



Registration of a Charge

Company name: **BIFFA WASTE SERVICES LIMITED**

Company number: **00946107**



X3BBHXVN

Received for Electronic Filing: **03/07/2014**

Details of Charge

Date of creation: **30/06/2014**

Charge code: **0094 6107 0010**

Persons entitled: **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

Brief description: **THE FOXYARDS, BEAN ROAD, TIPTON, WEST MIDLANDS, DY4 9AQ, TITLE NUMBER WM691546; COLWICK INDUSTRIAL ESTATE, PRIVATE ROAD NUMBER 2, COLWICK, NOTTINGHAM, NG4 2JR, TITEL NUMBER NT201354; TRAVELLER'S CLOSE, HATFIELD, AL9 7LA, TITLE NUMBER HD196890**

Contains fixed charge(s).

Contains negative pledge.

Authentication of Form

This form was authorised by: **a person with an interest in the registration of the charge.**

Authentication of Instrument

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by:

CHARLES MARTIN



CERTIFICATE OF THE REGISTRATION OF A CHARGE

Company number: 946107

Charge code: 0094 6107 0010

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th June 2014 and created by BIFFA WASTE SERVICES LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 3rd July 2014 .

Given at Companies House, Cardiff on 4th July 2014

The above information was communicated by electronic means and authenticated
by the Registrar of Companies under section 1115 of the Companies Act 2006



Companies House



**THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES**

DATED 30 June 2014

WASTEHOLDCO 2 LIMITED
as the *Parent*

BIFFA WASTE SERVICES LIMITED
as *Chargor*

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
as *Security Agent*

SUPPLEMENTAL DEED OF CHARGE

This Deed is entered into with the benefit of and subject to the terms of the Intercreditor Agreement



Freshfields Bruckhaus Deringer

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London EC4Y 1HS

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THIS SUPPLEMENTAL DEED OF CHARGE is made on 30 June 2014.

BETWEEN:

- (1) **BIFFA WASTE SERVICES LIMITED** (a company incorporated in England and Wales with company number 00946107) (the *Chargor*);
- (2) **WASTEHOLDCO 2 LIMITED** (a company incorporated in Jersey (registration number 112028) whose registered office is Ogier House, the Esplanade, St Helier, Jersey JE4 9WG) (as the *Parent* and as the Obligors' Agent); and
- (3) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security agent for the benefit of the Secured Creditors (the *Security Agent*).

Whereas:

- (A) We refer to:
 - a. an intercreditor agreement dated 15 April 2008 as amended on 30 April 2008 and amended and restated on 30 January 2013 and amended on or about the date of this Deed and made between, among others, the Parent, the Chargor, the Debtors (as defined therein), HSBC Corporate Trustee (UK) Limited as Security Agent, HSBC Bank PLC as agent, the Lenders, the Hedge Counterparties and the Intra-Group Lenders (as defined therein) (the *Intercreditor Agreement*);
 - b. a debenture dated 30 January 2013 between, among others, the Chargor, the Parent and the Security Agent;
 - c. a consent request letter dated 6 March 2014 under which the Parent requested consent to the release of freehold or leasehold property owned by the Chargor subject to the terms and conditions set out therein; and
 - d. a partial deed of release dated on or about the date of this Deed between the Chargor, the Parent and the Security Agent relating to the release of the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*).
- (B) This Deed is a "Finance Document" under and as defined in the Senior Facilities Agreement and the Junior Facility Agreement.
- (C) The Board of Directors of the Chargor is satisfied that entering into this Deed is for the purposes of the Chargor and its business and would promote its success for the benefit of its members as a whole.
- (D) The Security Agent and the Chargor intend this document to take effect as a deed (even though the Security Agent and the Parent only execute it under hand).
- (E) The Security Agent holds the benefit of this Deed on trust for the Secured Creditors on the terms of the Secured Documents.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless a contrary indication appears, terms used in the Senior Facilities Agreement have the same meaning and construction and:

Administrator means an administrator appointed under Schedule B1 to the Insolvency Act.

BACS Facility Agreement has the meaning given to that term in the Intercreditor Agreement.

BACS Facility Liabilities has the meaning given to that term in the Intercreditor Agreement.

Bonding Documents has the meaning given to that term in the Intercreditor Agreement.

Bonding Indemnities has the meaning given to that term in the Intercreditor Agreement.

Bonding Liabilities has the meaning given to that term in the Intercreditor Agreement.

Charged Assets means the assets from time to time subject, or expressed to be subject, to the Charges or any part of those assets.

Charges means all or any of the Security created or expressed to be created by or pursuant to this Deed.

Credit Card Liabilities has the meaning given to that term in the Intercreditor Agreement.

Debtor means the Parent and the Chargor.

Declared Default means the occurrence of an Event of Default which has resulted in a notice of acceleration being served by the Agent in accordance with clause 28.19 (*Acceleration*) of the Senior Facilities Agreement and/or being served by the Agent (as defined in the Junior Facility Agreement) in accordance with clause 22.10 (*Acceleration*) of the Junior Facility Agreement and/or in relation to which a demand has been made under clause 4.1 (*Cash Cover*) of the relevant Bonding Indemnity or under any equivalent provision in the applicable Bonding Documents (but only to the extent that such demand is not made sooner than would have been the case if the equivalent provisions of the relevant Bonding Indemnity had applied).

Delegate means a delegate or sub-delegate appointed under Clause 12.2 (*Delegation*).

Event of Default means each of the events or circumstances set out in clause 28 (*Events of Default*) of the Senior Facilities Agreement and/or clause 22 (*Events of Default*) of the Junior Facility Agreement and/or clause 4.3 (*Cash Cover*) of the relevant Bonding Indemnity or under any equivalent provision in the applicable Bonding Documents (but only to the extent that such equivalent event of default is not triggered sooner than would have been the case if the provisions of the relevant Bonding Indemnity had applied).

Existing Security means all Transaction Security created by the Chargors over the Charged Assets pursuant to a Security Document prior to the date of this Deed.

Final Discharge Date has the meaning given to that term in the Intercreditor Agreement.

Finance Document means each Senior Finance Document and each Junior Finance Document.

Fixtures means fixtures, fittings (including trade fixtures and fittings) and fixed plant, machinery and apparatus.

Insolvency Act means the Insolvency Act 1986.

Land Registry means the statutory body responsible for recording details of Real Property in England and Wales.

LPA means the Law of Property Act 1925.

Majority Junior Lenders has the meaning given to that term in the Intercreditor Agreement.

Party means a party to this Deed.

Permitted Third Party Security means the security created under a legal charge deed relating to the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) dated on or about the date of this deed between Infinis (Re-Gen) Limited as the chargee and the Chargor as the chargor.

Real Property means any freehold and leasehold property in England and Wales including freehold and leasehold property and other real property anywhere in the world (in each case including any estate or interest therein, all rights from time to time attached or relating thereto and all Fixtures from time to time therein or thereon).

Receiver means a receiver and manager or other receiver appointed in respect of the Charged Assets and shall, if allowed by law, include an administrative receiver.

Secured Documents means:

- (a) the Finance Documents;
- (b) the Hedging Documents;
- (c) the Bonding Documents; and
- (d) the BACS Facility Agreement.

Secured Liabilities means all the Liabilities (as defined in the Intercreditor Agreement) and all other present and future liabilities and obligations at any time due, owing or incurred by any Debtor to any Secured Creditor under the Secured Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity, subject, in the case of the Bonding Liabilities, the BACS Facility Liabilities, the Credit Card Liabilities and the Secured Pensions Liabilities, to the maximum aggregate amount contained in the definition of Bonding Liabilities, the definition of BACS Facility Liabilities, the definition of Credit Card Liabilities and clause 7.5(b) (*Guarantee*) of the Intercreditor Agreement respectively.

Secured Pensions Liabilities has the meaning given to that term in the Intercreditor Agreement.

Senior Facilities Agreement means the senior term and revolving facilities agreement originally dated 15 April 2008 as amended on 4 June 2008 and as amended and restated on 13 August 2010 and on 30 January 2013 and made between, among others, the Parent, the Company, the Senior Agent, the Security Agent and HSBC Bank plc as Issuing Bank.

Senior Finance Documents has the meaning given to that term in the Intercreditor Agreement.

Title Information Document means a proof of change of ownership issued by the Land Registry.

Total Liabilities means all present and future moneys, debts and liabilities due, owing or incurred by any Debtor to the Secured Creditors under or in connection with any Secured Document (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently and whether as principal, surety or otherwise).

1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Deed to:
- (i) **assets** includes present and future properties, revenues and rights of every description;
 - (ii) the **Chargor**, any **Finance Party**, any **Secured Creditor**, any **Party**, the **Company**, the **Parent** and the **Security Agent** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
 - (iii) a **Finance Document**, a **Secured Document** or any other agreement or instrument is a reference to that Finance Document, Secured Document or other agreement or instrument as amended, novated, supplemented, extended, restated (however fundamentally and whether or not more onerous) or replaced and includes any changes to the composition of the parties to any such Finance Document, Secured Document or other agreement or instrument and any changes in the purpose of, any extension of or any increase in any facility or the addition of any new facility under that Finance Document, Secured Document or other agreement or instrument;
 - (iv) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (v) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
 - (vi) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
 - (vii) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Clause and Schedule headings are for ease of reference only.

- (c) Unless a contrary indication appears, a term used in any other Secured Document or in any notice given under or in connection with any Secured Document has the same meaning in that Secured Document or notice as in this Deed.
- (d) An Event of Default is "continuing" if it has not been waived.

1.3 Third party rights

- (a) Pursuant to the Contracts (*Rights of Third Parties*) Act 1999:
 - (i) the provisions of Clause 11 (*Appointment and rights of Receivers*), Clause 14 (*Liability of Security Agent, Receivers and Delegates*) and Clause 16 (*Power of attorney*) shall be directly enforceable by any Receiver or Delegate; and
 - (ii) the provisions of Clause 17 (*Protection of third parties*) shall be directly enforceable by any purchaser.
- (b) Save as otherwise expressly provided in paragraph (a) above, a person who is not a Party has no right under the Contracts (*Rights of Third Parties*) Act 1999 to enforce or enjoy the benefit of any term of this Deed.

1.4 Obligors' Agent

The Parent enters into this Deed for and on behalf of each Debtor as Obligors' Agent pursuant to clause 2.4 (*Obligors' Agent*) of the Senior Facilities Agreement.

2. UNDERTAKING TO PAY

2.1 The Chargor (as primary obligor and not merely as surety) shall, on the Security Agent's written demand, pay the Secured Liabilities when due in accordance with the terms of the relevant Secured Documents.

2.2 The making of one demand in accordance with the Secured Documents shall not preclude the Security Agent from making any further demands in accordance with the Secured Documents.

3. FIXED CHARGES

3.1 Creation of fixed charge

Subject to the Existing Security, the Chargor, with full title guarantee (subject to the Existing Security) and as security for the payment or discharge of all Secured Liabilities, charges in favour of the Security Agent:

- (a) by way of second legal mortgage, all Real Property in England and Wales now belonging to it and registered at the Land Registry or which will be subject to first registration at the Land Registry upon the execution and delivery of this Deed, in each case as described in Schedule 2 (*Registered Real Property to be mortgaged*);
- (b) by way of second fixed charge all:
 - (i) the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) (to the extent not subject to a mortgage under paragraph (a) or (b) of this Clause 3.1); and

- (ii) all rental and other income and all debts and claims now or in the future due or owing to it under or in connection with any lease, agreement or licence relating to the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*),

under or by virtue of an asset comprised within a fixed Charge except to the extent that such rights, money or property are for the time being effectively assigned or charged by fixed Charge under the foregoing provisions of this Deed.

4. NEGATIVE PLEDGE AND OTHER RESTRICTIONS

- (a) With the exception of Permitted Security and Permitted Third Party Security, the Chargor shall not create or permit to subsist any Security or Quasi Security over any of its assets.
- (b) With the exception of a Permitted Disposal, the Chargor shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to assign, charge, sell, lease, transfer or otherwise dispose of any asset.

5. RIGHT OF APPROPRIATION

- (a) The Security Agent may, following the occurrence of a Declared Default, by notice in writing to the Chargor, appropriate with immediate effect all or any of its Charged Assets comprising financial collateral which is subject to a security financial collateral arrangement (within the meaning of the Financial Collateral Arrangements (No 2) Regulations 2003 (the *Regulations*)) and apply it in or towards the discharge of the Secured Liabilities in such manner as the Security Agent may determine in accordance with the Regulations, whether such Charged Assets are held by the Security Agent or otherwise.
- (b) The value of any assets appropriated under paragraph (a) above shall be:
 - (i) in the case of cash, its face value at the time the right of appropriation is exercised; and
 - (ii) in the case of other assets, the value of the relevant asset at the time of appropriation, as determined (after appropriation) by the Security Agent, acting reasonably, on the basis of the sale price(s) obtained from an applicable generally recognised source selected by the Security Agent (converted, where necessary, into sterling at a market rate of exchange prevailing at the time of appropriation selected by the Security Agent).
- (c) The Security Agent will account to the Chargor for any amount by which the value of the appropriated assets exceeds the Secured Liabilities then due and the Chargor shall remain liable to the Secured Creditors for any amount by which the value of the appropriated assets is less than the Secured Liabilities then due.
- (d) The Chargor agrees that the method of valuing such assets under paragraph (b) above is commercially reasonable.

6. FURTHER ASSURANCE

6.1 The Chargor shall, at its own expense, promptly do whatever the Security Agent reasonably requires:

- (a) (subject to Clause 6.2 below) to perfect, protect the Charges or the priority of the Charges;
- (b) (subject to Clause 6.2 below) to perfect and protect any Security intended to be conferred by or pursuant to this Deed; and
- (c) to facilitate the realisation of the Charged Assets or the exercise of any rights, power or discretion vested in the Security Agent or any Receiver, including executing any transfer, conveyance, charge, assignment or assurance of the Charged Assets (whether to the Security Agent or its nominees or otherwise), making any registration and giving any notice, order or direction.

6.2 Notwithstanding anything to the contrary set out in Clause 6.1 above, the Chargor shall not, prior to a Declared Default, be required to perfect the security granted under this Deed, to the extent that such perfection would have a material adverse effect on its ability to conduct its operations and business in the ordinary course or as otherwise permitted by the Finance Documents.

6.3 As security for the Secured Liabilities, the Chargor shall, following an Event of Default which is continuing after the end of any applicable grace period, promptly execute and deliver to the Security Agent such legal charge of such of its Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) as the Security Agent reasonably requires and directs. The Chargor shall promptly apply to the Land Registry for registration of any such legal charge in the same way as set out in Clause 7.1 (*Application to the Land Registry*).

7. REAL PROPERTY

7.1 Application to the Land Registry:

The Chargor at any time after an Event of Default which is continuing after the end of any applicable grace period:

- (a) undertakes to promptly make or procure that there is made a due application to the Land Registry in respect of the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) the title to which is registered at the Land Registry (with the Chargor's consent as proprietor of the relevant registered estate) and in respect of any other registered title(s) against which this Deed may be registered (including without limitation the Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*)) that will be subject to first registration by virtue of this Deed) by:
 - (i) entering a restriction in the following terms on the relevant register of title:

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a written consent signed by the proprietor for the time being of the charge

dated [date] in favour of [Chargee] referred to in the charges register or their conveyancer"; and

- (ii) entering an obligation to make further advances on the relevant register of title; and
- (b) covenants to promptly submit an application to the appropriate Land Registry for the first registration of any unregistered Real Property in England and Wales mortgaged by Clause 3.1 (*Creation of fixed charge*) at its own expense, following a request by the Security Agent at any time after an Event of Default which is continuing after the end of any applicable grace period.

7.2 Unregistered Real Property

In the case of the Chargor's Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) in England and Wales, both present and future, which is not registered at the Land Registry and is not required to be so registered, the Chargor will, following an Event of Default which is continuing after the end of any applicable grace period, promptly apply to register this Deed and the Charges at the Land Charges Registry if the title deeds and documents are not deposited with the Security Agent.

7.3 Title Information Document

On completion of the registration of any Charge pursuant to this Clause 7, the Chargor shall promptly supply to the Security Agent a certified copy of the relevant Title Information Document issued by the Land Registry (except to the extent that such Title Information Document has previously been supplied to the Security Agent in connection with the Existing Security).

7.4 Documents

Following an Event of Default which is continuing after the end of any applicable grace period, the Chargor shall deposit with the Security Agent (or as it shall direct) such title deeds and documents relating to the Chargor's Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) as the Security Agent requires (except to the extent that such documents have been delivered in connection with any Existing Security). The Security Agent shall be entitled to hold such title deeds and documents until the Final Discharge Date or, if earlier, until the Real Property to which such title deeds and documents relate are released from the Charged Assets in accordance with the Finance Documents.

8. GENERAL UNDERTAKINGS

8.1 Protection of assets

The Chargor shall use reasonable endeavours to keep or cause to be kept all the relevant Charged Assets in good working order and condition, ordinary wear and tear excepted.

8.2 Information

The Chargor shall notify the Security Agent of the occurrence of any Declared Default promptly upon becoming aware of it.

9. ENFORCEMENT

9.1 When enforceable

As between the Chargor and the Security Agent the Charges shall be enforceable, and the powers conferred by Section 101 of the LPA as varied and extended by this Deed shall be exercisable upon the occurrence of a Declared Default.

9.2 Power of sale

The statutory power of sale, of appointing a Receiver and the other statutory powers conferred on mortgagees by Section 101 of the LPA as varied and extended by this Deed shall arise on the date of this Deed.

9.3 Section 103 LPA

Section 103 of the LPA shall not apply to this Deed.

9.4 Leases

The Security Agent may lease, make agreements for leases at a premium or otherwise, surrender, rescind or agree or accept surrenders of leases and grant options on such terms and in such manner as it shall think fit without the need to comply with any of the provisions of sections 99 and 100 of the LPA.

10. OPENING OF NEW ACCOUNTS

10.1 Creation of new account

On receiving notice that the Chargor has granted Security over or otherwise encumbered or disposed of any of its assets in contravention of any Secured Document, a Secured Creditor may rule off all its accounts and open new accounts with the Chargor.

10.2 Credits to new account

If a Secured Creditor does not open a new account immediately on receipt of such notice, it shall nevertheless be treated as if it had done so on that day. From that day, all payments made by the Chargor to that Secured Creditor shall be treated as having been credited to a new account and shall not operate to reduce the amount owing from the Chargor to such Secured Creditor at the time when it received such notice.

11. APPOINTMENT AND RIGHTS OF RECEIVERS

11.1 Appointment of Receivers

If:

- (a) requested by the Parent and/or the Chargor;
- (b) any corporate action, legal proceedings or other formal procedure is taken with the intention of placing the Chargor into administration; or
- (c) a Declared Default has occurred (whether or not the Security Agent has taken possession of the Charged Assets),

without any notice or further notice, the Security Agent may, by deed, or otherwise in writing signed by any officer or manager of the Security Agent or any person authorised for this purpose by the Security Agent, appoint one or more persons to be a Receiver. The Security Agent may similarly remove any Receiver and appoint any person instead of any Receiver, if the Secured Creditors appoint more than one person as Receiver, the Security Agent may give those persons power to act either jointly or severally.

11.2 Scope of appointment

Any Receiver may be appointed Receiver of all of the Charged Assets or Receiver of a part of the Charged Assets specified in the appointment. In the latter case, the rights conferred on a Receiver as set out in Schedule 1 (*Rights of Receivers*) shall have effect as though every reference in that Schedule to any Charged Assets were a reference to the part of those assets so specified or any part of those assets.

11.3 Rights of Receivers

Any Receiver appointed pursuant to this Clause 11 shall have the rights, powers, privileges and immunities conferred by the Insolvency Act on administrative or other receivers duly appointed under the Insolvency Act, and shall also have the rights set out in Schedule 1 (*Rights of Receivers*).

11.4 Agent of Chargor

Any Receiver shall be the agent of the Chargor for all purposes unless and until the Chargor goes into liquidation, after which time he shall act as principal and shall not become the agent of the Secured Creditors. The Chargor alone shall be responsible for the Receiver's contracts, engagements, acts, omissions, defaults and losses and for liabilities incurred by the Receiver.

11.5 Remuneration

The Secured Creditors may acting reasonably determine the remuneration of any Receiver and direct payment of that remuneration out of moneys he receives as Receiver. The Chargor alone shall be liable for the remuneration and all other reasonable costs, losses, liabilities and expenses of the Receiver.

12. SECURITY AGENT'S RIGHTS

12.1 Same rights as Receiver

Any rights conferred by any Secured Document upon a Receiver may be exercised by the Security Agent, or to the extent permitted by law, an Administrator after the Charges become enforceable, whether or not the Security Agent shall have taken possession or appointed a Receiver of the Charged Assets.

12.2 Delegation

The Security Agent may delegate in any manner to any person any rights exercisable by the Security Agent under any Secured Document. Any such delegation may be made upon such terms and conditions (including power to sub-delegate) as the Security Agent thinks fit.

13. ORDER OF DISTRIBUTIONS

13.1 Application of proceeds

All amounts received or recovered by the Security Agent or any Receiver or Delegate in exercise of their rights under this Deed shall, subject to the rights of any creditors having priority and subject to the payment of any liabilities having priority to the Secured Liabilities by operation of law, be applied in the order provided in Clause 13.2 (*Order of distributions*).

13.2 Order of distributions

The order referred to in Clause 13.1 (*Application of proceeds*) is:

- (a) in or towards the payment of all reasonable costs, losses, liabilities and expenses of and incidental to the appointment of any Receiver or Delegate and the exercise of any of his rights, including his remuneration and all outgoings paid by him;
- (b) in or towards the payment of the Secured Liabilities in accordance with the terms of the Intercreditor Agreement; and
- (c) in payment of any surplus to the Chargor or other person entitled to it.

13.3 Receiver's receipts

Section 109(8) of the LPA shall not apply in relation to a Receiver appointed under this Deed.

14. LIABILITY OF SECURITY AGENT, RECEIVERS AND DELEGATES

14.1 Possession

If the Security Agent, any Receiver or any Delegate takes possession of the Charged Assets, it or he may at any time relinquish possession. Without prejudice to Clause 14.2 (*Security Agent's liability*), the Security Agent shall not be liable as a mortgagee in possession by reason of viewing or repairing any of the present or future assets of the Chargor.

14.2 Security Agent's liability

Neither the Security Agent nor any Receiver or Delegate shall (either by reason of taking possession of the Charged Assets or for any other reason and whether as mortgagee in possession or otherwise) be liable to the Chargor or any other person for any costs, losses, liabilities or expenses relating to the realisation of any Charged Assets or from any act, default, omission or misconduct of the Security Agent, any Receiver, any Delegate or their respective officers, employees or agents in relation to the Charged Assets or in connection with the Secured Documents except to the extent caused by its or his own gross negligence or wilful misconduct.

15. ROLE OF SECURITY AGENT

15.1 Role of the Security Agent

The Security Agent shall not be an agent or trustee of any Secured Creditor (save as expressly provided in this Deed or in the Intercreditor Agreement) or the Chargor or any other person under or in connection with this Deed.

15.2 Other roles of the Security Agent

- (a) The Chargor acknowledges that the Security Agent or its Affiliates may provide debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Chargor or its Affiliates may have conflicting interests regarding the transactions contemplated by this Deed and otherwise.
- (b) The Security Agent must not use confidential information obtained from the Investors or the Chargor or any of their Affiliates by virtue of the transactions contemplated by this Deed or through their other relationships with the Investors and their Affiliates in connection with their performance of services for other companies nor furnish any such information to any such other companies.
- (c) The Chargor acknowledges that the Security Agent is not obliged to use in connection with the transactions contemplated by this Deed, or to furnish to the Chargor or its Affiliates, confidential information obtained from any other source.

16. POWER OF ATTORNEY

16.1 Appointment

The Chargor by way of security irrevocably appoints the Security Agent, every Receiver and every Delegate severally its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time and in such manner as the attorney thinks fit:

- (a) following the failure of the Chargor to comply with its obligations under Clause 6 (*Further assurance*) within 10 Business Days of being notified of its failure to do so and being requested to comply, to do anything required by Clause 6 (*Further assurance*) that the Chargor has failed to do;
- (b) following a Declared Default, to do anything which the Chargor is obliged to do (but has not done) under any Secured Document to which it is party (including to execute charges over, transfers, conveyances, assignments and assurances of, and other instruments, notices, orders and directions relating to, the Charged Assets); and
- (c) following a Declared Default, to exercise (or delegate) all or any of the rights conferred on the Security Agent, any Receiver or any Delegate in relation to the Charged Assets or under any Secured Document, the LPA or the Insolvency Act.

16.2 Ratification

The Chargor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in Clause 16.1 (*Appointment*).

16.3 Sums recoverable

All sums properly expended by the Security Agent, a Receiver, Delegate or other attorney under this Clause 16 shall be recoverable from the Chargor under clause 22 (*Costs and Expenses*) of the Senior Facilities Agreement, clause 17 (*Costs and Expenses*) of the Junior Facility Agreement and clause 19 (*Costs*) of the relevant Bonding Indemnity.

17. PROTECTION OF THIRD PARTIES

17.1 No duty to enquire

No person dealing with the Security Agent, any Receiver or any Delegate shall be concerned to enquire:

- (a) whether the rights conferred by or pursuant to any Secured Document are exercisable;
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with;
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights; or
- (d) as to the application of any money borrowed or raised.

17.2 Protection to purchasers

All the protection to purchasers contained in Sections 104 and 107 of the LPA, Section 42(3) of the Insolvency Act or in any other applicable legislation shall apply to any person purchasing from or dealing with the Security Agent, any Secured Creditor, any Receiver or any Delegate.

18. SAVING PROVISIONS

18.1 Continuing Security

Subject to Clause 19 (*Discharge of Security*), the Charges are continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part.

18.2 Reinstatement

If any payment by the Chargor or any discharge given by the Secured Creditors (whether in respect of the obligations of any person or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of the Chargor and the Charges shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Security Agent shall be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, discharge, avoidance or reduction had not occurred.

18.3 Waiver of defences

Neither the obligations of the Chargor under this Deed nor the Charges will be affected by an act, omission, matter or thing which, but for this Clause 18, would reduce, release or prejudice any of its obligations under any Secured Document or any of the Charges (without limitation and whether or not known to it or the Secured Creditors) including:

- (a) any time, waiver or consent granted to, or composition with, the Chargor or any other person;

- (b) the release of the Chargor or any other person under the terms of any composition or arrangement with any creditor of the Chargor or any such person except to the extent of the release;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or security over assets of, the Chargor or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Chargor or any other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature) or replacement of a Secured Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Document or any other document or security; or
- (g) any insolvency or similar proceedings.

18.4 Immediate recourse

The Chargor waives any right it may have of first requiring the Secured Creditors (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Chargor under this Deed. This waiver applies irrespective of any Law or any provision of a Secured Document to the contrary.

18.5 Appropriations

Until all the Total Liabilities have been irrevocably paid in full and all facilities which might give rise to Total Liabilities have terminated, the Secured Creditors (or any trustee or agent on their behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by the Secured Creditors (or any trustee or agent on their behalf) in respect of those amounts, or apply and enforce the same in such manner and order as they see fit (whether against those amounts or otherwise) and the Chargor shall not be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

18.6 Deferral of Chargors' rights

Until all the Total Liabilities have been irrevocably paid in full and all facilities which might give rise to Total Liabilities have terminated and unless the Security Agent otherwise directs, the Chargor will not exercise any rights which it may have by reason of performance by it of its obligations under the Secured Documents:

- (a) to be indemnified by any person;

- (b) to claim any contribution from any other provider of Security for or any other guarantor of any person's obligations under the Secured Documents; and/or
- (c) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Secured Creditors under the Secured Documents or of any guarantee or other Security taken pursuant to, or in connection with, the Secured Documents by the Secured Creditors.

18.7 Additional Security

The Charges are in addition to and are not in any way prejudiced by any right of set-off, combination or other guarantees or Security now or subsequently held by the Secured Creditors.

18.8 Tacking

The Secured Creditors shall comply with their obligations under the Secured Documents (including any obligation to make further advances).

19. DISCHARGE OF SECURITY

19.1 Final redemption

Subject to Clause 19.2 (*Retention of Security*), if the Security Agent is satisfied that all the Total Liabilities have been irrevocably paid in full and that all facilities which might give rise to Total Liabilities have terminated, the Security Agent shall at the request and cost of the Chargor do all such reasonable acts as may be necessary to release, reassign or discharge (as appropriate) the Charged Assets from the Charges.

19.2 Retention of Security

If the Security Agent considers that any amount paid or credited to it under any Secured Document is capable of being avoided or otherwise set aside, that amount shall not be considered to have been paid for the purposes of determining whether all the Total Liabilities have been irrevocably paid.

19.3 Consolidation

Section 93 of the LPA shall not apply to the Charges.

20. EXPENSES

Following a Declared Default, the Chargor shall, within five Business Days of demand, pay to the Security Agent the amount of all costs, losses, liabilities and expenses (including legal fees) incurred by the Security Agent, any Receiver or any Delegate in relation to the realisation, enforcement or (provided that such expenses are reasonably incurred) the protection or preservation of any rights under or in connection with any Secured Document.

21. RIGHTS, AMENDMENTS, WAIVERS AND DETERMINATIONS

21.1 Ambiguity

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to any Secured Document, the terms of that Secured Document shall prevail.

21.2 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of the Secured Creditors, Receiver or Delegate any right or remedy under the Secured Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Secured Documents are cumulative and not exclusive of any rights or remedies provided by law, including the right to appoint an Administrator under the Insolvency Act.

21.3 Amendments and waivers

Any term of this Deed may be amended or waived only with the consent of the Security Agent and the Parent.

21.4 Certificates and determinations

Any certification or determination by the Secured Creditors or any Receiver or Delegate under any Secured Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

22. TRANSFER BY A SECURED CREDITOR

- (a) A Secured Creditor may at any time in accordance with the Secured Documents assign and transfer all or any of its rights in relation to this Deed to any person to whom it is permitted to transfer any of its rights under the relevant Secured Documents or otherwise grant an interest in them to any person.
- (b) The Security Agent may assign and transfer all of its rights and obligations under this Deed to any replacement Security Agent appointed in accordance with the Intercreditor Agreement. Upon such assignment and transfer becoming effective, the replacement Security Agent shall be, and be deemed to be, acting as agent and trustee for each of the Secured Creditors (including itself) for the purposes of this Deed in replacement of the previous Security Agent.

23. PRIORITY

The parties to this Deed acknowledge that immediately following the release of the Permitted Third Party Security, the Transaction Security under this Deed over the relevant Real Property described in Schedule 2 (*Registered Real Property to be mortgaged*) shall automatically be charged in favour of the Security Agent by way of first legal mortgage and by way of first fixed charge in favour of the Security Agent as set out in clause 30.2(c) (*Amendments and Waivers: Transaction Security Documents*) of the Intercreditor Agreement.

24. PARTIAL INVALIDITY

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

25. COUNTERPARTS

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

26. GOVERNING LAW

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

27. JURISDICTION

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed) (a *Dispute*).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 27 is for the benefit of the Secured Creditors only. As a result, no Secured Creditors shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Creditors may take concurrent proceedings in any number of jurisdictions.

IN WITNESS whereof the parties have executed this Deed on the day and year first above written.

SCHEDULE 1

RIGHTS OF RECEIVERS

Any Receiver appointed pursuant to Clause 11 (*Appointment and rights of Receivers*) shall have the right, either in his own name or in the name of the Chargor or otherwise and in such manner and upon such terms and conditions as the Receiver thinks fit, and either alone or jointly with any other person:

1. ENTER INTO POSSESSION

to take possession of, get in and collect the Charged Assets;

2. CARRY ON BUSINESS

to manage and carry on any business of the Chargor;

3. CONTRACTS

to enter into any contract or arrangement and to perform, repudiate, rescind or vary any contract or arrangement to which the Chargor is a party to the extent necessary to dispose of the Charged Assets and perform its obligations;

4. DEAL WITH CHARGED ASSETS

to sell, transfer, assign, exchange, hire out, lend or otherwise dispose of or realise the Charged Assets (including any Fixtures, which may be sold separately from the related Real Property) to any person (including a new company formed pursuant to paragraph 5 (*Hive down*)) either by public offer or auction, tender or private contract and for a consideration of any kind (which may be payable or delivered in one amount or by instalments spread over a period or deferred);

5. HIVE DOWN

to form a new company and to subscribe for or acquire (for cash or otherwise) any investment in or of the new company and to sell, transfer, assign, exchange and otherwise dispose of or realise any such investments or part thereof or any rights attaching thereto;

6. BORROW MONEY

to borrow or raise money either unsecured or on the security of the Charged Assets (either in priority to the Charges or otherwise);

7. COVENANTS AND GUARANTEES

to enter into bonds, covenants, guarantees, indemnities and other commitments and to make all payments needed to effect, maintain or satisfy them;

8. DEALINGS WITH TENANTS

to grant leases, tenancies, licences and rights of user, grant renewals and accept surrenders of leases, tenancies, licences or rights of user, and otherwise to reach agreements and make arrangements with, and to make allowances to, any lessees, tenants or other persons

(including a new company formed pursuant to paragraph 5 (*Hive down*)) from whom any rents and profits may be receivable (including those relating to the grant of any licences, the review of rent in accordance with the terms of, and the variation of, the provisions of any leases, tenancies, licences or rights of user affecting the Charged Assets);

9. RIGHTS OF OWNERSHIP

to manage and use the Charged Assets and to exercise and do (or permit the Chargor or any nominee of it to exercise and do) all such rights and things as the Receiver would be capable of exercising or doing if he were the absolute beneficial owner of the Charged Assets;

10. INSURANCE, REPAIRS, IMPROVEMENTS ETC

to insure the Charged Assets on such terms as he thinks fit, to carry out decorations, repairs, alterations, improvements and additions to the Charged Assets (including the development or redevelopment of any Real Property) and to purchase or otherwise acquire or do anything in connection with the Charged Assets;

11. CLAIMS

to settle, adjust, refer to arbitration, compromise and arrange any claims, accounts, disputes, questions and demands with or by any person who is or claims to be a creditor of the Chargor or relating to the Charged Assets;

12. LEGAL ACTIONS

to bring, prosecute, enforce, defend and abandon actions, suits and proceedings in relation to the Charged Assets or any business of the Chargor;

13. REDEMPTION OF SECURITY

to redeem any Security (whether or not having priority to the Charges) over the Charged Assets and to settle the accounts of any person with an interest in the Charged Assets;

14. EMPLOYEES ETC

to appoint, hire and employ officers, employees, contractors, agents, advisors and others and to discharge any such persons and any such persons appointed, hired or employed by the Chargor;

15. INSOLVENCY ACT

to exercise all powers set out in Schedule 1, Schedule B1 or (in the case of a Scottish Receiver) Schedule 2 to the Insolvency Act as now in force (whether or not in force at the date of exercise and whether or not the Receiver is an administrative receiver) and any powers added to Schedule 1 or Schedule 2, as the case may be, after the date of this Deed; and

16. OTHER POWERS

to do anything else he may think fit for the realisation, preservation or improvement of the Charged Assets or incidental to the exercise of any of the rights conferred on the Receiver under or by virtue of any Secured Document to which the Chargor is party, the LPA or the Insolvency Act.

SCHEDULE 2**REGISTERED REAL PROPERTY TO BE MORTGAGED**

Address of Property	Postcode of Property	Name of Chargor/Registered Proprietor	Title Number
The Foxyards, Bean Road, Tipton, West Midlands	DY4 9AQ	Biffa Waste Services Limited	WM691546
Colwick Industrial Estate, Private Road number 2, Colwick, Nottingham	NG4 2JR	Biffa Waste Services Limited	NT201354
Traveller's Close, Hatfield	AL9 7LA	Biffa Waste Services Limited	HD196890

The address for service of the Security Agent in the case of registered Real Property is HSBC Corporate Trustee Company (UK) Limited, do HSBC Bank plc 8 Canada Square, Level 24, London E14 5HQ, attention: Corporate Trust and Loan Agency.

SIGNATURES PAGES TO THE SUPPLEMENTAL DEED OF CHARGE

The Parent

EXECUTED as a DEED by)
WASTEHOLDCO 2 LIMITED)

Director



Witness



Name of witness:

MR. D FRYER, SOLICITOR
Address: BIFFA WASTE SERVICES LIMITED
CORONATION ROAD
CRESSEX
HIGH WYCOMBE
Occupation: BUCKINGHAMSHIRE HP12 3TZ

The Chargor

EXECUTED as a DEED by)
BIFFA WASTE SERVICES LIMITED)

Director



Witness



Name of witness:

MR. D FRYER, SOLICITOR
Address: BIFFA WASTE SERVICES LIMITED
CORONATION ROAD
CRESSEX
HIGH WYCOMBE
Occupation: BUCKINGHAMSHIRE HP12 3TZ

The Security Agent

**EXECUTED as a DEED by
HSBC CORPORATE TRUSTEE
COMPANY (UK) LIMITED**

),
)
)

Sender

Director AUTHORIZED Signature

Witness

Penell

Jenny Pennell
Authorised Signatory

Name of witness:

Address:

HSBC Bank plc
8 Canada Square
London
E14 5HQ

Occupation:

Jason Blondell
Authorised Signatory