantor**"); and
- (2) **3SE (BARNSELY, DONCASTER & ROTHERHAM) LIMITED** a company registered 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**").

WHEREAS

This guarantee is supplemental to:

- (A) a contract of even date herewith (as the same may be amended from time to time) (the "**Construction Contract**") and made between the Contractor (1) and Shanks Waste Management Limited (the "**Construction Sub-Contractor**") (2) for the carrying out of the Works; and
- (B) a direct agreement of even date herewith (as the same may be amended from time to time) (the "**Construction Funders Direct Agreement**") and made between the Contractor (1) the Construction Sub-Contractor (2) and Lloyds TSB Bank plc (in its capacity as security trustee for the Finance Parties (which expression includes all other persons from time to time being the security trustee for the Finance Parties)) (the "**Security Trustee**") (3) regulating certain matters in relation to the termination of the Construction Contract.

The Guarantor has agreed to guarantee the due performance of the Construction Contract and the Construction Funders Direct Agreement by the Construction Sub-Contractor in the manner hereinafter appearing.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 In this guarantee:

1.1.1 (including the recitals) words and expressions shall have the same meanings as are respectively assigned to them in the Construction Contract; and

- 1.1.2 clause headings are for ease of reference only and shall not affect the construction of this guarantee.

2 GUARANTEE

- 2.1 In consideration of the Contractor entering into the Construction Contract with the Construction Sub-Contractor:

2.1.1 the Guarantor irrevocably and unconditionally guarantees to the Contractor the due, proper and punctual performance by the Construction Sub-Contractor of each and all the obligations, duties and undertakings of the Construction Sub-Contractor under and pursuant to the Construction Contract and the Construction Funders Direct Agreement when and if such obligations, duties and undertakings shall become due and performable by the Construction Sub-Contractor according to the terms of the Construction Contract and/or the Construction Funders Direct Agreement and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by the Construction Sub-Contractor to the Contractor pursuant to the Construction Contract and/or the Construction Funders Direct Agreement or as a result of any breach thereof (including all expenses, taxes and legal fees reasonably incurred by the Contractor in connection with the Contractor justifiably and validly seeking to enforce this guarantee) as if it were sole principal obligor and not merely a guarantor; and

2.1.2 as a separate, additional, continuing and primary obligation, the Guarantor agrees to indemnify and hold harmless the Contractor from time to time on demand by the Contractor as a result of the non-performance or breach of any other obligations of the Guarantor under or pursuant to this guarantee from time to time,

provided always that the liability of the Guarantor under this guarantee:

- (a) shall in all respects be limited to the extent that the Construction Sub-Contractor would have been liable under the Construction Contract and/or the Construction Funders Direct Agreement (including as to any caps on liability) or would have been liable under the Construction Contract or the Construction Funders Direct Agreement had the obligations thereunder not been or become void, voidable, unenforceable, invalid or illegal, save that any costs incurred by the

Contractor in seeking to enforce any of the matters under this guarantee shall be recoverable in addition; and

- (b) shall, subject to this provision, expire when the Construction Sub-Contractor's liabilities pursuant to the Construction Contract and/or the Construction Funders Direct Agreement expire (the "**Limitation Period**") and each provision of this guarantee shall be construed accordingly provided that the Guarantor's liability shall not be discharged in respect of any claim in respect of which the Guarantor has received a demand prior to the expiration of the Limitation Period (a "**Limitation Claim**"). Where a demand in respect of a Limitation Claim has been delivered to the Guarantor prior to the expiry of the Limitation Period and there is a dispute or difference as to the validity of the Limitation Claim, this guarantee shall continue in full force and effect for the purpose of preserving the Guarantor's liability under this guarantee in respect of such disputed Limitation Claim pending the final determination of the dispute or difference as to the validity of the Limitation Claim.

Without prejudice to the other provisions of this guarantee, this guarantee shall expire on the date on which the Guarantor's liabilities under Clause 2 have been irrevocably and unconditionally discharged in full, regardless of any intermediate payment or discharge in whole or in part.

2.2 The obligations of the Guarantor under Clause 2.1 shall not be discharged, diminished or in any way affected as a result of any of the following (whether or not known to the Guarantor or the Contractor) including, but without limitation:

- 2.2.1 the giving of time, waiver or indulgence to the Construction Sub-Contractor by the Contractor or any other person; or
- 2.2.2 the granting of any concession to the Construction Sub-Contractor or any other person; or
- 2.2.3 the making of any arrangement by the Contractor or any other person with the Construction Sub-Contractor; or
- 2.2.4 anything that the Contractor may do or omit or neglect to do; or

- 2.2.5 the assertion or failure or delay to assert any right or remedy of the Contractor or any other person or the pursuit of any rights or remedies by the Contractor or any other person; or
- 2.2.6 the giving by the Construction Sub-Contractor of any security; or
- 2.2.7 the release, modification or exchange of any such security, right or action, guarantee or indemnity against the Guarantor or any other person; or
- 2.2.8 any legal limitation, disability or incapacity or other circumstance of the Construction Sub-Contractor, the Guarantor or any other person;
- 2.2.9 the making, or absence, of any demand for payment on the Construction Sub-Contractor, the Guarantor, or any other person; or
- 2.2.10 the Construction Sub-Contractor or the Guarantor becoming insolvent, going into receivership or liquidation or having an administrator appointed or becoming subject to any other procedure or the suspension of payments to or protection of creditors or similar proceedings; or
- 2.2.11 any enforcement, variation, compromise or absence of enforcement of the Construction Sub-Contractor's obligations under the Construction Contract or the Construction Funders Direct Agreement or of any security, right of action, guarantee or indemnity against the Construction Sub-Contractor, the Guarantor or any other person; or
- 2.2.12 any variation of the terms of the Construction Contract or the Construction Funders Direct Agreement or any other document, so that reference to the Construction Contract or the Construction Funders Direct Agreement (as relevant) in this guarantee shall include each such variation;
- 2.2.13 the replacement of the Contractor under the Construction Contract or the Construction Funders Direct Agreement;
- 2.2.14 any assignment of the benefit of the Construction Contract or the Construction Funders Direct Agreement or novation of the Construction Contract or the Construction Funders Direct Agreement; or
- 2.2.15 any other event which might operate to discharge a guarantor which but for this provision might exonerate the Guarantor.

3 CONTINUING GUARANTEE

- 3.1 The Guarantor hereby authorises the Construction Sub-Contractor and the Contractor by agreement between the parties to the Construction Contract or the Construction Funders Direct Agreement to make any addendum or variation to the Construction Contract or the Construction Funders Direct Agreement (as relevant) the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor hereunder in accordance with the terms of this guarantee and the obligations of the Guarantor under this guarantee shall in no way be affected by any such addendum or variation to the Construction Contract or the Construction Funders Direct Agreement.
- 3.2 This guarantee is a continuing guarantee and accordingly:
- 3.2.1 is in addition to and not in substitution for any other security which the Contractor may at any time hold for the performance of such obligations;
 - 3.2.2 may be enforced against the Guarantor without first having recourse to any other such security and without taking any steps or proceedings against the Construction Sub-Contractor; and
 - 3.2.3 shall remain in operation until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Construction Sub-Contractor under the Construction Contract and the Construction Funders Direct Agreement shall have been satisfied or performed in full.
- 3.3 Neither the liability of the Guarantor nor the rights of the Contractor in relation to this guarantee shall be discharged or impaired by reason of the winding up, incapacity, dissolution, administration or re-organisation of the Construction Sub-Contractor or the Guarantor or any change in their status, function, control or ownership or by any other act, event or omission (other than full performance of the Construction Contract and the Construction Funders Direct Agreement by the Construction Sub-Contractor) which might, but for the provisions of this agreement, operate to discharge, impair or otherwise affect any of the obligations or liabilities of the Guarantor hereunder or any of the rights, remedies or powers conferred upon the Contractor. The invalidity, illegality or unenforceability in whole or in part of any provisions of the Construction Contract shall not affect the validity, legality and enforceability of this agreement.

- 3.4 So long as any sums are payable (contingently or otherwise) under this guarantee the Guarantor shall not by paying any sum due hereunder or by any other means or on any ground claim or recover by the institution of proceedings or the threat of proceedings or otherwise such sum from the Construction Sub-Contractor or claim any set-off or counterclaim or exercise any other rights or remedies (each a "**Relevant Right**") against the Construction Sub-Contractor or prove in competition with the Contractor to claim or have the benefit of any security which the Contractor holds or may hold for any money or liabilities due or incurred by the Construction Sub-Contractor to the Contractor. The Guarantor shall give the Contractor the benefit of each such claim or benefit and proof of all the money to be received therefor and in the meantime hold the same in trust for the Contractor. Damages shall not be an adequate remedy for the Contractor in respect of a breach of this clause and the parties shall consent to any application brought by the Contractor for injunctive relief to prevent any such Relevant Right being enforced.
- 3.5 The Guarantor hereby further covenants with the Contractor that if the Construction Sub-Contractor goes into liquidation and the liquidator shall disclaim the Construction Contract and/or the Construction Funders Direct Agreement the liability of the Guarantor hereunder shall remain in full force and effect in respect of any claims, demands, losses, damages, costs, fees, expenses and interest related to such liquidation or the termination of or under the Construction Contract and/or the Construction Funders Direct Agreement or consequent thereon.
- 3.6 Subject to the proviso to Clause 2.1, the Guarantor as a separate, additional and continuing obligation unconditionally and irrevocably undertakes with the Contractor that, should the Construction Sub-Contractor fail to pay, perform or discharge or is otherwise in default in respect of any of the obligations or liabilities assumed by the Guarantor under Clause 2 as a result of such obligations or liabilities becoming void, voidable, unenforceable, invalid or illegal for any reason then, the Guarantor will (subject as aforesaid) as a separate, original and independent principal obligation make payment to the Contractor on demand by way of a full indemnity in such currency and otherwise in such manner as is provided for in the Construction Contract or the Construction Funders Direct Agreement (as applicable).
- 3.7 The Guarantor shall not hold any security from the Construction Sub-Contractor without prior written consent of the Contractor. The Guarantor shall hold any security held by them in breach of this provision in trust for the Contractor.

4 SUMS PAYABLE

- 4.1 In case the Guarantor receives any sums from the Construction Sub-Contractor in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies in trust for the Contractor until all guaranteed obligations, hereunder to the Contractor have been discharged in full (pursuant to Clause 2.1) and upon request by the Contractor the Guarantor will immediately deposit such sums with the Contractor for application in or towards the discharge of all sums of money and liabilities due, owing or incurred or payable and unpaid by the Construction Sub-Contractor to the Contractor pursuant to the Construction Contract and/or the Construction Funders Direct Agreement.
- 4.2 All sums payable under this guarantee shall be paid in full without set-off or counterclaim and free and clear of, and without deduction of or withholding for or on account of, any taxes, duties and/or other charges.

5 ASSIGNMENT

- 5.1 The Contractor shall be entitled by notice in writing to the Guarantor to assign all (but not part) of the benefits of this guarantee (whether or not accrued) at any time without the consent of the Guarantor:
- 5.1.1 to any third party to whom the Construction Contract or the Construction Funders Direct Agreement is novated or otherwise transferred;
 - 5.1.2 by way of security granted by the Contractor or a Transferee to its financiers; and/or
 - 5.1.3 to the Councils (as defined in the Construction Contract) or any person nominated by the Councils,
- and the Guarantor's obligations and responsibilities pursuant to this guarantee will not be affected. Any other form of assignment, whether in law or in equity, or any further such assignment shall require the prior consent of the Guarantor which consent is not to be unreasonably withheld or delayed.
- 5.2 The Guarantor shall not assign, transfer, sell or otherwise deal with or dispose of this guarantee (in whole or in part) in any manner whatsoever without the prior written consent of the Contractor.

6 PROCEEDINGS AGAINST THE CONSTRUCTION SUB-CONTRACTOR

In the event that the Contractor brings proceedings against the Construction Sub-Contractor, the Guarantor will be bound by any finding of fact, interim or final award or judgment made by an arbitrator or court in such proceedings.

7 FURTHER ASSURANCES

7.1 The Guarantor declares and undertakes with the Contractor that the Guarantor has not taken and shall not take or accept any security of whatever nature from the Construction Sub-Contractor in connection with this Guarantee, and in the event of the Guarantor having taken or taking any such security in contravention of this clause or receiving any payments, distributions, benefit or other property from the Construction Sub-Contractor, the Guarantor declares that they will be held in trust for the Contractor and the Guarantor will immediately deposit them and all documents relating to them with the Contractor and will immediately account to the Contractor for all moneys at any time received by or on behalf of the Guarantor in respect of them.

7.2 The Guarantor represents and warrants to the Contractor that:

- 7.2.1 it is duly incorporated with power to execute and perform its obligations under this guarantee;
- 7.2.2 each of its obligations under this guarantee is (subject to general legal, equitable and statutory principles of English law and applicable bankruptcy, liquidation, insolvency, reorganisation or other laws or other legal or equitable principles) valid, binding and enforceable at law;
- 7.2.3 it has taken all necessary corporate or other action to authorise such execution and performance to which it is subject;
- 7.2.4 the entry into and performance by it of this guarantee does not breach any provision of its constitutional documents or any other agreement binding on it; and
- 7.2.5 all consents and authorisations (if any) for the giving and implementation of this guarantee have been obtained.

8 NO WAIVER

- 8.1 Any release, settlement, satisfaction or discharge between the parties shall be conditional upon no security, disposition or payment made or given to the Contractor being avoided, reduced, set aside, rendered unenforceable or required to be paid away by virtue of any provision, requirement or enactment, whether relating to insolvency or liquidation or otherwise at any time in force or by virtue of any obligation to give effect to any preference of priority.
- 8.2 In the event of any order of the court being made directing the Contractor to pay or deliver any sum or any property to a liquidator of the Construction Sub-Contractor or to any other person, such sum or property when payable or deliverable shall be recoverable from the Guarantor and shall be repaid by the Guarantor within seven (7) days after demand in writing by or on behalf of the Contractor.
- 8.3 The Guarantor's liability under this guarantee shall not be discharged, reduced or affected by a compromise or arrangement in relation to the Construction Sub-Contractor sanctioned under Part 26 of the Companies Act 2006, the Insolvency Act 1986 or by any provisions or enactments relating to insolvency, winding up or liquidation or any analogous procedure in any jurisdiction for the time being in force in each case as amended or re-enacted from time to time, (whether or not the Contractor has agreed to such compromise or arrangement); and where by virtue of any such compromise or arrangement the liability of the Construction Sub-Contractor to the Contractor or any part of such liability is transferred to any other person this guarantee shall take effect as if the expression "the Construction Sub-Contractor" included such other person.
- 8.4 In the event that the Guarantor brings proceedings against the Construction Sub-Contractor, the Guarantor will be bound by any finding of fact, interim or final award or judgment made by an arbitrator or court in such proceedings.
- 8.5 This guarantee is and shall at all times remain the property of the Contractor notwithstanding any release, settlement, satisfaction, discharge or termination of this guarantee.
- 8.6 No failure or delay or omission of the Contractor in exercising any right, power or privilege under this Guarantee shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of such right, power or privilege or the exercise

of any other right, power or privilege. The rights and remedies provided in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.

- 8.7 A waiver given or consent granted by the Contractor under this guarantee will be effective only if given in writing.
- 8.8 A waiver by the Beneficiary shall not constitute a continuing waiver and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this guarantee.

9 NOTICES

- 9.1 Any notice, request, demand or other communication to be given or made under this guarantee shall be in writing (including post, facsimile transmission or email) and shall be made to the respective facsimile number or address of the addressee set out below and marked for the attention of the persons set out below:

In the case of the Contractor:

Address: Dunedin House, Auckland Park, Mount Farm, Milton Keynes,
Buckinghamshire, MK1 1BU

Facsimile No: +44 (0) 1908 650 651

Attention: Company Secretary

Email: company.secretary@shanks.co.uk

With a copy to:

Attention: Richard Webb, Assistant Company Secretary

Email: richard.webb@shanks.co.uk

In the case of the Guarantor:

Address: Dunedin House, Auckland Park, Mount Farm, Milton Keynes,
Buckinghamshire, MK1 1BU

Facsimile No: +44 (0) 1908 650 651

Attention: Company Secretary

Email: company.secretary@shanks.co.uk

With a copy to:

Attention: Richard Webb, Assistant Company Secretary

Email: richard.webb@shanks.co.uk

- 9.2 Any such notice or demand as aforesaid shall be deemed to have been served:
- 9.2.1 if delivered personally, when left at the address referred to in Clause 9.1 of this Guarantee if left during normal business hours of the recipient, or if delivered outside such hours on the next working day;
 - 9.2.2 if sent by first-class post within the United Kingdom, two (2) working days after posting it;
 - 9.2.3 if sent overseas by airmail, five (5) working days after posting it;
 - 9.2.4 if sent by telefax, on the working day following completion of its transmission; or
 - 9.2.5 if sent by email, when received in legible form.
- 9.3 Where a notice is received in incomplete and/or unreadable form, the receiving party shall notify the sending party as soon as possible and in any event within two (2) working days, failing which the notice shall be deemed to have been duly given in accordance with the provisions of this Clause 9.
- 9.4 For the purposes of this Clause 9, "**working day**" means a day (other than a Saturday or a Sunday) on which banks are generally open in the recipient's country for normal business.
- 9.5 Without prejudice to any other permitted mode of service, the Guarantor agrees that service of any claim form, notice or other document for the purpose of any proceedings in such courts shall be duly served upon it if delivered or sent by registered post to its registered office (marked for the attention of the Company Secretary) or such other address in England or Wales as the Guarantor may notify from time to time to the Contractor.

10 GENERAL

- 10.1 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class or airmail letter as the case may be or that the facsimile message was properly addressed and despatched, as the case may be.
- 10.2 If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way. If any provision of this guarantee does become invalid, illegal or unenforceable, the parties agree to substitute for such invalid, illegal or unenforceable term a new term which gives effect to the intention of the invalid, illegal or unenforceable term to the fullest possible extent.
- 10.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this guarantee and no person other than the parties to this guarantee shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it provided that this guarantee shall be enforceable by any assignee of the Contractor.
- 10.4 This guarantee contains or expressly refers to the entire agreement between the parties with respect to the specific subject matter of this guarantee and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties with respect thereto and each of the parties acknowledges and confirms that it does not enter into this guarantee in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this guarantee.
- 10.5 This guarantee shall be governed by and construed in accordance with the laws of England and, both parties irrevocably submit to the non-exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this guarantee and for the purpose of enforcement of any related judgment against its assets.

IN WITNESS whereof this agreement has been executed by the parties as a deed on the date first above written.

Executed as a deed by)
SHANKS GROUP PLC acting by its)
director/attorney)
_____ :

Signature of director/attorney
Signature of witness
Name of witness
Address of witness
.....
.....
Occupation of witness

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

SCHEDULE 25 – PARENT COMPANY GUARANTEE

PART 2 - OPERATING SUB-CONTRACT

DATED

201 2

SHANKS GROUP PLC (1)

and

3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED (2)

**PARENT COMPANY GUARANTEE IN RESPECT OF THE OPERATING CONTRACT
RELATING TO THE BDR WASTE MANAGEMENT PFI PROJECT**

WALKER MORRIS

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

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8	NO WAIVER	10
9	NOTICES	11
10	GENERAL	13

BETWEEN:

- (1) **SHANKS GROUP PLC** a company incorporated under the laws of Scotland with registered number SC077438, whose registered office is at 16 Charlotte Square, Edinburgh, United Kingdom EH2 4DF (the "**Guarantor**"); and
- (2) **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**").

WHEREAS

This guarantee is supplemental to:

- (A) a contract of even date herewith (as the same may be amended from time to time) (the "**Operating Contract**") and made between the Contractor (1) and Shanks Waste Management Limited (the "**Operating Sub-Contractor**") (2) for the carrying out of the Services; and
- (B) a direct agreement of even date herewith (as the same may be amended from time to time) (the "**Operator Funders Direct Agreement**") and made between the Contractor (1) the Operating Sub-Contractor (2) and Lloyds TSB Bank plc (in its capacity as security trustee for the Finance Parties (which expression includes all other persons from time to time being the security trustee for the Finance Parties)) (the "**Security Trustee**") (3) regulating certain matters in relation to the termination of the Operating Contract.

The Guarantor has agreed to guarantee the due performance of the Operating Contract and the Operator Funders Direct Agreement by the Operating Sub-Contractor in the manner hereinafter appearing.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 In this guarantee:

- 1.1.1 (including the recitals) words and expressions shall have the same meanings as are respectively assigned to them in the Operating Contract; and
- 1.1.2 clause headings are for ease of reference only and shall not affect the construction of this guarantee.

2 GUARANTEE

2.1 In consideration of the Contractor entering into the Operating Contract with the Operating Sub-Contractor:

2.1.1 the Guarantor irrevocably and unconditionally guarantees to the Contractor the due, proper and punctual performance by the Operating Sub-Contractor of each and all the obligations, duties and undertakings of the Operating Sub-Contractor under and pursuant to the Operating Contract and the Operator Funders Direct Agreement when and if such obligations, duties and undertakings shall become due and performable by the Operating Sub-Contractor according to the terms of the Operating Contract and/or the Operator Funders Direct Agreement and the due payment and discharge of all such sums of money and liabilities due, owing or incurred or payable and unpaid by the Operating Sub-Contractor to the Contractor pursuant to the Operating Contract and/or the Operator Funders Direct Agreement or as a result of any breach thereof (including all expenses, taxes and legal fees reasonably incurred by the Contractor in connection with the Contractor justifiably and validly seeking to enforce this guarantee) as if it were sole principal obligor and not merely a guarantor; and

2.1.2 as a separate, additional, continuing and primary obligation, the Guarantor agrees to indemnify and hold harmless the Contractor from time to time on demand by the Contractor as a result of the non-performance or breach of any other obligations of the Guarantor under or pursuant to this guarantee from time to time

provided always that the liability of the Guarantor under this guarantee:

(a) shall in all respects be limited to the extent that the Operating Sub-Contractor would have been liable under the Operating Contract and/or the Operator Funders Direct Agreement (including as to any caps on liability) or would have been liable under the Operating Contract or the Operator Funders Direct Agreement had the obligations thereunder not been or become void, voidable, unenforceable, invalid or illegal, save that any costs incurred by the Contractor in seeking to enforce any of the matters under this guarantee shall be recoverable in addition; and

- (b) shall, subject to this provision, expire when the Operating Sub-Contractor's liabilities pursuant to the Operating Contract and/or the Operator Funders Direct Agreement expire (the "**Limitation Period**") and each provision of this guarantee shall be construed accordingly provided that the Guarantor's liability shall not be discharged in respect of any claim in respect of which the Guarantor has received a demand prior to the expiration of the Limitation Period (a "**Limitation Claim**"). Where a demand in respect of a Limitation Claim has been delivered to the Guarantor prior to the expiry of the Limitation Period and there is a dispute or difference as to the validity of the Limitation Claim, this guarantee shall continue in full force and effect for the purpose of preserving the Guarantor's liability under this guarantee in respect of such disputed Limitation Claim pending the final determination of the dispute or difference as to the validity of the Limitation Claim.

Without prejudice to the other provisions of this guarantee, this guarantee shall expire on the date on which the Guarantor's liabilities under Clause 2 have been irrevocably and unconditionally discharged in full, regardless of any intermediate payment or discharge in whole or in part.

2.2 The obligations of the Guarantor under Clause 2.1 shall not be discharged, diminished or in any way affected as a result of any of the following (whether or not known to the Guarantor or the Contractor) including, but without limitation:

- 2.2.1 the giving of time, waiver or indulgence to the Operating Sub-Contractor by the Contractor or any other person; or
- 2.2.2 the granting of any concession to the Operating Sub-Contractor or any other person; or
- 2.2.3 the making of any arrangement by the Contractor or any other person with the Operating Sub-Contractor; or
- 2.2.4 anything that the Contractor may do or omit or neglect to do; or
- 2.2.5 the assertion or failure or delay to assert any right or remedy of the Contractor or any other person or the pursuit of any rights or remedies by the Contractor or any other person; or
- 2.2.6 the giving by the Operating Sub-Contractor of any security; or

- 2.2.7 the release, modification or exchange of any such security, right or action, guarantee or indemnity against the Guarantor or any other person; or
- 2.2.8 any legal limitation, disability or incapacity or other circumstance of the Operating Sub-Contractor, the Guarantor or any other person;
- 2.2.9 the making, or absence, of any demand for payment on the Operating Sub-Contractor, the Guarantor, or any other person; or
- 2.2.10 the Operating Sub-Contractor or the Guarantor becoming insolvent, going into receivership or liquidation or having an administrator appointed or becoming subject to any other procedure or the suspension of payments to or protection of creditors or similar proceedings; or
- 2.2.11 any enforcement, variation, compromise or absence of enforcement, of the Operating Sub-Contractor's obligations under the Operating Contract or the Operator Funders Direct Agreement or of any security, right of action, guarantee or indemnity, against, the Operating Sub-Contractor, the Guarantor or any other person; or
- 2.2.12 any variation of the terms of the Operating Contract or the Operator Funders Direct Agreement or any other document, so that reference to the Operating Contract or the Operator Funders Direct Agreement (as relevant) in this guarantee shall include each such variation;
- 2.2.13 the replacement of the Contractor under the Operating Contract or the Operator Funders Direct Agreement;
- 2.2.14 any assignment of the benefit of the Operating Contract or the Operator Funders Direct Agreement or novation of the Operating Contract or the Operator Funders Direct Agreement; or
- 2.2.15 any other event which might operate to discharge a guarantor which but for this provision might exonerate the Guarantor.

3 CONTINUING GUARANTEE

- 3.1 The Guarantor hereby authorises the Operating Sub-Contractor and the Contractor by agreement between the parties to the Operating Contract or the Operator Funders Direct Agreement to make any addendum or variation to the Operating Contract or the

Operator Funders Direct Agreement (as relevant) the due and punctual performance of which addendum or variation shall be likewise guaranteed by the Guarantor hereunder in accordance with the terms of this guarantee and the obligations of the Guarantor under this guarantee shall in no way be affected by any such addendum or variation to the Operating Contract and the Operator Funders Direct Agreement.

3.2 This guarantee is a continuing guarantee and accordingly:

3.2.1 is in addition to and not in substitution for any other security which the Contractor may at any time hold for the performance of such obligations;

3.2.2 may be enforced against the Guarantor without first having recourse to any other such security and without taking any steps or proceedings against the Operating Sub-Contractor; and

3.2.3 shall remain in operation until all obligations, warranties, duties and undertakings now or hereafter to be carried out or performed by the Operating Sub-Contractor under the Operating Contract and the Operator Funders Direct Agreement shall have been satisfied or performed in full.

3.3 Neither the liability of the Guarantor nor the rights of the Contractor in relation to this guarantee shall be discharged or impaired by reason of the winding up, incapacity, dissolution, administration or re-organisation of the Operating Sub-Contractor or the Guarantor or any change in their status, function, control or ownership or by any other act, event or omission (other than full performance of the Operating Contract and the Operator Funders Direct Agreement by the Operating Sub-Contractor) which might, but for the provisions of this agreement, operate to discharge, impair or otherwise affect any of the obligations or liabilities of the Guarantor hereunder or any of the rights, remedies or powers conferred upon the Contractor. The invalidity, illegality or unenforceability in whole or in part of any provisions of the Operating Contract shall not affect the validity, legality and enforceability of this agreement.

3.4 So long as any sums are payable (contingently or otherwise) under this guarantee the Guarantor shall not by paying any sum due hereunder or by any other means or on any ground, claim or recover by the institution of proceedings or the threat of proceedings or otherwise such sum from the Operating Sub-Contractor or claim any set-off or counterclaim or exercise any other rights or remedies (each a "**Relevant Right**") against the Operating Sub-Contractor or prove in competition with the Contractor to claim or have the benefit of any security which the Contractor holds or may hold for any money

or liabilities due or incurred by the Operating Sub-Contractor to the Contractor. The Guarantor shall give the Contractor the benefit of each such claim or benefit and proof of all the money to be received therefor and in the meantime hold the same in trust for the Contractor. Damages shall not be an adequate remedy for the Contractor in respect of a breach of this clause and the parties shall consent to any application brought by the Contractor for injunctive relief to prevent any such Relevant Right being enforced.

3.5 The Guarantor hereby further covenants with the Contractor that if the Operating Sub-Contractor goes into liquidation and the liquidator shall disclaim the Operating Contract and/or the Operator Funders Direct Agreement the liability of the Guarantor hereunder shall remain in full force and effect in respect of any claims, demands, losses, damages, costs, fees, expenses and interest related to such liquidation or the termination of or under the Operating Contract and/or the Operator Funders Direct Agreement or consequent thereon.

3.6 Subject to the proviso to Clause 2.1, the Guarantor as a separate, additional and continuing obligation unconditionally and irrevocably undertakes with the Contractor that, should the Operating Sub-Contractor fail to pay, perform or discharge or is otherwise in default in respect of any of the obligations or liabilities assumed by the Guarantor under Clause 2 as a result of such obligations or liabilities becoming void, voidable, unenforceable, invalid or illegal for any reason then, the Guarantor will (subject as aforesaid) as a separate, original and independent principal obligation make payment to the Contractor on demand by way of a full indemnity in such currency and otherwise in such manner as is provided for in the Operating Contract or the Operator Funders Direct Agreement (as applicable).

3.7 The Guarantor shall not hold any security from the Operating Sub-Contractor without prior written consent of the Contractor. The Guarantor shall hold any security held by them in breach of this provision in trust for the Contractor.

4 SUMS PAYABLE

4.1 In case the Guarantor receives any sums from the Operating Sub-Contractor in respect of any payment of the Guarantor hereunder, the Guarantor shall hold such monies in trust for the Contractor until all guaranteed obligations, hereunder to the Contractor have been discharged in full (pursuant to Clause 2.1) and upon request by the Contractor the Guarantor will immediately deposit such sums with the Contractor for application in or towards the discharge of all sums of money and liabilities due, owing

or incurred or payable and unpaid by the Operating Sub-Contractor to the Contractor pursuant to the Operating Contract and/or the Operator Funders Direct Agreement.

- 4.2 All sums payable under this guarantee shall be paid in full without set-off or counterclaim and free and clear of, and without deduction of or withholding for or on account of, any taxes, duties and/or other charges.

5 ASSIGNMENT

- 5.1 The Contractor shall be entitled by notice in writing to the Guarantor to assign all (but not part) of the benefits of this guarantee (whether or not accrued) at any time without the consent of the Guarantor:

5.1.1 to any third party to whom the Operating Contract or the Operator Funders Direct Agreement is novated or otherwise transferred;

5.1.2 by way of security granted by the Contractor or a Transferee to its financiers; and/or

5.1.3 to the Councils (as defined in the Operating Contract) or any person nominated by the Councils,

and the Guarantor's obligations and responsibilities pursuant to this guarantee will not be affected. Any other form of assignment, whether in law or in equity, or any further such assignment shall require the prior consent of the Guarantor which consent is not to be unreasonably withheld or delayed.

- 5.2 The Guarantor shall not assign, transfer, sell or otherwise deal with or dispose of this guarantee (in whole or in part) in any manner whatsoever without the prior written consent of the Contractor.

6 PROCEEDINGS AGAINST THE OPERATING SUB-CONTRACTOR

In the event that the Contractor brings proceedings against the Operating Sub-Contractor, the Guarantor will be bound by any finding of fact, interim or final award or judgment made by an arbitrator or court in such proceedings.

7 FURTHER ASSURANCES

- 7.1 The Guarantor declares and undertakes with the Contractor that the Guarantor has not taken and shall not take or accept any security of whatever nature from the Operating

Sub-Contractor in connection with this Guarantee, and in the event of the Guarantor having taken or taking any such security in contravention of this clause or receiving any payments, distributions, benefit or other property from the Operating Sub-Contractor, the Guarantor declares that they will be held in trust for the Contractor and the Guarantor will immediately deposit them and all documents relating to them with the Contractor and will immediately account to the Contractor for all moneys at any time received by or on behalf of the Guarantor in respect of them.

7.2 The Guarantor represents and warrants to the Contractor that:

- 7.2.1 it is duly incorporated with power to execute and perform its obligations under this guarantee;
- 7.2.2 each of its obligations under this guarantee is (subject to general legal, equitable and statutory principles of English law and applicable bankruptcy, liquidation, insolvency, reorganisation or other laws or other legal or equitable principles) valid, binding and enforceable at law;
- 7.2.3 it has taken all necessary corporate or other action to authorise such execution and performance to which it is subject;
- 7.2.4 the entry into and performance by it of this guarantee does not breach any provision of its constitutional documents or any other agreement binding on it; and
- 7.2.5 all consents and authorisations (if any) for the giving and implementation of this guarantee have been obtained.

8 NO WAIVER

- 8.1 Any release, settlement, satisfaction or discharge between the parties shall be conditional upon no security, disposition or payment made or given to the Contractor being avoided, reduced, set aside, rendered unenforceable or required to be paid away by virtue of any provision, requirement or enactment, whether relating to insolvency or liquidation or otherwise at any time to force or by virtue of any obligation to give effect to any preference of priority.
- 8.2 In the event of any order of the court being made directing the Contractor to pay or deliver any sum or any property to a liquidator of the Operating Sub-Contractor or to any other person, such sum or property when payable or deliverable by the Contractor

shall be recoverable from the Guarantor and shall be repaid by the Guarantor within seven (7) days after demand in writing by or on behalf of the Contractor.

- 8.3 The Guarantor's liability under this guarantee shall not be discharged, reduced or affected by a compromise or arrangement in relation to the Operating Sub-Contractor sanctioned under Part 26 of the Companies Act 2006, the Insolvency Act 1986 or by any provisions or enactments relating to insolvency, winding up or liquidation or any analogous procedure in any jurisdiction for the time being in force in each case as amended or re-enacted from time to time, (whether or not the Contractor has agreed to such compromise or arrangement); and where by virtue of any such compromise or arrangement the liability of the Operating Sub-Contractor to the Contractor or any part of such liability is transferred to any other person this guarantee shall take effect as if the expression "the Operating Sub-Contractor" included such other person.
- 8.4 In the event that the Guarantor brings proceedings against the Operating Sub-Contractor, the Guarantor will be bound by any finding of fact, interim or final award or judgment made by an arbitrator or court in such proceedings.
- 8.5 This guarantee is and shall at all times remain the property of the Contractor notwithstanding any release, settlement, satisfaction, discharge or termination of this guarantee.
- 8.6 No failure or delay or omission of the Contractor in exercising any right, power or privilege under this Guarantee shall operate as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies provided in this guarantee are cumulative and not exclusive of any rights or remedies provided by law.
- 8.7 A waiver given or consent granted by the Contractor under this guarantee will be effective only if given in writing.
- 8.8 A waiver by the Beneficiary shall not constitute a continuing waiver and shall not prevent the Beneficiary from subsequently enforcing any of the provisions of this guarantee.

9 NOTICES

- 9.1 Any notice, request, demand or other communication to be given or made under this guarantee shall be in writing (including post, facsimile transmission or email) and shall

be made to the respective facsimile number or address of the addressee set out below and marked for the attention of the persons set out below:

In the case of the Contractor:

Address: Dunedin House, Auckland Park, Mount Farm, Milton Keynes,
Buckinghamshire, MK1 1BU

Facsimile No: +44 (0) 1908 650 651

Attention: Company Secretary

Email: company.secretary@shanks.co.uk

With a copy to:

Attention: Richard Webb, Assistant Company Secretary

Email: richard.webb@shanks.co.uk

In the case of the Guarantor:

Address: Dunedin House, Auckland Park, Mount Farm, Milton Keynes,
Buckinghamshire, MK1 1BU

Facsimile No: +44 (0) 1908 650 651

Attention: Company Secretary

Email: company.secretary@shanks.co.uk

With a copy to:

Attention: Richard Webb, Assistant Company Secretary

Email: richard.webb@shanks.co.uk

9.2 Any such notice or demand as aforesaid shall be deemed to have been served:

9.2.1 if delivered personally, when left at the address referred to in Clause 9.1 of this Guarantee if left during normal business hours of the recipient, or if delivered outside such hours on the next working day;

- 9.2.2 if sent by first-class post within the United Kingdom, two (2) working days after posting it;
 - 9.2.3 if sent overseas by airmail, five (5) working days after posting it;
 - 9.2.4 if sent by telefax, on the working day following completion of its transmission; or
 - 9.2.5 if sent by email, when received in legible form.
- 9.3 Where a notice is received in incomplete and/or unreadable form, the receiving party shall notify the sending party as soon as possible and in any event within two (2) working days, failing which the notice shall be deemed to have been duly given in accordance with the provisions of this Clause 9.
- 9.4 For the purposes of this Clause 9, "**working day**" means a day (other than a Saturday or a Sunday) on which banks are generally open in the recipient's country for normal business.
- 9.5 Without prejudice to any other permitted mode of service, the Guarantor agrees that service of any claim form, notice or other document for the purpose of any proceedings in such courts shall be duly served upon it if delivered or sent by registered post to its registered office (marked for the attention of the Company Secretary) or such other address in England or Wales as the Guarantor may notify from time to time to the Contractor.

10 GENERAL

- 10.1 In proving service of a notice or demand it shall be sufficient to prove that delivery was made or that the envelope containing the notice or demand was properly addressed and posted as a pre-paid first-class or airmail letter as the case may be or that the facsimile message was properly addressed and despatched, as the case may be.
- 10.2 If any provision of this agreement is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way. If any provision of this guarantee does become invalid, illegal or unenforceable, the parties agree to substitute for such invalid, illegal or unenforceable term a new term which gives effect to the intention of the invalid, illegal or unenforceable term to the fullest possible extent.

- 10.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this guarantee and no person other than the parties to this guarantee shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it provided that this guarantee shall be enforceable by any assignee of the Contractor.
- 10.4 This guarantee contains or expressly refers to the entire agreement between the parties with respect to the specific subject matter of this guarantee and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties with respect thereto and each of the parties acknowledges and confirms that it does not enter into this guarantee in reliance on any representation, warranty or other undertaking not fully reflected in the terms of this guarantee.
- 10.5 This guarantee shall be governed by and construed in accordance with the laws of England and, both parties irrevocably submit to the non-exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this guarantee and for the purpose of enforcement of any related judgment against its assets.

IN WITNESS whereof this agreement has been executed by the parties as a deed on the date first above written.

Executed as a deed by)
SHANKS GROUP PLC acting by its)
director/attorney)
_____:)

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

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

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.....

Occupation of witness