

DATED 26th January 2023

MID ULSTER DISTRICT COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED

(LOCAL AUTHORITIES)

in relation to:

MAGHERAGLASS LANDFILL SITE

THIS DEED is made on the 26th day of January 2023

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 "**NIEA**").

(each known as a "Party" together known as the "Parties")

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 NIEA 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 NIEA 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 NIEA on the 1st November 2019 (V4) for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained within the Permit (as amended from time to time).
- (D) In order to satisfy the NIEA 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 NIEA'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 Northern Bank Ltd trading as 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 for the costs, damages, losses, debts, interest and other expenses of whatsoever nature (on a full indemnity basis) incurred by the NIEA in connection with the exercise of the NIEA'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 RPI"** means the Retail Price Index (All Items) published by the Office for National Statistics or such other Index as the NIEA 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 governed by and construed in accordance with the laws of Northern Ireland.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the NIEA upon the Permit Holder for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the NIEA for the purpose of satisfying Expenses incurred by the NIEA in respect of any work undertaken by the NIEA (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations. Provided that the NIEA 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 NIEA has served a notice on the Permit Holder requesting reimbursement of the Expenses within ten (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 NIEA on demand on service of a Certificate of Default by the NIEA 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 £749,894 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.
- (i) annually on the Review Date; or
 - (ii) on the date upon which the NIEA 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 RPI 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 NIEA 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 NIEA.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the NIEA 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 NIEA of a Certificate of Default in the form of

the draft at Schedule 1 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 NIEA for the sum demanded.
- 3.3 The NIEA 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 The 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 NIEA 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 the NIEA subsequently issues a certificate of satisfaction under regulation 24(7); and
 - 4.4 The Permit Holder providing to the NIEA an alternative mechanism for making financial provision which is acceptable to the NIEA in accordance with Clause 5.

ALTERNATIVE MECHANISM

- 5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the NIEA 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 or registered 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 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 or registered post on the second Business Day after the date of posting.

FORBEARANCE BY THE NIEA

7. No alteration, variation or wavier 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 NIEA nor any forbearance, forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the NIEA shall discharge the Permit Holder from its liability hereunder.

COSTS

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

COUNTERPARTS

9. This Deed may be executed in any number of counterparts and by the different Parties hereto on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute but one and the same instrument.

ARBITRATION OF DISPUTES

10. 10.1 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.

- 10.2 A reference to a dispute shall not prevent the NIEA recovering monies under this Deed in accordance with Clause 2.1.
- 10.3 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 1996.
- 10.4 The Parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
- 10.5 If the decision of the arbitrator is that the NIEA has wrongly recovered monies under this Deed in whole or in part then the NIEA shall repay to the Permit Holder or such other person as directed by the Permit Holder within twenty (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.
- 10.6 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.

ASSIGNMENT

11. This Deed and the benefits thereof shall not be assigned without the prior written consent of the NIEA.

THIRD PARTY RIGHTS

12. 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 or otherwise, by any person not a Party to it.

Schedule 1

THE FORM OF THE CERTIFICATE OF DEFAULT

To: MID ULSTER DISTRICT COUNCIL (the “**Permit Holder**”)

CERTIFICATE OF DEFAULT relating to the Deed

Dated the 26th of January 2023 and

MADE BETWEEN:

MID ULSTER DISTRICT COUNCIL (“**the Permit Holder**”)

-and-

THE NORTHERN IRELAND ENVIRONMENT AGENCY (“**the NIEA**”)

The NIEA whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA hereby certifies that default has been made by the Permit Holder in the observance and performance of its obligations under PPC Permit dated the 1st November 2019 Reference PO143/06A (and subsequent Variation Notices) issued by the NIEA and/or the Deed made 26th of January 2023 between the NIEA and the Permit Holder in the following respects:

[]¹

As a result of the aforesaid default the NIEA is entitled to recover under the above mentioned Deed the amount £[]² which sum the NIEA hereby requires you to pay pursuant to your obligation under the said Deed.

Dated this day of 20[*]

Signed
(Authorised Officer of the NIEA)

¹ DN: A description of the Permit Holder’s default is to be included here.

² DN: Insert the appropriate Expenses figure

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

Chairperson³

Date

Executed as a DEED by the Northern Ireland Environment Agency	
..... PRINT NAME acting by an authorised signatory SIGNATURE DATE.....	
in the presence of:	
Signature of witness:
Name of witness:
Address of witness:
Occupation of witness:

³ DN: Confirmation is required as to what signatory block is to be used by the Permit Holder

DATED 26th January 2023

MID ULSTER DISTRICT COUNCIL

-and-

NORTHERN IRELAND ENVIRONMENT AGENCY

PERFORMANCE DEED

(LOCAL AUTHORITIES)

in relation to:

BALLYMACOMBS LANDFILL SITE

THIS DEED is made on the 26th day of January 2023

BETWEEN

1. **MID ULSTER DISTRICT COUNCIL** whose principal office is at Ballyronan Road, Magherafelt, BT45 6EN ("**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 "**NIEA**").

(each known as a "Party" together known as the "Parties")

RECITALS

- (A) The Permit 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 Holder shall include its successors in title.
- (B) The NIEA 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 NIEA 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 NIEA on the 6th November 2015 (V2) for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained within the Permit (as amended from time to time).
- (D) In order to satisfy the NIEA 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 NIEA'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 Northern Bank Ltd trading as 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 for the costs, damages, losses, debts, interest and other expenses of whatsoever nature (on a full indemnity basis) incurred by the NIEA in connection with the exercise of the NIEA'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 RPI"** means the Retail Price Index (All Items) published by the Office for National Statistics or such other Index as the NIEA 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 governed by and construed in accordance with the laws of Northern Ireland.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the NIEA upon the Permit Holder for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the NIEA for the purpose of satisfying Expenses incurred by the NIEA in respect of any work undertaken by the NIEA (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations. Provided that the NIEA 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 NIEA has served a notice on the Permit Holder requesting reimbursement of the Expenses within ten (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 NIEA on demand on service of a Certificate of Default by the NIEA 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 £1,296,433 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.
- (i) annually on the Review Date; or
 - (ii) on the date upon which the NIEA 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 RPI 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 NIEA 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 NIEA.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the NIEA 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 NIEA of a Certificate of Default in the form of

the draft at Schedule 1 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 NIEA for the sum demanded.
- 3.3 The NIEA 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 The 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 NIEA 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 the NIEA subsequently issues a certificate of satisfaction under regulation 24(7); and
 - 4.4 The Permit Holder providing to the NIEA an alternative mechanism for making financial provision which is acceptable to the NIEA in accordance with Clause 5.

ALTERNATIVE MECHANISM

- 5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the NIEA 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 or registered 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 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 or registered post on the second Business Day after the date of posting.

FORBEARANCE BY THE NIEA

7. No alteration, variation or wavier 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 NIEA nor any forbearance, forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the NIEA shall discharge the Permit Holder from its liability hereunder.

COSTS

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

COUNTERPARTS

9. This Deed may be executed in any number of counterparts and by the different Parties hereto on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute but one and the same instrument.

ARBITRATION OF DISPUTES

10. 10.1 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.

- 10.2 A reference to a dispute shall not prevent the NIEA recovering monies under this Deed in accordance with Clause 2.1.
- 10.3 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 1996.
- 10.4 The Parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
- 10.5 If the decision of the arbitrator is that the NIEA has wrongly recovered monies under this Deed in whole or in part then the NIEA shall repay to the Permit Holder or such other person as directed by the Permit Holder within twenty (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.
- 10.6 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.

ASSIGNMENT

11. This Deed and the benefits thereof shall not be assigned without the prior written consent of the NIEA.

THIRD PARTY RIGHTS

12. 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 or otherwise, by any person not a Party to it.

Schedule 1

THE FORM OF THE CERTIFICATE OF DEFAULT

To: MID ULSTER DISTRICT COUNCIL (the “**Permit Holder**”)

CERTIFICATE OF DEFAULT relating to the Deed

Dated the 26th of January 2023 and

MADE BETWEEN:

MID ULSTER DISTRICT COUNCIL (“**the Permit Holder**”)

-and-

THE NORTHERN IRELAND ENVIRONMENT AGENCY (“**the NIEA**”)

The NIEA whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA hereby certifies that default has been made by the Permit Holder in the observance and performance of its obligations under PPC Permit dated the 6th November 2015 Reference P0366/03A (and subsequent Variation Notices) issued by the NIEA and/or the Deed made 26th of January 2023 between the NIEA and the Permit Holder in the following respects:

[]¹

As a result of the aforesaid default the NIEA is entitled to recover under the above mentioned Deed the amount £[]² which sum the NIEA hereby requires you to pay pursuant to your obligation under the said Deed.

Dated this day of 20[*]

Signed
(Authorised Officer of the NIEA)

¹ DN: A description of the Permit Holder’s default is to be included here.

² DN: Insert the appropriate Expenses figure

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

Chairperson³

Date

Executed as a DEED by the Northern Ireland Environment Agency	
..... PRINT NAME acting by an authorised signatory SIGNATURE DATE.....	
in the presence of:	
Signature of witness:
Name of witness:
Address of witness:
Occupation of witness:

³ DN: Confirmation is required as to what signatory block is to be used by the Permit Holder

DATED 26th January 2023

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 on the 26th day of January 2023

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 "**NIEA**").

(each known as a "Party" together known as the "Parties")

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 NIEA 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 NIEA 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 NIEA on the 8th June 2021 (V6) for the use of the Installation for a specified waste management activity (under the PPC Regulations) subject to conditions contained within the Permit (as amended from time to time).
- (D) In order to satisfy the NIEA 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 NIEA'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 Northern Bank Ltd trading as 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 for the costs, damages, losses, debts, interest and other expenses of whatsoever nature (on a full indemnity basis) incurred by the NIEA in connection with the exercise of the NIEA'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 RPI"** means the Retail Price Index (All Items) published by the Office for National Statistics or such other Index as the NIEA 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 governed by and construed in accordance with the laws of Northern Ireland.

ENFORCEMENT OF THIS DEED

2. 2.1 This Deed shall be enforceable by the NIEA upon the Permit Holder for the purpose of securing the performance and observance of the provisions of the Permit and further as security for the NIEA for the purpose of satisfying Expenses incurred by the NIEA in respect of any work undertaken by the NIEA (whether by itself or any other authorised person) pursuant to regulations 29(1) and/or (2) of the PPC Regulations. Provided that the NIEA 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 NIEA has served a notice on the Permit Holder requesting reimbursement of the Expenses within ten (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 NIEA on demand on service of a Certificate of Default by the NIEA 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 £585,524 and FURTHER PROVIDED THAT the amount secured pursuant to this Deed shall be revised.
- (i) annually on the Review Date; or
 - (ii) on the date upon which the NIEA 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 RPI 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 NIEA 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 NIEA.

CERTIFICATE OF DEFAULT

3. 3.1 The obligation of the Permit Holder to satisfy and discharge the Expenses sustained by the NIEA 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 NIEA of a Certificate of Default in the form of

the draft at Schedule 1 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 NIEA for the sum demanded.
- 3.3 The NIEA 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 The 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 NIEA 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 the NIEA subsequently issues a certificate of satisfaction under regulation 24(7); and
 - 4.4 The Permit Holder providing to the NIEA an alternative mechanism for making financial provision which is acceptable to the NIEA in accordance with Clause 5.

ALTERNATIVE MECHANISM

- 5. Nothing contained in this Deed shall prevent the Permit Holder making an application to the NIEA 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 or registered 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 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 or registered post on the second Business Day after the date of posting.

FORBEARANCE BY THE NIEA

7. No alteration, variation or wavier 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 NIEA nor any forbearance, forgiveness or compromise in or in respect of any matter or thing concerning the Permit on the part of the NIEA shall discharge the Permit Holder from its liability hereunder.

COSTS

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

COUNTERPARTS

9. This Deed may be executed in any number of counterparts and by the different Parties hereto on separate counterparts each of which when so executed and delivered shall be an original but all the counterparts shall together constitute but one and the same instrument.

ARBITRATION OF DISPUTES

10. 10.1 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.

- 10.2 A reference to a dispute shall not prevent the NIEA recovering monies under this Deed in accordance with Clause 2.1.
- 10.3 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 1996.
- 10.4 The Parties agree that the decision of the arbitrator shall be final except in the case of manifest error.
- 10.5 If the decision of the arbitrator is that the NIEA has wrongly recovered monies under this Deed in whole or in part then the NIEA shall repay to the Permit Holder or such other person as directed by the Permit Holder within twenty (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.
- 10.6 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.

ASSIGNMENT

11. This Deed and the benefits thereof shall not be assigned without the prior written consent of the NIEA.

THIRD PARTY RIGHTS

12. 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 or otherwise, by any person not a Party to it.

Schedule 1

THE FORM OF THE CERTIFICATE OF DEFAULT

To: MID ULSTER DISTRICT COUNCIL and FERMANAGH & OMAGH DISTRICT COUNCIL (the “**Permit Holder**”)

CERTIFICATE OF DEFAULT relating to the Deed

Dated the 26th of January 2023 and

MADE BETWEEN:

MID ULSTER DISTRICT COUNCIL and FERMANAGH & OMAGH DISTRICT COUNCIL (“the **Permit Holder**”)

-and-

THE NORTHERN IRELAND ENVIRONMENT AGENCY (“the **NIEA**”)

The NIEA whose principal office is at Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA hereby certifies that default has been made by the Permit Holder in the observance and performance of its obligations under PPC Permit dated the 8th June 2021 Reference PO184/07A (and subsequent Variation Notices) issued by the NIEA and/or the Deed made 26th of January 2023 between the NIEA and the Permit Holder in the following respects:

[]¹

As a result of the aforesaid default the NIEA is entitled to recover under the above mentioned Deed the amount £[]² which sum the NIEA hereby requires you to pay pursuant to your obligation under the said Deed.

Dated this day of 20[*]

Signed
(Authorised Officer of the NIEA)

¹ DN: A description of the Permit Holder’s default is to be included here.

² DN: Insert the appropriate Expenses figure

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

Date

Present when the Seal of
FERMANAGH & OMAGH DISTRICT COUNCIL
was affixed hereto

Chief Executive

Chairperson

Date

Executed as a DEED by the Northern Ireland Environment Agency

.....
PRINT NAME

acting by an authorised signatory

.....
SIGNATURE

DATE.....

in the presence of:

Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

THIS AGREEMENT is made the 26th day of January 2023 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

Date

Present when the Seal of
FERMANAGH & OMAGH DISTRICT COUNCIL
was affixed hereto

Chief Executive

Chairperson

Date

Exemplar