

**SCHEDULE 13**

**Independent Certifier Contract**

This is Schedule 13 comprising the Independent Certifier Deed of Appointment referred to in the Project Agreement for the provision of waste services to Cumbria

between

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED

and

SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (as Security Trustee)

and

FICHTNER CONSULTING ENGINEERS LIMITED



**DICKINSON DEES**

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DATED \_\_\_\_\_ 2009

CUMBRIA COUNTY COUNCIL

and

SHANKS CUMBRIA LIMITED

and

SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED (as Security Trustee)

and

FICHTNER CONSULTING ENGINEERS LIMITED

INDEPENDENT CERTIFIER DEED OF APPOINTMENT



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THIS AGREEMENT dated

2009 is made BETWEEN:-

- (1) CUMBRIA COUNTY COUNCIL of The Courts, Carlisle, Cumbria, CA3 8NA (“the Authority”) which expression shall include its successors and assigns;
- (2) SHANKS CUMBRIA LIMITED (a company registered in England with number 06799850) whose registered office is at 4 Dunedin House, Auckland Park, Mount Farm, Bletchley, Milton Keynes, Bucks, MK1 1BU (“the Contractor”) or any substitute or its permitted successors in title or assigns;
- (3) SUMITOMO MITSUI BANKING CORPORATION EUROPE LIMITED of 99 Queen Victoria Street, London EC4V 4EH in its capacity as the agent and security trustee for the Senior Lenders (“Security Trustee”) and
- (4) FICHTNER CONSULTING ENGINEERS LIMITED (a company registered in England with number 2605319) whose registered office is at Kingsgate (Floor 3), Wellington Road North, Stockport, Cheshire, SK4 1LW (“the Independent Certifier”) or such other person duly appointed pursuant to the terms of this Deed.

## BACKGROUND

- (A) The Authority and the Contractor have entered into the Project Agreement for (inter alia) the provision of the Project.
- (B) The terms of the Project Agreement require the Authority and the Contractor jointly to appoint the Independent Certifier.
- (C) The Security Trustee enters into this Deed in its capacity as security trustee under the Loan Agreement. The Security Trustee has agreed to enter into this Deed for the purpose of having rights to enforce the terms of this Deed. The Security Trustee shall not have any obligations or liabilities under this Deed to any of the Parties save as expressly set out herein.
- (C) The Authority, the Contractor, the Security Trustee and the Independent Certifier have agreed to enter into this Deed for the purposes of setting out the terms upon which the Independent Certifier is appointed.

IT IS AGREED as follows:-

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:-

- |                  |  |
|------------------|--|
| “Counterparties” | means each of the parties numbered (1), (2) and (3) above and “Counterparty” shall mean any one or more of them as the context of any particular provision of this Deed so requires; |
| “Director”       | means the person named in Schedule 1 or such replacement person appointed in accordance with clause 4.2;   |
| “Documents”      | means all technical information (whether or not stored in computer systems), drawings, models, bills of quantities, specifications, schedules, details, plans, programmes,           |

budgets, reports, calculations or other documents whatsoever provided or to be provided by the Independent Certifier in connection with the Project;

“Fee” means the amounts stated in paragraph 5 payable to the Independent Certifier in consideration of the performance of the IC Services and “Additional Fee” shall mean the amounts payable to the Independent Certifier for the performance of any Additional Services as set out in clause 6;

“IC Services” means the services to be performed by the Independent Certifier in connection with the Project as set out in Schedule 3 and the body of this Deed and “Additional Services” means any other services which the Independent Certifier performs pursuant to clause 6 of this Deed;

“Insolvency Event” means a party:-

- (a) is unable or admits its inability to pay its debts when they become due within the circumstances specified in section 123(1)(c) of the Insolvency Act 1986 without the need to prove any fact or matter to the satisfaction of the Court as provided thereon; or
- (b) enters into a voluntary arrangement under part I of the Insolvency Act 1986 or enters into a scheme of arrangement with its creditors generally in satisfaction of its debt; or
- (c) makes any arrangement or composition with creditors generally, other than for the purposes of a solvent internal re-organisation; or
- (d) is the subject of an administration order made under part II of the Insolvency Act 1986; or
- (e) is subject to any encumbrance taking possession or undergoes the appointment of a receiver or manager (including an administrative receiver) either under part III of the Insolvency Act 1986 or under the Law of Property Act 1925 or otherwise (and in the case of a receiver only, not being discharged within 21 days); or
- (f) is the subject of the passing of a resolution to wind up or a provisional liquidator is appointed or a winding-up order is made under part IV of the Insolvency Act 1986 (except for a voluntary winding up solely for the purpose of amalgamation or reconstruction, the terms of which have previously been notified to and approved in writing by the Counterparties); or
- (g) is the subject of a proposal made for a scheme of

arrangement under section 425 of the Companies Act 1985;

- “Interface Agreement” means each and any interface agreement entered into by the Building Contractor pursuant to clause 24.10.1 of the Building Contract;
- “Project” the Authority’s “Waste Management Strategic Partnership Project” for carrying out of the Works, the Maintenance of the Waste Management Facilities, the management and operation of the Services and the performance of all other obligations of the Contractor under the Agreement from time to time;
- “Project Agreement” means the project agreement dated on or about the date of this Deed between the Authority and the Contractor;
- “Site” means the sites of the Northern and Southern Resource Parks;
- “Statutory Requirements” means insofar as the same may apply to the IC Services, all laws, permissions, consents, codes, bye-laws, rules and regulations and the requirement of any public authorities and statutory undertakers and any permission, as the same may be modified and amended from time to time during the term of this Deed; and
- “Works” all of the works (including design and works necessary for obtaining access to the New Facilities) to be undertaken in accordance with the Project Agreement in accordance with the Contractor Works Proposals and to satisfy fully the Output Specification.
- 1.2 The clause headings in this Deed are for the convenience of the parties only and do not affect its interpretation.
- 1.3 Words importing the singular meaning include the plural meaning and vice versa.
- 1.4 Words denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that manner.
- 1.5 Reference in this Deed to a clause or Schedule or Appendix are to a clause or Schedule or Appendix of this Deed unless otherwise specified.
- 1.6 Reference in this Deed to any statute or statutory instrument includes and refers to any statutory amendment or re-enactment thereof from time to time and for the time being in force.
- 1.7 Terms used in this Deed that are defined in the Project Agreement shall have the respective meaning given to them in the Project Agreement save where otherwise expressly defined herein.

2. **APPOINTMENT OF INDEPENDENT CERTIFIER**

- 2.1 The Authority and the Contractor hereby jointly appoint the Independent Certifier and the Independent Certifier hereby agrees to perform the IC Services.
- 2.2 The Authority and the Contractor shall act in good faith towards the Independent Certifier at all times.
- 2.3 The Independent Certifier shall perform the IC Services which are more particularly detailed in clause 19 (Notification Of Service Availability For New Facilities) of the Project Agreement, the Building Contract and Schedule 3 to this Deed.

3. **INDEPENDENT CERTIFIER'S DUTIES**

- 3.1 The Independent Certifier shall perform the IC Services fully and faithfully upon and subject to the provisions of this Deed and the Independent Certifier acknowledges that each of the Counterparties is relying and will continue to rely on the professional skill and care of the Independent Certifier in the performance of the IC Services and that it owes a duty of care to each of the Counterparties in relation thereto.
- 3.2 Where, in the performance of the IC Services, the Independent Certifier is required to exercise a discretion as between any of the Counterparties and/or any third party (including, but without limitation, any sub-contractor), the Independent Certifier shall at all times act objectively and impartially and shall in no circumstances place the interests of any one party above those of any other party including any third party.
- 3.3 Where, in the performance of the IC Services, the Independent Certifier seeks or is obliged to seek the approval or agreement of any of the Counterparties to any matter or issue, the giving or confirming of the same shall not in any way derogate from the Independent Certifier's obligations under this Deed nor diminish any liability on its part for breach of such obligations and no enquiry, inspection, comment, consent, decision or instruction at any time made or given by or on behalf of the Counterparties shall operate to exclude or limit the obligations of the Independent Certifier to exercise all the skill care and diligence required by this clause 3 or to comply with the obligations contained in this Deed.
- 3.4 The Independent Certifier warrants to each of the Counterparties jointly and severally that it has exercised and will continue to exercise, in the performance of the IC Services and all its duties hereunder, all the reasonable skill, care and diligence as may reasonably be expected of a suitably qualified and competent professional rendering the IC Services and experienced in projects of a similar size, scope and complexity as the Project.
- 3.5 The Independent Certifier further warrants to each of the Counterparties severally that in the provision of the IC Services it will comply with all Statutory Requirements and, without limiting the generality of the foregoing, have due and proper regard to:-
  - 3.5.1 the CDM Regulations; and
  - 3.5.2 the approved code of practice "Managing Construction for Health & Safety" produced by the Health & Safety Executive as amended from time to time;

and shall comply with directions, instructions or requests relating to or in pursuance of the same given or made by the Contractor and/or the Authority whilst the Independent Certifier is present on the Site.

- 3.6 The Authority and the Contractor shall each procure that the Independent Certifier has such immediate access to the Site as it may reasonably require for the purposes of carrying out the IC Services and all purposes ancillary or related to this Deed.
- 3.7 In the performance of the IC Services the Independent Certifier shall have full regard to any relevant requirements and/or obligations of the Project Agreement, the Building Contract the Loan Agreement and the Interface Agreement and shall perform the IC Services in such manner and at such times that no act, omission or default of the Independent Certifier in relation thereto shall constitute or cause any breach by the Authority, the Security Trustee and/or the Contractor of any such requirements and/or obligations.
- 3.8 Without prejudice to clause 3.7 the Independent Certifier shall:-
- 3.8.1 liaise and co-operate with the Counterparties and provide each of them with all such information in relation to the Project as they may from time to time reasonably require promptly and in good time so as not to delay or disrupt the progress of the Project or cause the Counterparties to be in breach of any of their respective obligations under the Project Agreement or the Senior Loan Agreement;
- 3.8.2 in particular, subject to clause 3.8.1 but without limitation, in determining whether to issue an Acceptance Certificate for the Site, take account of the following:-
- (a) that the Works have been designed and built in accordance with good industry practice;
- (b) that the Works comply with the Project Agreement;
- (c) that the fixtures, fittings, furniture and equipment comply with the inventory of such items included within the Project Agreement as may be revised from time to time;
- 3.8.3 give to the Counterparties not less than five (5) Working Days' prior notice of its intention to issue any certificates;
- 3.8.4 have due regard to any written representations made to it by either the Authority and/or the Contractor (the party making the representation having previously sent the other and the Security Trustee a copy), in respect of any matter connected with the Project Agreement and, in particular, the achievement of completion of the Works or the issue of the Certificate of Service Availability by the Contractor under clause 19 of the Project Agreement, provided that nothing in clause 3.8 shall in any way fetter the discretion of the Independent Certifier (acting in accordance with the requirements of the Project Agreement and its obligations under this Deed) as to whether any Acceptance Certificate issued by the Independent Certifier should properly be issued; and
- 3.8.5 provide copies of all certificates to each of the Counterparties forthwith upon their issue.
- 3.9 The decision of the Independent Certifier with respect to the issue of certificates, and any of the matters referred to in the other clauses of the Project Agreement listed in the IC Services shall be final and binding subject to the terms of the Project Agreement. For the avoidance of doubt the Independent Certifier shall not express an opinion on and



shall not interfere with or give any advice, opinion or make any representation in relation to any matters which are beyond its role and responsibilities under this Deed.

- 3.10 The Independent Certifier acknowledges that nothing contained in this Deed shall prejudice or affect its liability in tort to any of the Counterparties.
- 3.11 The Independent Certifier shall only be liable under this Deed in respect of claims whether made in contract or in tort which are notified to the Independent Certifier before the expiration of the period of six years from the date of the performance by the Independent Certifier of the last professional service carried out by it under the terms of this Deed or termination of this Deed, whichever is the earlier.
- 3.12 The Independent Certifier must not make or purport to make any alteration or addition to or omission from the design of the New Facilities (including, without limitation, the setting of performance standards) or issue any instruction or direction to any contractor, sub-contractor or professional consultant employed or engaged in connection with the Project or consent or agree to any waiver or release of any obligation of the Contractor or the Authority under the Project Agreement, the Building Contract or of any contractor, sub-contractor or professional consultant employed or engaged by the Contractor, in connection with the Project unless both the Contractor and the Authority consent in writing or agree to any waiver or release of any obligation of the Contractor or the Authority under the Project Agreement or of any contractor, sub-contractor or professional consultant employed or engaged by the Contractor, in connection with the Project. The Independent Certifier hereby undertakes to perform all its duties under this Deed in accordance with the requirements and objectives of the Authority and the Contractor as set out in the Project Agreement and the Building Contract but not so far as they override its professional responsibility and in particular not as to exclude the exercise of independent judgement on the part of the Independent Certifier.
- 3.13 Where any delay has arisen, the Authority and the Contractor may, by notice to the Independent Certifier, suspend the activities of the Independent Certifier for a period previously agreed or determined by the Authority and the Contractor.
- 3.14 The Independent Certifier shall comply with all reasonable instructions given to it by the Authority and the Contractor except and to the extent that the Independent Certifier reasonably considers that any such instructions vary or might vary the IC Services or its authority or responsibilities under this Deed or prejudice or might prejudice the exercise by the Independent Certifier of its professional judgement.
- 3.15 All instructions to the Independent Certifier shall be given in writing and given jointly by the representatives of each of the Authority and the Contractor with a copy of the same given to the Security Trustee at the same time or as soon as reasonably practicable following issue to the Independent Certifier.

#### 4. **INDEPENDENT CERTIFIER'S PERSONNEL**

- 4.1 The Independent Certifier shall forthwith appoint the Director to direct and control the overall performance by the Independent Certifier of the IC Services and act as the primary contact and liaison with the Counterparties. Such person or any replacement approved by the Counterparties pursuant to clause 4.2 from time to time shall be available when necessary and for so long as may be necessary to ensure the proper performance by the Independent Certifier of the IC Services and shall have full authority to act on behalf of the Independent Certifier for all purposes in connection with this Deed.

4.2 The Independent Certifier shall not replace the Director nor any person approved by the Counterparties pursuant to this clause 4.2 without the prior approval of the Counterparties (which approval shall not be unreasonably withheld or delayed) as to the fact and identity of such replacement and if such approval is given the identity of the replacement must be previously approved in writing by the Counterparties.

## 5. **REMUNERATION**

5.1 In full consideration of the performance of the IC Services in accordance with this Deed, the Contractor shall pay by instalments to the Independent Certifier:-

5.1.1 the Fee; and

5.1.2 the Additional Fee (if any),

in accordance with this clause 5 and Schedule 2 and, for the avoidance of doubt, payment thereof shall constitute full reimbursement to the Independent Certifier of all costs, losses, expenses, overheads or profits suffered, incurred or earned, as the case may be, by the Independent Certifier in respect of the performance of its obligations under this Deed whenever they may be performed.

5.2 The Independent Certifier shall submit an invoice for each instalment to the Contractor at the address set out in and marked for the attention of the person identified in Schedule 1 copied to the Authority on or after the occurrence of the event allocated to that instalment and may include in such invoice (provided the same has not previously been included in an invoice) any Additional Fee for any Additional Services which have been completed prior to the date of such invoice. The Fee and Additional Fee are inclusive of all disbursements, including travel, photocopying, printing and accommodation, save as expressly provided in Schedule 2, but exclusive of any applicable Value Added Tax at the rate from time to time in force which shall be additionally payable by the Contractor, together with the appropriate Fee and Additional Fee.

5.3 Any sum properly included in an invoice submitted under and in accordance with this clause 5, as the case may be, shall become due on the date twenty (20) Working Days before the end of the month following the month in which the invoice is received by the Contractor.

5.4 The final date for the making of any payment of any sum due pursuant to this Deed shall be twenty (20) Working Days after the sum becomes due under the terms of this Deed ("the Final Date for Payment"). Subject to clause 5.5, the Contractor may (without prejudice to any other right or remedy which the Counterparties may have under or arising from or pursuant to this Deed, any other agreement or statute, at common law or otherwise) deduct or withhold from any money otherwise due to the Independent Certifier under or pursuant to this Deed any sum or sums for which the Independent Certifier is liable to the Counterparties under, arising from or pursuant to this Deed or statute or at common law.

5.5 Not later than five (5) Working Days after the date on which any sum becomes due or would have become due to the Independent Certifier pursuant to this Deed if:-

5.5.1 the Independent Certifier had carried out its obligations under this Deed; and

5.5.2 no set-off or abatement was permitted by reference to any sum claimed,

the Contractor shall give notice to the Independent Certifier specifying the amount (if any) of the payment made or proposed to be made and the basis on which that amount is calculated.

5.6 If the Contractor intends to withhold payment of any sum due to the Independent Certifier under this Deed pursuant to clause 5.4, the Contractor shall give the Independent Certifier a notice not later than two (2) Working Days prior to the Final Date for Payment of that sum specifying:-

5.6.1 the amount proposed to be withheld and the ground for withholding payment; or

5.6.2 if there is more than one ground, each ground and the amount attributable to it.

5.7 The Contractor shall further be liable to pay to the Independent Certifier the total amount of Value Added Tax at the rate from time to time in force properly chargeable by the Independent Certifier on the supply by the Independent Certifier of any goods or services under this Deed.

## **6. ADDITIONAL SERVICES**

In addition to the IC Services the Independent Certifier shall perform such other services ("Additional Services") in relation to the Project as the Contractor on behalf of itself, the Security Trustee and the Authority may from time to time instruct in writing and which the Independent Certifier (acting reasonably) may agree to perform. In default of the Contractor as agent on behalf of the Authority and the Security Trustee issuing instructions to the Independent Certifier, the Authority may give instructions in writing directly to the Independent Certifier which the Independent Certifier (acting reasonably) may agree to perform. The Contractor on behalf of itself, the Security Trustee and the Authority shall pay to the Independent Certifier in respect of such Additional Services the Additional Fee in accordance with clause 5, such Additional Fee to be agreed between the Contractor and the Independent Certifier prior to commencing the performance of such Additional Services or in default of agreement between the Independent Certifier and the Contractor such Additional Fee in respect of the Additional Services as the Authority (which shall then be responsible for payment of that Additional Fee) shall agree with the Independent Certifier.

## **7. PROFESSIONAL INDEMNITY INSURANCE**

7.1 Without prejudice to its other obligations under this Deed or otherwise at law, the Independent Certifier confirms that it has professional indemnity insurance and shall maintain professional indemnity insurance, with reputable insurers or underwriters who are acceptable to the Counterparties (such acceptance not to be unreasonably withheld or delayed), from the commencement of the IC Services and for a period expiring no earlier than six (6) years after the completion of the IC Services and notwithstanding the termination for any reason, including (without limitation) breach by the Contractor or and Authority, of the Independent Certifier's engagement under this Deed, without onerous conditions or unusual excesses to cover each and every claim. with a limit of indemnity of not less than five million pounds (£5,000,000 ) in respect of each and every claim (except that for claims relating to pollution and contamination the limit of indemnity shall be in the aggregate and for claims relating to asbestos there shall be no cover). All claims arising directly or indirectly from one source or originating cause shall be treated for all purposes as a single claim, provided always that such insurance continues to be available to it in the European Union insurance market upon reasonable terms and at commercially reasonable premium rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Independent Certifier's own claims record or other acts omissions matters

or things peculiar to the Independent Certifier will be deemed to be within the Independent Certifier's obligation.

- 7.2 The Independent Certifier shall, as and when it is reasonably required to do so by any Counterparty and in any event prior to commencing the provision of the IC Services and no less than ten (10) Working Days after each renewal date, produce for inspection by any Counterparty documentary evidence that the insurance required by clause 7.1 is being properly maintained subject to the same not constituting a breach of the terms of such insurance.
- 7.3 The Independent Certifier shall forthwith notify the Counterparties if the insurance required by clause 7.1 ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Independent Certifier is unable to continue to maintain such insurance and (in this event) shall continue to maintain insurance upon such terms and with such a limit of indemnity as may then be so available.
- 7.4 The Independent Certifier shall not compromise, settle or waive any claim which it may have under such insurance in respect of any professional liability which it may incur under this Deed without the prior written consent of the Counterparties.

7.5 **Limitation of Liability**

- 7.5.1 No action or proceedings for any breach of this Deed shall be commenced against the Independent Certifier after the expiry of six (6) years from the date of the performance by the Independent Certifier of the last professional service carried out by it under the terms of this Deed or termination of this Deed, whichever is the earlier.
- 7.5.2 The Independent Certifier's total liability under this Deed shall be limited to five million pounds (£5,000,000) except in the case of claims relating to pollution and contamination where the Independent Certifier's total liability shall be limited to any remaining insured liability at the time of the claim provided that nothing in this Deed shall operate to exclude or limit the liability of the Independent Certifier in respect of:-
- (a) death or personal injury caused by the negligence of the Independent Certifier; or
  - (b) reasonable costs, losses or damages suffered or incurred by the Authority, the Contractor or the Security Trustee arising out of the fraud and/or wilful misconduct of the Independent Certifier in the performance of the IC Services under this Deed.
- 7.5.3 The Independent Certifier shall have no liability for claims in any way connected with asbestos.

8. **CONFIDENTIALITY**

- 8.1 The Independent Certifier shall not, at all times during the period of its engagement hereunder (save in the proper course of its duties or as may be required by law or any regulatory authority) and at any time after its expiry or termination for any reason, disclose to any person nor otherwise make use of any confidential information (including, but without limitation, information relating to methods and techniques of construction for the Project and financial information relating to the Project) of which it has or may in the

course of its engagement hereunder become aware relating to the Project, any of the Counterparties or otherwise, nor shall it disclose to any person whatsoever (save as aforesaid or to its insurance or professional advisers) anything contained in this Deed, without the prior written consent of the Counterparties.

- 8.2 The Independent Certifier shall comply with its obligations under the Data Protection Act 1998 and other applicable legal requirements in respect of such data.

## **9. ASSIGNMENT AND SUB-LETTING**

9.1 The Independent Certifier shall not assign its interest in this Deed or any part thereof nor any right arising hereunder to any person without the prior consent of the Counterparties and only then on terms expressly approved by the Counterparties and subject to the Independent Certifier's obligations under this Deed remaining in full force and effect.

9.2 The Independent Certifier shall not without the prior consent of the Counterparties sub-contract to any person the performance of any of the IC Services and where the Counterparties give consent to the Independent Certifier sub-contracting any of its duties pursuant to this clause 9.2:-

9.2.1 the Independent Certifier shall be responsible for the breaches, acts, omissions, negligence or other default of any sub-consultant, its agents or employees appointed by the Independent Certifier as fully as if they were the breaches acts omissions negligence or other defaults of the Independent Certifier, its agents or employees and such sub-contracting shall not modify release diminish or in any way effect the liabilities and/or obligations of the Independent Certifier under this Deed and/or at law or otherwise;

9.2.2 the remuneration payable to the Independent Certifier in accordance with clause 5 shall not be increased by any amount payable by the Independent Certifier to its sub-consultants; and

9.2.3 the Independent Certifier shall procure from any sub-contractor or sub-consultant engaged by the Independent Certifier for the performance of the IC Services collateral warranties substantially and materially in the form set out at Schedule 5 in favour of each Counterparty within twenty (20) Working Days of a request from any of the Counterparties.

9.3 Each of the Counterparties may at any time assign, charge or transfer its respective interests in this Deed and/or any rights arising hereunder (whether or not accrued) upon notice to the Independent Certifier provided that not more than two such assignments by each Counterparty shall be permitted. The Independent Certifier shall not be entitled to contend that any person to whom this agreement is assigned in accordance with this clause 9.3 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening) by reason that such person is an assignee and not a named party under this Deed.

## **10. TERMINATION OF INDEPENDENT CERTIFIER'S ENGAGEMENT**

10.1 The Counterparties may by agreement determine the Independent Certifier's engagement under this Deed by way of service of a joint written notice upon the Independent Certifier terminating the Independent Certifier's engagement ten (10) Working Days after the date of the notice.

- 10.2 In the event of any act, omission or default of the Independent Certifier causing a material breach by the Independent Certifier of its obligations under this Deed which it shall fail to remedy after receiving a notice from the Contractor or the Authority (on behalf of the other Counterparty and the Security Trustee and having first obtained the consent of the other parties) specifying the breach and requiring its remedy within twenty (20) Working Days of the date of the notice, the Contractor or the Authority (on behalf of the other Counterparty and the Security Trustee and having first obtained the consent of the other to do so), may then by a further notice to the Independent Certifier ("the Second Notice") terminate the Independent Certifier's engagement under this Deed fifteen (15) Working Days after the date of the Second Notice.
- 10.3 Alternatively the Contractor or the Authority, on behalf of the other Counterparties and having obtained each of the other Counterparties' consent, may in the Second Notice bring to an end the performance of any divisible part of the IC Services in which event the Fee and any Additional Fee shall be adjusted on a pro-rata basis accordingly and the Independent Certifier shall be notified of the adjusted Fee (and adjusted Additional Fee if appropriate) by written notice from the Authority or the Contractor.
- 10.4 In the event of the Independent Certifier experiencing an Insolvency Event, any of the Counterparties may terminate the Independent Certifier's engagement forthwith upon service of a joint notice in writing to this effect.

**11. TERMINATION OF INDEPENDENT CERTIFIER'S ENGAGEMENT BY INDEPENDENT CERTIFIER**

In the event of a material breach by any one or more of the Counterparties of its or their obligations under this Deed which it or they, as appropriate, shall fail to remedy after receiving a notice from the Independent Certifier (such notice to be copied simultaneously to the other Counterparty) specifying the breach and requiring its remedy within twenty (20) Working Days of the date of the Notice, the Independent Certifier shall then serve a Step-in Notice pursuant to clause 13.1 and in the event that the Counterparties decline to exercise their rights under clause 13, the Independent Certifier may then by a further notice to the Counterparties ("the Termination Notice") terminate its engagement under this Deed fifteen (15) Working Days after the date of the Termination Notice.

**12. CONSEQUENCES OF TERMINATION OF INDEPENDENT CERTIFIER'S ENGAGEMENT**

- 12.1 Upon any termination of the Independent Certifier's engagement under clause 10 or clause 11, the Independent Certifier shall be relieved of its obligation to continue with the performance of the IC Services and any Additional Services and shall take immediate steps to bring to an end the IC Services and any Additional Services in an orderly manner but with all reasonable speed and economy and shall within ten (10) Working Days deliver to the Counterparties copies of all reports, minutes of meetings and other documents prepared or in the course of preparation by the Independent Certifier in connection with the Project and (in the event that a replacement Independent Certifier has been appointed to complete the performance of the IC Services including any Additional Services) shall co-operate fully with such replacement to the extent that it is reasonable to do so.
- 12.2 If the Independent Certifier's engagement under this Deed is terminated pursuant to clause 10.1, the Contractor shall, (subject to any withholdings, deductions or set-offs which they are entitled to make and to clauses 12.5, 12.6 and 12.7) pay to the Independent Certifier that part of the Fee and the Additional Fee which shall have accrued due prior to the date of such termination less the amount of any payments in respect of the Fee and the Additional Fee previously made to the Independent Certifier

under this Deed. In addition the Contractor shall reimburse to the Independent Certifier the direct costs wholly and necessarily incurred by the Independent Certifier and resulting from such termination provided always that such termination and such costs have arisen otherwise than by reason of any negligence, omission or default on the part of the Independent Certifier, its servants or agents, or any sub-contractor or assignee or their respective servants or agents and that the Independent Certifier shall have first submitted its account for payment hereunder to the Contractor upon or within five (5) Working Days following such termination.

- 12.3 If the Independent Certifier's engagement under this Deed is terminated pursuant to clauses 10.2 or 10.4, the Counterparties shall not be required to make any further payment to the Independent Certifier whether for work carried out up to the date of termination or thereafter until the exercise in this clause 12.3 is complete and subject to the result of the said exercise. Upon the termination of the Independent Certifier's engagement, the Authority and the Contractor may employ a replacement Independent Certifier to carry out and complete the IC Services and any Additional Services upon the terms and conditions set out in this Agreement. Upon completion of the IC Services and any Additional Services, the Authority and the Contractor shall prepare within a reasonable time thereafter an account in respect of the matters set out in sub-clauses 12.3.1 to 12.3.3 in the form of a statement to be served upon the Independent Certifier:-
- 12.3.1 the amount of expenses properly incurred by the Counterparties including those incurred pursuant to clause 12.3.2 and of any direct loss and/or damage caused to the Counterparties as a result of the termination of the Independent Certifier's engagement;
  - 12.3.2 the amount of any payment made to the Independent Certifier in respect of the IC Services and any Additional Services; and
  - 12.3.3 the total amount which would have been payable for the IC Services and any Additional Services on due completion in accordance with this Agreement.
- 12.4 If the sum of the amount stated under clauses 12.3.1 and 12.3.2 exceeds or is less than the amount stated under clause 12.3.3 the difference shall be a debt payable by the Independent Certifier to the Counterparties or by the Contractor to the Independent Certifier as the case may be.
- 12.5 Upon any termination of the Independent Certifier's engagement howsoever arising, the Counterparties shall not be liable, save as is exclusively set out in clauses 12.2 or 12.3 as appropriate, to the Independent Certifier for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.
- 12.6 Termination of the Independent Certifier's engagement howsoever arising shall, subject to clause 12.5, be without prejudice to the accrued rights and remedies of any party to this Deed in relation to any negligence, omission or default of any other party prior to such termination (including the right of the Counterparties to recover damages from the Independent Certifier) and shall not affect the continuing rights and obligations of the parties under clauses 7 (Professional Indemnity Insurance), 8 (Confidentiality), 22 (Dispute Resolution) and this clause 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.
- 12.7 The provisions of this Deed shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

### 13. **“STEP-IN” PROVISIONS**

- 13.1 The Independent Certifier shall not exercise nor seek to exercise any right to terminate its engagement under clause 11 without giving to each Counterparty not less than twenty (20) Working Days' written notice of its intention to do so and specifying the grounds for the proposed termination or discontinuance (“the Step-in Notice”).
- 13.2 Any period stipulated in this Deed for the exercise by the Independent Certifier of a right of termination shall be extended as necessary to take account of the period of notice required under clause 13.1.
- 13.3 The Independent Certifier's right to terminate its engagement under this Deed or to discontinue the performance of the IC Services or any Additional Services shall cease if, within the period of twenty (20) Working Days referred to in clause 13.1, any Counterparty not in breach shall give notice to the Independent Certifier:-
- 13.3.1 requiring it to continue the performance of the IC Services and any Additional Services;
  - 13.3.2 acknowledging that it is assuming all the obligations of the Counterparty in breach under this Deed; and
  - 13.3.3 undertaking to the Independent Certifier to discharge all payments which may subsequently become due to the Independent Certifier under this Deed and paying to the Independent Certifier any sums which have already become due but which remain unpaid.
- 13.4 On compliance by any Counterparty with clause 13.3, this Deed shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Certifier had not arisen and on the basis that all references in this Deed to the Contractor shall thereafter be read and construed as references to the Counterparties complying with clause 13.3, who may or may not be the Contractor.
- 13.5 Where a Counterparty has given notice in compliance with clause 13.3 and has given an undertaking pursuant to clause 13.3.3 and has assumed responsibility under this Deed in accordance with clause 13.4 the Counterparty in breach shall reimburse and indemnify that Counterparty against each and every liability which that Counterparty may have to the Independent Certifier by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Counterparty as a consequence thereof insofar as and to the extent that the same has arisen by reason of any breach by such Counterparty of its obligations under this Deed.

### 14. **VARIATION, WAIVER AND ENTIRE AGREEMENT**

- 14.1 All additions, amendments and variations to this Deed shall be binding only if in writing and signed by the duly authorised representative of each party.
- 14.2 No waiver by any party of any default or defaults by any other party in the performance of any of the provisions of this Deed shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 14.3 This Deed supersedes any previous agreement or arrangement between the parties in respect of the IC Services (whether oral or written) and represents the entire understanding between the parties in relation thereto.



14.4 Notwithstanding the date of this Deed, it shall have effect as if it had been executed upon the actual commencement of the IC Services by the Independent Certifier.

**15. DOCUMENTS**

15.1 Copyright in the Documents shall remain vested in the Independent Certifier and subject thereto the Independent Certifier hereby grants to each of the Counterparties an irrevocable non-exclusive royalty free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding termination of the Independent Certifier's appointment for whatever reason or any dispute hereunder) to copy and use the Documents and to reproduce the works, designs and inventions contained in the Documents for all purposes related to the Project including but without limitation the construction, completion, reconstruction, alteration, extension, maintenance, letting, promotion, advertisement, reinstatement, use and repair of the Project or the Counterparties' interests in it (but so that such licence shall not extend to or include a licence to reproduce the design contained in them for any extension of the Facilities) and each of the Counterparties shall be entitled to grant sub-licences on terms equivalent to the provision of this clause 15 and the Counterparties' licences and such sub-licences shall be transferable to other without charge PROVIDED ALWAYS THAT the Independent Certifier shall not be liable for the consequences of any use of the Documents by the Counterparties for any purpose other than that for which they were prepared and provided by the Independent Certifier.

15.2 The Independent Certifier shall provide to the Counterparties at their request such additional copies of all or any of the Documents as are reasonably required by the Counterparties beyond those required for the construction and completion of the Project and shall provide such additional information and co-operation as is reasonably required in connection with the same.

15.3 Where any rights are vested in the Independent Certifier by virtue of Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 the Independent Certifier hereby irrevocably waives any such rights in relation to the Project or any parts thereof and to any Documents and shall obtain a written waiver from its employees from time to time of any rights that they may have in respect of the same.

**16. CUMULATIVE RIGHTS AND ENFORCEMENT**

16.1 Any rights and remedies provided for in this Deed whether in favour of each one of the Counterparties, or the Independent Certifier are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

16.2 The duties and obligations of the Independent Certifier arising under or in connection with this Deed are owed to each of the Counterparties jointly and severally and each of the Counterparties may accordingly enforce the provisions hereof and pursue the prospective rights hereunder in their own name, whether separately or with another party.

16.3 The Counterparties covenant with each other that they will not waive any rights, remedies or entitlements or take any other action under this Deed that would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other's without the other's prior written consent, such consent not to be unreasonably withheld or delayed.

17. **SEVERANCE**

If any provision of this Deed shall be declared invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Deed.

18. **NOTICES**

Any notice or other communication given pursuant to this Deed shall be in writing and shall be sufficiently given to any party if sent in a letter by hand, by first class prepaid post addressed to that party at the address of that party set out in this Deed (or such other address as may have been specified in writing by the party receiving the notice to the other(s) from time to time as its address for service of notices) or if transmitted by facsimile (to the facsimile number of the party receiving the notice at the address to which service would have been effective) and any notice or other communication so given shall be deemed to have been duly served in the case of a letter delivered by hand when it is delivered to the addressee, by first class prepaid post two (2) Working Days after being posted, and in the case of facsimile the day after transmission.

19. **COUNTERPARTS**

This Deed may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

20. **GOVERNING LAW**

The application and interpretation of this Deed shall in all respects be governed by English Law. The parties hereby accept the non-exclusive jurisdiction of the Courts of England and Wales.

21. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

The parties to this Deed do not intend that any of its terms are to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

22. **DISPUTE RESOLUTION**

Any party may refer any dispute or difference arising under this Deed to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator will be as set out in the Scheme for Construction Contracts. The nominating body will be the Royal Institution of Chartered Surveyors or any successor organisation. Thereafter any dispute which remains unresolved shall be resolved in accordance with the Dispute Resolution Procedure set out in clause 54 of the Project Agreement.

IN WITNESS whereof the Authority, the Contractor, the Security Trustee and the Independent Certifier have executed this document as a Deed.

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

Chief Executive

Director/Secretary

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

SIGNED AS A DEED by FICHTNER )  
CONSULTING ENGINEERS LIMITED )  
in the presence of:- )

SIGNED AS A DEED by SUMITOMO )  
MITSUI BANKING CORPORATION )  
EUROPE LIMITED in the presence of:- )

## **SCHEDULE 1**

### **Contractor Point of Contact**

Director:- Mr Stephen Ray  
4 Dunedin House  
Auckland Park  
Mount Farm  
Bletchley  
Milton Keynes  
Bucks  
MK1 1BU

Tel:- 01908 650 650

Fax:- 01768 892 620

E-mail:- stephen.ray@shanks.co.uk

### **Independent Certifier Point of Contact**

Director:- Dr John Weatherby (Managing Director)  
Kings Gate  
Floor 3  
Wellington Road North  
Stockport  
Cheshire  
SK4 1LW

Tel:- 0161 476 0032

Fax:- 0161 474 0618

E-mail:- johnweatherby@fichtner.co.uk

## SCHEDULE 2

### 1. DETAILS FOR SUBMISSION OF INVOICES

Invoices to be submitted on an equal 3 monthly basis, based on one fourteenth of the total fee every 3 months and to include a breakdown of the instalments by reference to the events set out at clause 5.2 and a breakdown of the fees charged. The invoices must also be valid for the recovery of VAT.

### 2. FEE RATES

The fee rates set out below are inclusive of all reasonable expenses and disbursements but are subject to VAT at the rate in force from time to time.

### 3. FEES AND PRICING DETAILS

<b>No.</b>	<b>Task</b>	<b>Fee</b>
1	Keep Counterparties advised of Works in accordance with the general requirements of the PA (14 three monthly reports)	£13,860
2	Attend site and inspect Works over and above monthly TA visits. Inspect Works to establish if relevant New Facility has reached the Service Availability Requirements and issue relevant Acceptance Certificate. Attend each facility to confirm that all items on the Snagging List have been rectified	£23,100
	<b>Budget Expenses</b>	<b>£1,600</b>
	<b>Total</b>	<b>£38,560</b>

## **SCHEDULE 3 - IC SERVICES**

### **1. GENERALLY**

- 1.1 Perform all of the duties and exercise all of the rights (as appropriate) of the Independent Certifier as set out and particularised in the Project Agreement or as would be reasonably foreseen by an experienced independent certifier as forming a necessary part of an independent certifier's duties.
- 1.2 During the carrying out of the Works, visit that part of the Works at appropriate intervals to inspect the various elements of the Works to verify that the same are constructed in accordance with the requirements of the Project Agreement, and keep the Counterparties advised of such matters.
- 1.3 Monitor and keep the Counterparties advised of the progress of the Works.
- 1.4 Liaise as necessary with the Contractor's Representative and the Authority's Representative.

### **2. COMMISSIONING AND COMPLETION**

#### **2.1 New Facilities**

Without prejudice to paragraph 1.1 above:-

- 2.1.1 the Independent Certifier shall establish and confirm, and keep the Counterparties advised, whether or not completion of the Works at any New Facility has been or is about to be achieved;
- 2.1.2 the Independent Certifier shall attend the Sites at which Works are being carried out and inspect the Works on any date in respect of which the Contractor gives notice in accordance with clause 19.1 of the Project Agreement that it proposes to meet the Services Availability Requirements (as set out in Schedule 6 of the Project Agreement);
- 2.1.3 in establishing whether the relevant New Facility has met the applicable Services Availability Requirements (as set out in Schedule 6 of the Project Agreement) and any defects or items to be included on a Snagging List, the Independent Certifier shall have due and proper regard to any representations made by the Counterparties or any of them;
- 2.1.4 if in the opinion of the Independent Certifier the relevant New Facility has failed to meet the Services Availability Requirements (as set out in Schedule 6 of the Project Agreement) for that New Facility on the first or any subsequent inspection, the Independent Certifier shall immediately following the inspection referred to in clause 19.8 of the Project Agreement issue an objection notice stating that the Acceptance Certificate has not been issued and specifying any outstanding matters that need to be attended to before the relevant New Facility can be considered to have met the Services Availability Requirements (as set out in Schedule 6 of the Project Agreement) and an Acceptance Certificate can be issued in respect of the relevant New Facility (an "Objection Notice");
- 2.1.5 if in the opinion of the Independent Certifier the relevant New Facility has met the Services Availability Requirements (as set out in Schedule 6 of the Project Agreement) for that New Facility then within five (5) Working Days of any

inspection referred to in clause 19.1 of the Project Agreement (Inspection of a New Facility) it shall prepare sign and issue an Acceptance Certificate under clause 19.5 of the Project Agreement (Issue of Acceptance Certificate) ;

- 2.1.6 the procedures in paragraphs 2.1.2 to 2.1.5 shall be repeated as often as necessary until the Acceptance Certificate is issued in respect of a New Facility, provided that if the process is required to be repeated more than twice in respect of one New Facility, the parties shall agree a reasonable adjustment to the Fee, such adjustment to be the responsibility of the Contractor;
- 2.1.7 the Independent Certifier shall at the same time as it issues the relevant Acceptance Certificate issue to the Contractor and the Authority a Snagging List prepared by the Contractor and agreed by the Independent Certifier in respect of each relevant New Facility and shall confirm that each item on the Snagging List is rectified to its satisfaction, within the appropriate time.

**SCHEDULE 4 - NOT USED**



**SCHEDULE 5 - FORM OF COLLATERAL WARRANTY**

DATED \_\_\_\_\_ 2009

[SUB-CONSULTANT]

and

[COUNTERPARTY/SECURITY TRUSTEE]

SUB-CONSULTANT'S DEED OF WARRANTY

relating to the Independent Certifier Contract

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 2009 BETWEEN:-

- (1) [ \_\_\_\_\_ ] (“the Sub-Consultant”); and
- (2) [COUNTERPARTY/SECURITY TRUSTEE] whose registered office is at [ \_\_\_\_\_ ] (“the Beneficiary”).

WHEREAS:-

- (A) By Agreement in writing made on [date] (“the Appointment”) the Beneficiary jointly with [the other Counterparty] has employed Fichtner Consulting Engineers Limited (“the Independent Certifier”) to undertake certification services (“the IC Services”) in connection with the provision of works in respect of the Authority’s “Waste Management Strategic Partnership Project” (“the Project”).
- (B) By Agreement in writing between the Independent Certifier and the Sub-Consultant dated [ \_\_\_\_\_ ] 2001 (the “Sub-Appointment”) the Sub-Consultant agreed to provide [ \_\_\_\_\_ ] services in connection with the IC Services.
- (C) At the request of the Independent Certifier the Sub-Consultant has agreed to enter into this Agreement with the Beneficiary on the terms herein contained.

NOW THIS DEED WITNESSES in consideration of the sum of £1 paid by the Beneficiary receipt of which the Sub-Consultant acknowledges as follows:-

1. **DUTY OF CARE**

- 1.1 The Sub-Consultant warrants to the Beneficiary that it has carried out and will carry out the duties and obligations on its part to be performed under and in connection with the Sub-Appointment and that in performing the same the Sub-Consultant has exercised and shall continue to exercise all reasonable professional skill, care and diligence to be expected of a properly qualified and competent [architect/structural engineer/quantity surveyor/other professional] experienced in carrying out the duties and services of the type comprised in the Sub-Appointment for projects of a similar size, type, scope and complexity to the Project PROVIDED THAT the duty of care owed by the Sub-Consultant to the Beneficiary shall be no greater than the duty of care owed by the Sub-Consultant to the Independent Certifier under the terms of the Sub-Appointment (for this purpose not taking into account any variation in the terms of the Sub-Appointment or waiver of any breach thereof which might operate to reduce or diminish the liability to the Beneficiary under this Deed without the Beneficiary’s prior written consent).
- 1.2 No enquiry, inspection, comment, consent, decision or instruction at any time made or given by/or behalf of the Beneficiary shall operate to prejudice or diminish the obligations of the Sub-Consultant to the Beneficiary.

2. **PROFESSIONAL INDEMNITY INSURANCE**

- 2.1 The Sub-Consultant warrants that it has and will maintain professional indemnity insurance covering its obligations under this Deed with a limit of indemnity of not less than £[*an appropriate sum, given scope of Sub-Consultant’s responsibilities*] for each and every claim. The Sub-Consultant undertakes to maintain such insurance at all times until twelve (12) years from the date of completion of the IC Services (or if sooner twelve (12) years after the termination of the employment of the Sub-Consultant under the Sub-Appointment) provided such insurance is available on commercially acceptable terms having regard (inter alia) to the premium demanded and the policy conditions and (for

the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Sub-Consultant's own claims record or other acts omissions matters or things peculiar to the Sub-Consultant will be deemed to be within its obligations. The Sub-Consultant shall as soon as practicable inform the Beneficiary if such insurance ceases to be available on commercially acceptable terms in order that the Sub-Consultant and the Beneficiary can discuss means of best protecting their respective positions and in the meantime the Sub-Consultant shall maintain such professional indemnity insurance cover as is available to it (if any) on commercially acceptable terms.

2.2 When reasonably requested by the Beneficiary the Sub-Consultant will provide (but not in any way which would breach any term of the insurance policy then in force) documentary evidence that the insurance required hereunder is being maintained.

### 3. **ASSIGNMENT**

The Beneficiary is entitled to assign the benefit of this Deed once without the consent of the Sub-Consultant.

### 4. **DOCUMENTS**

4.1 Copyright in the Documents shall remain vested in the Sub-Consultant and subject thereto the Sub-Consultant hereby grants to the Beneficiary an irrevocable non-exclusive royalty free licence (for the avoidance of doubt such licence to remain in full force and effect notwithstanding termination of the Sub-Consultant's appointment for whatever reason or any dispute hereunder) to copy and use the Documents and to reproduce the works; designs and inventions contained in the Documents for all purposes related to the Project including but without limitation the construction, completion, reconstruction, alteration, extension, maintenance, letting, promotion, advertisement, reinstatement, use and repair of the Project or the Beneficiary's interests in it (but so that such licence shall not extend to or include a licence to reproduce the design contained in them for any extension of the Works) and the Beneficiary shall be entitled to grant sub-licences on terms equivalent to the provision of this clause 4.1 and the Beneficiary's licences and such sub-licences shall be transferable to other without charge PROVIDED ALWAYS THAT the Sub-Consultant shall not be liable for the consequences of any use of the Documents by the Beneficiary for any purpose other than that for which they were prepared and provided by the Sub-Consultant.

4.2 The Sub-Consultant shall provide to the Beneficiary at its request such additional copies of all or any of the Documents as are reasonably required by the Beneficiary beyond those required for the construction and completion of the Project and shall provide such additional information and co-operation as is reasonably required in connection with the same.

4.3 Where any rights are vested in the Sub-Consultant by virtue of Chapter IV (Moral Rights) of Part 1 of the Copyright Designs and Patents Act 1988 the Sub-Consultant hereby irrevocably waives any such rights in relation to the Project or any parts thereof and to any Documents and shall obtain a written waiver from its employees from time to time of any rights that may have in respect of the same.

### 5. **EXPIRY OF DEED**

This Deed shall cease to have effect twelve (12) years after the date of the Certificate of Practical Completion issued by the Independent Certifier under the Project Agreement (or if sooner 12 years after the termination of the employment of the Sub-Consultant under the Sub-

Appointment) save in relation to any claims hereunder in respect of which proceedings shall have been commenced against the Sub-Consultant before expiry of the said period of twelve (12) years.

6. **GOVERNING LAW**

The application and interpretation of this Deed shall in all respects be governed by English Law. The parties hereby accept non-exclusive jurisdiction of the Courts of England and Wales.

7. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

IN WITNESS whereof the Sub-Consultant and the Beneficiary have executed this document as a Deed.

EXECUTED AND DELIVERED )  
as a DEED with the COMMON )  
SEAL of [ ] )  
in the presence of )  
.....  
Director  
.....  
Director/Company Secretary

EXECUTED AND DELIVERED )  
as a DEED with the COMMON )  
SEAL of [ ] )  
in the presence of )  
.....  
Director  
.....  
Director/Company Secretary