

DATED 27th June 2019

MID ULSTER DISTRICT COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED

(LOCAL AUTHORITIES)

in relation to:-

MAGHERAGLASS LANDFILL SITE

THIS DEED is made the 27th of June 2019

BETWEEN

1. **MID ULSTER DISTRICT COUNCIL** whose principal office is at Burn Road, Cookstown, Co. Tyrone, BT80 8DT (“Permit Holder”)

-and-

2. **THE DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS acting through the NORTHERN IRELAND ENVIRONMENT AGENCY** whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. (The Department of Agriculture, Environment and Rural Affairs hereafter called the “Agency”).

RECITALS

- (A) The Permit Holder operates the installation at Magheraglass Landfill Site, Knockaleery Road, Cookstown, BT80 9EH which includes a specified waste management activity (“the Installation”) and any reference to Permit Holder shall include its successors in title.
- (B) The Agency is the regulator of the Installation for the purposes of the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) and references to the Agency shall include its successors in title as the regulator.
- (C) In accordance with the PPC Regulations a Permit (Reference PO143/06A) (“the Permit”) was issued to the Permit Holder by the Agency on 1st April 2008 for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained in the Permit as amended from time to time.
- (D) In order to satisfy the Agency that the Permit Holder is a fit and proper person for the purposes of the PPC Regulations the Permit Holder desires to make and maintain adequate financial provision in relation to and/or arising from its duties and obligations under the Permit.
- (E) The provision made by this Deed is without limitation to the Agency’s other rights and powers under the PPC Regulations and/or the Permit.

NOW IT IS AGREED as follows

DEFINITIONS AND INTERPRETATION

1. In this Deed unless the context otherwise requires or definitions are elsewhere set out in this Deed.
 - 1.1 “Agreed Interest” means interest at the rate of 2% above the base rate of Danske Bank published from time to time compounded quarterly or at the rate of 10% per annum compounded quarterly whichever is the greater.
 - 1.2 “Business Day” means any day from Monday to Friday inclusive other than Christmas Day, Good Friday or a statutory Bank Holiday in Northern Ireland.
 - 1.3 “Expenses” includes all costs and other expenses of whatsoever nature (on a full indemnity basis) incurred by the Agency in connection with the exercise of the Agency’s powers under regulations 29(1) and/or 29(2) of the PPC Regulations under the Permit or the enforcement of this Deed in whole or in part or the exercise of any power under this Deed and all legal costs and disbursements together with Agreed Interest from the date on which the Expenses are incurred.
 - 1.4 “The CPI” means the Consumer Price Index published by the Office for National Statistics or such other Index as the Agency may from time to time notify the Permit Holder.
 - 1.5 “Permit Holder’s Obligations” means all the Permit Holder’s duties and/or obligations arising from the Permit and/or the Waste and Contaminated Land (Northern Ireland) Order 1997.
 - 1.6 “the Review Date” means the anniversary of the date of this Deed.
 - 1.7 References in this Deed to Clause numbers are references to the Clauses in this Deed bearing those numbers.
 - 1.8 The singular includes the plural and vice versa.
 - 1.9 Any reference to an Act of Parliament or Order in Council shall include any modification extension or re-enactment of it for the time being in force and shall also include all instruments, orders, plans, regulations, permissions, licenses and directions for the time being

made issued or given under such Act or Order or deriving validity from it or so made issued or given and treated as though so made issued or given under a re-enactment with or without any modification or extension.

1.10 Headings are inserted for reference purposes only and do not form part of this Deed.

1.11 This Deed shall be subject to and construed in accordance with Northern Ireland Law.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the Agency upon the Agency for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the Agency for the purpose of satisfying Expenses incurred by the Agency in respect of any work undertaken by the Agency (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations.

Provided that the Agency has in relation to the exercise of power under regulation 29(2) complied with the requirements of regulation 29(3) and in either case the Agency has served a notice on the Permit Holder requesting reimbursement of the Expenses within 10 Business Days of the date of service of the notice and the Permit Holder has failed to pay and thereupon the Permit Holder shall be unconditionally bound to satisfy the Expenses incurred by the Agency on demand on service of a Certificate of Default by the Agency upon the Permit Holder without deduction set-off or counterclaim and for the avoidance of doubt the Permit Holder's liability hereunder may arise on successive occasions PROVIDED THAT the amount recoverable from the Permit Holder under this Deed shall not exceed the total of £849,127 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.

(i) annually on the Review Date or on the date upon which the Agency serves written notice of such revision on the Permit Holder certifying the revision as having been calculated in accordance with this Clause whichever is the later in line with

the annual movement in the CPI in the month prior to such Review Date in respect of the then preceding 12 months and calculated by compounding annually.

- 2.2 This Deed is and shall remain a continuing security for the Permit Holder's Obligations to the Agency at all times and shall not be satisfied or otherwise affected by any repayment or recovery from time to time of the whole or any part of any amount which may then be due owing from the Permit Holder to the Agency.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the Agency shall be deemed conclusively to have arisen both as to liability to pay and the quantum of the damages upon the service upon the Permit Holder by the Agency of a Certificate of Default in the form of the draft annexed hereto giving particulars of the default or occurrence giving rise to the liability and the quantum of the Expenses sustained.
- 3.2 Upon receipt of the Certificate described in Clause 3.1 the Permit Holder undertakes forthwith to make payment without any deduction direct to the Agency for the sum demanded.
- 3.3 The Agency may make a demand under or enforce this Deed either with or without first resorting to other means of payment or to other securities without taking proceedings against the Permit Holder.

RELEASE FROM THIS DEED

4. Upon any one of the following events occurring the Permit Holder shall be released from performance of this Deed
- 4.1 The Permit being surrendered or partially surrendered in either case in respect of all of the specified waste management activity of the Permit pursuant to regulation 22(5) of the PPC Regulations.
- 4.2 The Permit being transferred or partially transferred in respect of all of the specified waste management activity pursuant to regulation 20 of the PPC Regulations except where any transfer is made to a local government body pursuant to the Reform of Local Government and any legislative provision arising therefrom.

- 4.3 Permit either being revoked entirely or partially pursuant to regulation 24 of the PPC Regulations in respect of all of the specified waste management activity where the regulator either:
- 4.3.1 does not require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations; or
- 4.3.2 does require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations and where case the Agency subsequently issues a certificate of satisfaction under regulation 24(7).
- 4.4 The Permit Holder providing to the Agency an alternative mechanism for making financial provision which is acceptable to the Agency in accordance with Clause 5.
- 4.5 The decision of a Court or Tribunal of competent jurisdiction.

ALTERNATIVE MECHANISM

5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the Agency to consider any alternative mechanism for making financial provision in accordance with regulation 4(3)(b) of the PPC Regulations.

SERVICE OF NOTICES

6. Save as otherwise specifically provided any notice or document to be given or served for the purposes of this Deed shall be in writing and shall be delivered personally or sent by first class post or sent by telex or facsimile (confirmed in either of these cases by post) to the party to be given notice or served at the address specified herein or at such other address as the parties hereto may from time to time so serve upon each other and such notice shall be deemed to have been given and such document served
- 6.1 If delivered personally or sent by telex or facsimile as aforesaid on the date of delivery or transmission unless such date is not a Business Day or is after 4.30 pm on a Business Day in which event on the next Business Day; or
- 6.2 If sent by first class post on the second Business Day after the date of posting.

FORBEARANCE BY THE AGENCY

7. No alteration in the terms of the Permit made under the PPC Regulations or in the extent or nature of the works to be provided constructed and maintained thereunder and no allowance of time by the Agency nor any forbearance forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the Agency shall discharge the Permit Holder from its liability hereunder

COSTS

8. The Permit Holder shall pay the Agency's reasonable legal and administrative costs and expenses incurred in the preparation and execution of this Performance Deed in the sum of £100 plus Value Added Tax

ARBITRATION OF DISPUTES

9. 9.1 If any dispute arises between the parties as to the interpretation implementation or operation of this Deed and the parties are unable to resolve the dispute amicably it shall be referred to arbitration by either party.
- 9.2 A reference to a dispute shall not prevent the Agency recovering monies under this Deed in accordance with Clause 2.1.
- 9.3 In the event of a reference to arbitration the parties shall agree an arbitrator or if not agreed an arbitrator will be nominated at the request of either party by the President (or failing that the vice-President) for the time being of the Northern Ireland Chapter of the Irish Branch of the Chartered Institute of Arbitrators and such reference shall be deemed to be a reference to arbitration pursuant to the Arbitration Act (Northern Ireland) 1996.
- 9.4 The parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
- 9.5 If the decision of the arbitrator is that the Agency has wrongly recovered monies under this deed in whole or in part then the Agency shall repay to the Permit Holder or such other person as directed by the Permit Holder within 20 Business Days of the arbitrator's decision that amount wrongly recovered together with Agreed Interest from the date

of wrongful recovery to the date of repayment to the Permit Holder or such other person as directed by the Permit Holder.

- 9.6 The parties agree that the costs of the arbitrator shall be paid as directed the arbitrator or in the absence of such direction each party shall bear its own costs.

Exemplar

IN WITNESS of which the parties have executed this Deed the day and year first written above

Present when the Seal of
Mid Ulster District Council
was affixed hereto

Chief Executive

Chairperson

Signed and Delivered as a Deed by _____

on behalf of the Northern Ireland Environment Agency

dated [] in the presence of:-

Signature of Witness: _____

Address of Witness:

DATED 27th June 2019

MID ULSTER DISTRICT COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED

(LOCAL AUTHORITIES)

in relation to:-

BALLYMACOMBS LANDFILL SITE

THIS DEED is made the 27TH June 2019

BETWEEN

1. **MID ULSTER DISTRICT COUNCIL** whose principal office is at Ballyronan Road, Magherafelt, BT45 6EN (“Permit/Licence Holder”)

-and-

2. **THE DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS acting through the NORTHERN IRELAND ENVIRONMENT AGENCY** whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. (The Department of Agriculture, Environment and Rural Affairs hereafter called the “Agency”).

RECITALS

- (A) The Permit/Licence Holder operates the installation at Ballymacombs Landfill Site, Ballymacombs Road, Bellaghy, BT45 8JP which includes a specified waste management activity (“the Installation”) and any reference to Permit/Licence Holder shall include its successors in title.
- (B) The Agency is the regulator of the Installation for the purposes of the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) and The Waste and Contaminated Land (Northern Ireland) Order 1997 (as amended) (“the Order”) and references to the Agency shall include its successors in title as the regulator.
- (C) In accordance with the PPC Regulations a Permit (Reference P0336/09A) (“the Permit”) was issued to the Permit Holder by the Agency on 16th April 2010 for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained in the Permit as amended from time to time.

In accordance with Article 10 (2) (a) of the Order a Modified Waste Management Licence (Reference LN/10/48/C) (“the Licence”) was issued to the Licence Holder by the Agency on 29th April 2010 for the aftercare and restoration of the landfill subject to conditions contained in the Licence as amended from time to time.

- (D) In order to satisfy the Agency that the Permit/Licence Holder is a fit and proper person for the purposes of the PPC Regulations and the Order the Permit/Licence Holder desires to make and maintain adequate financial provision in relation to and/or arising from its duties and obligations under the Permit/Licence.
- (E) The provision made by this Deed is without limitation to the Agency's other rights and powers under the PPC Regulations and the Order and/or the Permit/Licence.

EXEMPLAR

NOW IT IS AGREED as follows

DEFINITIONS AND INTERPRETATION

1. In this Deed unless the context otherwise requires or definitions are elsewhere set out in this Deed.
 - 1.1 “Agreed Interest” means interest at the rate of 2% above the base rate of Danske Bank published from time to time compounded quarterly or at the rate of 10% per annum compounded quarterly whichever is the greater.
 - 1.2 “Business Day” means any day from Monday to Friday inclusive other than Christmas Day, Good Friday or a statutory Bank Holiday in Northern Ireland.
 - 1.3 “Expenses” includes all costs and other expenses of whatsoever nature (on a full indemnity basis) incurred by the Agency in connection with the exercise of the Agency’s powers under Regulations 29(1) and/or 29(2) of the PPC Regulations under the Permit, and under Article 16 (2) and (3) of the Order under the Licence, or the enforcement of this Deed in whole or in part or the exercise of any power under this Deed and all legal costs and disbursements together with Agreed Interest from the date on which the Expenses are incurred.
 - 1.4 “The CPI” means the Consumer Price Index published by the Office for National Statistics or such other Index as the Agency may from time to time notify the Permit Holder.
 - 1.5 “Permit/Licence Holder’s Obligations” means all the Permit/Licence Holder’s duties and/or obligations arising from the Permit/Licence and/or the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) and the Waste and Contaminated Land (Northern Ireland) Order 1997.
 - 1.6 “the Review Date” means the anniversary of the date of this Deed.
 - 1.7 References in this Deed to Clause numbers are references to the Clauses in this Deed bearing those numbers.
 - 1.8 The singular includes the plural and vice versa.

- 1.9 Any reference to an Act of Parliament or Order in Council shall include any modification extension or re-enactment of it for the time being in force and shall also include all instruments, orders, plans, regulations, permissions, licenses and directions for the time being made issued or given under such Act or Order or deriving validity from it or so made issued or given and treated as though so made issued or given under a re-enactment with or without any modification or extension.
- 1.10 Headings are inserted for reference purposes only and do not form part of this Deed.
- 1.11 This Deed shall be subject to and construed in accordance with Northern Ireland Law.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the Agency upon the Agency for the purpose of securing the performance and observance of the provisions of the Permit/Licence and further as security for the Agency for the purpose of satisfying Expenses incurred by the Agency in respect of any work undertaken by the Agency (whether by itself or any other authorised person) pursuant to Regulations 29(1) and/or (2) of the PPC Regulations and Article 16 (2) and (3) of the Order.
- Provided that the Agency has in relation to the exercise of power under regulation 29(2) complied with the requirements of regulation 29(3), in the case of the Permit, and in either case the Agency has served a notice on the Permit/Licence Holder requesting reimbursement of the Expenses within 10 Business Days of the date of service of the notice and the Permit/Licence Holder has failed to pay and thereupon the Permit/Licence Holder shall be unconditionally bound to satisfy the Expenses incurred by the Agency on demand on service of a Certificate of Default by the Agency upon the Permit/Licence Holder without deduction set-off or counterclaim and for the avoidance of doubt the Permit/Licence Holder's liability hereunder may arise on successive occasions PROVIDED THAT the amount recoverable from the Permit/Licence Holder under this Deed shall not exceed the total of £1,254,445 and FURTHER PROVIDED THAT the amount secured

pursuant to this Deed shall be revised annually on the Review Date or on the date upon which the Agency serves written notice of such revision on the Permit Holder certifying the revision as having been calculated in accordance with this Clause whichever is the later in line with the annual movement in the CPI in the month prior to such Review Date in respect of the then preceding 12 months and calculated by compounding annually.

- 2.2 This Deed is and shall remain a continuing security for the Permit Holder's Obligations to the Agency at all times and shall not be satisfied or otherwise affected by any repayment or recovery from time to time of the whole or any part of any amount which may then be due owing from the Permit/Licence Holder to the Agency.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit/Licence Holder to satisfy and discharge the Expenses sustained by the Agency shall be deemed conclusively to have arisen both as to liability to pay and the quantum of the damages upon the service upon the Permit/Licence Holder by the Agency of a Certificate of Default in the form of the draft annexed hereto giving particulars of the default or occurrence giving rise to the liability and the quantum of the Expenses sustained.
- 3.2 Upon receipt of the Certificate described in Clause 3.1 the Permit/Licence Holder undertakes forthwith to make payment without any deduction direct to the Agency for the sum demanded.
- 3.3 The Agency may make a demand under or enforce this Deed either with or without first resorting to other means of payment or to other securities without taking proceedings against the Permit/Licence Holder.

RELEASE FROM THIS DEED

4. Upon any one of the following events occurring the Permit Holder shall be released from performance of this Deed
- 4.1 The Permit/Licence being surrendered or partially surrendered in either

case in respect of all of the specified waste management activity of the Permit/Licence pursuant to regulation 22(5) of the PPC Regulations and Article 13 (7) of the Order.

- 4.2 The Permit/Licence being transferred or partially transferred in respect of all of the specified waste management activity pursuant to regulation 20 of the PPC Regulations and Article 14 of the Order except where any transfer is made to a local government body pursuant to the Reform of Local Government and any legislative provision arising therefrom.
- 4.3 The Permit/Licence either being revoked entirely or partially pursuant to regulation 24 of the PPC Regulations and Article 12 of the Order in respect of all of the specified waste management activity where, in the case of the Permit, the regulator either:
 - 4.3.1 does not require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations; or
 - 4.3.2 does require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations and where case the Agency subsequently issues a certificate of satisfaction under regulation 24(7).
- 4.4 The Permit/Licence Holder providing to the Agency an alternative mechanism for making financial provision which is acceptable to the Agency in accordance with Clause 5.
- 4.5 The decision of a Court or Tribunal of competent jurisdiction.

ALTERNATIVE MECHANISM

- 5. Nothing contained in this Deed shall prevent the Permit/Licence Holder making an application to the Agency to consider any alternative mechanism for making financial provision in accordance with regulation 4(3)(b) of the PPC Regulations or Article 3(3) (c) of the Order.

SERVICE OF NOTICES

- 6. Save as otherwise specifically provided any notice or document to be given or served for the purposes of this Deed shall be in writing and shall be delivered personally or sent by first class post or sent by telex or facsimile (confirmed in either of these cases by post) to the party to be given notice or served at the address specified herein or at such other address as the parties hereto may

from time to time so serve upon each other and such notice shall be deemed to have been given and such document served

- 6.1 If delivered personally or sent by telex or facsimile as aforesaid on the date of delivery or transmission unless such date is not a Business Day or is after 4.30 pm on a Business Day in which event on the next Business Day; or
- 6.2 If sent by first class post on the second Business Day after the date of posting.

FORBEARANCE BY THE AGENCY

- 7. No alteration in the terms of the Permit/Licence made under the PPC Regulations or in the extent or nature of the works to be provided constructed and maintained thereunder and no allowance of time by the Agency nor any forbearance forgiveness or compromise in or in respect of any matter or thing concerning the Permit/Licence on the part of the Agency shall discharge the Permit/Licence Holder from its liability hereunder.

COSTS

- 8. The Permit/Licence Holder shall pay the Agency's reasonable legal and administrative costs and expenses incurred in the preparation and execution of this Performance Deed in the sum of £100 plus Value Added Tax.

ARBITRATION OF DISPUTES

- 9.
 - 9.1 If any dispute arises between the parties as to the interpretation, implementation or operation of this Deed and the parties are unable to resolve the dispute amicably it shall be referred to arbitration by either party.
 - 9.2 A reference to a dispute shall not prevent the Agency recovering monies under this Deed in accordance with Clause 2.1.
 - 9.3 In the event of a reference to arbitration the parties shall agree an arbitrator or if not agreed an arbitrator will be nominated at the request of either party by the President (or failing that the vice-President) for the time being of the Northern Ireland Chapter of the Irish Branch of the Chartered Institute of Arbitrators and such reference shall be deemed to be a reference to arbitration pursuant to the Arbitration Act (Northern Ireland) 1996.

- 9.4 The parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
- 9.5 If the decision of the arbitrator is that the Agency has wrongly recovered monies under this deed in whole or in part then the Agency shall repay to the Permit/Licence Holder or such other person as directed by the Permit/Licence Holder within 20 Business Days of the arbitrator's decision that amount wrongly recovered together with Agreed Interest from the date of wrongful recovery to the date of repayment to the Permit/Licence Holder or such other person as directed by the Permit/Licence Holder.
- 9.6 The parties agree that the costs of the arbitrator shall be paid as directed the arbitrator or in the absence of such direction each party shall bear its own costs.

IN WITNESS of which the parties have executed this Deed the day and year first written above

Present when the Seal of
Mid Ulster District Council
was affixed hereto

Chief Executive

Chairperson

Signed and Delivered as a Deed by _____

on behalf of the Northern Ireland Environment Agency

dated [] in the presence of:-

Signature of Witness: _____

Address of Witness:

DATED 27th June 2019

MID ULSTER DISTRICT COUNCIL
-and-
FERMANAGH & OMAGH DISTRICT COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED
(LOCAL AUTHORITIES)

in relation to:-

TULLYVAR LANDFILL SITE

THIS DEED is made the 27th of June 2019

BETWEEN

1. **MID ULSTER DISTRICT COUNCIL** and **FERMANAGH & OMAGH DISTRICT COUNCIL** whose principal office is at Circular Road, Dungannon, BT71 6DT (“Permit Holder”)

-and-

2. **THE DEPARTMENT OF AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS** acting through the **NORTHERN IRELAND ENVIRONMENT AGENCY** whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. (The Department of Agriculture, Environment and Rural Affairs hereafter called the “Agency”).

RECITALS

- (A) The Permit Holder operates the installation at Tullyvar Landfill Site, 130 Tullyvar Road, Aughnacloy, BT69 6BN which includes a specified waste management activity (“the Installation”) and any reference to Permit Holder shall include its successors in title.
- (B) The Agency is the regulator of the Installation for the purposes of the Pollution Prevention & Control (Industrial Emissions) Regulations (Northern Ireland) 2013 SR 160 (as amended) (“the PPC Regulations”) and references to the Agency shall include its successors in title as the regulator.
- (C) In accordance with the PPC Regulations a Permit (Reference PO184/07A) (“the Permit”) was issued to the Permit Holder by the Agency on 30th October 2007 for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained in the Permit as amended from time to time.
- (D) In order to satisfy the Agency that the Permit Holder is a fit and proper person for the purposes of the PPC Regulations the Permit Holder desires to make and maintain adequate financial provision in relation to and/or arising from its duties and obligations under the Permit.
- (E) The provision made by this Deed is without limitation to the Agency’s other rights and powers under the PPC Regulations and/or the Permit.

NOW IT IS AGREED as follows

DEFINITIONS AND INTERPRETATION

1. In this Deed unless the context otherwise requires or definitions are elsewhere set out in this Deed.
 - 1.1 “Agreed Interest” means interest at the rate of 2% above the base rate of Danske Bank published from time to time compounded quarterly or at the rate of 10% per annum compounded quarterly whichever is the greater.
 - 1.2 “Business Day” means any day from Monday to Friday inclusive other than Christmas Day, Good Friday or a statutory Bank Holiday in Northern Ireland.
 - 1.3 “Expenses” includes all costs and other expenses of whatsoever nature (on a full indemnity basis) incurred by the Agency in connection with the exercise of the Agency’s powers under regulations 29(1) and/or 29(2) of the PPC Regulations under the Permit or the enforcement of this Deed in whole or in part or the exercise of any power under this Deed and all legal costs and disbursements together with Agreed Interest from the date on which the Expenses are incurred.
 - 1.4 “The CPI” means the Consumer Price Index published by the Office for National Statistics or such other Index as the Agency may from time to time notify the Permit Holder.
 - 1.5 “Permit Holder’s Obligations” means all the Permit Holder’s duties and/or obligations arising from the Permit and/or the Waste and Contaminated Land (Northern Ireland) Order 1997.
 - 1.6 “the Review Date” means the anniversary of the date of this Deed.
 - 1.7 References in this Deed to Clause numbers are references to the Clauses in this Deed bearing those numbers.
 - 1.8 The singular includes the plural and vice versa.
 - 1.9 Any reference to an Act of Parliament or Order in Council shall include any modification extension or re-enactment of it for the time being in force and shall also include all instruments, orders, plans, regulations, permissions, licenses and directions for the time being

made issued or given under such Act or Order or deriving validity from it or so made issued or given and treated as though so made issued or given under a re-enactment with or without any modification or extension.

1.10 Headings are inserted for reference purposes only and do not form part of this Deed.

1.11 This Deed shall be subject to and construed in accordance with Northern Ireland Law.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the Agency upon the Agency for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the Agency for the purpose of satisfying Expenses incurred by the Agency in respect of any work undertaken by the Agency (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations.

Provided that the Agency has in relation to the exercise of power under regulation 29(2) complied with the requirements of regulation 29(3) and in either case the Agency has served a notice on the Permit Holder requesting reimbursement of the Expenses within 10 Business Days of the date of service of the notice and the Permit Holder has failed to pay and thereupon the Permit Holder shall be unconditionally bound to satisfy the Expenses incurred by the Agency on demand on service of a Certificate of Default by the Agency upon the Permit Holder without deduction set-off or counterclaim and for the avoidance of doubt the Permit Holder's liability hereunder may arise on successive occasions PROVIDED THAT the amount recoverable from the Permit Holder under this Deed shall not exceed the total of £1,396,596 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.

(i) annually on the Review Date or on the date upon which the Agency serves written notice of such revision on the Permit Holder certifying the revision as having been calculated in accordance with this Clause whichever is the later in line with

the annual movement in the CPI in the month prior to such Review Date in respect of the then preceding 12 months and calculated by compounding annually.

- 2.2 This Deed is and shall remain a continuing security for the Permit Holder's Obligations to the Agency at all times and shall not be satisfied or otherwise affected by any repayment or recovery from time to time of the whole or any part of any amount which may then be due owing from the Permit Holder to the Agency.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the Agency shall be deemed conclusively to have arisen both as to liability to pay and the quantum of the damages upon the service upon the Permit Holder by the Agency of a Certificate of Default in the form of the draft annexed hereto giving particulars of the default or occurrence giving rise to the liability and the quantum of the Expenses sustained.
- 3.2 Upon receipt of the Certificate described in Clause 3.1 the Permit Holder undertakes forthwith to make payment without any deduction direct to the Agency for the sum demanded.
- 3.3 The Agency may make a demand under or enforce this Deed either with or without first resorting to other means of payment or to other securities without taking proceedings against the Permit Holder.

RELEASE FROM THIS DEED

4. Upon any one of the following events occurring the Permit Holder shall be released from performance of this Deed
- 4.1 The Permit being surrendered or partially surrendered in either case in respect of all of the specified waste management activity of the Permit pursuant to regulation 22(5) of the PPC Regulations.
- 4.2 The Permit being transferred or partially transferred in respect of all of the specified waste management activity pursuant to regulation 20 of the PPC Regulations except where any transfer is made to a local government body pursuant to the Reform of Local Government and any legislative provision arising therefrom.

- 4.3 Permit either being revoked entirely or partially pursuant to regulation 24 of the PPC Regulations in respect of all of the specified waste management activity where the regulator either:
- 4.3.1 does not require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations; or
- 4.3.2 does require the Permit Holder to take further steps under regulation 24(5) of the PPC Regulations and where case the Agency subsequently issues a certificate of satisfaction under regulation 24(7).
- 4.4 The Permit Holder providing to the Agency an alternative mechanism for making financial provision which is acceptable to the Agency in accordance with Clause 5.
- 4.5 The decision of a Court or Tribunal of competent jurisdiction.

ALTERNATIVE MECHANISM

5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the Agency to consider any alternative mechanism for making financial provision in accordance with regulation 4(3)(b) of the PPC Regulations.

SERVICE OF NOTICES

6. Save as otherwise specifically provided any notice or document to be given or served for the purposes of this Deed shall be in writing and shall be delivered personally or sent by first class post or sent by telex or facsimile (confirmed in either of these cases by post) to the party to be given notice or served at the address specified herein or at such other address as the parties hereto may from time to time so serve upon each other and such notice shall be deemed to have been given and such document served
- 6.1 If delivered personally or sent by telex or facsimile as aforesaid on the date of delivery or transmission unless such date is not a Business Day or is after 4.30 pm on a Business Day in which event on the next Business Day; or
- 6.2 If sent by first class post on the second Business Day after the date of posting.

FORBEARANCE BY THE AGENCY

7. No alteration in the terms of the Permit made under the PPC Regulations or in the extent or nature of the works to be provided constructed and maintained thereunder and no allowance of time by the Agency nor any forbearance forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the Agency shall discharge the Permit Holder from its liability hereunder

COSTS

8. The Permit Holder shall pay the Agency's reasonable legal and administrative costs and expenses incurred in the preparation and execution of this Performance Deed in the sum of £100 plus Value Added Tax

ARBITRATION OF DISPUTES

9.
 - 9.1 If any dispute arises between the parties as to the interpretation implementation or operation of this Deed and the parties are unable to resolve the dispute amicably it shall be referred to arbitration by either party.
 - 9.2 A reference to a dispute shall not prevent the Agency recovering monies under this Deed in accordance with Clause 2.1.
 - 9.3 In the event of a reference to arbitration the parties shall agree an arbitrator or if not agreed an arbitrator will be nominated at the request of either party by the President (or failing that the vice-President) for the time being of the Northern Ireland Chapter of the Irish Branch of the Chartered Institute of Arbitrators and such reference shall be deemed to be a reference to arbitration pursuant to the Arbitration Act (Northern Ireland) 1996.
 - 9.4 The parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
 - 9.5 If the decision of the arbitrator is that the Agency has wrongly recovered monies under this deed in whole or in part then the Agency shall repay to the Permit Holder or such other person as directed by the Permit Holder within 20 Business Days of the arbitrator's decision that amount wrongly recovered together with Agreed Interest from the date

of wrongful recovery to the date of repayment to the Permit Holder or such other person as directed by the Permit Holder.

- 9.6 The parties agree that the costs of the arbitrator shall be paid as directed the arbitrator or in the absence of such direction each party shall bear its own costs.

IN WITNESS of which the parties have executed this Deed the day and year first written above

Present when the Seal of
Mid Ulster District Council
was affixed hereto

Chief Executive

Chairperson

Present when the Seal of
Fermanagh & Omagh District Council
was affixed hereto

Chief Executive

Chairperson

Signed and Delivered as a Deed by _____

on behalf of the Northern Ireland Environment Agency

dated [] in the presence of:-

Signature of Witness: _____

Address of Witness:

THIS AGREEMENT is made the 27th day of June 2019 between MID ULSTER DISTRICT COUNCIL of Circular Road, Dungannon in the County of Tyrone (“Mid Ulster”) of the one part and FERMANAGH & OMAGH DISTRICT COUNCIL of The Grange, Mountjoy Road, Omagh in the County of Tyrone (“Fermanagh & Omagh”) of the other part.

WHEREAS:-

a) Mid Ulster and Fermanagh & Omagh are the joint owners of Tullyvar Landfill Site and are the joint holders of a Permit issued under the Pollution Prevention and Control (Northern Ireland) Regulations 2003 in respect of the waste management activity carried on therein.

b) Mid Ulster and Fermanagh & Omagh have today executed a Performance Deed with the Department of Agriculture, Environment and Rural Affairs acting through the Northern Ireland Environment Agency for the purpose of securing performance and observance of the provisions of the Permit a copy of which is set out in Schedule One attached hereto.

NOW IT IS HEREBY agreed that Mid Ulster and Fermanagh & Omagh shall each be liable for and shall discharge without deduction, set-off or counterclaim one half of any liability which may from time to time arise on foot of the Performance Deed.

IN WITNESS whereof the parties hereby have affixed their seals the day and year first herein written.

Present when the Seal of
Mid Ulster District Council
was affixed hereto

Chief Executive

Chairperson

Present when the Seal of
Fermanagh & Omagh District Council
was affixed hereto

Chief Executive

Chairperson