

SCHEDULE 7

Collateral Warranties

This is Schedule 7 comprising Collateral Warranties referred to in the Project Agreement for the provision of waste services to Cumbria

between

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED



DICKINSON DEES

Dickinson Dees LLP

St Ann's Wharf 112 Quayside Newcastle upon Tyne NE1 3DX

Telephone: (0191) 279 9000 Fax: (0191) 279 9100

Email: law@dickinson-dees.com www.dickinson-dees.com

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SCHEDULE 7 - COLLATERAL WARRANTIES

Part 1 - Operating Contractor's Authority Warranty

DATED _____ 2009

SHANKS WASTE MANAGEMENT LIMITED

and

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED

OPERATING CONTRACTOR'S AUTHORITY WARRANTY

relating to the Cumbria Waste PFI Project

and to raise equivalent rights in defence of liability as it would have against the Contractor under the Operating Agreement.

- 2.3 Notwithstanding anything in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Contractor, the Authority and the Operating Contractor will not be under any obligation to each other nor will any party have any claim or cause of action against the others unless and until the Authority has given written notice to the Operating Contractor pursuant to clause 6.1.1 or clause 6.3 of this Deed.
- 2.4 Any claims of the Authority under or pursuant to this Deed shall be subordinated to any claims of the Contractor under the Operating Contract, and the Authority agrees with the Operating Contractor to turnover to the Contractor any amount received under this Deed to the extent that it results in any limitation on liability under the Operating Contract being exceeded.
- 2.5 The terms of clause 2 shall take priority over the other provisions of this Deed.

3. **COPYRIGHT**

- 3.1 The Operating Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty free non-exclusive licence to use and to reproduce all Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably foreseeable. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.2 The Authority will not hold the Operating Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Operating Contractor authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Operating Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.
- 3.4 The Operating Contractor warrants to the Authority that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Project will not infringe the rights of any third party.

4. **ASSIGNMENT**

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Operating Contractor on two (2) occasions only and the Authority will notify the Operating Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Operating Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

5. **AUTHORITY'S REMEDIES**

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Operating Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

6. **STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY**

6.1 The Operating Contractor will not exercise or seek to exercise any right which may be or becomes available to it to terminate or treat as terminated or repudiated the Operating Agreement or its employment under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) Working Days prior written notice specifying the Operating Contractor's ground for terminating or treating as terminated or repudiated the Operating Agreement or its employment under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Operating Agreement. Within such period of notice:-

6.1.1 subject always to clause 6.4, the Authority may give written notice to the Operating Contractor that the Authority will thenceforth become the Contractor under the Operating Agreement to the exclusion of the Contractor and thereupon the Operating Contractor will admit that the Authority is the Contractor and the Operating Agreement will be and remain in full force and effect notwithstanding any of the said grounds;

6.1.2 if the Authority has given such notice as aforesaid or under clause 6.3 below, the Authority shall accept liability for the performance of the Contractor's obligations under the Operating Agreement and will as soon as practicable thereafter remedy any outstanding breach by the Contractor including for the avoidance of doubt any non-payment of sums due to the Operating Contractor which properly has been included in the Operating Contractor's specified grounds pursuant to clause 6.1 (and which has been notified to the Authority) and which is capable of remedy; and

6.1.3 if the Authority has given such notice as aforesaid or under clause 6.3 below, the Authority will from the service of such notice become responsible for all sums properly payable to the Operating Contractor under the Operating Agreement accruing due after the service of the Operating Contractor's notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Contractor under the Operating Agreement.

6.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Operating Contractor, the Operating Contractor will not be under any duty to obey any direction or instruction from the Authority unless and until the Authority has given notice under clauses 6.1.1 and 6.3.

6.3 Subject always to clause 6.4, the Operating Contractor further covenants with the Authority that if the Project Agreement is terminated by the Authority, the Operating Contractor, if requested by the Authority, by notice in writing and subject to clause 6.1.2 and clause 6.1.3, will accept the instructions of the Authority to the exclusion of the Contractor in respect of the Services upon the terms and conditions of the Operating Agreement and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Operating Agreement.

- 6.4 Where the Operating Contractor has given rights in relation to the Operating Agreement similar to those contained in this clause 6 to the Lender then if both the Authority and the Lender serve notice under clause 6.1.1 or clause 6.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.
- 6.5 The Contractor acknowledges that the Operating Contractor will be entitled to rely on a notice given to the Operating Contractor by the Authority under clause 6.3 as conclusive evidence that the Project Agreement has been terminated by the Authority.
- 6.6 The Authority may by notice in writing to the Operating Contractor appoint another person to exercise its rights under this clause 6 subject to the Authority remaining liable to the Operating Contractor as guarantor for its appointee in respect of its obligations under this Deed.

7. **LIMITATION**

Without prejudice to the provisions of clause 6.1 hereof, the Authority shall not be entitled to take any action or proceedings against the Operating Contractor pursuant to this Deed unless and until the Project Agreement has been terminated.

8. **INDEPENDENT ENQUIRY CLAUSE**

The liability of the Operating Contractor under this Deed shall not be modified released, diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Authority nor by any failure or omission to carry out any such inspection, investigation or enquiry nor by the appointment by the Authority of any independent firm, company, or party whatsoever to review the progress of or otherwise report to the Authority in respect of the Services nor by any action or omission of any such firm, company or party whether or not such action or omission might give rise to any independent liability of such firm, company or party to the Authority provided always that nothing in this clause shall modify or affect any rights which the Operating Contractor might have but for the existence of this clause to claim contribution from any third party whether under statute or at common law.

9. **THE CONTRACTOR'S INCLUSION AS PARTY**

The Contractor has agreed to be a party to this Deed for the purpose of clause 6 and for acknowledging that the Operating Contractor shall not be in breach of the Operating Agreement by complying with the obligations imposed on it by this Deed.

10. **COUNTERPARTS**

This Deed may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full and original instrument for all purposes.

11. **JURISDICTION**

The law applicable to this Deed shall be English Law and the English Courts shall have non-exclusive jurisdiction with regard to all matters arising in connection with or under this Deed.

12. **THIRD PARTY RIGHTS**

It is agreed for the purposes of the Contracts (Right of Third Parties) Act 1999 that this Deed is not intended to and does not give any person who is not a party to this Deed any rights to enforce any provisions contained in this Deed.

13. **NOTICES**

Any notice to be given by either party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

IN WITNESS whereof this document is executed by the Parties as a Deed and delivered on the date stated at the beginning of this Deed

EXECUTED as a deed by SHANKS)
WASTE MANAGEMENT LIMITED by a)
director in the presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

THE COMMON SEAL of CUMBRIA)
COUNTY COUNCIL was affixed in the)
presence of:-)

Authorised Signatory

Authorised Signatory

EXECUTED as a deed by SHANKS)
CUMBRIA LIMITED by a director in the)
presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

SCHEDULE 7 - COLLATERAL WARRANTIES

Part 2 - Building Contractor's Authority Warranty

DATED _____ 2009

SHANKS WASTE MANAGEMENT LIMITED

and

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED

BUILDING CONTRACTOR'S AUTHORITY WARRANTY

relating to the Cumbria Waste PFI Project

THIS DEED is made on

2009 BETWEEN:-

- (1) SHANKS WASTE MANAGEMENT LIMITED (Company No. 02393309) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU (the "Building Contractor");
- (2) CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA (the "Authority"), which expression includes its permitted successors in title and assigns); and
- (3) SHANKS CUMBRIA LIMITED (Company No 06799850) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU (the "Contractor").

BACKGROUND

- (A) By a project agreement dated on or about the date of this Deed (the "Project Agreement") the Authority has appointed the Contractor to provide the Services as contemplated by the Project Agreement including the carrying out of the Works and the provisions of the design and construction of the Works.
- (B) The Building Contractor has been appointed by the Contractor under a contract dated on or about the date of this Deed (the "Building Contract") to carry out the construction of the Works.
- (C) The Building Contractor is obliged under the Building Contract to give a warranty in this form in favour of the Authority.

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Deed unless the context otherwise requires "Lender(s)" means any organisation providing funding to the Contractor in connection with the carrying out of the Works.
- 1.2 Unless expressly defined otherwise in this Deed, any defined term in this Deed shall have the same meaning given to such term in the Building Contract.

2. BUILDING CONTRACTOR'S WARRANTY AND LIABILITY

- 2.1 The Building Contractor warrants to the Authority that it has carried out and will continue to carry out its duties under the Building Contract in accordance with the Building Contract and that it has exercised and will continue to exercise, in carrying out its duties, the level of skill and care reasonably to be expected from an appropriately qualified and competent contractor providing those services in relation to a project of a similar size and scope to the Works. In particular and without limiting the generality of the foregoing the Building Contractor covenants with the Authority that it has carried out and will carry out and complete the Works in accordance with the Building Contract and duly observe and perform all its duties and obligations thereunder.
- 2.2 The Building Contractor shall be entitled in any action or proceedings by the Authority to raise equivalent rights in defence of liability (excluding set off and counterclaim) as it would have against the Contractor under the Building Contract, and shall have no liability under this Deed that is of greater or of longer duration than it would have had if the Authority had been a party to the Building Contract as joint employer (excluding set off and counterclaim). Upon the expiration of twelve (12) years from the date of completion of the Works in accordance with the Building Contract, the liability of the Building Contractor under this Deed shall cease and determine, save in relation to any claims

made by the Authority against the Building Contractor and notified by the Authority to the Building Contractor in writing prior thereto.

- 2.3 The Building Contractor shall have no liability to the Authority in respect of any delay in the completion of the Works howsoever caused save to the extent that the liability arises under the Building Contract and the Authority shall have exercised its right to step in under clause 8. Any claim in relation to a delay in completion of the Works but not otherwise will be extinguished to the extent that the Building Contractor has had liquidated damages deducted under clause 20 of the Building Contract.
- 2.4 Any claims of the Authority under or pursuant to this Deed shall be subordinated to any claims of the Contractor under the Building Contract, and the Authority agrees with the Building Contractor to turnover to the Contractor any amount received under this Deed to the extent that it results in any limitation on liability under the Building Contract being exceeded.
- 2.5 The terms of clause 2 shall take priority over the other provisions of this Deed.

3. **DOCUMENTS**

- 3.1 The Building Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Authority with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, a royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding completion of the Building Contractor's obligations under the Building Contract or the termination of the Building Contract or the determination of the Building Contractor's engagement under it or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works, and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Authority will not hold the Building Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it and other than for such other uses as are reasonably foreseeable unless the Building Contractor authorises such use and confirms the Documents are suitable for it. The Building Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Building Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Building Contract.
- 3.2 The Building Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Authority or those authorised by it access to the Documents and to provide copies (including copy negatives and CAD disks) thereof at the Authority's expense.
- 3.3 The Building Contractor warrants to the Authority that he has used the standard of skill, care and diligence as set out in clause 2.1 to see that the Documents (save to the extent duly appointed sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works will not infringe the rights of any third party.

4. **NOTICES**

Any notice to be given by any party will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the

party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet, provided that if any notice sent by hand or facsimile is sent after 4.45pm on any day it will be deemed to be served on the next Working Day. Any notice sent by post will be deemed to have been duly served at the expiration of forty eight (48) hours after the time of posting if the end of that period falls before 4.45pm on a Working Day and otherwise on the next Working Day.

5. **ASSIGNMENT**

The benefit of and the rights of the Authority under this Deed may be assigned without the consent of the Building Contractor on two occasions only and the Authority will notify the Building Contractor in writing following any such assignment specifying the name and address of the assignee and the date of the assignment. The Building Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any, or as much, loss.

6. **AUTHORITY'S REMEDIES**

The rights and benefits conferred upon the Authority by this Deed are in addition to any other rights and remedies it may have against the Building Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7. **INSPECTION OF DOCUMENTS**

The Building Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Authority may make or procure to be made for its benefit or on its behalf.

8. **STEP-IN RIGHTS IN FAVOUR OF THE AUTHORITY**

8.1 The Building Contractor will not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Building Contract or its engagement under it or discontinue or suspend the performance of any duties or obligations thereunder without first giving to the Authority not less than thirty (30) days' prior written notice specifying the Building Contractor's ground for terminating or treating as terminated or repudiated the Building Contract or its engagement under it or discontinuing or suspending its performance thereof and stating the amount (if any) of monies outstanding under the Building Contract. Within such period of notice:-

8.1.1 the Authority may give written notice to the Building Contractor that the Authority will thenceforth become the Contractor under the Building Contract to the exclusion of the Contractor and thereupon the Building Contractor will admit that the Authority is the Contractor under the Building Contract and the Building Contract will be and remain in full force and effect notwithstanding any of the said grounds;

8.1.2 if the Authority has given such notice as aforesaid or under clause 8.3, the Authority shall accept liability for the Contractor's obligations under the Building Contract and will as soon as practicable thereafter remedy any outstanding

breach by the previous client which properly has been included in the Building Contractor's specified grounds and which is capable of remedy by the Authority; and

- 8.1.3 if the Authority has given such notice as aforesaid or under clause 8.3, the Authority will from the service of such notice become responsible for all sums properly payable to the Building Contractor under the Building Contract accruing due after the service of such notice but the Authority will in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the previous client under the Building Contract.
- 8.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Authority to the Building Contractor, the Authority will not be under any obligation to the Building Contractor nor will the Building Contractor have any claim or cause of action against the Authority unless and until the Authority has given written notice to the Building Contractor pursuant to clause 8.1.1 or clause 8.3.
- 8.3 The Building Contractor further covenants with the Authority that if the Project Agreement is terminated by the Authority the Building Contractor, if requested by the Authority by notice in writing and subject to clause 8.1.2 and clause 8.1.3, will accept the instructions of the Authority to the exclusion of the Contractor in respect of its duties under the Building Contract upon the terms and conditions of the Building Contract and will if so requested in writing enter into a novation agreement whereby the Authority is substituted for the Contractor under the Building Contract.
- 8.4 Where the Building Contractor has given rights in relation to the Building Contract similar to those contained in this clause 8 to the Lender then if both the Authority and the Lender serve notice under clause 8.1.1 or clause 8.3 or its equivalent the notice served by the Authority will not prevail over any notice served by the Lender but will prevail over any notice served by any other person.
- 8.5 The Contractor acknowledges that the Building Contractor will be entitled to rely on a notice given to the Building Contractor by the Authority under clause 8.3 as conclusive evidence that the Project Agreement has been terminated by the Authority.
- 8.6 The Authority may by notice in writing to the Building Contractor appoint another person to exercise its rights under this clause 8 subject to the Authority remaining liable to the Building Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 8.7 Upon request by the Authority the Building Contractor agrees to co-operate with the Authority in determining the duties performed or to be performed by the Building Contractor and to provide a copy of the Building Contract and any variations thereto and details of all monies paid and due under the Building Contract.
- 8.8 On the date the Authority serves notice under clause 8.1.1 or clause 8.3 the Building Contractor shall assign all its rights and interests in the Retention Bond, Performance Bond and the Parent Company Guarantee (all as defined in the Building Contract) to the Authority.

9. **SUB-CONTRACTORS**

Following a written request from the Authority the Building Contractor will (unless it has already done so) and/ or procure that its sub-contractors execute a deed of collateral warranty in the relevant form specified in the Building Contract in favour of any person in whose favour the

Building Contract obliges the Building Contractor to give or procure the giving of such a warranty.

10. **APPLICABLE LAW AND JURISDICTION**

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

11. **THIRD PARTY RIGHTS**

This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first before written

EXECUTED as a deed by SHANKS)
WASTE MANAGEMENT LIMITED by a)
director in the presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

THE COMMON SEAL of CUMBRIA)
COUNTY COUNCIL was affixed in the)
presence of:-)

Authorised Signatory

Authorised Signatory

EXECUTED as a deed by SHANKS)
CUMBRIA LIMITED by a director in the)
presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

SCHEDULE 7 - COLLATERAL WARRANTIES

Part 3 - Principal Building Sub-Contractor's Authority Warranty

DATED _____ 2009

CUMBRIA COUNTY COUNCIL

and

HANSON QUARRY PRODUCTS EUROPE LIMITED

and

SHANKS WASTE MANAGEMENT LIMITED

AUTHORITY SUB-CONTRACTOR DIRECT AGREEMENT

relating to the Cumbria Waste PFI Project

THIS AGREEMENT dated

2009 is made BETWEEN:-

- (1) CUMBRIA COUNTY COUNCIL whose principal office is The Courts, Carlisle, Cumbria, CA3 8NA ("Authority");
- (2) HANSON QUARRY PRODUCTS EUROPE LIMITED (registered in England under company number 00300002) having its registered office at Hanson House, 14 Castle Hill, Maidenhead, SL6 4JJ ("Contractor"); and
- (3) SHANKS WASTE MANAGEMENT LIMITED (registered in England under company number 02393309) having its registered office at 2 Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU ("Employer").

BACKGROUND

- (A) The Authority and Project Co have entered into the Service Contract.
- (B) In order to enable Project Co to perform its obligations under the Service Contract, Project Co and the Employer have entered into the Building Contract.
- (C) In order to assist the Employer in performing its obligations under the Building Contract it has contracted its obligations for the design and construction of certain civil works to the Contractor under the terms of the Hanson Construction Contract.
- (D) It is a condition precedent to the execution by the Authority of the Service Contract that the Contractor enters into this Agreement.

WITNESSES as follows:-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and phrases shall have the following meaning:-

"Agent"	means Sumitomo Mitsui Banking Corporation;
"Building Contract"	means the building contract dated on or about the date of this Agreement in relation to the Project and made between the Employer and Project Co;
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in London;
"Facility Agreement"	means the facility agreement dated on or about the date of this Agreement between Project Co, Sumitomo Mitsui Banking Corporation, NIBC Bank NV and Barclays Bank PLC as arrangers, the financial institutions named therein as the equity bridge lenders, the Agent, the Security Trustee, Sumitomo Mitsui Banking Corporation Europe Limited as account bank, the financial institutions named therein as term loan lenders, the financial institutions named therein as change in law lenders and Shanks Cumbria Holdings Limited;
"Funder/Hanson Direct	means the agreement dated on or about the date hereof

Agreement"	between the Security Trustee, the Agent, Project Co, the Employer and the Contractor;
"Funder's Step-in Notice"	means the Step-in Notice served pursuant to clause 8 of the Funder/Hanson Direct Agreement;
"Funder's Step-in Period"	means the Step-in Period as defined under the Funder/Hanson Direct Agreement;
"Funders"	has the same meaning as given to the term "Lenders" in the Facility Agreement;
"Funders' Direct Agreement"	means the agreement dated on or about the date hereof between the Authority, the Agent, Project Co and the Employer (in its capacity as a shareholder in Project Co and not in any other capacity) in respect of the Service Contract;
"Hanson Construction Contract"	means each contract for the design and construction of certain civil works entered into or to be entered into between the Contractor and the Employer in relation to the Project;
"Liability Notice"	means a written notice of any sums which are, or shall become due and payable and of any obligations which are, or shall become outstanding by the Employer to the Contractor under the Hanson Construction Contract up to the expected date of issue of a Step-in Undertaking;
"Performance Bond"	has the meaning given to it in the Hanson Construction Contract;
"Project"	means the design, development, construction and financing of the Works, the financing, managing and provision of the Services at the Sites and the conduct of any other operations as required by the Service Contract;
"Project Co"	means Shanks Cumbria Limited (a company incorporated in England and Wales with registered number 06799850) whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU;
"Proposed Transfer Notice"	has the meaning given in clause 6.1;
"Relevant Agreement"	means the Hanson Construction Contract, the Retention Bond and the Performance Bond (together the "Relevant Agreements") and each a "Relevant Agreement";
"Representative"	means:- <ul style="list-style-type: none"> (a) the Authority; (b) an administrative receiver, receiver or receiver and manager of the Employer or Project Co appointed

	by or on behalf of the Funders;
	(c) an administrator of the Employer or Project Co;
	(d) a person directly or indirectly owned or controlled by the Authority;
	(e) (in relation to any step-in under clauses 2 and 3 to the obligations of the Employer); or
	(f) any other person approved by the Contractor (such approval not to be unreasonably withheld or delayed);
"Retention Bond"	has the meaning given to it in the Hanson Construction Contract;
"Security Documents"	has the meaning given in the Facility Agreement;
"Security Trustee"	means Sumitomo Mitsui Banking Corporation Europe Limited;
"Service Contract"	means the agreement dated on the date hereof between the Authority and the Project Co in relation to the Project;
"Services"	has the meaning given in the Service Contract;
"Site"	means each Site as defined in the Building Contract;
"Step-in Date"	means the date on which a Representative becomes liable for the rights and obligations of the Employer as specified in clause 3.4;
"Step-in Notice"	has the meaning given in clause 3.2;
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earlier of:-
	(a) the date of the first anniversary of the Step-in Date (subject to clause 6.6);
	(b) the Step-out Date; and
	(c) the Transfer Effective Date;
"Step-in Undertaking"	has the meaning given in clause 3.4;
"Step-out Date"	has the meaning set out in clause 4;
"Substitute Entity"	means a person who is (or is proposed by the Authority) to take a transfer of the Employer's rights, benefits, obligations and liabilities under the Relevant Agreements;
"Termination Notice"	has the meaning given in clause 2.1;

- "Transfer Effective Date" has the meaning given in clause 6.1; and
- "Works" has the meaning given to it in the Hanson Construction Contract.

1.2 **Interpretation**

In this Agreement, unless a contrary intention appears:-

- 1.2.1 a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
- 1.2.2 references to clauses and Schedules are references to, respectively, clauses of and Schedules to this Agreement and references to this Agreement include its Schedules;
- 1.2.3 a reference to (or to any specified provision of) any agreement or document is to be construed as a reference to that agreement or document (or that provision) as it may be amended, supplemented, novated or replaced from time to time, but excluding for this purpose any amendment, supplementation, transfer or replacement which is made without the prior consent of the Agent;
- 1.2.4 a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
- 1.2.5 a time of day is a reference to London time;
- 1.2.6 the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement; and
- 1.2.7 words importing the plural shall include the singular and vice versa.

2. **AUTHORITY STEP-IN AND TRANSFER**

The Contractor undertakes to issue a written notice to the Authority (a "Termination Notice") as follows:-

- 2.1 the Contractor undertakes to the Authority not to give notice to the Employer to terminate the Hanson Construction Contract pursuant to clause 62 (Default by Employer or Termination of Building Contract) of the Hanson Construction Contract without first giving the Authority prior written notice specifying the grounds for that termination; and
- 2.2 subject to the terms of the Funders' Direct Agreement and if the Step-in Decision Period under the Funder/Hanson Direct Agreement has expired without the Security Trustee issuing a Funder's Step-in Notice then the Authority may, within twenty (20) Business Days of the date of the notification, referred to in clause 2.1 or expiry of the Funder's Step-in Period under the Funder/Hanson Direct Agreement (whichever is the later date) issue a written notice to the Contractor of its intention to exercise its rights under this Agreement. If the Authority does not issue a written notice to the Contractor within twenty (20) Business Days of receipt of a notice under clause 2.1 or expiry of the Funder's Step-in Period under the Funder/Hanson Direct Agreement, the Authority shall

be deemed to have irrevocably waived all its rights, claims and liabilities pursuant to clauses 3 to 6 of this Agreement.

3. **STEP-IN AND STEP-OUT**

- 3.1 If the Authority issues a notice under clause 2.2 of its intention to exercise its rights under this Agreement, the Authority shall at any time during the period commencing on the date of that notice up to (and including) the date which is ten (10) Business Days thereafter request that the Contractor issue a Liability Notice. The Contractor shall provide to the Authority a Liability Notice within twenty five (25) Business Days of receipt of the request for the Liability Notice having first taken into account any reasonable representations made by the Authority. If reasonable access to the Sites or to the Contractor's books, records and information as reasonably required by the Authority for the purpose of making representations is not granted to the Authority, the time period referred to hereunder shall be extended as requested by the Authority (acting reasonably). Subject to clause 3.3, the Liability Notice shall be deemed to be conclusive as to the maximum amount of the sums which are, or shall become, payable and of the maximum amount of any obligations which are, or shall become, outstanding by the Employer to the Contractor under the Hanson Construction Contract up to a date specified in the Liability Notice. The Contractor shall not be entitled to assert that any sums are due or payable or that any obligations are outstanding in respect of the period prior to the Step-in Date other than those amounts or obligations, respectively, set out in the Liability Notice.
- 3.2 No later than ten (10) Business Days following receipt by the Authority of the Liability Notice, the Authority may give written notice to the Contractor ("Step-in Notice") of the intention of the Authority to issue a Step-in Undertaking on a specified date being no later than the date which is twenty (20) Business Days after the date of receipt of the Liability Notice.
- 3.3 The Authority may at any time prior to the date which is ten (10) Business Days after the issue of the Liability Notice request the Contractor to adjust the Liability Notice so as to reflect any change to the proposed date of issue of a Step-in Undertaking and following such request the Contractor shall as soon as reasonably practicable (but in any event before the Step-in Date) so amend the Liability Notice.
- 3.4 If the Authority decides to issue a Step-in Undertaking as envisaged by clause 3.2, the Authority shall provide to the Contractor, no later than the date indicated in the Step-in Notice, a written undertaking by or on behalf of the Authority ("Step-in Undertaking") undertaking:-
- 3.4.1 within ten (10) Business Days of a written demand by the Contractor to pay to the Contractor any sums due and payable but unpaid by the Employer to the Contractor under the Hanson Construction Contract as set out in the Liability Notice;
- 3.4.2 to perform any other obligations set out in the Liability Notice which are outstanding as at the Step-in Date and capable of being remedied, within the applicable remedy periods set out in the Hanson Construction Contract or, where none is set out, as soon as reasonably practicable after the Step-in Date; and
- 3.4.3 to perform any obligations on the part of the Employer under the Hanson Construction Contract which shall arise from the Step-In Date to the end of the Step-in Period (excluding the payment of any sums or obligations which:-

- (a) were not set out in the Liability Notice; but
- (b) were required to be set out in the Liability Notice in accordance with clause 3.1).

3.5 Following payment to the Contractor of such sums or performance by the Authority of any such obligations any default by the Employer under the Hanson Construction Contract which are referred to in the Liability Notice, the Hanson Construction Contract shall be deemed to have been remedied and (without prejudice to the generality of clause 5) the Hanson Construction Contract shall continue in full force and effect. For the purposes only of clauses 3.4.2 and 5.2.2 the remedy periods referred to in the Hanson Construction Contract shall be deemed to commence five (5) Business Days after the Step-in Date.

3.6 During the Step-in Period the Contractor shall owe its obligations under the Hanson Construction Contract to the Authority and the Contractor hereby agrees, subject to clause 4 that the Employer shall in these circumstances have no further liability or obligations to the Contractor under the Hanson Construction Contract but without prejudice to any accrued liabilities and obligations which arose prior to the Step-in Date.

4. **STEP-OUT**

The Authority may at any time give the Contractor at least twenty (20) Business Days' prior written notice to terminate the Step-in Period on a date specified in the notice ("Step-out Date"). Without prejudice to the rights or liabilities of the Authority or the Contractor which accrue prior to the Step-out Date (including, without limitation, liability incurred under the Step-in Undertaking), the Authority shall be released from the Step-in Undertaking on the Step-out Date, or the occurrence (subject to clause 6.6) of the first anniversary of the Step-in Date (whichever is earlier). For the avoidance of doubt, the release of the Authority hereunder shall be without prejudice to the Contractor's rights against the Authority under clause 3.4.2 in respect of any cause of action accruing under that clause during the Step-in Period prior to the date of such release.

5. **RESTRICTION OF RIGHT OF TERMINATION**

5.1 Without prejudice to clause 5.2, during the period between the issue of a Termination Notice and the Step-in Date or the date on which the Authority's rights under clause 3 expire (whichever is the earlier) the Contractor undertakes to the Authority not to exercise any of its rights of termination under the Hanson Construction Contract.

5.2 During the Step-in Period the Contractor shall only be entitled to exercise its rights of termination under the Hanson Construction Contract:-

5.2.1 by reference to an event arising during (but not before) the Step-in Period; or

5.2.2 if the Authority fails to pay when due any amount owed to the Contractor or to perform any material obligation under the Step-in Undertaking and such failure is not remedied within fifteen (15) Business Days of notice thereof by the Contractor to the Authority or, where a remedy period in respect of the relevant failure is specified under the Hanson Construction Contract in accordance with that remedy period (subject to the last sentence of clause 3.5).

5.3 The Contractor undertakes to the Authority that, from the date on which the Authority would, but for the terms of the Funders' Direct Agreement, have been entitled to give a Termination Notice under the Service Contract, the Contractor shall not exercise any

right of termination under or in respect of the Hanson Construction Contract, unless and until the periods referred to in clause 2.2 have expired without the Authority having issued a written notice of its intention to exercise its rights under this Agreement.

6. **TRANSFER**

- 6.1 Subject to clause 6.2, at any time during the Step-in Period the Authority may give notice ("Proposed Transfer Notice") to the Contractor that it wishes the Authority or Substitute Entity to assume by way of novation transfer, sale or other disposal the rights and obligations of the Employer under the Hanson Construction Contract and specifying a date, falling not later than thirty (30) Business Days after the date of the Proposed Transfer Notice, on which such assumption is to be effective (which date, if such assumption shall become effective in accordance with this clause 6, shall be known as the "Transfer Effective Date").
- 6.2 Prior to the issue of a Proposed Transfer Notice the Authority shall (save where the Substitute Entity is the Authority) request the consent of the Contractor (such consent not to be unreasonably withheld or delayed) to the identity of the Substitute Entity. The Contractor may, within fifteen (15) Business Days of the Proposed Transfer Notice notify the Authority that it does not consent to the Transfer if, acting reasonably, it is not satisfied that the Substitute Entity has:-
- 6.2.1 the legal capacity, power and authorisation; or
- 6.2.2 the technical competence, financial standing and resources to perform and discharge all the obligations, liabilities and duties of the Employer under the Hanson Construction Contract. The Contractor shall be deemed to have consented to the identity of the Substitute Entity:-
- (a) where the Substitute Entity is the Authority; or
- (b) in any other case, unless it gives written notice to the Authority to the contrary within fifteen (15) Business Days of the request from the Authority pursuant to this clause 6.2.
- 6.3 On the Transfer Effective Date:-
- 6.3.1 the Substitute Entity shall become a party to:-
- (a) the Hanson Construction Contract in place of the Employer;
- (b) this Agreement in place of the Employer and thereafter shall be treated as if it is named as a party hereto in place of the Employer;
- 6.3.2 the parties to the Hanson Construction Contract and the Substitute Entity shall enter into a novation agreement and any other requisite agreements (except for any others expressly provided for elsewhere in this clause 6.3) in form and substance satisfactory to the Authority and the Contractor (both acting reasonably) pursuant to which the Substitute Entity shall be granted all of the rights and assume all of the obligations of Contractor under the Hanson Construction Contract;
- 6.3.3 the parties to the Hanson Construction Contract (other than the Employer) shall owe their respective obligations under the Hanson Construction Contract arising on and after the Transfer Effective Date to the Substitute Entity and the receipt,

acknowledgment or acquiescence of the Substitute Entity shall be a good discharge;

- 6.3.4 the Authority shall be released from the Step-in Undertaking, provided that the release of the Authority from the Step-in Undertaking shall be without prejudice to all obligations of the Authority under the Step-in Undertaking which have accrued up to the Transfer Effective Date and are identifiable as at such date shall have been discharged in full on or before such date;
- 6.3.5 the Substitute Entity shall execute such agreements and/or documents as shall be necessary to ensure that the Contractor is in substantially the same contractual position with the Substitute Entity as the Contractor was with the Employer as at the Transfer Effective Date subject to any amendments thereto agreed (both parties acting reasonably) between the Contractor and the Substitute Entity pursuant to clause 6.3.2.
- 6.4 Each of the parties to the Hanson Construction Contract hereby expressly consents to and agrees to transfer by novation, transfer, assignment or otherwise of the Relevant Agreements to a Substitute Entity in accordance with the provisions of this clause 6.
- 6.5 On or after the Transfer Effective Date the Contractor shall only be entitled to exercise its rights of termination under the Hanson Construction Contract in respect of any event arising after the Transfer Effective Date provided that such event is not a breach of the Hanson Construction Contract which is capable of remedy and is remedied within any relevant remedy time period determined in accordance with the relevant provisions of the Hanson Construction Contract. For the purposes only of this clause 6.5 such time period shall be deemed to commence five Business Days after the Transfer Effective Date.
- 6.6 If as at the expiry of the Step-in Period the Authority shall be in the course of conducting discussions in good faith with a Substitute Entity then the Step-in Period shall not expire but shall continue until a date specified by the Authority but no later than six (6) months after the expiry of the Step-in Period, or if conditional contracts have been entered into with a Substitute Entity as at the expiry of the Step-in Period then the Step-in Period shall not expire but shall continue until the date such contracts come into full force and effect provided that such date shall not be later than forty (40) Business Days after the date on which the conditional contracts were entered into.

7. COLLATERAL WARRANTIES

- 7.1 The Contractor undertakes to the Authority that it has complied with and shall continue to comply with and fulfil its obligations under the Hanson Construction Contract provided that, in the event of any breach of this clause 7:-
 - 7.1.1 the Contractor shall have no greater liability to the Authority (excluding any rights of set-off or counterclaim) under this Agreement than it would have had to the Authority under the Hanson Construction Contract had it been named as the Employer thereunder;
 - 7.1.2 the Contractor shall be entitled to rely on the equivalent rights of defence (excluding any rights of set-off or counterclaim) and limitation of liability as are or would have been available to it if the authority had been a party to, and had brought a claim under, the Hanson Construction Contract; and

- 7.1.3 the liability of the Contactor to the Employer under the Hanson Construction Contract shall be reduced to the extent any corresponding liability of the Contractor to the Authority under this clause 7 is discharged.
- 7.2 The obligations and liabilities of the Contractor under this clause 7 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Authority or by the appointment of any person, firm or company by the Authority to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or company to the Authority arises in connection therewith.
- 7.3 No action or proceedings for any breach of this clause 7 shall be commenced against the Contractor after the expiry of twelve (12) years from the date of completion of the Works as evidenced by the issue of the Certificate of Substantial Completion under the Hanson Construction Contract.
- 7.4 The Contractor makes the representations and warranties as to itself set out in clauses 8.3.1 to 8.3.10 (inclusive).

8. REPRESENTATIONS AND WARRANTIES

- 8.1 The Contractor acknowledges that the Authority has entered into this Agreement in reliance on the representations and warranties made by it hereunder.
- 8.2 The representations and warranties in this clause 8 are made on the date of this Agreement.
- 8.3 The Contractor represent and warrants that:-
- 8.3.1 it is duly incorporated and validly existing with limited liability under the laws of its place of incorporation and has the corporate power to own its assets and to carry on its business;
- 8.3.2 it has the power and capacity to enter into and comply with its obligations under this Agreement and each Relevant Agreement to which it is a party;
- 8.3.3 it has taken all necessary shareholder and other corporate action:-
- (a) to authorise the entry into and compliance with its obligations under this Agreement and each Relevant Agreement to which it is party;
- (b) to ensure that its obligations under this Agreement and each Relevant Agreement to which it is a party are valid, legally binding and enforceable in accordance with their terms; and
- (c) to make this Agreement and each Relevant Agreement to which it is a party admissible in evidence in the courts of England;
- 8.3.4 the entry into by it, the exercise of its rights under and the compliance with its obligations under this Agreement and each Relevant Agreement to which it is party do not:-
- (a) contravene any law, regulation, judgment or order to which it is subject;
- (b) conflict with its constitutional documents;

- (c) breach any agreement or the terms of any consent binding upon it or any of its assets; or
 - (d) oblige to create any security or result in the creation of any security over any of its assets other than under the Security Documents;
- 8.3.5 no dispute, litigation, arbitration or administrative proceedings are current or pending or, so far as it is aware, threatened against it which would have a material adverse effect on its business or financial condition or its ability to perform its obligations under this Agreement and each Relevant Agreement to which it is a party;
- 8.3.6 it is not insolvent and it has not taken any action nor have any steps been started against it which are continuing for bankruptcy, sequestration, dissolution or reorganisation, nor the enforcement of any security over its assets or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or any of its assets or revenues and which are not frivolous or vexatious;
- 8.3.7 claims made against it under this Agreement and each Relevant Agreement to which it is a party will rank at least pari passu with the claims of all its other unsecured creditors save those whose claims are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application in its jurisdiction of incorporation;
- 8.3.8 in any proceedings taken in its jurisdiction of incorporation in relation to this Agreement and each Relevant Agreement to which it is party, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;
- 8.3.9 under the laws of its jurisdiction of incorporation in force at the date hereof, it is not necessary that this Agreement or any Relevant Agreement to which it is a party be filed, recorded or enrolled with any court or other authority in its jurisdiction of incorporation or that any stamp, registration or similar tax to be paid on or in relation to this Agreement or such Relevant Agreement;
- 8.3.10 the Relevant Agreements contain all the terms of the agreement between the Employer and the Contractor with respect to the subject matter of the Relevant Agreements.

9. **MISCELLANEOUS**

9.1 The Contractor and the Employer shall, at the Employer's expense, take whatever action:-

9.1.1 the Authority; or

9.1.2 a Substitute Entity taking a transfer in accordance with clause 6,

may reasonably require for perfecting any transfer, release or assumption under clause 3, 4 or 6 including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Authority or Substitute Entity reasonably requires.

- 9.2 In the event of any conflict or inconsistency between the provisions of this Agreement and the Relevant Agreements, the provisions of this Agreement shall prevail.
- 9.3 No purported amendment or modification of this Agreement shall be valid unless in writing executed by the parties.

10. **NO IMPLIED WAIVER**

- 10.1 Subject to clause 2.2, no failure or delay by the Authority or the Contractor in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 10.2 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 10.3 A waiver given or consent granted by the Authority or the Contractor under this Agreement will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

11. **ASSIGNMENT**

- 11.1 The Contractor consents to the benefit of the agreement being assigned twice only, and thereafter only with the prior written consent of the Contractor (not to be unreasonably withheld or delayed), provided always that the maximum number of two assignments referred to above shall not be affected by any assignment or transfer set out in clause 11.2 .
- 11.2 The Authority may assign or transfer its rights and obligations under this Agreement to a successor Authority in which event the Contractor shall enter into a direct agreement with the successor Authority on the same terms as this Agreement and substantially the same terms as this Agreement in all other respects.
- 11.3 The Contractor may assign or transfer its rights and obligations under this Agreement to a wholly-owned subsidiary, or as a result of the Contractor's amalgamating, merging or consolidating with or into any other person or being the subject of any reconstruction, or otherwise as the Contractor may request, provided, in each case, that the Authority has given its prior written approval (such consent not to be unreasonably withheld or delayed).

12. **NOTICES**

- 12.1 Except as specifically provided otherwise in this Agreement, any notice, demand, consent, agreement or other communication ("Notice") to be served under or in connection with this Agreement will be in writing and will be made by letter or by facsimile transmission to the party to be served.
- 12.2 The address and facsimile number of each party to this Agreement for the purposes of clause 12.1 are:-

12.2.1 Authority

Cumbria County Council
The Courts
Carlisle

Cumbria
CA3 8NA

Attention Graham Harrison, Authority Representative

Fax 01228 607 724

12.2.2 Employer

Shanks Waste Management Limited
2 Dunedin House
Auckland Park
Mount Farm
Milton Keynes
Buckinghamshire
MK1 1BU

Attention Gerard McCabe

Fax 01768 8892620

12.2.3 Contractor

Hanson Contracting
Coleridge House
Gilwilly Industrial Estate
Penrith
Cumbria
CA11 9BN

Attention Colin Lees

Fax 01768 862380

12.2.4 the address and facsimile number notified by that party for this purpose to the Authority on or before the date it becomes a party to this Agreement (in the case of any person who becomes a party after the date of this Agreement); or

12.2.5 any other address and facsimile number notified by that party for this purpose to the Authority by not less than five (5) Business Days' notice.

12.3 Any Notice to be served by any party to this Agreement on the Authority will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in clause 12.2.

12.4 Subject to clause 12.5, a Notice will be deemed to be given as follows:-

12.4.1 if by letter, when delivered personally or on actual receipt; and

12.4.2 if by facsimile, when delivered.

12.5 A Notice given in accordance with clause 12.4 but received on a non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day.

12.6 Any Notice must be in English.

12.7 All other documents provided under or in connection with this Agreement must be:-

12.7.1 in English; or

12.7.2 if not in English, accompanied by a certified English translation in which case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

13. **CONFIDENTIALITY**

The parties to this Agreement will keep this Agreement and its subject matter (including all details relating to the structure and financing of the Project) confidential, except to the extent that they are required by law or regulation to disclose the same. The Authority agrees to this Agreement to hold confidential all information, which it acquires under or in connection with this Agreement, except to the extent it is required by law or regulation to disclose it or it comes into the public domain (otherwise than as a result of a breach of this clause 13). A party may, subject, where relevant, to any confidentiality obligations in the Relevant Agreements, disclose any such information to its auditors, legal advisers or other professional advisers ("Professionals") for any purpose connected with the Service Contract, provided that the relevant party takes reasonable steps to procure that each Professional maintains the confidentiality of that information.

14. **INVALIDITY OF ANY PROVISION**

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.

15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

16. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 16 does not affect any right or remedy, which exists or is available otherwise than pursuant to that Act.

17. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

17.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.

17.2 For the benefit of the Authority, the Contractor irrevocably submits to the jurisdiction of the courts in England for the purpose of hearing and determining any dispute arising out of this Agreement and the purpose of enforcement of any judgment against its assets.

17.3 The submission to the jurisdiction of the courts referred to in clause 17.2 shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any

other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

IN WITNESS this document has been executed as a deed on the day and year that appears first on page 1.

THE COMMON SEAL of CUMBRIA)
COUNTY COUNCIL was affixed in the)
presence of:-)

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by HANSON)
QUARRY PRODUCTS EUROPE)
LIMITED acting by its director duly)
authorised by the board:-)

Director

Director/Secretary

EXECUTED as a deed by SHANKS)
WASTE MANAGEMENT LIMITED by a)
director in the presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address

SCHEDULE 7 - COLLATERAL WARRANTIES

Part 4 - Principal Building Sub-Contractor's Authority Warranty

DATED _____ 2009

CUMBRIA COUNTY COUNCIL

and

SISTEMA ECODECO UK LIMITED

and

SHANKS WASTE MANAGEMENT LIMITED

and

SHANKS CUMBRIA LIMITED

and

ECODECO SRL

AUTHORITY SUB-CONTRACTOR DIRECT AGREEMENT

relating to the Cumbria Waste PFI Project

THIS AGREEMENT dated

2009 is made BETWEEN:-

- (1) CUMBRIA COUNTY COUNCIL whose principal office is The Courts, Carlisle, Cumbria, CA3 8NA ("Authority");
- (2) SISTEMA ECODECO UK LIMITED (registered in England under company number 05049191) having its registered office at Matrix House, 12-16 Lionel Road, Canvey Island, Essex, SS8 9DE ("Contractor");
- (3) SHANKS WASTE MANAGEMENT LIMITED (registered in England under company number 02393309) having its registered office at 2 Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU ("Employer");
- (4) SHANKS CUMBRIA LIMITED (registered in England under company number 06799850) having its registered office at 2 Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire, MK1 1BU ("Project Co"); and
- (5) ECODECO SRL (Italian fiscal code n0. 01255650168) of Via Vittor Pisani 16 Milan, Italy ("Licensor").

BACKGROUND

- (A) The Authority and Project Co have entered into the Service Contract.
- (B) In order to enable Project Co to perform its obligations under the Service Contract, Project Co and the Employer have entered into the Building Contract.
- (C) In order to assist the Employer in performing its obligations under the Building Contract it has contracted its obligations for the design and construction of certain waste management facilities to the Contractor under the terms of the Ecodeco Construction Contracts.
- (D) The Licensor has agreed to grant an intellectual property licence to Project Co in accordance with the terms of the Operational Licence.
- (E) It is a condition precedent to the execution by the Authority of the Service Contract that the Contractor enters into this Agreement.

THIS DEED WITNESSES as follows:-

1. INTERPRETATION

1.1 In this Agreement the following expressions have the following meaning:-

"Agent"	means Sumitomo Mitsui Banking Corporation;
"Building Contract"	means the building contract dated on or about the date of this Agreement in relation to the Project and made between the Employer and Project Co;
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in London;
"Contractor's Parent Company Guarantee"	has the meaning given to it in the Ecodeco Construction Contract;
"Ecodeco Construction"	means each contract for the design and construction of

Contracts"	certain waste management facilities entered into or to be entered into between the Contractor and the Employer in relation to the Project;
"Facility Agreement"	means the facility agreement dated on or about the date of this Agreement between Project Co, Sumitomo Mitsui Banking Corporation, NIBC Bank NV and Barclays Bank PLC as arrangers, the financial institutions named therein as the equity bridge lenders, the Agent, the Security Trustee, Sumitomo Mitsui Banking Corporation Europe Limited as account bank, the financial institutions named therein as term loan lenders, the financial institutions named therein as change in law lenders and Shanks Cumbria Holdings Limited;
"Funder/Ecodeco Direct Agreement"	means the agreement dated on or about the date hereof between the Security Trustee, the Agent, Project Co, the Employer, the Contractor and the Licensor;
"Funder's Step-in Notice"	means the Step-in Notice served pursuant to clause 8 of the Funder/Ecodeco Direct Agreement;
"Funder's Step-in Period"	means the Step-in Period as defined under the Funder/Ecodeco Direct Agreement;
"Funders"	has the same meaning as given to the term "Lenders" in the Facility Agreement;
"Funders' Direct Agreement"	means the agreement dated on or about the date hereof between the Authority, the Agent, Project Co and the Employer (in its capacity as a shareholder in Project Co and not in any other capacity) in respect of the Service Contract;
"Liability Notice"	means a written notice of any sums which are, or shall become due and payable and of any obligations which are, or shall become outstanding by the Employer to the Contractor under the Ecodeco Construction Contracts and/or shall become due and outstanding by Project Co to the Licensor under the Operational Licence up to the expected date of issue of a Step-in Undertaking;
"Operational Licence"	means the operating licence dated on or about the date of this Agreement between the Licensor (therein referred to as the Licensee) and Project Co;
"Performance Bond"	has the meaning given to it in the Ecodeco Construction Contracts;
"Project"	means the design, development, construction and financing of the Works, the financing, managing and provision of the Services at the Sites and the conduct of any other operations as required by the Service Contract;

"Proposed Transfer Notice"	has the meaning given in clause 6.1;
"Relevant Agreement"	means the Ecodeco Construction Contracts, the Operational Licence, the Retention Bond, the Performance Bond and the Contractor's Parent Company Guarantee (together the "Relevant Agreements") and each a "Relevant Agreement"; "Representative" means:- <ul style="list-style-type: none"> (a) the Authority; (b) an administrative receiver, receiver or receiver and manager of the Employer or Project Co appointed by or on behalf of the Funders; (c) an administrator of the Employer or Project Co; (d) a person directly or indirectly owned or controlled by the Authority; (e) (in relation to any step-in under clauses 2 and 3 to the obligations of the Employer); or (f) any other person approved by the Contractor (such approval not to be unreasonably withheld or delayed);
"Retention Bond"	has the meaning given to it in the Ecodeco Construction Contracts;
"Security Documents"	has the meaning given in the Facility Agreement;
"Security Trustee"	means Sumitomo Mitsui Banking Corporation Europe Limited;
"Service Contract"	means the agreement dated on the date hereof between the Authority and the Project Co in relation to the Project;
"Services"	has the meaning given in the Service Contract;
"Site"	means each Site as defined in the Building Contract;
"Step-in Date"	means the date on which a Representative becomes liable for the rights and obligations of the Employer and Project Co as specified in clause 3.4;
"Step-in Notice"	has the meaning given in clause 3.2;
"Step-in Period"	means the period commencing on the Step-in Date and ending on the earlier of:- <ul style="list-style-type: none"> (a) the date of the first anniversary of the Step-in Date (subject to clause 6.6); (b) the Step-out Date; and

	(c) the Transfer Effective Date;
"Step-in Undertaking"	has the meaning given in clause 3.4;
"Step-out Date"	has the meaning set out in clause 4;
"Substitute Entity"	means a person who is (or is proposed by the Authority) to take a transfer of the Employer's or, as the case may be, Project Co's rights, benefits, obligations and liabilities under the Relevant Agreements;
"Termination Notice"	has the meaning given in clause 2.1;
"Transfer Effective Date"	has the meaning given in clause 6.1; and
"Works"	has the meaning given to it in the Ecodeco Construction Contracts.

1.2 **Interpretation**

In this Agreement, unless a contrary intention appears:-

- 1.2.1 a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
- 1.2.2 references to clauses and Schedules are references to, respectively, clauses of and Schedules to this Agreement and references to this Agreement include its Schedules;
- 1.2.3 a reference to (or to any specified provision of) any agreement or document is to be construed as a reference to that agreement or document (or that provision) as it may be amended, supplemented, novated or replaced from time to time, but excluding for this purpose any amendment, supplementation, transfer or replacement which is made without the prior consent of the Agent;
- 1.2.4 a reference to a statute, statutory instrument or accounting standard or any provision thereof is to be construed as a reference to that statute, statutory instrument or accounting standard or such provision thereof, as it may be amended or re-enacted from time to time;
- 1.2.5 a time of day is a reference to London time;
- 1.2.6 the index to and the headings in this Agreement are inserted for convenience only and are to be ignored in construing this Agreement; and
- 1.2.7 words importing the plural shall include the singular and vice versa.

2. **AUTHORITY STEP-IN AND TRANSFER**

The Contractor and the Licensor each undertake to issue a written notice to the Authority (a "Termination Notice") as follows:-

- 2.1 the Contractor undertakes to the Authority not to give notice to the Employer to terminate the Ecodeco Construction Contracts pursuant to clause 41 (Default by Employer or Termination of Construction Agreement) of the Ecodeco Construction Contracts and the

Licensor undertakes to the Authority not to give notice to Project Co to terminate the Operational Licence under clause 7 (Provisions on Termination) of the Operational Licence without first giving the Authority prior written notice specifying the grounds for that termination; and

2.2 subject to the terms of the Funder Direct Agreement if either:-

2.2.1 the Step-In Decision Period under the Funder/Ecodeco Direct Agreement has expired without the Security Trustee issuing a Funder's Step-in Notice; or

2.2.2 the Funder's Step-in Period under the Funder/Ecodeco Direct Agreement has terminated without the Funders exercising their rights to require the transfer of either the relevant Ecodeco Construction Contract or the Operational Licence to a third party,

then the Authority may, within twenty (20) Business Days of the date of the notification, referred to in clause 2.1 or expiry of the Funder's Step-in Period under the Funder/Ecodeco Direct Agreement (whichever is the later date) issue a written notice to the Contractor and/or the Licensor of its intention to exercise its rights under this Agreement in respect of either or both of the Ecodeco Construction Contracts and/or the Operational Licence. If the Authority does not issue a written notice to the Contractor and/or the Licensor within twenty (20) Business Days of receipt of a notice under clause 2.1 or expiry of the Funder's Step-in Period under the Funder/Ecodeco Direct Agreement, the Authority shall be deemed to have irrevocably waived all its rights, claims and liabilities pursuant to clauses 3 to 6 of this Agreement.

3. **STEP-IN AND STEP-OUT**

3.1 If the Authority issues a notice under clause 2.2 of its intention to exercise its rights under this Agreement, the Authority may at any time during the period commencing on the date of that notice up to (and including) the date which is ten (10) Business Days thereafter request that the Contractor and/or the Licensor (as the case may be) issue a Liability Notice. The Contractor and/or the Licensor (as the case may be) shall provide to the Authority a Liability Notice within twenty five (25) Business Days of receipt of the request for the Liability Notice having first taken into account any reasonable representations made by the Authority. If reasonable access to the Sites or to the Contractor's and/or the Licensor's (as the case may be) books, records and information as reasonably required by the Authority for the purpose of making representations is not granted to the Authority, the time period referred to hereunder shall be extended as requested by the Authority (acting reasonably). Subject to clause 3.3 the Liability Notice shall be deemed to be conclusive as to the maximum amount of the sums which are, or shall become, payable and of the maximum amount of any obligations which are, or shall become, outstanding by the Employer to the Contractor under the relevant Ecodeco Construction Contract and/or to the Licensor by Project Co under the Operational Licence up to a date specified in the Liability Notice. The Contractor and/or the Licensor (as the case may be) shall not be entitled to assert that any sums are due or payable or that any obligations are outstanding in respect of the period prior to the Step-in Date other than those amounts or obligations, respectively, set out in the Liability Notice.

3.2 No later than ten (10) Business Days following receipt by the Authority of the Liability Notice, the Authority may give written notice to the Contractor and/or the Licensor (as the case may be) ("Step-in Notice") of the intention of the Authority to issue a Step-in Undertaking on a specified date being no later than the date which is twenty (20) Business Days after the date of receipt of the Liability Notice.

- 3.3 The Authority may at any time prior to the date which is ten (10) Business Days after the issue of the Liability Notice request the Contractor and/or the Licensor (as the case may be) to adjust the Liability Notice so as to reflect any change to the proposed date of issue of a Step-in Undertaking and following such request the Contractor and/or the Licensor (as the case may be) shall as soon as reasonably practicable (but in any event before the Step-in Date) so amend the Liability Notice.
- 3.4 If the Authority decides to issue a Step-in Undertaking as envisaged by clause 3.2, the Authority shall provide to the Contractor and/or the Licensor (as the case may be) , no later than the date indicated in the Step-in Notice a written undertaking by or on behalf of the Authority ("Step-in Undertaking") undertaking:-
- 3.4.1 within ten (10) Business Days of a written demand by the Contractor and/or the Licensor (as the case may be) to pay to the Contractor and/or the Licensor (as the case may be) any sums due and payable but unpaid by the Employer to the Contractor under the relevant Ecodeco Construction Contract and/or by the Project Co to the Licensor under the Operational Licence; and
- 3.4.2 to perform any other obligations which are outstanding as at the Step-in Date and capable of being remedied, within the applicable remedy periods set out in the relevant Ecodeco Construction Contract and/or the Operational Licence or, where none is set out, as soon as reasonably practicable after the Step-in Date,
- in each case, as set out in the Liability Notice;
- 3.4.3 (provided always that the Authority elects, at its sole discretion, in the Step-in Undertaking, to perform the relevant Ecodeco Construction Contract and/or the Operational Licence during the Step-in Period and to accept liability therefor) to perform any obligations under the relevant Ecodeco Construction Contract and/or the Operational Licence which shall arise during the Step-in Period (excluding the payment of any sums or obligations which:-
- (a) were not set out in the Liability Notice; but
- (b) were required to be set out in the Liability Notice in accordance with clause 3.1).
- 3.5 Following payment to the Contractor and/or the Licensor (as the case may be) of such sums or performance of any such obligations any default by the Employer and/or Project Co under the Ecodeco Construction Contracts or the Operational Licence which are referred to in the Termination Notice and/or the Liability Notice, the Ecodeco Construction Contracts and/or the Operational Licence shall be deemed to have been remedied and (without prejudice to the generality of clause 5) the Ecodeco Construction Contracts and/or the Operational Licence shall continue in full force and effect. For the purposes only of clauses 3.4.2 and 5.2.2(b) the remedy periods referred to in the Ecodeco Construction Contracts and the Operational Licence shall be deemed to commence five Business Days after the Step-in Date; and
- 3.6 Without prejudice to the Contractor's rights under the Ecodeco Construction Contracts and/or the Licensor's rights under the Operational Licence (including its rights of termination but subject to the restrictions in clause 4) which arise during the Step-in Period, during the Step-in Period the Contractor shall owe its obligations under the relevant Ecodeco Construction Contract to the Employer and the Licensor shall owe its obligations under the Operational Licence to Project Co (including if acting by a receiver) unless the Authority elects to perform either of the Ecodeco Construction Contracts

and/or the Operational Licence during the Step-in Period as referred to in clause 3.4.3 in which event the Contractor and/or the Licensor (as the case may be) shall owe their respective obligations to the Authority and:-

- 3.6.1 the Contractor hereby agrees, subject to clause 4, that the Employer shall in these circumstances, have no further liability or obligations to the Contractor under the relevant Ecodeco Construction Contract; and
- 3.6.2 the Licensor hereby agrees, subject to clause 4, that Project Co in these circumstances, have no further liability or obligations to the Licensor under the Operational Licence, but without prejudice to any accrued liabilities and obligations which arose prior to the Step-in Date.

4. **STEP-OUT**

Without prejudice to the rights or liabilities of the Authority, the Licensor or the Contractor which accrue prior to the Step-out Date (including, without limitation, liability incurred under the Step-in Undertaking), the Authority may at any time give the Contractor and/or the Licensor (as the case may be) at least twenty (20) Business Days' prior written notice to terminate the Step-in Period on a date specified in the notice ("Step-out Date"). The Authority shall be released from the Step-in Undertaking on the Step-out Date, or the occurrence (subject to clause 6.6) of the first anniversary of the Step-in Date (whichever is earlier). For the avoidance of doubt, the release of the Authority hereunder shall be without prejudice to the Contractor's and/or the Licensor's (as the case may be) rights against the Authority under clause 3.4.2 in respect of any cause of action accruing under that clause during the Step-in Period prior to the date of such release.

5. **RESTRICTION OF RIGHT OF TERMINATION**

- 5.1 Without prejudice to clause 5.2, during the period between the issue of a Termination Notice and the Step-in Date or the date on which the Authority's rights under clause 3 expire (whichever is the earlier) the Contractor undertakes to the Authority not to exercise any of its rights of termination under the Ecodeco Construction Contracts and the Licensor undertakes to the Authority not to exercise any of its rights of termination under the Operational Licence.
- 5.2 During the Step-in Period:-
 - 5.2.1 the Contractor shall only be entitled to exercise its rights of termination under the Ecodeco Construction Contracts; and
 - 5.2.2 the Licensor shall only be entitled to exercise its rights of termination under the Operational Licence:-
 - (a) by reference to an event arising during (but not before) the Step-in Period; or
 - (b) if the Authority fails to pay when due any amount owed to the Contractor and/or the Licensor (as the case may be) or to perform any material obligation under the Step-in Undertaking and such failure is not remedied within fifteen (15) Business Days of notice thereof by the Contractor and/or the Licensor (as the case may be) to the Authority or, where a remedy period in respect of the relevant failure is specified under the Ecodeco Construction Contract and/or the Operational Licence in accordance with that remedy period (subject to clause 3.4.1).

- 5.3 The Contractor undertakes to the Authority that, from the date on which the Authority would, but for the terms of the Funders' Direct Agreement, have been entitled to give a Termination Notice under the Service Contract, the Contractor shall not exercise any right of termination or any other right or remedy under or in respect of the Ecodeco Construction Contracts, unless and until the periods referred to in clause 2.2 have expired without the Authority having issued a written notice of its intention to exercise its rights under this Agreement.
- 5.4 The Licensor undertakes to the Authority that, from the date on which the Authority would, but for the terms of the Funders' Direct Agreement, have been entitled to give a Termination Notice under the Project Agreement, the Licensor shall not exercise any right of termination or any other right or remedy under or in respect of the Operational Licence, unless and until the periods referred to in clause 2.2 have expired without the Authority having issued a written notice of its intention to exercise its rights under this Agreement.

6. **TRANSFER**

- 6.1 Subject to clause 6.2, at any time during the Step-in Period the Authority may give notice ("Proposed Transfer Notice") to the Contractor and/or the Licensor (as the case may be) that it wishes the Authority or Substitute Entity to assume by way of novation, transfer, sale or other disposal the rights and obligations of the Employer under either or both of the Ecodeco Construction Contracts and/or Project Co under the Operational Licence and specifying a date, falling not later than thirty (30) Business Days after the date of the Proposed Transfer Notice, on which such assumption is to be effective (which date, if such assumption shall become effective in accordance with this clause 6, shall be known as the "Transfer Effective Date").
- 6.2 Prior to the issue of a Proposed Transfer Notice the Authority shall (save where the Substitute Entity is the Authority) request the consent of the Contractor and/or the Licensor (as the case may be) (such consent not to be unreasonably withheld or delayed) to the identity of the Substitute Entity. The Contractor may, within fifteen (15) Business Days of the Proposed Transfer Notice notify the Authority that it does not consent to the Transfer if, acting reasonably, it is not satisfied that the Substitute Entity has:-
- 6.2.1 the legal capacity, power and authorisation; or
- 6.2.2 the technical competence, financial standing and resources to perform and discharge all the obligations, liabilities and duties of the Employer under the Ecodeco Construction Contracts and/or Project Co under the Operational Licence. The Contractor and/or the Licensor (as the case may be) shall be deemed to have consented to the identity of the Substitute Entity:-
- (a) where the Substitute Entity is the Authority; or
- (b) in any other case, unless it gives written notice to the Authority to the contrary within fifteen (15) Business Days of the request from the Authority pursuant to this clause 6.2.
- 6.3 On the Transfer Effective Date:-
- 6.3.1 the Substitute Entity shall become a party to:-

- (a) the relevant Ecodeco Construction Contract in place of the Employer (provided that a Proposed Transfer Notice has been issued in relation to the relevant Ecodeco Construction Contract);
 - (b) this Agreement in place of the Employer and thereafter shall be treated as if it is named as a party hereto in place of the Employer; and
 - (c) the Operational Licence in place of Project Co (provided that a Proposed Transfer Notice has been issued in relation to the Operational Licence).
- 6.3.2 the parties to the relevant Ecodeco Construction Contract and/or the Operational Licence and the Substitute Entity shall enter into a novation agreement and any other requisite agreements (except for any others expressly provided for elsewhere in this clause 6.3) in form and substance satisfactory to the Authority, the Contractor and/or the Licensor (as the case may be) (acting reasonably) pursuant to which the Substitute Entity shall be granted all of the rights and assume all of the obligations of Employer under the relevant Ecodeco Construction Contract and/or Project Co under the Operational Licence;
- 6.3.3 the parties to the relevant Ecodeco Construction Contract (other than the Employer) and the Operational Licence (other than Project Co) shall owe their respective obligations under the relevant Ecodeco Construction Contract and/or the Operational Licence arising on and after the Transfer Effective Date to the Substitute Entity and the receipt, acknowledgment or acquiescence of the Substitute Entity shall be a good discharge;
- 6.3.4 the Authority shall be released from the Step-in Undertaking, provided that the release of the Authority from the Step-in Undertaking shall be without prejudice to all obligations of the Authority under the Step-in Undertaking which have accrued up to the Transfer Effective Date and are identifiable as at such date shall have been discharged in full on or before such date;
- 6.3.5 the Substitute Entity shall execute such agreements and/or documents as shall be necessary to ensure that the Contractor and/or the Licensor (as the case may be) is in substantially the same contractual position with the Substitute Entity as the Contractor was with the Employer and/or as the Licensor was with Project Co as at the Transfer Effective Date subject to any amendments thereto agreed (the parties acting reasonably) between the Contractor, the Licensor and the Substitute Entity pursuant to clause 6.3.2.
- 6.4 Each of the parties to the Ecodeco Construction Contracts and the Operational Licence hereby expressly consents to any and agrees to transfer by novation, transfer, assignment or otherwise of the Relevant Agreements to a Substitute Entity in accordance with the provisions of this clause 6.
- 6.5 On or after the Transfer Effective Date:-
- 6.5.1 the Contractor shall only be entitled to exercise its rights of termination under the Ecodeco Construction Contracts; and
 - 6.5.2 the Licensor shall only be entitled to exercise its rights of termination under the Operational Licence
- (as appropriate) in respect of any event arising after the Transfer Effective Date provided that such event is not a breach of the Ecodeco Construction Contracts or the Operational

Licence (as appropriate) which is capable of remedy and is remedied within any relevant remedy time period determined in accordance with the relevant provisions of the Ecodeco Construction Contracts and the Operational Licence. For the purposes only of this clause 6.5 such time period shall be deemed to commence five (5) Business Days after the Transfer Effective Date.

- 6.6 If as at the expiry of the Step-in Period the Authority shall be in the course of conducting discussions in good faith with a Substitute Entity then the Step-in Period shall not expire but shall continue until a date specified by the Authority but no later than six (6) months after the expiry of the Step-in Period, or if conditional contracts have been entered into with a Substitute Entity as at the expiry of the Step-in Period then the Step-in Period shall not expire but shall continue until the date such contracts come into full force and effect provided that such date shall not be later than forty (40) Business Days after the date on which the conditional contracts were entered into.
- 6.7 The parties shall do all acts and things necessary to transfer the benefit of the Operational Licence to the Substitute Entity under that agreement.

7. COLLATERAL WARRANTIES

- 7.1 The Contractor undertakes to the Authority that it has complied with and shall continue to comply with and fulfil its obligations under the Ecodeco Construction Contracts and the Licensor undertakes to the Authority that it has complied with and shall continue to comply with and fulfil its obligations under the Operational Licence provided that, in the event of any breach of this clause 7:-
- 7.1.1 the Contractor shall have no greater liability (excluding any rights of set off or counterclaim) to the Authority under this Agreement than it would have had to the Authority under the Ecodeco Construction Contracts had it been named as the employer thereunder and the Licensor shall have no greater liability (excluding any rights of set off or counterclaim) to the Authority under this Agreement than it would have had to the Authority under the Operational Licence had it been named as the licensee thereunder;
- 7.1.2 the Contractor shall be entitled to rely on the equivalent rights of defence (excluding any rights of set off or counterclaim) and limitation of liability as are or would have been available to it if the Authority had been a party to, and had brought a claim under, the Ecodeco Construction Contracts and the Licensor shall be entitled to rely on the equivalent rights of defence (excluding any rights of set off or counterclaim) and limitation of liability as are or would have been available to it if the Authority had been a party to, and had brought a claim under, the Operational Licence; and
- 7.1.3 the liability of the Contactor to the Employer under the Ecodeco Construction Contracts and/or the liability of the Licensor to the licensee under the Operational Licence shall be reduced to the extent any corresponding liability of the Contractor and/or the Licensor (as the case may be) to the Authority under this clause 7 is discharged.
- 7.2 The obligations and liabilities of the Contractor and/or the Licensor (as the case may be) under this clause 7 shall not be limited or excluded by any enquiry or inspection into any matter which may be made or carried out by the Authority or by the appointment of any person, firm or company by the Authority to make or carry out any enquiry or inspection and whether or not any independent liability of any such person, firm or company to the Authority arises in connection therewith.

- 7.3 No action or proceedings for any breach of this clause 7 shall be commenced against the Contractor after the expiry of twelve (12) years from the date of completion of the Works as evidenced by the issue of the Taking Over Certificate under the Ecodeco Construction Contracts.
- 7.4 The Contractor makes the representations and warranties as to itself set out in clauses 8.3.1 to 8.3.10 (inclusive).

8. **REPRESENTATIONS AND WARRANTIES**

- 8.1 The Contractor and the Licensor acknowledge that the Authority has entered into this Agreement in reliance on the representations and warranties made by it hereunder.
- 8.2 The representations and warranties in this clause 8 are made on the date of this Agreement.
- 8.3 Each of the Contractor and the Licensor represent and warrants that:-
- 8.3.1 it is duly incorporated and validly existing with limited liability under the laws of its place of incorporation and has the corporate power to own its assets and to carry on its business;
- 8.3.2 it has the power and capacity to enter into and comply with its obligations under this Agreement and each Relevant Agreement to which it is a party;
- 8.3.3 it has taken all necessary shareholder and other corporate action:-
- (a) to authorise the entry into and compliance with its obligations under this Agreement and each Relevant Agreement to which it is party;
 - (b) to ensure that its obligations under this Agreement and each Relevant Agreement to which it is a party are valid, legally binding and enforceable in accordance with their terms; and
 - (c) to make this Agreement and each Relevant Agreement to which it is a party admissible in evidence in the courts of England;
- 8.3.4 the entry into by it, the exercise of its rights under and the compliance with its obligations under this Agreement and each Relevant Agreement to which it is party do not:-
- (a) contravene any law, regulation, judgment or order to which it is subject;
 - (b) conflict with its constitutional documents;
 - (c) breach any agreement or the terms of any consent binding upon it or any of its assets; or
 - (d) oblige to create any security or result in the creation of any security over any of its assets other than under the Security Documents;
- 8.3.5 no dispute, litigation, arbitration or administrative proceedings are current or pending or, so far as it is aware, threatened against it which would have a material adverse effect on its business or financial condition or its ability to perform its obligations under this Agreement and each Relevant Agreement to which it is a party;

- 8.3.6 it is not insolvent and it has not taken any action nor have any steps been started against it which are continuing for bankruptcy, sequestration, dissolution or reorganisation, nor the enforcement of any security over its assets or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or any of its assets or revenues and which are not frivolous or vexatious;
- 8.3.7 claims made against it under this Agreement and each Relevant Agreement to which it is a party will rank at least pari passu with the claims of all its other unsecured creditors save those whose claims are preferred solely by any bankruptcy, insolvency, liquidation or other similar laws of general application in its jurisdiction of incorporation;
- 8.3.8 in any proceedings taken in its jurisdiction of incorporation in relation to this Agreement and each Relevant Agreement to which it is party, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process;
- 8.3.9 under the laws of its jurisdiction of incorporation in force at the date hereof, it is not necessary that this Agreement or any Relevant Agreement to which it is a party be filed, recorded or enrolled with any court or other authority in its jurisdiction of incorporation or that any stamp, registration or similar tax to be paid on or in relation to this Agreement or such Relevant Agreement;
- 8.3.10 the Relevant Agreements contain all the terms of the agreement between:-
- (a) the Employer and the Contractor with respect to the subject matter of the Relevant Agreements; and
 - (b) Project Co and the Licensor with respect to the subject matter of the Relevant Agreements.

9. **MISCELLANEOUS**

- 9.1 The Contractor, the Licensor, the Employer and Project Co shall, at the Employer's expense (or Project Co's expense in relation to the Operational Licence) take whatever action:-
- 9.1.1 the Authority; or
 - 9.1.2 a Substitute Entity taking a transfer in accordance with clause 6,
- ay reasonably require for perfecting any transfer, release or assumption under clause 3, 4 or 6 including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Authority or Substitute Entity reasonably requires.
- 9.2 In the event of any conflict or inconsistency between the provisions of this Agreement and the Relevant Agreements, the provisions of this Agreement shall prevail.
- 9.3 No purported amendment or modification of this Agreement shall be valid unless in writing executed by the parties.

10. **NO IMPLIED WAIVER**

- 10.1 No failure or delay by the Authority or the Contractor or the Licensor in exercising any right, power or privilege under this Agreement will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 10.2 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 10.3 A waiver given or consent granted by the Authority or the Contractor or the Licensor under this Agreement will be effective only if given in writing and then only in the instance and for the purpose for which it is given.

11. **ASSIGNMENT**

- 11.1 The Contractor and the Licensor consent to the benefit of this Agreement being assigned twice only, and thereafter only with the prior written consent of the Contractor and the Licensor (not to be unreasonably withheld or delayed), provided always that the maximum number of two assignments referred to above shall not be affected by any assignment or transfer set out in clause 11.2.
- 11.2 The Authority may assign or transfer its rights and obligations under this Agreement to a successor Authority in which event the Contractor and the Licensor shall enter into a direct agreement with the successor Authority on the same terms as this Agreement and substantially the same terms as this Agreement in all other respects.
- 11.3 The Contractor and the Licensor each may assign or transfer its rights and obligations under this Agreement to a wholly-owned subsidiary, or as a result of the Contractor's and/or the Licensor's amalgamating, merging or consolidating with or into any other person or being the subject of any reconstruction, provided, in each case, that the Authority has given its prior written approval (such consent not to be unreasonably withheld or delayed).

12. **NOTICES**

- 12.1 Except as specifically provided otherwise in this Agreement, any notice, demand, consent, agreement or other communication ("Notice") to be served under or in connection with this Agreement will be in writing and will be made by letter or by facsimile transmission to the party to be served.
- 12.2 The address and facsimile number of each party to this Agreement for the purposes of clause 12.1 are:-

12.2.1 Authority

Cumbria County Council
The Courts
Carlisle
Cumbria
CA3 8NA

Attention Graham Harrison, Authority Representative

Fax 01228 607 724

12.2.2 Employer

Shanks Waste Management Limited
2 Dunedin House
Auckland Park
Mount Farm
Milton Keynes
Buckinghamshire
MK1 1BU

Attention Gerard McCabe

Fax 01768 892620

12.2.3 Contractor

Sistema Ecodeco UK Limited
Matrix House
12-16 Lionel Road
Canvey Island
Essex
S8 9DE

Attention Mr Michele Sparacino

Fax +44(0)1707658265

12.2.4 Project Co

Shanks Cumbria Limited
Dunedin House
Auckland Park
Mount Farm
Milton Keynes
Buckinghamshire
MK1 1BU

Attention Peter Sharpe

Fax 01768 892620

12.2.5 Licensor

EcoDeco Srl
Via Vittor Pisani
6 Milan
Italy

Attention Mr Michele Sparacino

Fax +390266995270

12.2.6 the address and facsimile number notified by that party for this purpose to the Authority on or before the date it becomes a party to this Agreement (in the case of any person who becomes a party after the date of this Agreement); or

- 12.2.7 any other address and facsimile number notified by that party for this purpose to the Authority by not less than five (5) Business Days' notice.
- 12.3 Any Notice to be served by any party to this Agreement on the Authority will be effective only if it is expressly marked for the attention of the department or officer (if any) specified in conjunction with the relevant address and facsimile number referred to in clause 12.2.
- 12.4 Subject to clause 12.5, a Notice will be deemed to be given as follows:-
- 12.4.1 if by letter, when delivered personally or on actual receipt; and
- 12.4.2 if by facsimile, when delivered.
- 12.5 A Notice given in accordance with clause 12.4 but received on a non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day.
- 12.6 Any Notice must be in English.
- 12.7 All other documents provided under or in connection with this Agreement must be:-
- 12.7.1 in English; or
- 12.7.2 if not in English, accompanied by a certified English translation in which case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

13. **CONFIDENTIALITY**

The parties to this Agreement will keep this Agreement and its subject matter (including all details relating to the structure and financing of the Project) confidential, except to the extent that they are required by law or regulation to disclose the same. The Authority agrees to this Agreement to hold confidential all information, which it acquires under or in connection with this Agreement, except to the extent it is required by law or regulation to disclose it or it comes into the public domain (otherwise than as a result of a breach of this clause 13) and agrees to execute and deliver to the Licensor a confidentiality undertaking in the form set out at enclosure 3 Part 2 of the Operational Licence. A party may, subject, where relevant, to any confidentiality obligations in the Relevant Agreements, disclose any such information to its auditors, legal advisers or other professional advisers ("Professionals") for any purpose connected with the Service Contract, provided that the relevant party takes reasonable steps to procure that each Professional maintains the confidentiality of that information.

14. **INVALIDITY OF ANY PROVISION**

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.

15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

16. **CONTRACT (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 16 does not affect any right or remedy, which exists or is available otherwise than pursuant to that Act.

17. **GOVERNING LAW AND SUBMISSION TO JURISDICTION**

17.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with English law.

17.2 For the benefit of the Authority, the Contractor and the Licensor irrevocably submit to the jurisdiction of the courts in England for the purpose of hearing and determining any dispute arising out of this Agreement and the purpose of enforcement of any judgment against its assets.

17.3 The submission to the jurisdiction of the courts referred to in clause 17.2 shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor and/or the Licensor in any other court of competent jurisdiction nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

IN WITNESS this document has been executed as a deed on the day and year that appears first on page 1.

THE COMMON SEAL of CUMBRIA)
COUNTY COUNCIL was affixed in the)
presence of:-)

Authorised Signatory

Authorised Signatory

EXECUTED AS A DEED by SISTEMA)
ECODECO UK LIMITED acting by its)
director duly authorised by the board:-)

Director

EXECUTED as a deed by SHANKS)
WASTE MANAGEMENT LIMITED by a)
director in the presence of a witness:-)

Signature

Name (block capitals)

Director

Witness signature

Witness name (block capitals)

Witness address