DATED

PARENT COMPANY GUARANTEE FROM CONTRACTOR'S PARENT COMPANY

in relation to:

Waste Treatment and Disposable Waste Agreement

Between:

Guarantor

and

Bournemouth Christchurch and Poole Council

CONTENTS

CLAUSE

1. Interpretation 2
2. Guarantee and indemnity 4
3. Amendments to the Contract 5
4. Council does not have to pursue Contractor 5
5. Insolvency of Contractor 5
6. Priority of claims against the Contractor 5
7. Limit of liability 5
8. Assignment 6
9. Notices 6
10. Third party rights 7
11. Governing law 8
12. Jurisdiction 8

This deed is dated [DATE]

Parties

(1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Guarantor)**

(2) **Bournemouth Christchurch and Poole Council** of Town Hall Bourne Avenue Bournemouth BH2 6DY **(Council)**

BACKGROUND

(A) By an agreement in writing dated [DATE] (**Contract**) and made between the Council and [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**), the Contractor agreed to perform and carry out the services in accordance with the written terms of the Contract (**Services**).

(B) The Guarantor (the [immediate **OR** ultimate] parent company of the Contractor) has agreed to guarantee the Contractor's due performance of its duties or obligations under the Contract.

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Insolvency Event: a party suffers an insolvency event if:

a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;

b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any

compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;

c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction;

d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over it;

e) the holder of a qualifying floating charge over its assets has become entitled to appoint or has appointed an administrative receiver;

f) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets;

g) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

h) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (g) (inclusive); or

i) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

1.2 Clause headings shall not affect the interpretation of this deed.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This deed shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and

references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to **writing** or **written** includes email.

1.11 Any obligation on a party not to do something includes an obligation not to agree that thing to be done.

1.12 A reference to **this deed** or to any other deed, agreement or document referred to in this deed is a reference to this deed or such other deed, agreement or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.

1.13 References to clauses are to the clauses of this deed.

1.14 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Guarantee and indemnity

2.1 The Guarantor guarantees the due and punctual performance by the Contractor of any and all of the Contractor's duties and obligations under the Contract.

2.2 If the Contractor fails to observe or perform any of its duties or obligations under the Contract, or if the Contractor fails to pay any sum, loss, debt, damage, interest, cost or expense due from the Contractor to the Council under or in connection with the Contract, the Guarantor (as a separate and independent obligation and liability from its obligations and liabilities under clause 2.1) shall indemnify the Council against all loss, debt, damage, interest, payments, charges, cost and expense incurred by the Council by reason of such failure or non-payment and shall, on first written demand, pay to the Council, without any deduction or set-off, the amount of that loss, debt, damage, interest, payment, charges, cost and expense.

2.3 If the Contractor suffers an Insolvency Event or if the Council terminates the Contractor's employment under the Contract under Clause 30 of the Contract, the Guarantor shall indemnify the Council against all loss, debt, damage, interest, payments, charges, cost and expense incurred by the Council by reason of such Insolvency Event or termination

and shall, on first written demand, pay to the Council without any deduction or set-off the amount of that loss, debt, damage, interest, payment, charges, cost and expense.

3. Amendments to the Contract

3.1 The Contract may be modified, amended or supplemented in any way without the Guarantor's consent. The Guarantor's liability under this deed (which includes the Contractor's duties, obligations and liabilities under the Contract as modified, amended or supplemented) shall not be released, reduced or adversely affected by any such modification, amendment or supplement.

3.2 The Guarantor's liability under this deed shall not be released, reduced or adversely affected by:

(a) any invalidity, avoidance or termination of the Contract;

(b) any waiver, concession, allowance, compromise or forbearance whether as to payment, time, performance or otherwise given to, or made with, the Contractor and the terms of this deed shall apply to the terms of any such compromise as they apply to the Contract; or

(c) any other act, event, omission or circumstance that, but for this provision, might operate to exonerate the Guarantor.

4. Council does not have to pursue Contractor

The Council does not have to pursue any remedy against the Contractor before proceeding against the Guarantor under this deed.

5. Insolvency of Contractor

Without affecting clause 2.3, if the Contractor suffers an Insolvency Event that shall not release, reduce or adversely affect the Guarantor's liability under this deed.

6. Priority of claims against the Contractor

As long as any liability incurred by the Contractor to the Council guaranteed under this deed remains unsatisfied, the Guarantor shall not, in respect of any payment made or liability arising under this deed, effect (or try to effect) any recovery from the Contractor, whether by receipt of money, set-off, proof of debt, enforcement of security or otherwise.

7. Limit of liability

The Council may not recover any more under this deed in respect of any matter than the Council would be entitled to recover from the Contractor in respect of that matter, net of any set off. The Council may not start proceedings against the Guarantor under this

deed in respect of any claim if any proceedings against the Contractor in respect of that claim would be statute-barred.

8. Assignment

8.1 The Council may assign or charge the benefit of this deed to any person to whom the Council lawfully assigns or charges the benefit of the Contract.

8.2 The Guarantor and the Contractor may not assign or charge the benefit of this deed without the Council's written consent.

8.3 The Council shall notify the Guarantor of any assignment. If the Council fails to do this, the assignment shall still be valid.

8.4 The Guarantor shall not contend that any person to whom the benefit of this deed is assigned under clause 8.1 may not recover any sum under this deed because that person is an assignee and not a named party to this deed.

9. Notices

9.1 For the purposes of this clause, but subject to clause 9.7, notice includes any other communication.

9.2 A notice given to a party under or in connection with this deed:

(a) shall be in writing;

(b) shall be signed by or on behalf of the party giving it;

(c) shall be sent to the party for the attention of the contact and at the address[, email address, listed in clause 9.3 or such other address, email address, as that party may notify in accordance with clause 9.4;

(d) shall be sent by a method listed in clause 9.5; and

(e) is deemed received as set out in clause 9.5 if prepared and sent in accordance with this clause.

9.3 The parties' addresses and email addresses service of notices are:

(a) Guarantor

(i) Address: [ADDRESS]

(ii) For the attention of: [POSITION OF CONTACT]

(iii) [Email address: [EMAIL ADDRESS]

(b) Council

(i) Address: Bournemouth Town Hall Annex, St Stephen's Road, Bournemouth, BH2 6EA

(ii) For the attention of: Service Director, Environment

(iii) Email address: larry.austin@bcpcouncil.gov.uk

9.4 A party may change its details given in clause 9.3 by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

(a) the date, if any, specified in the notice as the effective date for the change; or

(b) the date five Business Days after deemed receipt of the notice.

9.5 This clause 9.5 sets out the delivery methods for sending a notice to a party under this deed and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provisions in clause 9.6:

(a) if delivered by hand, on signature of a delivery receipt;

(b) if sent by pre-paid first class post or other next working day delivery service providing proof of postage at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;

(c) if sent by email, at the time of transmission.

9.6 If deemed receipt under clause 9.5 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 9.6, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

9.7 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

10. Third party rights

10.1 Unless it expressly states otherwise, this deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

10.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

11. Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

12. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as deed by [NAME OF **Guarantor**] acting by [NAME OF FIRST DIRECTOR], and [NAME OF SECOND DIRECTOR/SECRETARY]	……. Director ……. Director/Secretary
OR	
Signed as deed by [NAME OF **Guarantor**] in the presence of [NAME OF WITNESS]	……. [SIGNATURE OF **Guarantor**] ……. [SIGNATURE OF WITNESS] ……. ……. [ADDRESS OF WITNESS]
Signed as deed by [NAME OF **Guarantor**] in the presence of [NAME OF WITNESS]	……. [SIGNATURE OF **Guarantor**] ……. [SIGNATURE OF WITNESS] ……. ……. [ADDRESS OF WITNESS]

The Common Seal of **Bournemouth Christchurch and Poole Council**	…… Monitoring/Deputy Monitoring Officer