

JOINT INSURANCE ACCOUNT AGREEMENT

DATED 2012

(1) 3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED

(2) ROTHERHAM BOROUGH COUNCIL

(3) LLOYDS TSB BANK PLC

JOINT INSURANCE ACCOUNT AGREEMENT

CONTENTS

Clause		Page
1	DEFINITIONS AND INTERPRETATION	1
2	JOINT INSURANCE ACCOUNT	2
3	RECEIPTS AND PAYMENTS	4
4	GENERAL PROVISIONS FOR THE ACCOUNT	4
5	QUALIFYING BANK	6
6	CHARGES	6
7	MANDATES	6
8	THE ACCOUNT BANK	6
9	ACKNOWLEDGMENTS BY THE ACCOUNT BANK	9
10	ASSIGNMENT	9
11	SECURITY TRUSTEE	10
12	FURTHER ASSURANCE	10
13	AMENDMENTS	10
14	NOTICES	10
15	MISCELLANEOUS	11
16	GOVERNING LAW AND JURISDICTION	12
17	THIRD PARTY RIGHTS	12

THIS DEED is made on

2012

BETWEEN:

- (1) **3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED** a company incorporated under the laws of England and Wales with registered number 07820886 whose registered office is at Dunedin House, Auckland Park, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Issuer**"); and
- (2) **ROTHERHAM BOROUGH COUNCIL** whose principal office is at Riverside House, Main Street, Rotherham S60 1AE (the "**Council**"); and
- (3) **LLOYDS TSB BANK PLC** a company incorporated under the laws of England and Wales with registered number 00002056, whose registered office is at 25 Gresham Street, London EC2V 7HN (the "**Account Bank**" and "**Security Trustee**").

WHEREAS

- (A) The Issuer and the Council have agreed to open a joint insurance proceeds account in their joint names.
- (B) The parties hereto have agreed to set out the terms on which payments may be made to or from that account in this Deed.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1

"Event of Default"	has the meaning given in Clause 4.5 (General Provisions for the Account);
"Joint Insurance Account"	has the meaning given to the term "Joint Insurance Proceeds Account" in the Facility Agreement;
"Intercreditor Deed"	means the intercreditor deed dated on or about the date of this Deed made inter alia, between the Issuer, Holdco, the Security Trustee, the Senior Lenders, Shanks PFI Investments Limited (a company incorporated under the laws of England

and Wales with registered number 03158124 whose registered office is at Dunedin House, Auckland Park, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU) and the Shareholders;

"Project Agreement"	means the project agreement dated on or about the date of this Deed made between (1) Barnsley Metropolitan Borough Council, Doncaster Borough Council and the Council and (2) the Issuer;
"Qualifying Bank"	has the meaning given in limb (b)(ii) of the definition of Qualifying Bank Transaction in the Project Agreement;
"Receipts Account"	has the meaning given to the term "Insurance Proceeds Account" in the Senior Financing Agreements;
"Relevant Documents"	means the Project Documents and the Senior Financing Agreements; and
"Security Documents"	has the meaning given in the Senior Financing Agreements.

1.2 Capitalised terms defined in the Project Agreement shall have the same meaning in this Deed.

1.3 **European Economic and Monetary Union**

In the event that the United Kingdom joins EMU any figures expressed in "£" and "sterling" under this Deed shall be converted into Euro at the rate for conversion of sterling into Euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in "£" or "Sterling" shall mean that figure adjusted into Euro.

2 **JOINT INSURANCE ACCOUNT**

2.1 Each of the Issuer and the Council (together the "**Account Holders**") hereby appoint Lloyds TSB Bank plc as the Account Bank.

- 2.2 The Account Bank has opened on its books, at its office at PO Box 72, Bailey Drive, Gillingham Business Park, Kent ME8 0LS, an account in the joint names of the Account Holders with account number 00420706 and sort code 30-00-02 and designated the Joint Insurance Account (the "**Account**").
- 2.3 The Account Bank shall, save as otherwise provided herein, maintain the Account in accordance with its usual practices, provided that, in the event of any conflict between the provisions of this Deed and any applicable mandate, the provisions of this Deed shall prevail.
- 2.4 Notwithstanding anything else in this Deed, no person shall request or require that any withdrawal be made from the Account if it would cause the Account to become overdrawn and to the extent that any withdrawal (if made in full) would cause the Account to become so overdrawn, such withdrawal shall be made in part in as great an amount as possible as will not result in such Account becoming overdrawn.
- 2.5 Where any withdrawal required under this Deed cannot be made in its entirety, the Account Bank shall promptly notify both of the Account Holders of that fact and provide details of the payment not made, the date on which it should have been made and the amount unpaid.
- 2.6 Each amount from time to time standing to the credit of the Account shall bear interest at the rate agreed between the Account Bank and the Account Holders from time to time, such interest to be credited to the Account in respect of which such interest has accrued in accordance with the relevant mandate.
- 2.7 Subject to and in accordance with the provisions of this Deed, including without limitation Clause 4 (General Provisions for the Account), the Account Bank agrees that it shall make such payments out of the amount standing to the credit of the Account as may from time to time be requested by the Account Holders jointly subject to the restrictions as contained in this Deed. Save as otherwise provided in this Deed, no party shall be entitled to require the Account Bank to make, and the Account Bank shall not make, any payment out of the amount standing to the credit of the Account.
- 2.8 Subject to Clause 8.6 (Account Bank), the Account Holders shall maintain the Account with the Account Bank until the termination of the Project Agreement. If so instructed after the termination of the Project Agreement, the Account Bank shall, at the sole cost and expense of the Issuer, terminate the Account in accordance with the relevant

instructions and pay any amount standing to the credit of such accounts as the Account Holders may elect in accordance with Clause 4 (General Provisions for the Account).

3 RECEIPTS AND PAYMENTS

- 3.1 The Account may only be used in accordance with the terms of and for the purposes set out in this Clause 3.
- 3.2 The Account shall be used for receiving, to the extent required by Clause 64 (Insurance) of the Project Agreement, the proceeds of all Required Insurances (as defined in the Project Agreement).
- 3.3 Subject to restrictions set out in this Deed, the Account shall only be used for applying the proceeds of the Required Insurances in accordance with Clause 64 (Insurance) of the Project Agreement either directly or indirectly by way of the reimbursement to the Issuer of costs or expenses incurred or monies paid by it (or on its behalf) in or towards satisfaction of the reinstatement restoration or replacement requirements of Clause 64 (Insurance) of the Project Agreement or as otherwise permitted by Clause 64 (Insurance) of the Project Agreement. In the event that any amount standing to the credit of the Account is not so required to be applied, such amount shall (subject to Clause 4.3 (General Provisions of the Account) and 4.5 (General Provisions of the Account) below) be paid by the Account Bank to the Receipts Account, or as otherwise instructed by the Security Trustee pursuant to Clause 4.5 (General Provisions of the Account) below.

4 GENERAL PROVISIONS FOR THE ACCOUNT

- 4.1 Subject to Clauses 4.3 and 4.5 below, and provided that no notice has been given to the Account Bank by the Security Trustee prior to the making of such payment or transfer of an Event of Default which is subsisting and the Account Bank has no actual notice that an Event of Default will occur as a result of the making of any such payment or transfer, the Account Bank shall be entitled to make payments or transfers from the Account on the request of the Account Holders in accordance with the applicable mandate (which for the avoidance of doubt requires the written instruction of three signatories (1) two of which shall be authorised signatories of the Issuer (one of whom must be an "A" signatory and one of whom must be a "B signatory") and (2) the other, an authorised signatory of the Council, in each case as listed under the applicable mandate).

4.2

- 4.2.1 The Council undertakes to provide such instructions as are necessary to for the purposes of applying the amounts standing to the credit of the Account in accordance with the project agreement in accordance with clause 3.3 (Receipts and Payments) in accordance with Clause 64 (Insurance) of the Project Agreement and, to the extent that such amounts are not required to be so applied, for the purposes of applying any part of the balance to the Receipts Account, or as otherwise instructed by the Security Trustee pursuant to Clause 4.5 (General Provisions of the Account) in accordance with Clause 3.3 (Receipts and Payments).
- 4.2.2 Each of the Account Bank and the Issuer shall be entitled to treat any act of the authorised signatory of the Council as being expressly authorised by the Council and neither the Account Bank nor the Issuer shall be required to determine whether an express authority has in fact been given.
- 4.3 No payments or transfers from the Account shall be made after an Event of Default which is continuing until the Security Trustee has confirmed to the Account Bank that such payment or transfer may be made except as expressly permitted under this Deed. The Account Bank shall not be under any obligation to investigate the compliance of any payment with this Deed.
- 4.4 All amounts withdrawn from the Account for transfer to another account or for application in or towards making a specific payment or meeting a specific liability shall be transferred to that Account or applied in or towards making that payment or meeting that liability, and for no other purpose.
- 4.5 Notwithstanding any other provision of this Deed, at any time following the occurrence of any Event of Default (as defined in the Senior Financing Agreements) which has not been waived or remedied, the Security Trustee may at any time give notice to the Account Bank instructing it not to act on the instructions of or at the request of the Issuer in relation to any sums at any such time standing to the credit of the Account. Without prejudice to the foregoing, the Account Bank agrees that it shall pay any amount standing to the credit of the Account and payable to the Issuer in accordance with Clause 3.3 (Receipts and Payments) to such a bank account as the Security Trustee shall direct following the occurrence of any Event of Default. The Account Bank agrees that it shall not so act and shall act on the instructions of the Security Trustee in place of the Issuer.

4.6 In establishing the balance standing to the credit of the Account at any time, the Account Bank may take into account credits to and withdrawals from such Account which are to be made on such day.

5 QUALIFYING BANK

If at any time the Account Bank ceases to be a Qualifying Bank, the Account Holders shall promptly open or cause to be opened a new account with a Qualifying Bank on the same terms as the Account and the Account Holders shall take all such action as may be required to open the new account.

6 CHARGES

The charges of the Account Bank (if any) for the operation of the Account shall be for the account of the Account Holders (half of the amount for the Council and the other half for the Issuer) and shall be debited from the balance standing to the credit of the Account as from time to time agreed between the Account Bank, the Council and the Issuer.

7 MANDATES

Each of the Account Holders will deliver to the Account Bank on or prior to the date hereof the applicable mandate together with authorised signature lists for both the Issuer and the Council.

8 THE ACCOUNT BANK

8.1 The Account Bank may:

8.1.1 engage and pay reasonable fees for the advice or services of any lawyers, accountants or other experts whose advice or services may to it seem necessary, expedient or desirable and rely upon any advice so obtained;

8.1.2 rely upon any communication or document believed by it to be genuine and, in particular, rely upon any notice, request or other communication of the Account Holders for the purposes of this Deed if such notice, request or other communication purports to be signed or sent by or on behalf of an authorised signatory of the Account Holders;

8.1.3 assume that no Event of Default has occurred unless it has actual notice to the contrary; and

- 8.1.4 assume that all conditions for the making of any payment out of the amount standing to the credit of the Account which is specified in the Project Agreement or any of the Senior Financing Agreements has been satisfied, unless it has actual notice to the contrary.
- 8.2 Notwithstanding anything to the contrary expressed or implied herein and subject to Clause 2 (Joint Insurance Account), the Account Bank shall not:
- 8.2.1 be bound to enquire as to the occurrence or otherwise of an Event of Default be affected by notice of any of the same except by reason of and to the extent expressly provided in this Deed;
 - 8.2.2 be bound to account to any other party hereto for any sum or the profit element of any sum received by it for its own account;
 - 8.2.3 save as provided in this Deed, be bound to disclose to any other person any information relating to any other party hereto;
 - 8.2.4 be under any fiduciary duty towards any other party hereto or under any obligations other than those for which express provision is made in this Deed;
 - 8.2.5 have any responsibility to ensure that the information set out in any instructions received by it hereunder are correct or to check or enquire as to or otherwise be affected by whether any condition has been or will be met or fulfilled or any instruction is properly given on behalf of the person from whom it purports to be given or any instruction is given properly other than to exercise the bankers duty of care; or
 - 8.2.6 have any responsibility to any party if any instruction which should be given by the Account Holders to the Account Bank under or in connection with this Deed is for any reason not received by the Account Bank or is not made at the time it should be made.
- 8.3 The Account Bank does not have and does not accept any responsibility for the accuracy and/or completeness of any information (other than statements provided in accordance with Clause 9.2 (Acknowledgments by the Account Bank) and the Account Bank shall not be under any liability as a result of taking or omitting to take any action in relation to the Account, save in the case of negligence or wilful misconduct or breach of its obligations under this Deed.

- 8.4 Each of the other parties hereto agrees that it will not assert or seek to assert against any director, officer or employee of the Account Bank any claim it might have against the Account Bank in respect of the matters referred to in Clause 8.3.
- 8.5 The Account Bank may accept deposits from, lend money to, invest in and generally engage in any kind of banking or other business with the Account Holder, the Shareholders and any other party to any of the Relevant Documents.
- 8.6 The Account Bank may, at any time, (without assigning any reason therefor) notify the Account Holders in writing that it wishes to cease to be a party hereto as Account Bank (a "**Cessation Notice**"). Upon receipt of a Cessation Notice the Account Holders may nominate a Qualifying Bank as a successor to the Account Bank (a "**Successor Account Bank**"). If no such nomination is made before the date specified in the Cessation Notice as being the date on which the Account Bank wishes to cease to be a party hereto (the "**Cessation Date**") (which date shall be a Business Day falling not less than thirty (30) days after the date of delivery of the Cessation Notice to the Account Holders) then the Account Bank may nominate a Qualifying Bank as Successor Account Bank itself.
- 8.7 If a Successor Account Bank is nominated under the provisions of Clause 8.6, then on the Cessation Date, provided the Successor Account Bank has executed and delivered to the Account Holders a deed of novation in such form as the Account Holders may require undertaking to become a party to and bound by the terms and conditions of this Deed and to become a party to such other documents as may be required by the Security Trustee in order to perfect the security created by the Senior Financing Agreements:
- 8.7.1 the Successor Account Bank shall open on its books at its principal office an account equivalent to that described in Clause 2 (Joint Insurance Account) and any amounts standing to the credit of the Account shall be transferred to such corresponding account;
 - 8.7.2 any reference in the Project Agreement or any Senior Financing Agreement to the Account shall be deemed to refer to the corresponding account opened pursuant to Clause 8.7.1;
 - 8.7.3 the Account Bank shall cease to be a party hereto as Account Bank and shall cease to have any obligation hereunder in such capacity (but without prejudice

to any accrued liabilities under this Deed and its obligations under Clause 8) (but shall remain entitled to the benefit of the provisions of this Clause 8);

8.7.4 the successor Account Bank and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Account Bank had been an original party hereto as Account Bank; and

8.7.5 the Issuer shall do all such things as the Security Trustee may reasonably request in order to facilitate every such change.

9 ACKNOWLEDGMENTS BY THE ACCOUNT BANK

9.1 Notwithstanding anything to the contrary in any applicable mandate, the Account Bank hereby waives so far as it may validly and lawfully do so any right it has or may hereafter acquire to combine, consolidate or merge the Account with any other account of the Account Bank, Account Holders or the Security Trustee or any other person or with any liabilities of the Account Holders or the Security Trustee or any other person to the Account Bank. In addition, the Account Bank agrees so far as it may validly and lawfully do so that it may not set off, combine, withhold or transfer any sum standing to the credit of the Account in or towards satisfaction of any liabilities to the Account Bank of the Account Holders, the Security Trustee or any other person.

9.2 After the date hereof and until the Account Bank has been notified by the Account Holders of the termination of the Project Agreement or until the Account Bank ceases to be a party to this Deed pursuant to the provisions of Clause 8.7 (Account Bank), the Account Bank shall provide each of the Account Holders and the Security Trustee with statements in respect of the Account, such statement to be supplied in accordance with any reasonable request therefore by the Account Holders.

10 ASSIGNMENT

10.1 The Account Holders may not assign any of their rights under this Deed or in relation to the Account otherwise than pursuant to the Security Documents or as permitted under the Project Agreement. The Security Trustee may assign its rights under this Deed to a successor Security Trustee appointed in accordance with the Security Trustee and Intercreditor Deed and shall promptly give notice of any such assignment to the Account Bank. The Account Bank shall not be entitled to novate (except in accordance with Clause 8.7 (Account Bank)) or assign all or any part of its rights under this Deed.

10.2 This Deed constitutes notice to the Council that, under the Security Documents, the Issuer has assigned by way of security or charged in favour of the Security Trustee all its rights under or in respect of this Deed and the Account.

10.3 The Council acknowledges notice of, and (to the extent required) consent to, the security referred to in Clause 10.2 above.

11 SECURITY TRUSTEE

The Security Trustee is party hereto solely for the purpose of receiving the benefits and exercising the rights specifically allocated to it under the terms of this Deed.

12 FURTHER ASSURANCE

The parties hereto agree that they will co-operate fully to do all such further acts and things and execute any further documents as may be necessary or reasonably desirable to give full effect to the arrangements contemplated by this Deed, subject to any such party being reimbursed to its satisfaction for any costs, expenses (including VAT) liabilities or fees reasonably incurred by it in the negotiation, preparation or execution of any such further documents.

13 AMENDMENTS

The provisions of this Deed may not be amended (otherwise than in accordance with the terms hereof) except by written agreement between all the parties hereto.

14 NOTICES

14.1 Each communication to be made hereunder shall be made in writing and, unless otherwise stated, may be made by facsimile or letter delivered by registered post or courier.

14.2 Any communication or document to be made or delivered by one person to another pursuant to or in connection with this Deed shall (unless that other person has by ten days' written notice to the other specified another address) be made or delivered to that other person at the address set out below identified with its signature below or identified with its signature in any deed of novation and shall be deemed to have been made or delivered:

14.2.1 (in the case of any communication made by letter) when delivered to that address; or

14.2.2 (in the case of any communication by facsimile) when transmission of such facsimile communication has been received in legible form and receipt has been confirmed, and communication verified, by telephone,

provided that (a) if such communication or document would otherwise be deemed to have been received on a day which is not a Business Day it shall be deemed to have been received on the next subsequent Business Day, (b) if any communication is made or document is delivered to the Security Trustee, such communication or document shall be effective only if the same is expressly marked for the attention of the officer identified the Security Trustee, as the case may be, below (or such other officer as the Security Trustee shall from time to time specify for this purpose) and (c) if any communication or document is made or delivered to the Account Bank or the Security Trustee, such communication or document shall be effective only when received by the Account Bank, or the Security Trustee.

14.3 Notice to the Account Bank at any other office than the address shown beside its execution of this Deed or such substitute address notified in accordance with Clause 14.2 shall not constitute notice to the Account Bank unless agreed in writing by the Account Bank by reference to this Deed.

15 MISCELLANEOUS

15.1 This Deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

15.2 The obligations of the parties who have executed this Deed shall not be affected by the fact that not all of the parties hereto have validly executed this Deed and such obligations shall be binding inter se.

15.3 The parties hereto each acknowledge that the Security Trustee when acting hereunder shall be acting in accordance with and subject to the terms of the Intercreditor Deed.

15.4 If any term, condition or provision of this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of any other documents referred to in this Deed.

16 GOVERNING LAW AND JURISDICTION

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales to settle any disputes which arise out of or in connection with this Deed.

17 THIRD PARTY RIGHTS

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

IN WITNESS whereof this Deed has been executed and delivered as a deed by the parties hereto the day and year first above written

The Issuer

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

_____:

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

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

Telephone: +44 (0) 1908 650 580

Fax: +44 (0) 1908 650 651

Attention: Company Secretary

Email: Company.Secretary@shanks.co.uk

Copy to: Richard.Webb@shanks.co.uk (Fax: (as above), Tel: +44 (0) 1908 650 589)

THE COMMON SEAL OF)

ROTHERHAM)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

Address for notices: Riverside House, Main Street, Rotherham S60 1AE

Telephone: +44 (01709) 382121

Fax: +44 (01709) 823598

Attention: The Chief Executive

The Account Bank and Security Trustee

Signed as a deed by

Lloyds TSB Bank plc

by its attorney in exercise of a power of
attorney in the presence of

.....
(attorney's signature)

.....
Signature of witness

Name

Address

.....

Address for notices: Lloyds TSB Bank plc (Wholesale Loans Agency), 3rd Floor, 10 Gresham
Street, London EC2V 7AE

Fax: +44 (0) 207 158 3198

Attention: Martin Clancy (Tel: +44 (0) 207 158 8671, email: [martin.clancy@lloyds
banking.com](mailto:martin.clancy@lloydsbanking.com)) or Andrew Butt (Tel: +44 (0) 207 158 1460, email:
andrew.butt@lloydsbanking.com)