

**SCHEDULE 34**

**Tax Risk Sharing Mechanism**

This is Schedule 34 comprising the Tax Risk Sharing Mechanism referred to in the Project Agreement for the provision of waste services to Cumbria

between

**CUMBRIA COUNTY COUNCIL**

and

**SHANKS CUMBRIA LIMITED**



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## **SCHEDULE 34 - TAX RISK SHARING MECHANISM**

Schedule 34 makes provision for payments to be made by the Authority to the Contractor or by the Contractor to the Authority in the event that the relief from corporation tax available to the Contractor in any accounting period in relation to expenditure incurred on the construction of the New Facilities and on the maintenance and repair of the Waste Management Facilities is different to that assumed to be available in the Original Financial Model.

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Schedule 34, the following words have the following meanings:-

“Adjusted Assumed Profits”	in relation to any Relevant Accounting Period, means the taxable profits of the Contractor for that Relevant Accounting Period, as determined for that period in accordance with paragraph 3.2;
“Assumed Profits”	in relation to any Relevant Accounting Period, means the taxable profits of the Contractor for that Relevant Accounting Period, as shown in <del>the Original Financial Model</del> <i>Appendix 1 to this Schedule</i> ;
“Base Profits”	in relation to any Relevant Accounting Period, means the taxable profits of the Contractor for that Relevant Accounting Period, as determined for that period in accordance with paragraph 2;
“Deemed Premium Relief”	means relief from corporation tax under Chapter 4 of Part 4 of the Corporation Tax Act 2009;
“Eligible Lifecycle Capital Expenditure”	means the Lifecycle Waste Capital Expenditure by reference to which the Contractor is entitled to claim Writing-Down Allowances;
“Eligible Lifecycle Capital Expenditure Percentage”	the percentage determined in accordance with paragraph 3.1.3;
“Eligible Waste Capital Expenditure”	means the Waste Capital Expenditure by reference to which the Contractor is entitled to claim Writing-Down Allowances;
“Eligible Waste Capital Expenditure Percentage”	the percentage determined in accordance with paragraph 3.1.1;
“Lifecycle Capital Expenditure”	means the capital expenditure actually incurred by the Contractor on the Waste Management Facilities with funding from the LRA2 Account (as defined in the Loan Agreement);
“Modelled Lifecycle Capital Expenditure”	<i>REDACTED – 5 lines</i>

“Modelled Non-Eligible Lifecycle Capital Expenditure”	means the Modelled Lifecycle Capital Expenditure in relation to which the Contractor is not, on the basis of the assumption set out in paragraph <b>Error! Reference source not found.</b> , eligible for Writing-Down Allowances;
“Modelled Non-Eligible Project Risk Expenditure”	means the Modelled Project Risk Expenditure in relation to which the Contractor is not, on the basis of the assumption set out in paragraph <b>Error! Reference source not found.</b> , eligible for Writing-Down Allowances;
“Modelled Non-Eligible Waste Capital Expenditure”	means the Modelled Waste Capital Expenditure in relation to which the Contractor is not, on the basis of the assumption set out in paragraph <b>Error! Reference source not found.</b> , eligible for Writing-Down Allowances;
“Modelled Project Risk Expenditure”	<i>REDACTED – 5 lines</i>
“Modelled Waste Capital Expenditure”	<i>REDACTED – 5 lines</i>
“Non-Eligible Lifecycle Capital Expenditure”	means the Lifecycle Capital Expenditure that is not Eligible Lifecycle Capital Expenditure;
“Non-Eligible Lifecycle Capital Expenditure Percentage”	the percentage determined in accordance with paragraph 3.1.4;
“Non-Eligible Waste Capital Expenditure”	means the Waste Capital Expenditure that is not Eligible Waste Capital Expenditure;
“Non-Eligible Waste Capital Expenditure Percentage”	the percentage determined in accordance with paragraph 3.1.2;
“Relevant Accounting Period”	means any accounting period of the Contractor ending on or after 31 December 2027 and on or before 31 December 2034;
“Waste Capital	means the capital expenditure actually incurred by the

Expenditure” Contractor on the construction of the New Facilities; and  
“Writing-Down Allowances” means plant and machinery allowances under Part 2 of the Capital Allowances Act 2001.

1.2 If, after the date of this Agreement, there is introduced a new form of relief from corporation tax that is available to the Contractor in relation to capital expenditure incurred by it on the construction of the New Facilities or on the repair or maintenance of the Waste Management Facilities and this relief supplements or otherwise increases the relief from corporation tax that is available to the Contractor in relation to Writing-Down Allowances and/or Deemed Premium Relief, the benefit of this supplementary or increased relief shall be made available to the Authority on the same basis as this Schedule 34 (and, accordingly, appropriate amendments shall be made to this Schedule 34 to give effect to this).

1.3 The Contractor shall not be required to make available to the Authority in accordance with paragraph 1.2 the benefit of any supplementary or increased relief to the extent that such relief does not increase the relief from corporation tax that is available to the Contractor in excess of the relief that would be available to it if:-

1.3.1 *REDACTED – 3 lines*

1.3.2 *REDACTED – 3 lines*

## 2. **BASE PROFITS**

2.1 The Authority and the Contractor shall, promptly following Financial Close, determine the taxable profits of the Contractor for each of the Relevant Accounting Periods on the basis of the same assumptions as the assumptions taken into account in the Original Financial Model (the reference to taxable profits being the defined range “TaxAmountSubjectToTax” in the Original Financial Model) save that it shall be assumed that:-

2.1.1 *REDACTED – 4 lines*

2.1.2 *REDACTED – 4 lines*

2.1.3 *REDACTED – 4 lines*

- 2.1.4 the Contractor is not entitled to Deemed Premium Relief in relation to any part of the Modelled Waste Capital Expenditure or the Modelled Lifecycle Capital Expenditure.
- 2.2 The Authority and the Contractor shall, promptly following determination of the taxable profits of the Contractor for the Relevant Accounting Periods in accordance with paragraph 2.1, agree a table setting out details of:-
- 2.2.1 the Assumed Profits; and
- 2.2.2 the Base Profits,
- for each of the Relevant Accounting Periods. The table shall, in the absence of manifest error, be binding on the Authority and the Contractor.

### 3. **ADJUSTED ASSUMED PROFITS**

- 3.1 The Authority and the Contractor shall, as soon as practicable after the end of the accounting period of the Contractor (being not later than the period ending on 31 December 2026) in which the aggregate Lifecycle Waste Expenditure incurred by the Contractor for all periods up to and including that period exceeds (*FIGURE REDACTED*), determine the following percentages:-
- 3.1.1 the Eligible Waste Capital Expenditure as a percentage of the Waste Capital Expenditure;
- 3.1.2 the Waste Capital Expenditure by reference to which the Contractor is entitled to Deemed Premium Relief as a percentage of the Non-Eligible Waste Capital Expenditure;
- 3.1.3 the Eligible Lifecycle Capital Expenditure incurred up to the end of that period as a percentage of the Lifecycle Capital Expenditure incurred up to the end of that period; and
- 3.1.4 the Lifecycle Capital Expenditure incurred up to the end of that period by reference to which the Contractor is entitled to Deemed Premium Relief as a percentage of the Non-Eligible Lifecycle Capital Expenditure incurred up to the end of that period.
- 3.2 The Authority and the Contractor shall, as soon as practicable after they have determined the percentages referred to in paragraph 3.1, determine the adjusted taxable profits of the Contractor for each of the Relevant Accounting Periods (which may be nil but cannot be a negative amount) on the basis of the same assumptions as the assumptions taken into account in the Original Financial Model save that it shall be assumed that:-
- 3.2.1 *REDACTED – 5 lines*
- 3.2.2 *REDACTED – 6 lines*

3.2.3 the percentage of the Modelled Project Risk Expenditure by reference to which the Contractor is entitled to claim Writing-Down Allowances shall be assumed to be the Eligible Waste Capital Expenditure Percentage of the Modelled Waste Capital Expenditure;

3.2.4 the percentage of the Modelled Non-Eligible Waste Capital Expenditure and the Modelled Non-Eligible Project Risk Expenditure by reference to which the Contractor is entitled to Deemed Premium Relief shall be assumed to be the Non-Eligible Waste Capital Expenditure Percentage of the Modelled Non-Eligible Waste Capital Expenditure;

3.2.5 the percentage of the Modelled Non-Eligible Lifecycle Capital Expenditure by reference to which the Contractor is entitled to Deemed Premium Relief shall be assumed to be the Non-Eligible Lifecycle Capital Expenditure Percentage of the Modelled Non-Eligible Lifecycle Capital Expenditure;

3.2.6 the rate at which Writing-Down Allowances are available in relation to capital expenditure incurred on plant and machinery shall be assumed to be:-

(a) *REDACTED – 5 lines*

(b) *REDACTED – 6 lines*

3.2.7 the rate at which Writing-Down Allowances are available in relation to capital expenditure incurred on plant and machinery that are integral features shall be assumed to be:-

(a) *REDACTED – 6 lines*

(b) *REDACTED – 5 lines*

3.3 Where:-

3.3.1 *REDACTED – 2 lines*

3.3.2 REDACTED – 5 lines

REDACTED – 7 lines

3.4 Where:-

3.4.1 REDACTED – 2 lines

3.4.2 REDACTED – 5 lines

REDACTED – 7 lines

3.5 REDACTED – 5 lines

#### 4. **PAYMENTS**

4.1 If the Adjusted Assumed Profits for any Relevant Accounting Period are equal to, or higher than, the Assumed Profits for that period, the Authority shall, within one month after the end of that period, pay to the Contractor the amount (X) calculated in accordance with the following formula:-

*FORMULA REDACTED*

where:-

A is the Adjusted Assumed Profits for that period;

B is the Assumed Profits for that period; and

C is the Base Profits for that period.

- 4.2 If the Adjusted Assumed Profits for any Relevant Accounting Period are lower than the Assumed Profits for that period the Authority shall, within one month after the end of that period, pay to the Contractor the amount (Y) calculated in accordance with the following formula (if a positive amount) or the Contractor shall, within one month after the end of that period, pay to the Authority the amount (Y) calculated in accordance with the following formula (if a negative amount):-

*FORMULA REDACTED*

where:-

A is the Adjusted Assumed Profits for that period;

B is the Assumed Profits for that period; and

C is the Base Profits for that period.

- 4.3 *REDACTED – 3 lines*



**SCHEDULE 34**

**Appendix 1 – Assumed Profits**

<b>Accounting Period Ending</b>	<b>Taxable Profits (£000s) ALL FIGURES REDACTED</b>
<i>31-Mar-10</i>	
<i>31-Mar-11</i>	
<i>31-Mar-12</i>	
<i>31-Mar-13</i>	
<i>31-Mar-14</i>	
<i>31-Mar-15</i>	
<i>31-Mar-16</i>	
<i>31-Mar-17</i>	
<i>31-Mar-18</i>	
<i>31-Mar-19</i>	
<i>31-Mar-20</i>	
<i>31-Mar-21</i>	
<i>31-Mar-22</i>	
<i>31-Mar-23</i>	
<i>31-Mar-24</i>	
<i>31-Mar-25</i>	
<i>31-Mar-26</i>	
<i>31-Mar-27</i>	
<i>31-Mar-28</i>	
<i>31-Mar-29</i>	
<i>31-Mar-30</i>	
<i>31-Mar-31</i>	
<i>31-Mar-32</i>	
<i>31-Mar-33</i>	
<i>31-Mar-34</i>	
<i>31-Mar-35</i>	

**SCHEDULE 34**

**Appendix 2 – Base Profits**

<b>Accounting Period Ending</b>	<b>Taxable Profits (£000s) ALL FIGURES REDACTED</b>
31-Mar-10	
31-Mar-11	
31-Mar-12	
31-Mar-13	
31-Mar-14	
31-Mar-15	
31-Mar-16	
31-Mar-17	
31-Mar-18	
31-Mar-19	
31-Mar-20	
31-Mar-21	
31-Mar-22	
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31-Mar-27	
31-Mar-28	
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31-Mar-30	
31-Mar-31	
31-Mar-32	
31-Mar-33	
31-Mar-34	
31-Mar-35	