DATED

PERFORMANCE BOND

relating to:

WASTE TREATMENT AND DISPOSABLE WASTE AGREEMENT

between

[SURETY]

and

[CONTRACTOR]

and

BOURNEMOUTH CHRISTCHURCH AND POOLE COUNCIL

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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] ("**Surety**").

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

(3) Bournemouth Christchurch and Poole Council of Town Hall Bourne Avenue Bournemouth BH2 6DY ("**Contracting Authority**").

BACKGROUND

(A) The Contracting Authority and the Contractor entered into a Contract pursuant to which the Contractor agreed to carry out and perform waste treatment and disposable waste services ("**Services**").

(B) The Contracting Authority requires the Contractor to provide a bond, in the form of this deed, to the Contracting Authority.

(C) The Surety has agreed with the Contracting Authority (at the request of the Contractor) to (1) guarantee the performance of the obligations under the Contract upon the terms of this Performance Bond and (2) to enter into this deed with the Contracting Authority and the Contractor for the benefit of the Contracting Authority.

AGREED TERMS

1. INTERPRETATION

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

1.1 Definitions:

Contract: an agreement in writing dated [DATE] between the Contracting Authority and the Contractor by which the Contractor has agreed to carry out and perform the Works.

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

Maximum Amount: (The sum of two hundred and fifty thousand pounds sterling (£250,000) or 10% of tender sum or 10% of the price for the Services stated in the Contract (whichever is the greater sum)

Services: any and all of the services stated in the Contract, to be carried out by or on behalf of the Contractor in accordance with the written terms of the Contract.

1.2 Clause and annex 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 The annex forms part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the annex.

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

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

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

1.8 This agreement 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.

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

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

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

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

1.13 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.14 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.

1.15 References to clauses or the annex are to the clauses or the annex of this deed.

1.16 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. PROMISE TO PAY UP TO MAXIMUM AMOUNT

2.1 If the Contractor fails to pay any sum that becomes due from it to the Contracting Authority under or in connection with the Contract (including any debt, damages, interest or costs), the Contracting Authority may give notice to the Surety requiring the Surety to pay that sum, up to the Maximum Amount, to the Contracting Authority. The Surety shall pay that sum to the Contracting Authority within 10 Business Days of receipt of the Contracting Authority's notice. The Contracting Authority's notice may be in the form set out in Annex 1. The Surety shall accept such demand as conclusive evidence, for the purposes of this bond alone, that the amount claimed is due to the Contracting Authority under this bond.

2.2 The Contracting Authority may give different notices to the Surety on different occasions, each requiring the Surety to pay the sum referred to in clause **Error! Reference source not found.**, but the Surety shall not be obliged to pay to the Contracting Authority more than the Maximum Amount in aggregate.

3. AMENDMENTS TO CONTRACT

3.1 The Contract or the Services may be modified, amended or supplemented in any way without the consent of the Surety. No such modification, amendment or supplement shall affect, release or impair the liability of the Surety under

this deed. The Surety's liability shall extend to all the liabilities of the Contractor under the Contract as modified, amended or supplemented.

3.2 The invalidity, avoidance or termination of the Contract shall not affect, release or impair the liability of the Surety under this deed.

3.3 No waiver, concession, allowance of time, compromise or forbearance given to, or made with, the Contractor shall affect, release or impair the liability of the Surety under this deed. The terms of this deed shall apply to the terms of any such waiver, concession, allowance of time, compromise or forbearance as they apply to the Contract.

4. PRIORITY OF CLAIMS AGAINST THE CONTRACTOR

4.1 Until the Contracting Authority has recovered all sums due to it under or in connection with the Contract, the Surety shall not:

(a) in respect of any payment made or liability under this deed, claim, rank or vote as a creditor in the liquidation of the Contractor in competition with the Contracting Authority; or

(b) enforce any security over the assets of the Contractor in respect of any such payment or liability in competition with the Contracting Authority.

This clause 4 shall not limit or restrict the exercise or enforcement by the Surety of its rights against any other person.

4.2 If the Surety recovers any sums in breach of clause 4.1, the Surety shall hold such sums on trust:

(a) to pay to the Contracting Authority any sums due from the Contractor to the Contracting Authority under or in connection with the Contract[, as set out in clause 4.3]; and

(b) subject to clause 4.2(a), for the benefit of the Surety.

4.3 The Contracting Authority may enforce this clause 4 to keep itself, or to put itself, in the position it would be in if the Surety had no rights of recourse against the Contractor or the Contractor's assets in respect of:

(a) any payment made by the Surety; or

(b) any liability of the Surety under this deed

but no further.

5. CONCLUSIVE LIABILITY AND EXTENT OF LIABILITY

5.1 For the purposes of this deed, any money judgment, award or adjudicator's decision against the Contractor in favour of the Contracting Authority under or in connection with the Contract shall be conclusive evidence of any liability of the Contractor to which that judgment, award or decision relates.

5.2 The inability of the Contractor to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or the entry of the Contractor into liquidation, administration, receivership, bankruptcy or any compromise or arrangement with some or all of its creditors (or any equivalent process in any other jurisdiction) shall not reduce, release or impair the liability of the Surety under this deed.

5.3 The Contracting Authority shall not be obliged to pursue any means of recourse against the Contractor before being entitled to enforce this deed against the Surety.

5.4 The Contracting Authority may compromise, release, waive or neglect any security as it sees fit, without impairing its rights under this deed.

5.5 The Contracting Authority shall notify the Surety within 20 Business Days if it begins any legal action (including any adjudication, litigation or arbitration) against the Contractor under or in connection with the Contract.]

6. EXPIRY

6.1 Subject to clause 6.2, this deed shall expire 3 calendar months after the expiry or termination of the Contract.

6.2 If the Contracting Authority has given any notice under clause **Error! Reference source not found.** before the end of the 3 calendar months referred to in clause 6.1, clause 6.1 shall not affect that notice and the Contracting Authority may continue its claim under that notice.

7. ASSIGNMENT

7.1 The Contracting Authority may assign or charge the benefit of this deed, without the consent of the Surety or of the Contractor to any person to whom the Contracting Authority assigns the benefit of the Contract.

7.2 The Contracting Authority shall notify the Surety and the Contractor of any assignment. If the Contracting Authority fails to do this, the assignment shall still be valid.

7.3 The Contractor and the Surety shall not contend that any person to whom the benefit of this deed is assigned may not recover any sum (including any debt, damages, interest or costs) under this deed because that person is an assignee and not a named party to this deed.

8. NOTICES

8.1 For the purposes of this clause, but subject to clause 8.7, notice includes any other communication.

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

(a) shall be in writing;

(b) shall be sent to the party for the attention of the contact and at the address or email address listed in clause 8.3;

(c) shall be sent by a method listed in clause 8.5; and

(d) is deemed received as set out in clause 8.5 if prepared and sent in accordance with this clause.

8.3 The parties' addresses and contacts are as set out in this table:

Party	**Contact**	**Address**	**Email address**
Contracting Authority	Service Director, Environment	Bournemouth Town Hall Annex, St Stephen's Rd, Bournemouth BH2 6EA	larry.austin@bcpcouncil.gov.uk
Contractor	[POSITION OF CONTACT]	[ADDRESS]	EMAIL ADDRESS
Surety	[POSITION OF CONTACT]	[ADDRESS]	EMAIL ADDRESS]

8.4 A party may change its details given in the table in clause 8.3 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 5 Business Days after deemed receipt of the notice.

8.5 This table sets out:

(a) delivery methods for sending a notice to a party under this deed; and

(b) for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 8.6:

Delivery method	**Delivery date and time**
Delivery by hand.	At the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service providing proof of postage or delivery.	9.00 am on the 2nd Business Day after posting or at the time recorded by the delivery service.
Email.	At the time of transmission.

8.6 For the purpose of clause 8.5 and calculating deemed receipt all references to time are to local time on Business Days in the place of deemed receipt.

8.7 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.

9. THIRD PARTY RIGHTS

No one other than a party to this deed, their successors and permitted assignees, shall have any right to enforce any of its terms.

10. 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.

11. 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 a deed by [NAME OF SURETY] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF SURETY] acting by [NAME OF DIRECTOR], a director, in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]
Director

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....
[SIGNATURE OF FIRST DIRECTOR]
Director
.....
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]
[Director **OR** Secretary]

OR

Executed as a deed by [NAME OF CONTRACTOR] acting by [NAME OF DIRECTOR], a director, in the presence of:
.....
[SIGNATURE OF WITNESS]
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

.....
[SIGNATURE OF DIRECTOR]
Director

EXECUTED AS A DEED BY)
BOURNEMOUTH,
CHRISTCHURCH)
AND POOLE COUNCIL by affixing)
the common seal in the presence

of:)

Monitoring Officer/Deputy
Monitoring Officer

Annex 1 [Form of notice]

[Referred to in clause **Error! Reference source not found.**.]
From: [CONTRACTING AUTHORITY'S ADDRESS: SEE clause 8]
To: [SURETY'S ADDRESS: SEE clause 8]
CC: [CONTRACTOR'S ADDRESS: SEE clause 8]
Sent by [METHOD OF SERVICE].

[DATED]

Dear [SURETY]
Demand under a bond dated [DATE] (Bond) relating to [SHORT DESCRIPTION OF THE SERVICES]

This letter is a notice under the Bond. Defined terms used in this letter have the same meanings as in the Bond.

[We are the assignee of the benefit of the Bond by a [deed of assignment **OR** an assignment agreement] dated [DATE] between [PARTY] and [PARTY].]

The Services have not been performed by the Contractor in accordance with the terms of the Contract.

The Contractor has failed to properly pay a sum due to us under or in connection with the Contract. We require you to pay to us £[SUM][, the Maximum Amount] within 10 Business Days.

[We attach a copy of the [money judgment **OR** award **OR** adjudicator's decision] against the Contractor in our favour as conclusive evidence of your liability to us under the Bond.]

OR
[The sum due to us from the Contractor is summarised in the attachment to this notice.]

Please make payment to [PAYMENT DETAILS].
Yours faithfully
[SIGNED]
For and on behalf of the Contracting Authority
[Enclosure]