

DATED _____ 2012

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

and

BARNLEY METROPOLITAN BOROUGH COUNCIL (2)

and

DONCASTER BOROUGH COUNCIL (3)

and

ROTHERHAM BOROUGH COUNCIL (4)

and

LLOYDS TSB BANK PLC (5)

and

CURRIE & BROWN UK LIMITED (6)

APPOINTMENT OF INDEPENDENT CERTIFIER

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CONTENTS

SECTION	PAGE
1 INTERPRETATION	5
2 APPOINTMENT	7
3 DURATION	10
4 PAYMENT	10
5 LIMITATIONS ON THE AUTHORITY OF THE INDEPENDENT CERTIFIER	12
6 TERMINATION	13
7 CONFIDENTIAL INFORMATION	16
8 PROFESSIONAL INDEMNITY INSURANCE	17
9 COPYRIGHT	18
10 COLLATERAL WARRANTIES	19
11 QUALITY ASSURANCE	19
12 LIMITATION OF LIABILITY	20
13 NOTICE	20
14 ASSIGNMENT	22
15 CUMULATIVE RIGHTS AND ENFORCEMENT	22
16 WAIVER	23
17 SEVERABILITY	23
18 VARIATION	23
19 ENTIRE AGREEMENT	23
20 DISPUTE RESOLUTION PROCEDURE	24
21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	24
22 GOVERNING LAW AND JURISDICTION	24
23 COUNTERPARTS	24
SCHEDULE 1 - THE IC SERVICES	29
SCHEDULE 2 - FEE	30
PART 1	30
PART 2	32
SCHEDULE 3	33
PART 1 - FORM OF ACCEPTANCE TEST CERTIFICATE	33
PART 2 - FORM OF READINESS TEST CERTIFICATE	34
SCHEDULE 4 - FORM OF COLLATERAL WARRANTY	1
1 WARRANTY	3

2	LIMITATION	3
3	PROFESSIONAL INDEMNITY INSURANCE	5
4	ASSIGNMENT	6
5	GOVERNING LAW	6
6	THIRD PARTY RIGHTS	6

BETWEEN:

- (1) **3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED** a company incorporated under the laws of England and Wales with registered number 7820886, whose registered office is at Dunedin House, Auckland Park, Bletchley, Milton Keynes, Buckinghamshire MK1 1BU (the "**Contractor**");
- (2) **BARNSELEY METROPOLITAN BOROUGH COUNCIL** whose principal office is at The Town Hall, Barnsley, South Yorkshire S70 2TA ("**Barnsley**");
- (3) **DONCASTER BOROUGH COUNCIL** whose principal office is at PO Box 71, Copley House, Waterdale, Doncaster DN1 3EQ ("**Doncaster**");
- (4) **ROTHERHAM BOROUGH COUNCIL** whose principal office is at Riverside House, Main Street, Rotherham S60 1AE ("**Rotherham**");

Barnsley, Doncaster and Rotherham together (the "**Councils**" and each a "**Council**");
- (5) **LLOYDS TSB BANK PLC** a company incorporated under the laws of England and Wales with registered number 00002065, whose registered address is at 25 Gresham Street, London EC2V 7HN as facility agent and security agent for the Senior Lenders from time to time under the Facility Agreement (the "**Agent**" which term shall include any substitute or replacement agent from time to time under the Facility Agreement); and
- (6) **CURRIE & BROWN UK LIMITED** a company registered in England and Wales under company number 01300409 whose registered office is at Dashwood House, 69 Old Broad Street, London EC2M 1QS (the "**Independent Certifier**").

RECITALS:

WHEREBY IT IS AGREED as follows:

- (A) The Contractor has entered into a project agreement (the "**Contract**") with the Councils inter alia for the financing, design, construction and commissioning of certain facilities and the provision of certain services in connection with the management of waste arising in the Barnsley, Doncaster and Rotherham administrative areas (the "**Project**").

- (B) The Contractor will undertake the works to construct and develop the ITSAD Facility in accordance with the Works Delivery Plan and the Contract; (the "Works").
- (C) The Contractor and the Agent have entered into the Senior Financing Agreements pursuant to which the Agent has agreed to provide certain finance to the Contractor in relation to the Project.
- (D) The Independent Certifier is an independent adviser willing to provide services to the Contractor and the Councils and for the benefit of the Agent in relation to the Contract.
- (E) The Appointers and the Agent have agreed to enter into this Agreement with the Independent Certifier to carry out the duties and obligations ascribed to the Independent Certifier in the Contract and upon the terms of this Agreement.

1 INTERPRETATION

In this Agreement, unless expressly defined in this Agreement or the context requires otherwise, words and expressions defined in the Contract have the same meanings in this Agreement as in the Contract:

1.1 The following words and expressions mean:

"Appointers" means the Councils and the Contractor;

"Cap" has the meaning as set out in clause 4 (Payment);

"Construction Sub-Contract" means the sub-contract entered into by the Contractor and the Construction Sub-Contractor for the design, construction and commissioning of the whole or part of the Works;

"Contract" has the meaning as set out in the Recitals;

"Documents" has the meaning as set out in clause 9 (Copyright);

"Due Date" has the meaning as set out in clause 4.8 (Payment);

"Fee" means the sum or sums referred to in Schedule 2 (Fee) payable in relation to the performance of the IC Services subject to any adjustment in accordance with this Agreement;

"Final Date" has the meaning as set out in Clause 4.8 (Payment);

"Good Industry Practice" means that degree of skill, care and diligence which would reasonably and ordinarily be expected from time to time of a skilled and experienced person engaged in the same type of undertaking as that of the Independent Certifier under the same or similar circumstances;

"IC Services" means the services to be provided by the Independent Certifier as described in clause 2 (Appointment) and Schedule 1 (The IC Services) as may be amended in accordance with this Agreement;

"Interface Agreement" means the agreement between the Contractor, the Construction Sub-Contractor and the Operating Sub-Contractor;

"Joint Notice" means a written notice signed by a duly authorised representative of each of the Appointers;

"Project" has the meaning as set out in the Recitals;

"Works" has the meaning as set out in the Recitals;

- 1.2 Any schedules shall form part of this Agreement and any references to this Agreement shall include them.
- 1.3 Unless the context requires otherwise, all references to clauses and schedules are references to clauses of and schedules to this Agreement.
- 1.4 References to this Agreement or any other document are to this Agreement or that document in force from time to time and as amended from time to time in accordance with this Agreement or that document (as the case may be).
- 1.5 A reference to a statute or statutory provision shall be construed as including a reference to any subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under that statute or provision (whether before or after the date of this Agreement).
- 1.6 A reference to a statute, statutory provision or subordinate legislation (as so defined) shall be construed as including a reference to that statute, provision or subordinate legislation as in force at the date of this Agreement and as from time to time modified or consolidated, superseded or replaced (whether with or without modification) after the date of this Agreement.

- 1.7 Words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case wherever resident and for whatever purpose) and vice versa.
- 1.8 A reference to a party shall be a reference to a party to this Agreement unless the context requires otherwise.
- 1.9 Words preceding includes, including, in particular or any similar expression shall be construed without limitation by the words which follow those words.
- 1.10 The headings in this Agreement are for ease of reference only and shall not affect its construction or interpretation.

2 APPOINTMENT

- 2.1 The Appointers hereby jointly appoint the Independent Certifier and the Independent Certifier agrees to perform the obligations and tasks which are both ascribed to the Independent Certifier under the Contract and which are set out in Schedule 1 (The IC Services) upon the terms and conditions set out in this Agreement.
- 2.2 The Independent Certifier shall provide the IC Services (including without limitation the exercise of any discretion in the performance of the IC Services) independently, fairly and impartially to and as between the Appointers at such times and at such locations as the Appointers and the Independent Certifier shall agree from time to time. Whilst the Independent Certifier may take account of any representations made by the Appointers the Independent Certifier shall not be bound to comply with any such representations made by them in connection with any matter on which the Independent Certifier is required to exercise its professional judgement.
- 2.3 The Independent Certifier shall promptly and efficiently provide the IC Services:
- 2.3.1 with the degree of skill, care and diligence reasonably to be expected of a properly qualified professional independent certifier experienced in testing buildings and providing services for projects of a similar size, nature, scope, complexity and value to the Project; and
- 2.3.2 in compliance with all Legislation, Good Industry Practice and all current British Standards and Codes of Practice.

- 2.4 The terms and conditions of this Agreement and the warranties and undertakings which it contains are deemed to apply to all IC Services performed and to be performed by the Independent Certifier in relation to the Project both before and after the date of this Agreement.
- 2.5 The Independent Certifier acknowledges that the Appointers and the Agent have relied on, and continue to rely upon, the professional skill and judgment of the Independent Certifier in the performance of the IC Services and it owes a duty of care pursuant to and as set out in clause 2.3 to the Appointers and the Agent and to the Construction Sub-Contractor under the terms of the collateral warranty (referred to in clause 10 (Collateral Warranties)) in the provision by it of the IC Services.
- 2.6 All instructions to the Independent Certifier shall be given in writing by the Contractor and the Councils (acting jointly as far as this is practicable) provided that if either the Contractor or the Councils (acting reasonably where joint instructions are not practicable) instructs the Independent Certifier it shall provide the Contractor or the Councils (as the case may be) with a copy of the relevant instruction immediately following issue of such instruction. Any instruction given by the Contractor or the Councils on its own accord shall be capable of being countermanded by the Contractor or the Councils (as the case may be) immediately following receipt of the copy of the relevant instruction.
- 2.7 The Independent Certifier shall promptly and fully comply with all reasonable instructions given to it by the Councils and the Contractor.
- 2.8 To the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the IC Services or its authorities or responsibilities under this Agreement or prejudices or might prejudice the exercise by the Independent Certifier of its professional judgement in accordance with clauses 2.1 and 2.2, the Independent Certifier shall notify and consult with the Appointers as soon as reasonably possible in order to resolve the conflict before acting upon the instruction.
- 2.9 The Councils and the Contractor agree to (and the Contractor shall procure that the Construction Sub-Contractor and any of their sub-contractors shall) co-operate with and provide reasonable assistance to the Independent Certifier, to familiarise the Independent Certifier with all necessary aspects of the Project and to enable the

Independent Certifier to carry out its obligations under this Agreement or duties under the Contract.

- 2.10 The Independent Certifier acknowledges that it has been provided with a complete copy of the Project Documents. Accordingly, the Independent Certifier shall be deemed to have full knowledge of the provisions of the Project Documents and shall be deemed to be aware of and to have taken full account of all the undertakings and warranties, both expressed and implied, on the part of the Appointers and the Construction Sub-Contractor which are set out in the Project Documents. The Independent Certifier further acknowledges that any breach by it of this Agreement may result in the Appointers and/or the Construction Sub-Contractor incurring liabilities under the Project Documents and other costs and losses and all such liability, costs and losses are hereby agreed to be within the contemplation of the Independent Certifier as being the probable result of any such breach by the Independent Certifier.
- 2.11 Subject to clauses 2.11.1 and 2.11.2, the Independent Certifier shall use Jim Crossman in connection with the performance of the IC Services, who shall be available to the extent that and for so long as may be necessary to ensure the proper performance by the Independent Certifier of the IC Services. Such person shall have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Agreement.
- 2.11.1 Subject to clause 2.11.2, the person specified in this clause 2.11 shall not be removed or replaced by the Independent Certifier unless he ceases to work as a director or employee of the Independent Certifier or is unable to work because of death, ill health or other exceptional circumstances. The Independent Certifier shall, as soon as reasonably practicable, notify the Appointers of any such circumstances and shall be responsible for finding a replacement who shall previously have been approved in writing by the Appointers, provided that such approval shall not be unreasonably withheld or delayed. The replacement shall be of equal standing, experience and technical competence as the person previously appointed.
- 2.11.2 The Independent Certifier shall, within fifteen (15) Business Days of receipt of a Joint Notice issued by the Appointers, remove and replace the person specified in this clause 2.11 provided that such notice shall have been jointly issued by the Appointers on reasonable grounds.

2.12 Nothing in this Agreement shall be construed as imposing on the Independent Certifier liability in respect of design work prepared by others for the Project, provided that the Independent Certifier shall not be relieved by virtue of this clause 2.12 from his duty to notify the Appointers of any issues adversely affecting the Project of which the Independent Certifier becomes aware in the course of performing the IC Services.

2.13 The Independent Certifier shall provide the Appointers and the Agent upon reasonable request with:

2.13.1 copies of any reports and correspondence issued or required to be provided by the Independent Certifier in accordance with this Agreement and/or the IC Services; and

2.13.2 any other information relating to the Project which is in its possession

and shall regularly update the Appointers and the Agent as to progress in the carrying out of the IC Services and shall provide to the Appointers copies of minutes of all meetings it attends relating to the Project.

3 DURATION

This Agreement shall have effect as from the date hereof in relation to all IC Services performed by the Independent Certifier (whether before or after the date hereof) and shall continue until all the IC Services have been performed or this Agreement is otherwise terminated in accordance with the terms of this Agreement.

4 PAYMENT

4.1 The Contractor shall be liable to pay to the Independent Certifier in full satisfaction of its performance of the IC Services, the Fee in respect of labour and all reasonable costs and expenses up to a cap of one hundred and sixteen thousand pounds (£116,400) (exclusive of value added tax) (the "Cap"), payable in accordance with this clause 4 and Schedule 2 (Fee).

4.2 The Fee shall, subject to the provisions of clauses 4.3 to 4.5, be deemed to be inclusive payment for the IC Services and for all costs and expenses of every kind incurred by the Independent Certifier in connection therewith. Subject to the provisions of clauses 4.3 to 4.5, the Contractor shall have no liability to pay to the Independent Certifier any Fee in excess of the Cap.

- 4.3 If the Independent Certifier is required to:
- 4.3.1 provide any additional services in connection with the Project which do not form part of the IC Services; or
 - 4.3.2 materially modify or revise any document by reason of a change in the Works or Services pursuant to Schedule 32 (Change Protocol) of the Contract; or
 - 4.3.3 provide services in connection with the reinstatement of part or the whole of the Project in the event of any significant damage to or destruction of the Project or any part thereof,

then the Independent Certifier and the Contractor shall agree in writing a fair and reasonable additional payment to the Independent Certifier calculated by reference to the extent of such additional services and the hourly and daily rates set out at Part 2 of Schedule 2 (Fee) provided that the Independent Certifier has notified the Appointers in advance of undertaking any such additional service that he is or may be entitled to payment in respect of such additional services and, so far as is possible, the amount of such payment shall be agreed in writing by the Contractor and the Independent Certifier prior to performance of any such additional services.

- 4.4 Nothing in this Agreement shall make the Councils or the Agent liable to the Independent Certifier for any payment or other sum due to the Independent Certifier pursuant to this clause 4 and liability for any such payment or other sums shall remain exclusively with the Contractor.
- 4.5 Clause 4.3 in relation to additional payment shall not apply where and to the extent that any such additional work or services shall have been necessitated, in whole or in part, by any negligence, act, omission or default on the part of the Independent Certifier in the performance of the IC Services.
- 4.6 The Fee shall be paid by instalments as specified in Part 1 of Schedule 2 (Fee) in accordance with the provisions of clauses 4.8 and 4.9.
- 4.7 The Independent Certifier shall submit to the Contractor accounts from time to time as and when any sums become due to the Independent Certifier under this Agreement (but no more frequently than monthly) showing:
- 4.7.1 the instalment of the Fee which is due to the Independent Certifier;

4.7.2 the instalments of the Fee previously paid by the Contractor to the Independent Certifier; and

4.7.3 any other sums due to the Independent Certifier under this Agreement,

and such accounts shall be supported by such documents, vouchers and receipts as shall be reasonably necessary for computing the same or as may be reasonably required by the Contractor to verify and understand the same.

4.8 Subject to clause 4.9 and to any deductions or set-offs which the Contractor is entitled to make under the terms of this Agreement or otherwise at law, payment shall become due upon receipt by the Contractor of the Independent Certifier's accounts (the "**Due Date**"). The final date for payment by the Contractor shall be thirty (30) Days following the Due Date (the "**Final Date**"). Any payment which is not made by the Final Date for payment shall thereafter bear simple interest at a daily rate equivalent to four per cent (4%) per annum above the Royal Bank of Scotland plc base rate from time to time until the date of actual payment.

4.9 The Contractor may, not later than five (5) Days after the Due Date, give the Independent Certifier written notice stating the amount which the Contractor proposes to pay and the basis on which that amount is calculated. Where no such notice is given, the amount to be paid is that stated in the account.

4.10 If the Contractor intends to withhold payment of any amount due to the Independent Certifier, the Contractor shall give written notice to the Independent Certifier no later than five (5) Days before the Final Date for payment specifying the amount to be withheld and the grounds for withholding payment. The Contractor shall not withhold payment of amounts not disputed.

4.11 The Contractor shall pay to the Independent Certifier the total amount of value added tax properly chargeable by the Independent Certifier on the supply of the IC Services under this Agreement.

5 LIMITATIONS ON THE AUTHORITY OF THE INDEPENDENT CERTIFIER

5.1 The Independent Certifier shall not, without the written consent (in the form of a Joint Notice) of the Appointers:

- 5.1.1 make or purport to make any alteration or addition to or omission from the design of the Works (including, without limitation, the setting of Performance Standards) or issue any instruction or direction to any contractor or professional consultant employed or engaged in connection with the Project;
 - 5.1.2 consent or agree to any waiver or release of any obligation of the Contractor or the Councils under the Contract or of any contractor or professional consultant employed or engaged in connection with the Project;
 - 5.1.3 sanction, approve or accept any design submitted by the Contractor or any other contractor or professional consultant employed or engaged in connection with the Project; or
 - 5.1.4 issue any instruction or give any approval or make any agreement which, save as may be necessary for the performance of the IC Services, would or might delay the Project or increase the cost to the Contractor of the Project.
- 5.2 For the avoidance of doubt, the Independent Certifier shall not express an opinion on and shall not interfere with or give any advice or make any representations in respect of any matters which are beyond its role and responsibilities under this Agreement.

6 TERMINATION

- 6.1 The Appointers may by issuing a Joint Notice to the Independent Certifier immediately terminate the Independent Certifier's appointment under this Agreement if the Independent Certifier:
- 6.1.1 is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Certifier within fourteen (14) Days of receipt by the Independent Certifier of a Joint Notice specifying the breach and requiring its remedy;
 - 6.1.2 commits an act or omission amounting to incompetence, gross misconduct or negligence or is responsible for a material delay in the provision of the IC Services;
 - 6.1.3 fails or refuses after written warning to provide the IC Services reasonably and properly required; or

- 6.1.4 ceases for any reason to carry on its business or is unable to pay its debts as they fall due or if any distress or execution is levied or threatened upon the Independent Certifier's property or assets or if the Independent Certifier makes or offers to make any arrangement or composition with its creditors (including taking any step with a view to a moratorium) or commit any act of bankruptcy or if any petition, application or receiving order in bankruptcy is presented or made against it or (if it is a limited company) any resolution or petition to wind up the Independent Certifier's business or other proceeding is made, passed or presented (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency and provided that in the case of a winding up proceeding such proceedings has not been withdrawn, dismissed, set aside or revoked within twenty (20) Business Days) or the Independent Certifier petitions or applies for or arranges for the appointment of, or has an order made appointing to it, a trustee, liquidator, administrator, receiver or manager of the Independent Certifier's undertaking property or assets or any part of them.
- 6.2 The Appointers may by issuing a Joint Notice to the Independent Certifier suspend the Independent Certifier's appointment at any time. During the period of any such suspension payment of the Fee by the Contractor pursuant to clause 4 (Payment) shall be suspended.
- 6.3 If the Contract is rescinded, terminated or repudiated for any reason and, notwithstanding that the validity of such rescission, termination or repudiation may be disputed, the Independent Certifier's appointment under this Agreement may be terminated by Joint Notice and with immediate effect.
- 6.4 Following any termination of this Agreement, but subject to any set-off or deductions which the Contractor may be entitled properly to make as a result of any breach of this Agreement by the Independent Certifier, the Independent Certifier shall be entitled to be paid by the Contractor in full and final settlement of any claim which the Independent Certifier may have in consequence thereof, any fees due under clause 4 (Payment) in respect of IC Services carried out in accordance with this Agreement prior to the date of termination. For the avoidance of doubt, neither the Contractor nor the Councils nor the Agent shall have any liability to the Independent Certifier for loss of profit, loss of contracts or other costs, losses and/or expenses (in each case, whatsoever howsoever) arising out of or in connection with such termination.

- 6.5 Termination of this Agreement shall be without prejudice to any party's accrued rights and obligations under this Agreement as at the date of termination (including the right of the Appointers to recover damages from the Independent Certifier).
- 6.6 If this Agreement is terminated pursuant to clause 6.1, the Independent Certifier shall pay to the Appointers, as the case may be, any reasonable incremental loss, damage or additional costs suffered by each of them including but not limited to any liability under the Project Documents as contemplated by the provisions of clause 2.10 (Appointment).
- 6.7 If this Agreement is terminated in accordance with this clause 6, the Contractor and the Councils shall use reasonable endeavours to engage an alternative independent certifier within twenty-five (25) Business Days, subject to any relevant legal requirements and public procurement rules. The costs incurred in procuring such an alternative appointment shall be borne by the Contractor except in the event of termination pursuant to clause 6.1 in which case the costs shall be borne by the Independent Certifier. If within such period the Contractor and the Councils are unable to procure the appointment of an alternative independent certifier on reasonable commercial terms and termination is caused by the Independent Certifier's default of this Agreement, the Independent Certifier shall pay the Contractor and/or the Councils and/or the Agent, as the case may be, any reasonable additional loss, damage or extra costs suffered by each of them.
- 6.8 Each party's further rights and obligations shall cease immediately on termination except that termination of this Agreement shall not affect the continuing rights and obligations of the Appointers under clauses 7 (Confidential Information), 8 (Professional Indemnity Insurance), 12 (Limitation of Liability), 20 (Dispute Resolution Procedure) and this clause 6 or under any other clause which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.
- 6.9 The Independent Certifier shall only be entitled to terminate its appointment under this Agreement with immediate effect by written notice to the Appointers and the Agent where:
- 6.9.1 the Contractor fails to make payment in accordance with clause 4 (Payment) to the Independent Certifier within twenty (20) Business Days following the Final Date; and

- 6.9.2 after expiry of the period set out in clause 6.9.1 the Independent Certifier has served notice on each of the Appointers indicating that this sum remains unpaid; and
- 6.9.3 such sum remains unpaid for a period of twenty (20) Business Days from the date of service by the Independent Certifier of the notice pursuant to clause 6.9.2.
- 6.10 The Councils or the Agent may elect to make payment to the Independent Certifier of the monies owed by the Contractor pursuant to clause 4 (Payment) before the expiry of the period set out in clause 6.9.3 (or at any time thereafter prior to the termination of this Agreement by the Independent Certifier in accordance with clause 6.9) provided that the Councils or the Agent gives five (5) Business Days notice to the other Appointer of its election to make such payment to the Independent Certifier. Upon receipt of such payment the Independent Certifier's right to terminate this Agreement under clause 6.9 shall cease.
- 6.11 If the Councils elect to make payment to the Independent Certifier of the monies owed by the Contractor pursuant to clause 4 (Payment) before the expiry of the period set out in clause 6.9.3 (or at any time thereafter prior to the termination of this Agreement by the Independent Certifier in accordance with clause 6.9), the Councils shall be entitled to deduct any such sums from the Unitary Charge.

7 CONFIDENTIAL INFORMATION

- 7.1 Save as may be necessary for the proper provision of the IC Services by the Independent Certifier under this Agreement, the Independent Certifier shall treat as secret and confidential and shall not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information relating to the Project or to any of the Appointers', or the Agent's, or the Construction Sub-Contractor's, or the SRF Offtaker's technology or other know how, business plans or finances or any such information relating to a subsidiary, supplier, customer or client of any of the Appointers, or the Agent, or the Construction Sub-Contractor or the SRF Offtaker where the information was received during the period of this Agreement.
- 7.2 Upon termination of this Agreement for whatever reasons the Independent Certifier shall deliver up to the Appointers (as appropriate) all working papers, computer disks

and tapes or other material and copies provided to the Independent Certifier, together with copies of any document or report produced by the Independent Certifier, pursuant either to this Agreement or to any previous obligation owed to the Appointers.

- 7.3 The Independent Certifier shall retain in safe storage at its own cost, for a period of not less than ten (10) Years following termination of this Agreement, all working papers, computer disks, tapes and other material arising out of or in connection with its performance of the IC Services or its obligations under this Agreement.

8 PROFESSIONAL INDEMNITY INSURANCE

- 8.1 Without prejudice to its obligations under this Agreement, or otherwise at law, the Independent Certifier shall take out and maintain professional indemnity insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) for each and every claim in respect of any neglect, error or omission on the Independent Certifier's part in the performance of its obligations under this Agreement for the period commencing on the date on which the IC Services are first provided under this Agreement and expiring twelve (12) Years after the earlier of:

8.1.1 the date of the completion of the IC Services; and

8.1.2 the termination of this Agreement,

provided that such insurance is available at reasonable commercial rates and terms.

- 8.2 Any increased or additional premium required by insurers by reason of the Independent Certifier's own claims record or other acts or omissions particular to the Independent Certifier shall be deemed to be within commercially reasonable rates.
- 8.3 The Independent Certifier shall maintain such insurance with reputable insurers licensed to carry out insurance business in Europe who are acceptable to the Appointers, such acceptance not to be unreasonably withheld or delayed.
- 8.4 The Independent Certifier shall, prior to commencing the provision of the IC Services and no less than thirty (30) Business Days prior to renewal dates, provide to the Appointers written confirmation by an independent company of insurance brokers that such insurance is in force and being properly maintained.

- 8.5 The Independent Certifier shall comply with all conditions and obligations of such insurance policy and shall immediately inform the Appointers if such insurance ceases to be maintained. If such insurance ceases to be available at commercially reasonable rates and on commercially reasonable terms, other than by reason of the Independent Certifier's own claims record or other acts, omissions or other matters particular to the Independent Certifier, the Independent Certifier shall immediately notify the Appointers and shall discuss the best means of protecting each party's position in the absence of such insurance and the Independent Certifier shall, if requested by the Appointers, take out such insurance with such a limit of indemnity as is available in the market at commercially reasonable rates and upon commercially reasonable terms.
- 8.6 The obligations in this clause 8 shall continue notwithstanding termination of this Agreement for any reason whatsoever, including (without limitation) breach by the Appointers.

9 COPYRIGHT

- 9.1 The copyright in all reports, statements, summaries, certificates, calculations and other similar documents provided by or on behalf of the Independent Certifier in connection with the Project (the "**Documents**") shall remain vested in the Independent Certifier, but the Appointers and the Agent shall have an irrevocable, royalty-free transferable licence to copy and use the Documents and to reproduce their contents for any purpose related to the Project, including but without limitation, the construction, completion, maintenance, operation, reinstatement, extension and repair of the Project. The Independent Certifier shall not be liable for any misuse by the Appointers or the Agent of the Documents (which shall be determined by reference to, inter alia, the purposes for which the same were prepared).
- 9.2 The licence referred to in clause 9.1 shall carry the right to grant sub-licences and shall be transferable to third parties. The Independent Certifier shall, if so requested by the Appointers or the Agent, at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Appointers and/or the Agent (as the case may be) the rights referred to in clause 9.1. Where a claim or proceeding is made or brought against the Appointers, the Agent and/or the Construction Sub-Contractor which arises out of the infringement of any copyright, unless such infringement has arisen out of the use of the Documents by or on behalf of the Appointers, the Agent and/or the Construction Sub-Contractor otherwise than in

accordance with the terms of this Agreement, the Independent Certifier shall indemnify the Appointers, the Agent and the Construction Sub-Contractor at all times from and against all such claims and proceedings.

10 COLLATERAL WARRANTIES

Within fourteen (14) Days of receipt of a written request from time to time from the Contractor, the Independent Certifier shall execute as a deed one or more collateral warranties in the form annexed as Schedule 4 (Form of Collateral Warranty) in favour of the Construction Sub-Contractor and the Operating Sub-Contractor and any other person having an interest in or providing funding in respect of the Works or any part of the Works.

11 QUALITY ASSURANCE

- 11.1 The Independent Certifier shall visit the Works sufficiently frequently to enable it to perform the IC Services in accordance with this Agreement.
- 11.2 The Independent Certifier shall give reasonable notice to the Appointers and the Construction Sub-Contractor in writing of the date and time of any inspection of the Works and of any Tests and shall allow all parties to accompany the Independent Certifier on the inspection.
- 11.3 The Independent Certifier shall implement a quality system in a form reasonably acceptable to the Appointers in respect of the IC Services, to comply with the requirements of this Agreement and the Contract.
- 11.4 Implementation and compliance with the quality system or acceptance by the Appointers of the quality system shall not relieve the Independent Certifier of its responsibility for the performance of its obligations in accordance with this Agreement.
- 11.5 The Independent Certifier shall comply with all requests by the Council to either provide information or to procure the attendance of specific officers or employees of the Independent Certifier or any sub-contractor (and shall include such a provision in any sub-contracts to be entered into) at any Council Overview & Scrutiny Meetings at which the IC Services are to be discussed.

12 LIMITATION OF LIABILITY

- 12.1 No action or proceedings under or in respect of this Agreement shall be commenced against the Independent Certifier after the expiry of twelve (12) Years from the date of the completion of the IC Services or the termination of this Agreement, if earlier.
- 12.2 The Independent Certifier's maximum aggregate liability to the Appointers and the Agent under or in connection with this Agreement (including any termination of this Agreement) shall be limited to ten million pounds (£10,000,000).
- 12.3 The parties to this Agreement agree that the Agent shall have no liability to the Independent Certifier in respect of any act or omission of, or breach of this Agreement by, the Contractor.

13 NOTICE

- 13.1 A notice or other communication under or in connection with this Agreement shall be in writing and shall be either delivered personally, sent by first class post, email or by facsimile, as follows:

13.1.1 if to the Contractor, to: 3SE (Barnsley, Doncaster & Rotherham)
Limited

Address: Dunedin House

Auckland Park

Mount Farm

Milton Keynes

Buckinghamshire MK1 1BU

Fax: 01908 650 651

Email Address: Company.Secretary@shanks.co.uk

Attention: Company Secretary

with a copy to:

Email Address: Richard.Webb@shanks.co.uk

	Attention:	Richard Webb, Assistant Company Secretary
13.1.2	if to the Councils, to: Authority)	Rotherham Borough Council (as Lead
	Address:	Riverside House Main Street Rotherham S60 1AE
	Fax:	01709 823598
	Attention:	The Chief Executive
13.1.3	if to Agent, to:	Lloyds TSB Bank plc
	Address:	Lloyds TSB Bank plc Wholesale Loans Agency 3 rd Floor 10 Gresham Street London EC2V 7AE
	Fax:	+44 (0)20 7158 3198
	Email Address:	<i>Martin.clancy@lloydsbanking.com</i> Catalina.pimillos@lloydsbanking.com
	Attention:	<i>Martin Clancy, Manager</i> Catalina Pimillos (Assistant Manager)
	Fax:	+44 (0)20 7158 3198
	Email Address:	Andrew.Butt@lloydsbanking.com
	Attention:	Andrew Butt (Manager)
13.1.4	if to Independent Certifier, to:	Currie & Brown UK Ltd
	Address:	Dashwood House

Old Broad Street

London EC2M 1QS

Email Address: jim.crossman@curriebrown.com

Attention: Jim Crossman

or to such other address or facsimile number as a party to this Agreement may notify in writing to the other parties to this Agreement.

14 ASSIGNMENT

- 14.1 The Independent Certifier shall not assign or transfer, or purport to assign or transfer, any of its rights or obligations under this Agreement or sub contract the whole or any part of the IC Services.
- 14.2 Subject to clause 14.3 below, the Contractor and/or the Councils and/or the Agent may assign or transfer any of their rights and obligations under this Agreement to any other person, firm, corporate body or company provided that it gives notice in writing of such assignment or transfer as soon as possible thereafter to the other parties to this Agreement.
- 14.3 While the Independent Certifier is still providing services under this Agreement no such assignment or transfer by the Contractor (other than by way of security) shall be permitted without the consent of the Councils and the Independent Certifier (such consent not to be unreasonably withheld or delayed).

15 CUMULATIVE RIGHTS AND ENFORCEMENT

- 15.1 Any rights and remedies provided for in this Agreement whether in favour of the Contractor, the Agent, the Councils or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to the parties.
- 15.2 The duties and obligations of the Independent Certifier arising under or in connection with this Agreement are owed to the Appointers jointly and severally and the Appointers may accordingly enforce the provisions hereof and, subject to clause 12 (Limitation of Liability), pursue their respective rights hereunder in their own name, whether separately or with each other.

15.3 The Appointers covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Agreement which would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the other's prior written consent, which consent shall not be unreasonably withheld or delayed.

15.4 The parties to this Agreement agree that the Councils and the Construction Sub-Contractor have no liability to the Independent Certifier in respect of any act or omission of, or breach of this Agreement by the Contractor.

16 WAIVER

The failure of any party at any one time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by any other party, nor shall the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

17 SEVERABILITY

In the event that any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall, to that extent, be omitted from this Agreement and the rest of this Agreement shall stand, without affecting the remaining clauses.

18 VARIATION

A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

19 ENTIRE AGREEMENT

This Agreement sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. None of the parties shall be entitled to rely on anything which is not stated in this Agreement or which cannot be implied as being reasonably required to give it business efficacy and is not otherwise inconsistent herewith.

20 DISPUTE RESOLUTION PROCEDURE

- 20.1 Subject to clause 20.2, all disputes shall be resolved in accordance with the provisions and procedures set out at clause 104 (Dispute Resolution) of the Contract except that any reference to the Councils and the Contractor (such terms being defined in the Contract) shall be construed as a reference to more than two (2) parties.
- 20.2 If a dispute under this Agreement raises issues which are substantially the same as or connected with issues raised in a dispute between the Contractor and the Councils under the Contract and if the related dispute has already been referred for determination pursuant to the Contract the dispute under this Agreement may be referred at the option of the Contractor or the Councils for determination pursuant to the Contract.
- 20.3 The Appointers and the Independent Certifier shall co-operate to facilitate the proper, just, economical and expeditious resolution of any and all such disputes which arise under this Agreement.

21 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties agree that, notwithstanding any other provision of this Agreement, this Agreement shall not purport to confer on any third party any right to enforce any term of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 save that (for the avoidance of doubt) nothing contained herein shall prejudice any claim under any collateral warranty given pursuant to this Agreement.

22 GOVERNING LAW AND JURISDICTION

- 22.1 This Agreement, and all matters arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the Laws of England.
- 22.2 Subject to clause 20.1 (Dispute Resolution), the parties to this Agreement submit to the exclusive jurisdiction of the courts of England.

23 COUNTERPARTS

This Agreement may be executed in any number of counterparts which together shall constitute one agreement. Any party may enter into this Agreement by executing a counterpart and this Agreement shall not take effect until it has been executed by all parties.

IN WITNESS of which the parties to this Agreement have duly executed it on the date specified on page one.

Contractor

Executed as a deed by)

3SE (BARNLEY, DONCASTER & ROTHERHAM))

LIMITED acting by its director/attorney)

_____ :)

Signature of director/attorney

Signature of witness

Name of witness

Address of witness

.....

.....

Occupation of witness

Independent Certifier

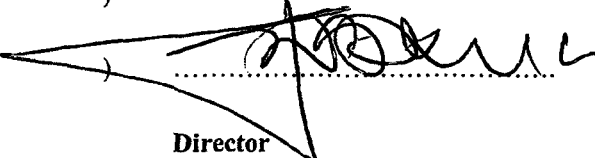
EXECUTED AND DELIVERED)

As a Deed by)

CURRIE & BROWN UK LIMITED)

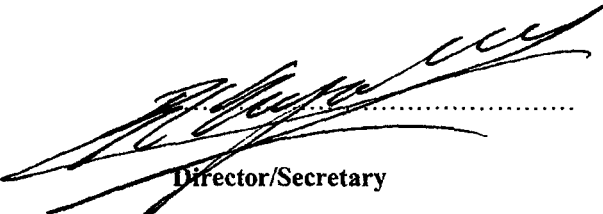
Acting by the signatures of:

JIM CROSSMAN


.....
Director

and

BRIAN THORPE-TRACEY


.....
Director/Secretary

Councils

THE COMMON SEAL OF)

BARNSELY METROPOLITAN)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

THE COMMON SEAL OF)

DONCASTER)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

**Authorised by the Assistant Director of Legal
and Democratic Services**

Number in seal register

THE COMMON SEAL OF)

ROTHERHAM)

BOROUGH COUNCIL)

Was affixed to this Deed)

In the presence of:)

Authorised Signatory

Agent

Signed as a deed by

.....

LLOYDS TSB BANK PLC

(attorney's signature)

by its attorney in exercise of a power of attorney

in the presence of

.....

Signature of witness

Name

Address:

.....

.....

SCHEDULE 1 - THE IC SERVICES

The Independent Certifier shall discharge the functions that the Contract (expressly or impliedly) contemplates will be discharged by the Independent Certifier), including but not limited to the following:

- 1 Familiarise itself with the role (express or implied) under the Contract of the Independent Certifier and review information made available to the Independent Certifier by the Appointers.
- 2 Attend the Site(s), attend such progress meetings and conduct such progress meetings and conduct such inspections of the carrying out of the Works as are necessary to undertake the IC Services.
- 3 In accordance with the provisions of clause 35 (Certification of Completion of the Works) of the Contract, for each of the Facilities:
 - 3.1 assess and determine whether the Tests have been satisfactorily passed;
 - 3.2 where it is determined that the Tests have not been satisfactorily passed, provide the Councils and the Contractor with a report setting out the respects in which they have not been passed;
 - 3.3 issue one or more Readiness Test Certificates or Acceptance Test Certificates in the form set out at PART 1 of Schedule 3 (Form of Acceptance Test Certificate) once it has been determined that the relevant Tests have been satisfactorily passed; and
 - 3.4 identify any Snagging Items that the Contractor is required to rectify on any Readiness Test Certificate or Acceptance Test Certificate.
- 4 Issue, in accordance with clause 39 (Defects Liability Period and Liquidated and Ascertained Damages) of the Construction Sub-Contract, the Certificate of Making Good of Defects (as defined in the Construction Sub-Contract).

SCHEDULE 2 - FEE

PART 1

The Fee payable to the Independent Certifier in respect of the IC Services shall be payable by the following instalments:

Month (following financial close)	Fee in (£)
Month 1	2,300
Month 2	2,300
Month 3	2,300
Month 4	2,300
Month 5	2,300
Month 6	2,300
Month 7	2,300
Month 8	2,300
Month 9	2,300
Month 10	2,500
Month 11	2,500
Month 12	2,500
Month 13	2,500
Month 14	2,500
Month 15	2,500
Month 16	2,500
Month 17	2,500
Month 18	2,500
Month 19	1,900
Month 20	1,900
Month 21	1,900
Month 22	1,900
Month 23	2,200
Month 24	2,200
Month 25	3,100
Month 26	3,100
Month 27	3,100
Month 28	3,100
Month 29	3,100
Month 30	3,100
Month 31	3,100
Month 32	3,100
Month 33	3,100
Month 34	3,100
Month 35	3,100
Month 36	3,100
Month 37	3,100
Month 38	3,100
Month 39	3,950
Month 40	3,950
Month 41	3,950

Month (following financial close)	Fee in (£)
Month 42	3,950
Month 43	3,950
Month 44	8,950
Month 45	8,950
Month 46	8,950
Total	116,400

PART 2

Additional services provided by the Independent Certifier shall be charged at the following rates:

	Hourly Rate (£)	Daily Rate (£)
Director	125	750
Senior Consultant	96	600
Consultant	85	520
Project Engineer	80	500
CAE Engineer	80	500

SCHEDULE 3

PART 1 - FORM OF ACCEPTANCE TEST CERTIFICATE

Project	RELATING TO THE BARNSELEY, DONCASTER AND ROTHERHAM WASTE PARTNERSHIP PFI PROJECT
Contractor	3SE (BARNSELEY, DONCASTER & ROTHERHAM) LIMITED
Independent Certifier	CURRIE & BROWN UK LIMITED
Facility certified	ITSAD Facility
Certificate issued pursuant to:	Clause 35.3.11(a) of the Contract
Date of issue of Acceptance Test Certificate:	[*****]

We hereby certify that the Acceptance Tests in respect of the ITS Facility and the AD Facility have been satisfactorily passed.

Signed:

On behalf of CURRIE & BROWN UK LIMITED

Date [***]**

[Insert name of individual certifier]

PART 2 - FORM OF READINESS TEST CERTIFICATE

Project RELATING TO THE BARNSELY,
DONCASTER AND ROTHERHAM WASTE
PARTNERSHIP PFI PROJECT

Contractor 3SE (BARNSELY, DONCASTER &
ROTHERHAM) LIMITED

Independent Certifier CURRIE & BROWN UK LIMITED

Facility certified ITSAD Facility

Certificate issued pursuant to: Clause 35.3.11(a) of the Contract

Date of issue of Readiness Test Certificate: [*****]

Outstanding Snagging Matters:

We hereby certify that the Readiness Tests for the ITS Facility and the AD Facility have been satisfactorily passed.

Signed:

On behalf of CURRIE & BROWN UK LIMITED

Date [***]**

[Insert name of individual certifier]

SCHEDULE 4 - FORM OF COLLATERAL WARRANTY

CURRIE & BROWN UK LIMITED (1)

SHANKS WASTE MANAGEMENT LIMITED (AS EPC CONTRACTOR) (2)

DEED OF COLLATERAL WARRANTY

Relating to the design, construction, financing and commissioning of certain elements of an ITS
and AD facility at Bolton Road, Rotherham as part of the Barnsley, Doncaster and Rotherham
Waste Partnership PFI Project

2012

THIS DEED is made on

2012

BETWEEN:

- (1) **CURRIE & BROWN UK LIMITED**, a company duly incorporated and existing under the laws of England and Wales (Company no. 1300409) whose registered office is at Dashwood House, 69 Old Broad Street, London EC2M 1QS ("**Independent Certifier**"); and
- (2) **SHANKS WASTE MANAGEMENT LIMITED** (No. 02393309) incorporated in England and Wales whose registered office is at Dunedin House, Auckland Park, Mount Farm, Milton Keynes, Buckinghamshire MK1 1BU (the "**EPC Contractor**").

RECITALS:

- (A) 3SE (Barnsley, Doncaster & Rotherham) Limited (the "**Contractor**") has been appointed by Barnsley Metropolitan Borough Council ("**Barnsley**"), Doncaster Borough Council ("**Doncaster**") and Rotherham Borough Council ("**Rotherham**"), (together the "**Councils**" and each a "**Council**") under a contract dated on or about the date hereof (the "**Contract**") (a copy of which has been provided to the EPC Contractor and the Independent Certifier) to, inter alia, design, build, finance and operate an intelligent transfer station and an anaerobic digestion facility at Bolton Road, Rotherham (the "**Project**").
- (B) The Project will be carried out as part of the Barnsley, Doncaster and Rotherham Waste Partnership Private Finance Initiative project.
- (C) The Contractor and the EPC Contractor have entered into an agreement (the "**EPC Contract**") to carry out the "**Works**" (as those terms are defined in the EPC Contract) and to carry out other obligations.
- (D) The Independent Certifier is an independent adviser willing to provide services to the Contractor and the Councils (together the "**Appointers**") and for the benefit of the Agent in relation to the Contract.
- (E) The Appointers have appointed the Independent Certifier under an Independent Certifier's deed of appointment dated on or about the same date as this Deed (the "**Appointment**"). The Independent Certifier has agreed to carry out and complete the services as specified in Appointment (the "**IC Services**" as defined in clause 1.1 below).
- (F) The Independent Certifier is obliged under the Appointment to give a warranty in this form in favour of the EPC Contractor.

NOW, in consideration of the payment of one pound (£1) (receipt of which is hereby acknowledged by the Independent Certifier) and without prejudice to the rights and obligations of the Independent Certifier under any contract in respect of the Project to which the Independent Certifier is a party, **THIS DEED WITNESSES as follows:**

1 WARRANTY

1.1 The Independent Certifier warrants and undertakes to the EPC Contractor that in respect of all services performed and to be performed by the Independent Certifier (and any of its sub-contractors) under clause 2 (Appointment) of the Appointment in relation to and in accordance with clause 35 (Certification of Completion of the Works) and Schedule 11 (Independent Certifier's Appointment) (in each case) of the Contract and under the Appointment (the "IC Services"), it will perform those IC Services in a reasonable, independent, fair and impartial manner and will continue to perform the IC Services with all the reasonable skill, care and diligence to be expected of a properly qualified competent adviser acting in the role of independent certifier experienced in providing services similar to the IC Services in relation to projects of a similar size, scope, nature, complexity and value to the Project, provided always that:

1.1.1 the Independent Certifier shall owe no greater duties to the EPC Contractor than it owes to the Appointers in respect of the IC Services under the Appointment (and the limitation of liability set out in clause 11 (Quality Assurance) of the Appointment is hereby acknowledged by the EPC Contractor); and

1.1.2 any written agreement or arrangement between the Independent Certifier and The Contractor in respect of the IC Services shall likewise bind the EPC Contractor.

1.2 For the avoidance of doubt, the Independent Certifier gives no warranty under this Deed to the EPC Contractor in respect of any of its obligations or services provided under the Contract, the Appointment or any other document relating to the Project (but without prejudice to the terms of those documents) that are not expressly included in clause 1.1 of this Deed.

2 LIMITATION

2.1 Notwithstanding anything herein contained, the Independent Certifier shall not be liable to the EPC Contractor for any breach or breaches of clause 1.1 (Warranty) hereof which

is or are the subject matter of litigation proceedings commenced against the Independent Certifier unless such proceedings are commenced before the expiry of twelve (12) Years from the date of completion of the IC Services.

2.2 For the avoidance of doubt:

2.2.1 the Independent Certifier has no greater liability under this Deed which is greater or of longer duration than it would have had to the EPC Contractor under the Appointment if the EPC Contractor had been a party to the Appointment as joint employer with The Contractor and the Councils;

2.2.2 the Independent Certifier shall be entitled in any action or proceedings brought by the EPC Contractor under this Deed to rely on any limitation in the Appointment and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the EPC Contractor under the Appointment if the EPC Contractor had been a party to the Appointment as joint employer;

2.2.3 the total aggregate liability of the Independent Certifier in respect of losses or claims:

- (a) to the EPC Contractor under or in connection with this Deed; and
- (b) to the Appointers under the Appointment

whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be limited to ten million pounds (£10,000,000);

2.2.4 subject to clause 2.2.5, the EPC Contractor shall not initiate a claim or litigation against the Independent Certifier pursuant to this Deed in respect of:

- (a) the Independent Certifier's failure and/or delay to determine (or otherwise find) that the conditions set out in Schedule 47 (Performance Guarantee) of the EPC Contract have been satisfied and/or that the Service Commitment Date (as that term is defined in the Contract) has occurred; and/or
- (b) any determination (or other finding) of the Independent Certifier that the conditions in Schedule 47 (Performance Guarantee) of the EPC Contract of the Contract have not been satisfied and/or that the Service

Commencement Date (as that term is defined in the Contract) has not occurred

unless and until the EPC Contractor has challenged or disputed any of the relevant matters referred to in sub-clauses 2.2.4(a) and/or 2.2.4(b) above pursuant to clause 104 (Dispute Resolution) of the EPC Contract and either:

- (c) the Service Commencement Date has been agreed by the parties to the Contract; or
- (d) the dispute has been determined by an Adjudicator (or other court or tribunal) pursuant to the clause 104 (Dispute Resolution) of the EPC Contract;

2.2.5 in the event that the Independent Certifier has issued the Acceptance Test Certificate (as that term is defined in the Contract) pursuant to clause 35.5 (Effect of Issue of Test Certificate) of the Contract, nothing in clause 2.2.4 or clause 2.2.6 shall prevent the EPC Contractor from initiating a claim or litigation against the Independent Certifier pursuant to this Deed in respect of the content and/or timing of the Acceptance Test Certificate (as that term is defined in the Contract); and

2.2.6 without prejudice to clauses 2.2.4 and 2.2.5, to the extent the subject matter of any claim or litigation initiated by the EPC Contractor pursuant to this Deed constitutes a dispute for the purposes of clause 104 (Dispute Resolution) of the EPC Contract the EPC Contractor shall not initiate such claim or litigation against the Independent Certifier pursuant to this Deed unless and until it has referred the dispute for resolution pursuant to the Dispute Resolution Procedure (as that term is defined in the EPC Contract) and either:

- (a) the parties to the EPC Contract have agreed the disputed matter; or
- (b) the dispute has been determined by an Adjudicator (or other court or tribunal) pursuant to the EPC Contract.

3 PROFESSIONAL INDEMNITY INSURANCE

3.1 The Independent Certifier shall maintain from the date hereof until twelve (12) Years from the date of completion of the IC Services or, if earlier, the date of termination of the Appointment, professional indemnity insurance in an amount of not less than ten

million pounds (£10,000,000) for each and every claim arising out of one incident provided always that such insurance is available in the market at commercially reasonable rates and terms. If disclosure is required to secure effective insurance cover for claims arising under this Deed, the Independent Certifier confirms that it has prior to the date hereof disclosed this Deed to each insurer of its professional indemnity insurance and will disclose the same to each such insurer upon each renewal of its said insurance. The Independent Certifier shall upon request provide for inspection documentary evidence to show that its professional indemnity insurance is being maintained in accordance with this Deed. The Independent Certifier shall immediately upon receipt thereof notify each such insurer or underwriter of its professional indemnity insurance of any claim made against it under this Deed.

- 3.2 It is acknowledged by the EPC Contractor that the professional indemnity insurance maintained by the Independent Certifier in accordance with this Deed is expected and intended to respond to the Independent Certifier's obligations under the Appointment (and accordingly under this Deed) and to the obligations of the Independent Certifier in its role to provide the IC Services. The Independent Certifier shall maintain such insurance with reputable insurers licensed to carry out insurance business in Europe in accordance with the terms of the Appointment.

4 ASSIGNMENT

This Deed, the benefit hereof and/or all of the rights arising hereunder (whether or not accrued) may with the consent of the Independent Certifier (not to be unreasonably withheld) be assigned by way of absolute legal assignment to a party acquiring the entire interest of the EPC Contractor in the EPC Contract.

5 GOVERNING LAW

This Deed, and all matters arising out of or in connection with it, shall be governed by and construed in accordance with English law, and subject to clause 2 (Limitation), the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.

6 THIRD PARTY RIGHTS

The Contracts (Rights of Third Parties) Act 1999 (the "Act") shall not apply to this Deed and no person other than the parties to this Deed (which term shall for the purposes of this clause include all permitted assignees) shall have any rights under it, nor shall it be enforceable under the Act by any person other than the parties to it.

IN WITNESS whereof the parties executed and delivered this Deed on the date first before written.

Executed as a deed and delivered)
(but not until the date hereof) by)
CURRIE & BROWN UK LIMITED acting by:)
)

.....

Director

.....

Director/Secretary

Executed as a deed and delivered)
(but not until the date hereof) by)
SHANKS WASTE MANAGEMENT)
LIMITED acting by)
)

.....

Director

.....

Director/Secretary