

**SCHEDULE 12**

**Insurance**

This is Schedule 12 comprising Insurance referred to in the Project Agreement for the provision of waste services to Cumbria

between

**CUMBRIA COUNTY COUNCIL**

and

**SHANKS CUMBRIA LTD**



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## **SCHEDULE 12 - INSURANCE**

This Schedule 12 comprises six Parts:-

PART 1 - Policies to be taken out by the Contractor and maintained during the Works Period

PART 2 - Policies to be taken out by the Contractor and maintained during the Service Period

PART 3 – Environmental Impairment Liability Insurance

PART 4 - Endorsements

PART 5 - Broker's Letter of Undertaking

PART 6 - Definitions

## SCHEDULE 12 - INSURANCE

### Part 1 - Policies to be taken out by the Contractor and maintained during the design and construction phase of the New Facilities

Common to each policy in Part 1 (unless stated otherwise):-

#### Insureds

1. Authority;
2. Contractor;
3. Building Contractor;
4. Operating Contractor;
5. Sub-Contractors to 2, 3 and 4 above of any tier;
6. Senior Lenders;
7. Subordinated Lenders; and
8. Professional Consultants acting for any of the above for their site activities only,

each for their respective rights and interests in the Project.

#### 1. CONTRACTORS' "ALL RISKS" INSURANCE (CAR)

##### 1.1 Insured Property

The permanent and temporary works, materials, goods, plant and equipment for incorporation in the Works (other than constructional plant, tools, accommodation and equipment belonging to or the responsibility of the Building Contractor or the Building Contractor's Sub-Contractors) and all other property used or for use in connection with works associated with the Project.

##### 1.2 Coverage

"All risks" of physical loss or damage to the Insured Property unless otherwise excluded.

##### 1.3 Sum Insured

At all times an amount not less than the full reinstatement or replacement value of the Insured Property, but not less than the value specified in the Building Contract plus provision to include extensions as appropriate.

##### 1.4 Maximum Deductible

1.4.1 (FIGURE REDACTED),

1.4.2 (FIGURE REDACTED), testing and commissioning and during the maintenance period.

1.4.3 (FIGURE REDACTED), storm, tempest, water, subsidence and collapse.

1.4.4 (FIGURE REDACTED), all other losses in each case on an each and every occurrence basis.

1.5 **Territorial Limits**

European Economic Area including offsite storage and during inland transit, including loading and unloading incidental thereto.

1.6 **Period of Insurance**

From the date of the Project Agreement until the final Services Availability Date and thereafter in respect of defects liability until expiry of the twenty four (24) months defects liability period in respect of each of the Facilities, expiring twenty four (24) months after the relevant Services Availability Date in the case of each Facility.

1.7 **Cover Features & Extensions**

1.7.1 Terrorism.

1.7.2 Munitions of war clause.

1.7.3 Additional costs of completion clause.

1.7.4 Professional fees clause.

1.7.5 Debris removal clause.

1.7.6 72 hour clause.

1.7.7 European Union local authorities clause.

1.7.8 Free issue materials clause.

1.7.9 Twenty percent (20%) escalation clause.

1.7.10 Automatic reinstatement of Sum Insured.

1.7.11 Loss minimisation.

1.7.12 Testing and commissioning.

1.7.13 Expediting expenses.

1.7.14 Temporary repairs.

1.7.15 Extended maintenance.

1.7.16 Payment on account.

1.8 **Principal Exclusions**

1.8.1 War and related perils (UK market agreed wording).

1.8.2 Nuclear/radioactive risks (UK market agreed wording).

- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Inventory losses, fraud and employee dishonesty.
- 1.8.8 Design exclusion LEG3/06.

2. **DELAY IN START UP INSURANCE (DSU)**

2.1 **Insureds**

- 2.1.1 Contractor;
- 2.1.2 Senior Lenders;
- 2.1.3 Subordinated Lenders;

each for their respective rights in the Project.

2.2 **Indemnity**

In respect of:-

- 2.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from a delay in completion of the Works as a result of loss or damage covered under the Contractors' All Risks' insurance effected in accordance with paragraph 1 of Part 1 of this Schedule 12, including physical loss or damage which would be indemnifiable but for the application of any deductible; and
- 2.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Minimum Indemnity Period.

2.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

2.4 **Maximum Excess**

(*FIGURE REDACTED*), per Site.

2.5 **Minimum Indemnity Period**

(*FIGURE REDACTED*), in respect of the Resource Park Sites.

## 2.6 **Period of Insurance**

As per the Contractors' "All Risks" Insurance, excluding the defects liability period.

## 2.7 **Cover Features and Extensions**

2.7.1 Denial of access.

2.7.2 Utilities.

2.7.3 Terrorism.

2.7.4 Professional Fees.

2.7.5 Specified suppliers.

2.7.6 Waiver of subrogation in favour of the Construction Contractor and the Operating Contractor.

## 2.8 **Principal Exclusions**

2.8.1 The exclusions under the Contractors' "All Risks" Insurance, other than for consequential financial losses.

2.8.2 Delayed response by a public body or state authority.

## 3. **CONSTRUCTION THIRD PARTY LIABILITY INSURANCE**

### 3.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:-

3.1.1 death, or bodily injury, illness, death, disease contracted by any person;

3.1.2 loss or damage to property; and

3.1.3 interference to property or any easement right of air, light, water or way or the enjoyment or use thereof by obstruction, trespass, nuisance, or loss of amenities.

happening during the Period of Insurance and arising out of or in connection with the Project.

### 3.2 **Limit of Indemnity**

Not less than (*FIGURE REDACTED*), in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate during the period of insurance in respect of pollution liability.

### 3.3 **Maximum Deductible**

(*FIGURE REDACTED*), for each and every occurrence of property damage. (Personal injury claims will be paid in full.)

### 3.4 **Territorial Limits**

European Economic Area and elsewhere in the world in respect of non manual visits.

### 3.5 **Jurisdiction**

European Economic Area.

### 3.6 **Period of Insurance**

As per the Contractors' "All Risks" Insurance, including the defects liability period.

### 3.7 **Cover Features and Extensions**

3.7.1 Munitions of war.

3.7.2 Cross liability clause.

3.7.3 Contingent motor.

3.7.4 Legal defence costs.

3.7.5 Health & Safety at Work Act(s).

3.7.6 Data Protection Act.

3.7.7 Defective Premises Act.

### 3.8 **Principal Exclusions**

3.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.

3.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by legislation in respect of such vehicles.

3.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

3.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured.

3.8.5 Events more properly covered under a professional indemnity policy.

3.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

3.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

3.8.8 Losses indemnified under the CAR policy or DSU policy.

## **SCHEDULE 12 - INSURANCE**

### **Part 2 - Policies to be taken out by the Contractor and maintained during the Service Period.**

Common to all policies in Part 2 (unless stated otherwise):-

#### **Insureds**

1. Authority;
2. Contractor;
3. Operating Contractor;
4. Sub-Contractors to 2 and 3 above of any tier;
5. Senior Lenders; and
6. Subordinated Lenders,

each for their respective rights and interests in the Project.

#### **1. PROPERTY DAMAGE INSURANCE**

##### **1.1 Insured Property**

The Project assets at the Waste Management Facilities which are the property of the Contractor or for which the Contractor is responsible including but not limited to the New Facilities.

##### **1.2 Coverage**

“All Risks” of physical loss or damage to the Insured Property from any cause not excluded.

##### **1.3 Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include other Principal Extensions as appropriate.

##### **1.4 Maximum Deductible**

(*FIGURE REDACTED*), each and every loss.

##### **1.5 Territorial Limits**

European Economic Area plus elsewhere in the world whilst in inland transit.

##### **1.6 Period of Insurance**

From the Commencement Date for the duration of the Project Agreement and renewable on an annual basis unless agreed otherwise by the parties.

##### **1.7 Cover Features & Extensions**

1.7.1 Terrorism.

- 1.7.2 Automatic reinstatement of Sum Insured.
- 1.7.3 Capital additions clause.
- 1.7.4 72 hour clause.
- 1.7.5 European Union local authorities clause.
- 1.7.6 Professional fees.
- 1.7.7 Debris removal.
- 1.7.8 Repair/reinstatement basis of claims settlement with cash option for non-reinstatement.
- 1.7.9 Cost escalation clause.
- 1.7.10 Expediting expenses.
- 1.7.11 Payment on account.

## 1.8 **Principal Exclusions**

- 1.8.1 War and related perils (UK market agreed wording).
- 1.8.2 Nuclear/radioactive risks (UK market agreed wording).
- 1.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.
- 1.8.4 Wear, tear and gradual deterioration.
- 1.8.5 Consequential financial losses.
- 1.8.6 Cyber risks.
- 1.8.7 Losses recovered under the CAR policy.

## 2. **MACHINERY BREAKDOWN INSURANCE**

### 2.1 **Insurance Property**

Mechanical or electrical breakdown of fixed plant, machinery and equipment used in connection with the Project, which is the property of the Contractor or for which the Contractor is responsible.

### 2.2 **Coverage**

“All risks” of physical loss or damage to the Insured Property from any cause not excluded.

### 2.3 **Sum Insured**

At all times an amount not less than the total reinstatement or replacement value of the Insured Property plus provision to include extensions as appropriate.

2.4 **Maximum Deductible**

(FIGURE REDACTED), each and every loss.

2.5 **Territorial Limits**

Anywhere on the Sites and temporary removals elsewhere in the European Economic Area.

2.6 **Period of Insurance**

From the relevant Services Availability Date for the duration of the Project Agreement and renewable on an annual basis or as agreed otherwise by the parties.

2.7 **Cover Features & Extensions**

2.7.1 Automatic reinstatement of Sum Insured.

2.7.2 Capital additions clause.

2.7.3 72 hour clause.

2.7.4 European Union local authorities clause.

2.7.5 Professional fees.

2.7.6 Debris removal.

2.7.7 Pressure explosion

2.7.8 Breakdown following latent defects in plant, machinery and equipment.

2.7.9 Breakdown following failure of computer equipment.

2.7.10 Payment on account.

2.8 **Principal Exclusions**

2.8.1 War and related perils.

2.8.2 Nuclear/radioactive risks.

2.8.3 Pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds.

2.8.4 Wear, tear and gradual deterioration.

2.8.5 Corrosion and erosion.

2.8.6 Damage to plant, machinery and equipment resulting from experiment or overload or similar tests requiring imposition of abnormal conditions (other than overload or similar tests carried out with the approval of the manufacturer or by normal rules of good practice).

2.8.7 Consequential financial losses.

### 3. **BUSINESS INTERRUPTION INSURANCE**

#### 3.1 **Insureds**

- 3.1.1 Contractor;
- 3.1.2 Senior Lenders;
- 3.1.3 Subordinated Lenders

each for their respective rights and interests in the Project.

#### 3.2 **Indemnity**

In respect of:-

- 3.2.1 loss of anticipated Revenue during at least the Minimum Indemnity Period arising from an interruption or interference in the operation of the Waste Management Facilities as a result of loss or damage covered under Property Damage Insurance and/or Machinery Breakdown Insurance effected in accordance with paragraphs 1 and 2 of Part 2 of this Schedule 12 including physical loss or damage which would be indemnifiable but for the application of any deductible; and
- 3.2.2 the economic additional expenditure necessarily and reasonably incurred for the purpose of avoiding or reducing the loss of Revenue of the Contractor which without such expenditure would have taken place, during the Indemnity Period.

#### 3.3 **Sum Insured**

An amount sufficient to cover the sums the subject of the Indemnity for the Minimum Indemnity Period.

#### 3.4 **Maximum Excess**

- 3.4.1 (*FIGURE REDACTED*), each and every loss in respect of Property Damage.
- 3.4.2 Thirty (30) days each and every loss in respect of Machinery Breakdown.

#### 3.5 **Minimum Indemnity Period**

- 3.5.1 Thirty six (36) months in respect of the Resource Park Sites.
- 3.5.2 Nine (9) months in respect of the HWRC Sites.
- 3.5.3 Twelve (12) months in respect of Machinery Breakdown.

#### 3.6 **Period of Insurance**

From the Commencement Date for the duration of the Project Agreement and renewable on an annual basis unless agreed otherwise.

### 3.7 **Cover Features and Extensions**

- 3.7.1 Denial of access.
- 3.7.2 Terrorism.
- 3.7.3 Utilities.
- 3.7.4 Professional fees.
- 3.7.5 Automatic reinstatement of Sum Insured.
- 3.7.6 Specified suppliers.
- 3.7.7 Waiver of subrogation in favour of the Operating Contractor.
- 3.7.8 Payment on account.

### 3.8 **Principal Exclusions**

- 3.8.1 Exclusions under the Property Damage and Machinery Breakdown Insurance, other than for consequential financial losses.
- 3.8.2 Delayed response by a public body or state authority.

## 4. **THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE**

### 4.1 **Interest**

To indemnify the Insured in respect of all sums that they may become legally liable to pay (including claimant's costs and expenses) as damages in respect of accidental:-

- 4.1.1 death, or bodily, illness, death, disease contracted by any person;
- 4.1.2 loss or damage to property; and
- 4.1.3 interference to property or any easement right of air, light, water or the enjoyment or use thereof by obstruction, trespass, nuisance or loss of amenities,

happening during the period of insurance and arising out of or in connection with the Project and the provision of the Services.

### 4.2 **Limit of Indemnity**

Not less than (*FIGURE REDACTED*), in respect of any one occurrence, the number of occurrences being unlimited, but in the aggregate in respect of pollution and products liability.

### 4.3 **Maximum Deductible**

(*FIGURE REDACTED*), for each and every occurrence of property damage (Personal injury claims will be paid in full).

#### 4.4 **Territorial Limits**

European Economic Area and elsewhere in the world in respect of non manual visits.

#### 4.5 **Jurisdiction**

Worldwide (subject to North American conditions).

#### 4.6 **Period of Insurance**

From the Commencement Date for the duration of the Project Agreement and renewable on an annual basis unless agreed otherwise.

#### 4.7 **Cover Features & Extensions**

4.7.1 Munitions of war.

4.7.2 Cross liability clause.

4.7.3 Contingent Motor.

4.7.4 Legal defence costs.

4.7.5 Health & Safety at Work Act(s).

4.7.6 Defective Premises Act.

4.7.7 Data Protection Act.

#### 4.8 **Principal Exclusions**

4.8.1 Liability for death, illness, disease or bodily injury sustained by employees of the insured.

4.8.2 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsory insured by legislation in respect of such vehicles.

4.8.3 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the insured.

4.8.4 Liability in respect of loss or damage to property in the care, custody and control of the insured but this exclusion is not to apply to all property belonging to the Authority which is in the care, custody and control of another Insured Party.

4.8.5 Liability arising out of technical or professional advice (given for a fee) other than in respect of death or bodily injury to persons or damage to third party property.

4.8.6 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

4.8.7 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

4.8.8 Losses under the Property Damage policy or Business Interruption policy.

## **SCHEDULE 12 - INSURANCE**

### **Part 3 – Environmental Impairment Liability Insurance**

#### **1. CONTRACTORS' POLLUTION LIABILITY (CPL) INSURANCE**

##### **1.1 Insured**

- 1.1.1 Contractor;
- 1.1.2 Building Contractor (during the Works Period only);
- 1.1.3 Operating Contractor;
- 1.1.4 Sub-contractors to Contractor, Building Contractor (during the Works Period only) and Operating Contractor of any tier;
- 1.1.5 Senior Lenders;
- 1.1.6 Subordinated Lenders.

each for their respective rights and interests in the Project.

##### **1.2 Interest**

To indemnify the Insured in respect of all sums that they become legally liable to pay as a result of third party claims or regulatory actions first made against the Insured and reported to the Insurer during the period of insurance or extended reporting period for clean-up costs, bodily injury, property damage or nuisance resulting from pollution conditions caused by the Insured in connection with the carrying out of the Works and Services including unintended or unexpected exacerbation of pre-existing pollution conditions.

##### **1.3 Limit of Indemnity**

Not less than (*FIGURE REDACTED*), any one loss and (*FIGURE REDACTED*), in the aggregate any one period of insurance, such period not to exceed three (3) years. The Limit of Indemnity specified under the CPL Insurance and the Limit of Indemnity specified under the EIL Insurance to be linked.

##### **1.4 Maximum Deductible**

(*FIGURE REDACTED*), each and every loss.

##### **1.5 Territorial Limits**

Anywhere in the United Kingdom.

##### **1.6 Period of Insurance**

From the date of this Agreement for the duration of the Project.

##### **1.7 Cover Features & Extensions**

- 1.7.1 Legal/defence costs.
- 1.7.2 Biodiversity/natural resource damage.

- 1.7.3 Retroactive date of policy inception.
- 1.7.4 Loss prevention and mitigation costs.
- 1.7.5 Project Agreement to be an Insured Contract
- 1.7.6 Cross liabilities in respect of Insured Contracts

1.8 **Principal Exclusions**

- 1.8.1 War and terrorism.
- 1.8.2 Nuclear/radioactive risks.
- 1.8.3 Asbestos (exclusion not to extend to remediation costs with respect to soil and groundwater).
- 1.8.4 Intentional non-compliance
- 1.8.5 Criminal fines and penalties
- 1.8.6 Losses covered under the EIL insurance.

2. **ENVIRONMENTAL IMPAIRMENT LIABILITY (EIL) INSURANCE (applicable to the Southern Resource Park site only)**

1.1 **Insured**

- 1.1.1 Contractor;
- 1.1.2 Building Contractor (during the Works Period only);
- 1.1.3 Operating Contractor;
- 1.1.4 Sub-contractors to Contractor, Building Contractor (during the Works Period only) and Operating Contractor of any tier;
- 1.1.5 Senior Lenders;
- 1.1.6 Subordinated Lenders.
- 1.1.7 the Authority

each for their respective rights and interests in the Project.

1.2 **Interest**

To indemnify the Insured in respect of all sums that they become legally liable to pay as a result of third party claims or regulatory actions first made against the Insured and reported to the Insurer during the period of insurance or extended reporting period for on-site and off-site clean-up costs, bodily injury, property damage or nuisance resulting from pre-existing pollution conditions in, on, under or migrating from, the Insured Site. Pollution conditions relate to both new and pre-existing pollution.

1.3 **Insured Site**

Southern Resource Park

1.4 **Limit of Indemnity**

Not less than (*FIGURE REDACTED*), any one occurrence and (*FIGURE REDACTED*), in the aggregate any one period of insurance, such period not to exceed three (3) years. The Limit of Indemnity specified under the CPL Insurance and the Limit of Indemnity specified under the EIL Insurance to be linked.

1.4 **Maximum Deductible**

(*FIGURE REDACTED*), each and every loss.

1.5 **Territorial Limits**

Anywhere in the United Kingdom.

1.6 **Period of Insurance**

From the date of the Lease Agreement for the Insured Site for the duration of the Project.

1.7 **Cover Features & Extensions**

1.7.1 Legal/defence costs.

1.7.2 Biodiversity/natural resource damage

1.7.3 No retroactive date

1.7.4 Loss prevention and mitigation/emergency costs.

1.7.5 Project Agreement to be an Insured Contract

1.7.6 Insured versus Insured claims allowed in respect of Insured Contracts

1.7.7 Development works

1.8 **Principal Exclusions**

1.8.1 War and terrorism.

1.8.2 Nuclear/radioactive risks.

1.8.3 Asbestos and lead (exclusion not to extend to remediation costs with respect to soil and groundwater).

1.8.4 Intentional non-compliance.

1.8.5 Criminal fines and penalties.

1.8.6 Known underground storage tanks (unless specifically scheduled).

1.8.7 Known conditions.

1.8.9 Voluntary site investigations

1.8.10 Mould/microbial matter (not to include the waste materials handled at the site).

1.8.11 Internal expenses

1.8.12 Losses covered under the CPL insurance.

## **SCHEDULE 12 - INSURANCE**

### **Part 4 - Endorsements**

Unless the context otherwise requires defined terms set out in the following endorsements shall have the meaning set out in the Project Agreement.

#### **1. ENDORSEMENT 1 - CANCELLATION**

- 1.1 This policy shall not be cancelled or terminated before the original expiry date is to take effect except in respect of non-payment of premium.
- 1.2 The insurer shall by written notice advise the Authority:-
  - 1.2.1 at least thirty (30) days before any such cancellation or termination is to take effect;
  - 1.2.2 at least thirty (30) days before any reduction in limits or coverage or any increase in deductibles to take effect; and
  - 1.2.3 of any act of omission or any event of which the insurer has knowledge and which might invalidate, or render unenforceable in whole or in part this policy.

#### **2. ENDORSEMENT 2 - MULTIPLE INSURED/NON-VITIATION CLAUSE**

- 2.1 Each of the parties comprising the insured shall for the purpose of this policy be considered a separate co-insured entity, insured on a composite basis, with the words "the insured" applying to each as if they were separately and individually insured provided that the total liability of the insurers under each section of this policy to the insured collectively shall not (unless the policy specifically permits otherwise) exceed the limit of indemnity or amount stated to be insured under that section or policy. Accordingly, the liability of the insurers under this policy to any one insured shall not be conditional upon the due observance and fulfilment by any other insured party of the terms and conditions of this policy or of any duties imposed upon that insured party relating thereto, and shall not be affected by any failure in such observance or fulfilment by any such other insured party.
- 2.2 It is understood and agreed that any payment or payments by insurers to any one or more of the insureds shall reduce, to the extent of that payment, insurers' liability to all such parties arising from any one event giving rise to a claim under this policy and (if applicable) in the aggregate.
- 2.3 Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any insured party in circumstances of fraud misrepresentation non-disclosure or material breach of warranty or condition of this policy (each referred to in this clause as a "Vitiating Act") committed that insured party save where such misrepresentation non-disclosure or breach of warranty or condition was committed innocently and in good faith.
- 2.4 For the avoidance of doubt it is however agreed that a Vitiating Act committed by one insured party shall not prejudice the right to indemnify of any other insured who has an insurable interest and who has not committed the Vitiating Act.
- 2.5 Insurers hereby agree to waive all rights of subrogation and/or recourse which they may have or acquire against any insured party (together with their employees and agents) except where the rights of subrogation or recourse are acquired in consequence of a

Vitiating Act in which circumstances insurers may enforce such rights against the insured responsible for the Vitiating Act notwithstanding the continuing or former status of the vitiating party as an insured.

- 2.6 Notwithstanding any other provision of this policy or any other document or any act and/or omission by any insured party insurers agree that:-
- 2.6.1 no party other than the Authority has any authority to make any warranty, disclosure or representation in connection with this policy on behalf of the Authority;
  - 2.6.2 where any warranty, disclosure or representation is required from the Authority in connection with this policy insurers will contact the Authority in writing (in accordance with Endorsement 3 to the Project Agreement) and set out expressly the warranty, disclosure and/or representation required within a reasonable period of time from the Authority (regarding itself); and
  - 2.6.3 save as set out in a request from insurers to the Authority in accordance with Endorsement 2 above, the Authority shall have no duty to disclose any fact or matter to insurers in connection with this policy save to the extent that for the Authority not to disclose a fact or matter would constitute fraudulent misrepresentation and/or fraudulent non-disclosure.

### 3. **ENDORSEMENT 3 - COMMUNICATIONS**

- 3.1 All notices or other communications under or in connection with this policy shall be given to each insured (and the Authority) in writing or by facsimile. Any such notice will be deemed to be given as follows:-
- 3.1.1 if in writing, when delivered; and
  - 3.1.2 if by facsimile, when transmitted but only if, immediately after transmission, the sender's facsimile machine records a successful transmission has occurred.
- 3.2 The address and facsimile number of the Authority for all notices under or in connection with this policy are those notified from time to time by the Authority for this purpose to the Contractor at the relevant time. The initial address and facsimile number of the Authority are as follows:-
- Cumbria County Council
- Address: The Courts, Carlisle, Cumbria, CA3 8NA
- Facsimile No: 01228 607 648
- Attention: The Chief Executive from time to time of the Authority
- 3.3 It is further agreed that a notice of claim given by the Authority or any other insured shall in the absence of any manifest error be accepted by the insurer as a valid notification of a claim on behalf of all insureds.

4. **ENDORSEMENT 4 - LOSS PAYEE (APPLICABLE ONLY TO THE PHYSICAL DAMAGE POLICIES)**

All proceeds paid under any Physical Damage Policy in respect of a single event or a series of related events in an amount in excess of (*FIGURE REDACTED*), (indexed) shall be payable without deduction or set-off to the Joint Insurance Account.

5. **ENDORSEMENT 5 - PRIMARY INSURANCE**

It is expressly understood and agreed that this policy provides primary cover for the insured parties and that in the event of loss destruction damage or liability covered by this policy which is covered either in whole or in part under any other policy or policies of insurance effected by or on behalf of any of the insured parties the insurers will indemnify the insured parties as if such other policy or policies of insurance were not in force and the insurers waive their rights of recourse if any against the insurers of such other policy or policies of insurance.

6. **ENDORSEMENT 6 - RINGFENCING**

The level of any indemnity available to an insured party under this policy in relation to any claim(s) concerning the Project shall not be affected and/or reduced by any claim(s) unrelated to the Project.

## **SCHEDULE 12 - INSURANCE**

### **Part 5 - Broker's Letter of Undertaking**

**To: Cumbria County Council  
The Courts  
  
Carlisle  
  
Cumbria  
  
CA3 8NA**

**Dear Sirs**

**Agreement dated [ ] entered into between Shanks  
Cumbria Limited (the "Contractor") and Cumbria County Council (the "Authority") (the "Agreement")**

1. We refer to the Agreement. Unless the context otherwise requires, terms defined in the Agreement shall have the same meaning in this letter
2. We act as insurance broker to the Contractor in respect of the Required Insurances and in that capacity we confirm that the Required Insurances which are required to be procured pursuant to Clause 51 and Schedule 12 of the Agreement:
  - 2.1 where appropriate name you and such other persons as are required to be named pursuant to the Agreement for their respective interests;
  - 2.2 are, in our reasonable opinion as insurance brokers, as at today's date, in full force and effect;
  - 2.3 all premiums due to date in respect of the Required Insurances are paid and the Required Insurances are, to the best of our knowledge and belief, placed with insurers which, as at the time of placement, are reputable and financially sound. We do not however make any representations regarding such insurers' current or future solvency, or ability to pay claims; and that
  - 2.4 the endorsements set out in Part 4 to Schedule 12 of the Agreement which is attached hereto are in our reasonable opinion as at today's date in full force and effect in respect of the Required Insurances.
3. We further confirm that the attached cover notes confirm this position.
4. Pursuant to instructions received from the Contractor and in consideration of your approving our appointment [or continuing appointment] as brokers in connection with the Required Insurances, we hereby undertake in relation to the Required Insurances:
  - 4.1 **Notification Obligations**
    - 4.1.1 to notify you at least 30 (thirty) days prior to the expiry of any of the Required Insurances if we have not received instructions from the Contractor to negotiate renewal and in the event of our receiving instructions to renew, to advise you promptly of the details thereof;

4.1.2 to notify you at least 30 (thirty) days prior to ceasing to act as brokers to the Contractor unless, due to circumstances beyond our control, we are unable to do so in which case we shall notify you as soon as practicable; and

4.1.3 to pay into the Joint Insurance Account without set off or deduction of any kind for any reason all payments in respect of claims received by us from insurers in relation to the Required Insurances specified in Clause [] of the Agreement.

## 4.2 **Advisory Obligations**

4.2.1 to notify you as soon as reasonably practicable of any default in the payment of any premium for any of the Required Insurances;

4.2.2 to notify you if any insurer cancels or gives notification of cancellation of any of the Required Insurances to us, at least 30 (thirty) days before such cancellation is to take effect or as soon as reasonably practicable in the event that notification of cancellation takes place less than 30 (thirty) days before it is to take effect;

4.2.3 to notify you as soon as reasonably practicable of any act or omission, breach or default of which we have been notified which in our reasonable opinion would either, invalidate or render unenforceable in whole or in part any of the Required Insurances or, would otherwise materially impact on the extent of cover provided under the Required Insurances; and

4.2.4 in accordance with our duty to the Contractor to notify the Contractor of its pre-contractual duties of disclosure to insurers, including the duty to disclose all information that would be considered material in the context of such duty.

## 4.3 **Disclosure Obligations**

4.3.1 subject to the prior written consent of the Contractor (and we undertake to notify you as soon as reasonably practicable if such consent is withheld) to disclose to insurers all information provided to those of our employees directly involved with the placement of the Required Insurances in our capacity as insurance broker to the Contractor, including any fact, change of circumstance or occurrence notified to such employees, which in our reasonable opinion is material to the risks insured against under the Required Insurances and which properly should be disclosed to insurers, or in accordance with the policy terms and conditions of the relevant Required Insurance, as soon as reasonably practicable after we are in receipt of such information, fact, change of circumstance or occurrence whether prior to inception or renewal or otherwise.

4.3.2 to treat as confidential all information so marked or otherwise stated to be confidential and supplied to us by or on behalf of the Contractor or the Authority and not to disclose such information, without the prior written consent of the supplier, to any third party other than those persons who, in our reasonable opinion have a need to have access to such information from time to time, and for the purpose of disclosure to the insurers or their agents in respect of the Required Insurances. Our obligations of confidentiality shall not conflict with our duties owed to the Contractor and shall not apply to disclosure required by an order of a court of competent jurisdiction, or pursuant to any applicable law, governmental or regulatory authority having the force of law or to information which is in the public domain.

## 4.4 **Administrative Obligations**

4.4.1 to hold copies of all documents relating to or evidencing the Required Insurances, including but without prejudice to the generality of the foregoing, insurance slips, contracts, policies, endorsements and copies of all documents evidencing renewal of the Required Insurances, payment of premiums and presentation and receipt of claims;

4.4.2 to supply to the Authority and/or its insurance advisers (or the Authority's or its insurance advisers' authorised representatives) promptly on written request copies of the documents set

out in clause 4.4.1 of this letter, and to the extent available, to make available to such persons promptly upon the Authority's request the originals of such documents;

4.4.3 to administer the payment of premiums due pursuant to the Required Insurances such that, in so far as we hold appropriate funds, all such premiums shall be paid to insurers in accordance with the terms of the Required Insurances;

4.4.4 to administer the payment of claims from insurers in respect of the Insurances (the "Insurance Claims") including

- (a) negotiating settlement of Insurance Claims presented in respect of the Required Insurances;
- (b) collating and presenting all information required by insurers in relation to Insurance Claims presented in respect of the Required Insurances, and
- (c) in so far as it is relevant and practicable, liaising and reporting to the Authority throughout the settlement, payment and administration of such Insurance Claims;

4.4.5 to advise the Authority as soon as reasonably practicable upon receipt of notice of any material changes which we are instructed by the Contractor to make in the terms of the Required Insurances and which, if effected, in our reasonable opinion as Insurance Brokers would result in any material reduction in limits or coverage or increase in deductibles, exclusions or exceptions; and

4.4.6 to use our reasonable endeavours to have endorsed on each and every policy evidencing the Required Insurances (when the same is issued) endorsements substantially in the form set out in Part 4 to Schedule 12 of the Agreement.

#### **4.5 Insurance Cost Reporting Procedures**

4.5.1 to prepare, at the expense of the Contractor, a Joint Insurance Cost Report on behalf of both the Contractor and the Authority in accordance with the Insurance Review Procedure as set forth in Clause 51 of the Agreement. We shall ensure that the information in the Joint Insurance Cost Report is fairly represented, based on the information available to us.

#### **5. Notification Details**

5.1 Our obligations at clause 4 of this letter to notify or inform you shall be discharged by providing the requisite information in hard copy to:

**Cumbria County Council  
The Courts**

**Carlisle**

**Cumbria**

**CA3 8NA**

6. Save insofar as we have given agreements or representations in this letter, it is to be understood by the Authority that they may not rely on any advice which we have given to the Contractor, and we do not represent that the Required Insurances are suitable or sufficient to meet the needs of the Authority which must take steps and advice of its own as it considers necessary in order to protect its own position.
7. The representations and obligations set out in this letter are subject to our continuing appointment as insurance brokers to the Contractor in relation to the Required Insurances concerned, and following termination of such appointment our immediate release from all our obligations set out in this letter to the extent those obligations arise on or after the termination, and subject to any right of lien we may have over the policy and policy documents regarding the Required Insurances, arising through common law or otherwise.
8. Our aggregate liability to any persons companies or organisation who acts in reliance on this letter, or on any other broker's letter of undertaking issued by us in respect of the Required Insurances for this Project, for any and all matters arising from them and the contents thereof shall in any and all events be limited to the sum of £5 million, even if we are negligent. We do not limit liability for our fraud.
9. This letter is given by us on the instructions of the Contractor and with their full knowledge and consent as to its terms.

Yours faithfully

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For and on behalf of

Marsh Ltd

We consent to the giving of this Letter of Undertaking by our insurance brokers

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For and on behalf of

[Contractor]

## **SCHEDULE 12 - INSURANCES**

### **Part 5 - Definitions**

“Estimated Maximum Loss”	is defined as an estimation of the maximum loss (including economic additional expenditure) which could reasonably be sustained (or incurred) as a result of a single incident considered to be within the realms of probability taking into account all factors likely to increase or lessen the extent of the loss (including economic additional expenditure), but excluding such coincidences and catastrophes which may be possible but remain unlikely;
“Revenue”	is defined as the projected Unavoidable Fixed Costs and Senior Debt Service Costs of the Contractor;
“Senior Debt Service Costs”	shall mean interest and debt service costs incurred in respect of the Senior Financing Agreement less:-  (a) sums which are in arrears; and  (b) all sums reserved by the Contractor and which the Contractor is entitled to use to make such payments, without breaching the Senior Financing Agreement;
“Unavoidable Fixed Costs”	should mean the fixed costs incurred by the Contractor which first fall due for payment by the Contractor during period of indemnity but excluding:-  (a) costs which could have reasonably been mitigated or avoided by the Contractor;  (b) payments to the Contractor’s Associated Companies which are not entirely at arm’s length;  (c) payments which are not entirely at arm’s length;  (d) payments to holders of equity in the Contractor, Subordinated Lenders and any other financing costs other than Senior Debt Service Costs;  (e) indirect losses suffered or allegedly suffered by any person;  (f) fines, penalties or damages for unlawful acts, breaches of contract or other legal obligations;  (g) payments the Contractor can recover under contract or in respect of which the Contractor has a remedy against another person in

respect of the same liability;

- (h) payments to the extent that the Contractor has available to it:-
  - (i) reserves which the Contractor can draw upon without breaching the Senior Financing Agreement; and
  - (ii) standby or contingent facilities or funds of Senior Debt or equity which the Contractor is entitled to have available;
- (i) payments representing any profits of the Project (to the extent not already excluded in (e) above).