

**SCHEDULE 4**  
**FUNDERS DIRECT AGREEMENT**

**CORNWALL COUNCIL**  
(as Authority)

- and -

**THE LAW DEBENTURE TRUST CORPORATION P.L.C.**  
(as Security Agent)

- and -

**MIZUHO CORPORATE BANK, LTD.**  
(as Global Agent)

- and -

**SITA CORNWALL LIMITED**  
(as Contractor)

**FUNDERS DIRECT AGREEMENT**



Ref: F6JDWL/2618319  
R3846.00013

## CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
2. CONSENT TO SECURITY	5
3. NOTICE OF TERMINATION AND EXISTING LIABILITIES	5
4. NO LIQUID MARKET	6
5. REPRESENTATIVE	6
6. STEP-IN PERIOD	6
7. STEP-OUT	8
8. NOVATION	8
9. INSURANCE PROCEEDS	9
10. MISCELLANEOUS	9
10A. COMPENSATION ON TERMINATION	11
11. ASSIGNMENT	11
12. AUTHORITY'S RIGHTS	12
13. GOVERNING LAW	12
14. THIRD PARTY RIGHTS	13
15. ENTIRE AGREEMENT	13
16. COUNTERPARTS	13
17. WAIVER	13
18. SEVERABILITY	13
19. NOTICES	13
20. SURVIVING CLAUSES	14

**BETWEEN:**

- (1) **CORNWALL COUNCIL** of New County Hall, Treyew Road, Truro, Cornwall TR13 3AY (the "**Authority**");
- (2) **THE LAW DEBENTURE TRUST CORPORATION P.L.C.** for itself and as security agent for the Senior Lenders (in that capacity the "**Security Agent**");
- (3) **MIZUHO CORPORATE BANK, LTD.** for itself and as global agent for and on behalf of the Senior Lenders (in that capacity the "**Global Agent**"); and
- (4) **SITA CORNWALL LIMITED** (company registered number 5696514, whose registered office is at SITA House, Grenfell Road, Maidenhead, Berkshire SL6 1ES (the "**Contractor**"),

each a "**Party**" and together the "**Parties**".

**WHEREAS**

- (A) Under the Senior Financing Agreements dated on or around today's date, the Senior Lenders have agreed to make available certain credit facilities to the Contractor.
- (B) Under the Contract, the Authority and the Contractor have agreed the terms on which the Contractor will carry out the Works and provide the Services.

**IT IS AGREED** as follows:

1. **INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires:

**"Affiliate"** means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meaning given to them in sections 1159 and 1162 of the Companies Act 2006;

**"Accounts Agreement"** means the agreement dated on or about the date of this Agreement entered into between inter alia the Contractor, Holdco, the Account Bank, the Global Agent and the Security Agent;

**"Appointed Representative"** means a Representative that has assumed the Contractor's rights under the Contract under Clause 5.1 of this Agreement;

**"Authority Collateral Agreement"** means any Collateral Agreement (as defined in the Contract) and any replacement Collateral Agreement which is entered into pursuant to Clause 107 of the Contract;

**"Contract"** means the agreement dated 6 November 2006 as amended by a supplemental deed dated on or around the date of this Agreement between the Authority and the Contractor relating to the design, construction and financing of, and the provision of certain services in connection with the provision of, an integrated waste management scheme;

**"Exercise Date"** has the meaning given in Clause 12.3(a);

**"Financing Parties"** means:

- (a) the Global Agent; and
- (b) each Finance Party.

**"Proceeds Account"** has the meaning ascribed to such term in the Accounts Agreement.

**"Representative"** means:

- (a) the Global Agent, any Finance Party and/or any of their Affiliates;
- (b) an administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents;
- (c) an administrator of the Contractor;
- (d) a person directly or indirectly owned or controlled by the Global Agent and/or any Finance Party; or
- (e) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed),

provided that the Security Agent shall not be a Representative.

**"Required Period"** means subject to Clause 4 (*No Liquid Market*) of this Agreement the period starting on the date of a Termination Notice and:

- (a) prior to the last Operational Commencement Date ending 120 days later; and
- (b) during the period following the last Operational Commencement Date ending 90 days later.

**"Senior Lenders Release Date"** means the date upon which all indebtedness of the Contractor and HoldCo owing to the Senior Secured Creditors under the Senior Financing Agreements has been irrevocably paid and discharged in full.

**"Step-In Date"** means the date on which the Global Agent takes any action under Clause 5.1 (*Representative*) of this Agreement.

**"Step-In Period"** means the period from the Step-In Date up to and including the earlier of:

- (a) the Step-Out Date;
- (b) the date of any transfer under Clause 8 (*Novation*) of this Agreement;
- (c) the date of any termination for breach under Clause 6 (*Step-In Period*) of this Agreement; and
- (d) the date of expiry of the Contract.

**"Step-Out Date"** means the date falling 30 days after the date of the notice given under Clause 7 (*Step-Out*) of this Agreement;

**"Termination Notice"** means a notice given by the Authority to the Global Agent under Clause 3.1 (*Notice of Termination and Existing Liabilities*) of this Agreement; and

**"Unrestricted Assets"** means those Handback Assets, Facilities and Authority Site, excluding any revenues or cash balances or claims outstanding at the date of transfer

under any Subcontract, which are required by the Authority or its nominee or any replacement of the Contractor for the purposes of the construction, operation or maintenance of the Facilities and provision of the Services following termination assuming such construction, operation or maintenance is carried out on terms substantially the same as the terms of the Contract.

1.2 The following capitalised terms used in this Agreement shall have the meaning given to them in the Contract:

- (a) Additional Permitted Borrowing
- (b) Adjusted Estimated Fair Value of the Contract
- (c) Adjusted Highest Compliant Tender Price
- (d) Authority Site
- (e) Base Senior Debt Termination Amount
- (f) Business Day
- (g) Certification Requirement
- (h) Certification Period
- (i) Collateral Agreement
- (j) Contractor Default
- (k) Deductions
- (l) Distribution
- (m) Excess Cashflow Account
- (n) Facilities
- (o) Final Warning Notice
- (p) Handback Assets
- (q) HoldCo
- (r) Joint Insurance Account
- (s) Liquid Market
- (t) New Contract
- (u) Operational Commencement
- (v) Operational Commencement Date
- (w) Physical Damage Policies
- (x) Project Documents
- (y) Revised Senior Debt Termination Amount
- (z) Senior Financing Agreements

- (aa) Senior Lenders
- (bb) Service
- (cc) Subcontract
- (dd) Subcontractor
- (ee) Suitable Substitute Contractor
- (ff) Termination Date
- (gg) Termination Sum
- (hh) Works
- (ii) Works Commencement

1.3 The following capitalised terms used in this Agreement shall have the meaning given to them in the Senior Financing Agreements:

- (a) 2013 Amendment and Restatement Deed
- (b) Account Bank
- (c) Event of Default
- (d) Finance Party
- (e) Security Document

1.4 In this Agreement:

- (a) each gender includes all genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any clause or sub-clause, is except where expressly stated to the contrary, a reference to such clause of this Agreement;
- (d) without prejudice to any restrictions contained in the Contract and the requirement to obtain the consent of the Authority and/or the Security Agent and/or the Global Agent (as applicable) to the same, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- (e) any reference to any enactment, order, regulation or other similar instrument, statute or statutory provisions shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted;
- (f) any reference to a person includes firms, partnerships and corporations and subject to Clause 107 (*Assignment and Subcontractors*) of the Contract their successors and permitted assignees or transferees;
- (g) the headings and captions in the body of this Agreement do not form part of this Agreement and shall not be taken into account in its construction or interpretation;
- (h) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words;

- (i) words in parentheses and italics appearing after a clause reference or a reference to a Schedule Part are inserted for ease of reference only. If there is any discrepancy between the clause reference and the words in parentheses and italics appearing after a clause reference, the latter shall prevail; and
- (j) in the event of a conflict between this Agreement and the Contract or any of the Project Documents, the provisions of this Agreement will prevail.

## 2. **CONSENT TO SECURITY**

- 2.1 The Authority acknowledges notice of, and consents to the security interest granted over the Contractor's rights under the Project Documents to which the Authority is party effected by the Contractor in favour of the Security Agent on behalf of the Senior Lenders under the Security Documents.
- 2.2 The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Project Documents to which the Authority is party.
- 2.3 Notwithstanding the terms of the Senior Financing Agreements, the Parties agree and shall, to the extent it is within their power, direct that all insurance proceeds payable under the Physical Damage Policies shall be paid into the Joint Insurance Account except as otherwise agreed by the Global Agent, the Security Agent and the Authority and shall be applied in accordance with the Contract.
- 2.4 The Contractor and the Global Agent hereby authorise and instruct the Authority (and the Authority Agrees) to pay all sums payable to the Contractor under the Contract to the Proceeds Account and the Contractor and the Authority agrees that at any time following the occurrence of an Event of Default, if so directed in writing by the Global Agent upon giving reasonable notice, the Authority shall pay any sum which it is obliged to pay to the Contractor under the Contract to the Proceeds Account or such other bank account specified by the Global Agent.
- 2.5 The Contractor hereby gives the Authority notice that the security agent under the debenture dated 16 October 2006 (the "**Debenture**"), entered into between the Contractor, Holdco and The Royal Bank of Scotland P.L.C., is changing from The Royal Bank of Scotland P.L.C. to The Law Debenture Trust Corporation P.L.C. pursuant to the 2013 Amendment and Restatement Deed dated on or about the date of this Agreement between among others, The Royal Bank of Scotland P.L.C. as resigning security agent and The Law Debenture Trust Corporation P.L.C. as successor security agent. Each of the Contractor and Authority agree that the assignment of the Contract by the Contractor under the Debenture will continue in full force and effect notwithstanding any amendment and/or restatement of the Contract pursuant to the Supplemental Agreement dated on or about the date of this deed between the Contractor and the Authority or otherwise.

## 3. **NOTICE OF TERMINATION AND EXISTING LIABILITIES**

The Authority shall not terminate or give notice terminating the Contract on the grounds of Contractor Default without giving to the Security Agent and the Global Agent:

- 3.1 at least the Required Period of prior written notice stating:
  - (a) the proposed Termination Date; and
  - (b) the grounds for termination in reasonable detail; and
- 3.2 not later than the date falling 30 days after the date of a Termination Notice or (if earlier) the date falling 30 days after the date on which the Global Agent informs the Authority that an Event of Default has occurred, a notice containing details of any amount owed by the



Contractor to the Authority, and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry):

- (a) at the time of the Termination Notice or the notification of an Event of Default; and/or
- (b) which will fall due on or prior to the end of the Required Period, under the Contract.

4. **NO LIQUID MARKET**

- 4.1 At any time during the Required Period the Global Agent may issue a written notice (the "**No Liquid Market Notice**") to the Authority setting out the reasons why the Global Agent does not believe that a Liquid Market exists.
- 4.2 On or before the date falling 14 days after the date on which a No Liquid Market Notice is received by the Authority, the Authority shall notify the Global Agent of its opinion as to whether or not a Liquid Market exists. Where the Authority believes that a Liquid Market does exist, such notice shall set out the reasons for the Authority's belief. If the Authority and the Global Agent do not agree whether or not a Liquid Market exists, then either party may refer the dispute to be determined in accordance with Clause 102 (*Dispute Resolution*) of the Contract.
- 4.3 If the Authority and the Global Agent agree or it is determined in accordance with Clause 102 (*Dispute Resolution*) of the Contract that no Liquid Market exists, the Contract shall automatically terminate and the provisions of Clause 90.10 (*No Retendering Procedure*) of the Contract shall apply.
- 4.4 If any dispute relating to this Clause 4 is determined under Clause 102 (*Dispute Resolution*) of the Contract, the Required Period shall be extended by the period of time spent determining such dispute under Clause 102 (*Dispute Resolution*) of the Contract.

5. **REPRESENTATIVE**

- 5.1 Without prejudice to the rights of the Security Agent and the Global Agent under the Security Documents, at any time:
  - (a) during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
  - (b) during the Required Period,the Global Agent shall be entitled to procure that an Appointed Representative assumes, jointly and severally with the Contractor, all of the Contractor's rights under the Contract.
- 5.2 The Global Agent shall give the Authority 5 days' prior notice of:
  - (a) any action to be taken by it referred to in this Clause 5; and
  - (b) the identity of the proposed Appointed Representative.

6. **STEP-IN PERIOD**

- 6.1 Without prejudice to Clause 3 (*Notice of Termination and Existing Liabilities*), but subject to Clause 6.2 below, the Authority shall not terminate the Contract during the Step-In Period on grounds:
  - (a) that the Global Agent or Security Agent has taken any action referred to in Clause 5 (*Representative*) above or enforced any Security Document(s); or

- (b) arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or
- (c) arising solely in relation to the Contractor or HoldCo;

unless, in the case of Clause 6.1(b) above:

- (i) the grounds arose under any of paragraphs (m) or (p) of the definition of Contractor Default as set out in Schedule 1 (Definitions) of the Contract, and the relevant Operational Commencement is not achieved on or before the date falling 12 months after the date on which the Authority would have been entitled to terminate the Contract for failing to achieve such Operational Commencement in accordance with the definition of Contractor Default; or
- (ii) the grounds arose under paragraph (n) of the definition of Contractor Default, and the RWTP Planning Application and the RWTP PPC Application are not lodged on or before the date falling 3 months after the date on which the Authority would have been entitled to terminate the Contract for non-lodgment of the RWTP Planning Application and the RWTP PPC Application in accordance with the definition of Contractor Default; or
- (iii) the grounds arose under paragraph (o) of the definition of Contractor Default, and Works Commencement in relation to the RWTP has not been achieved on or before the date falling 2 months after the date on which the Authority would have been entitled to terminate the Contract for failure to achieve such Works Commencement in accordance with the definition of Contractor Default; or
- (iv) the grounds arose for any reason other than as specified in clauses 6.1(d)(i) and (ii) and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of any remedial programme) to remedy any breach of the Contract that:
  - (1) arose prior to the Step-In Date; and
  - (2) is continuing (and capable of remedy); and
  - (3) would have entitled the Authority to terminate the Contract; or
- (v) the grounds (whenever they first arose) did not give rise to any right to terminate until after the Step-In Notice.

6.2 Notwithstanding Clause 3 (Notice of Termination and Existing Liabilities), the Authority shall be entitled to terminate the Contract by written notice to the Contractor and the Appointed Representative:

- (a) if permitted by Clause 6.1;
- (b) if any amount referred to in Clause 3.2(a)(Notice of Termination and Existing Liabilities) above has not been paid to the Authority on or before the Step-In Date;
- (c) if any amount referred to in Clause 3.2(b)(Notice of Termination and Existing Liabilities) above has not been paid on or before the last day of the Required Period;
- (d) if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default,

subsequently become payable and are not discharged on or before the date falling 30 days after the date on which the liability for these amounts is notified to the Global Agent or, if later, when due; or

- (e) on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that for the purposes of termination under the Contract, all warning notices served under Clause 79.1 (Warning Notice) of the Contract, and any Final Warning Notices, Deductions (including multipliers), Recycling Deductions, Unavailability Deductions, Unavailability at any Facilities and/or failure to Process by way of Energy Recovery any Residual Waste that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date.

6.3 The Authority shall deal with the Appointed Representative and not the Contractor during the Step-In Period.

## 7. STEP-OUT

7.1 The Appointed Representative will, on 30 days' prior written notice from the Security Agent or the Appointed Representative to the Authority, or, if earlier, on the expiry of the Step-In Period, be released from all of its obligations and liabilities to the Authority under the Contract arising prior to the Step-Out Date and the rights of the Appointed Representative against the Authority will be cancelled.

7.2 The Contractor shall continue to be bound by the terms of the Contract, notwithstanding the occurrence of the Step-Out Date.

7.3 If following the Step-Out Date the Authority is satisfied (acting reasonably) that the circumstances giving rise to the Global Agent electing to exercise its rights under paragraph 5 (Representative) have been remedied in full, then for the purposes of termination of the Contract only, and without prejudice to the rights of the Authority to make deductions/adjustments pursuant to the Payment Mechanism, all warning notices served under Clause 79.1 (Warning Notice) of the Contract, and any Final Warning Notices, Deductions, Deductions multipliers, Recycling Deductions, Unavailability Deductions, Unavailability at any Facilities and/or failure to Process by way of Energy Recovery any Residual Waste that arose prior to the Step-In Date shall be immediately cancelled, provided that where, during the Step-In Period, the Contractor has substituted or replaced the defaulting Operating Sub-Contractor and has elected to exercise its rights under Clause 107.9 of the Contract, the provisions of Clause 107.9 (Performance Relief upon replacement of Subcontractors) of the Contract will apply from the date of substitution or replacement of that Operating Subcontractor.

## 8. NOVATION

8.1 Subject to Clauses 8.2 below, at any time:

- (a) during which an Event of Default is subsisting; or
- (b) during the Required Period, if no Step-In Notice has been served; or
- (c) during the Step-In Period,

the Global Agent may, on at least 30 days' prior written notice to the Authority and any Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Contract to a Suitable Substitute Contractor.

8.2 The Authority shall notify the Global Agent as to whether any person to whom the Global Agent proposes to transfer the Contractor's rights and liabilities under the Contract is a

Suitable Substitute Contractor, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.

8.3 The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.

8.4 On any transfer referred to in Clause 8.1 above becoming effective:

- (a) the Contractor and the Appointed Representative shall be released from any obligations arising under or in connection with this Agreement and the Contract from that date and the Suitable Substitute Contractor shall become liable for obligations arising under the Agreement and the Contract on or after that date;
- (b) any accrued warning notices served under Clause 79.1 (Warning Notice) of the Contract, Final Warning Notices, any Deductions, Deductions multipliers, Unavailability at any Facilities and/or failures to Process by any of Energy Recovery any Residual Waste occurring prior to transfer shall for the purposes of termination only be cancelled or disregarded;
- (c) any then subsisting ground for termination of the Contract by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked and, if the grounds arose under any of paragraphs (m) or (p) of the definition of Contractor Default as set out in Schedule 1 (Definitions) of the Contract, no Contractor Default will arise unless the relevant Operational Commencement is not achieved on or before the date falling 12 months after the date on which the Authority would have been entitled to terminate the Contract for failing to achieve such Operational Commencement in accordance with the definition of Contractor Default; and
- (d) the Authority shall enter into a direct agreement with the Suitable Substitute Contractor, the global agent and the security agent of the finance parties lending to the Suitable Substitute Contractor on substantially the same terms as this Agreement.

## 9. INSURANCE PROCEEDS

9.1 Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Global Agent shall not take any steps to procure any release from the Joint Insurance Account otherwise than in accordance with terms of Clause 98 (*Reinstatement*) of the Contract and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with the provisions of Clause 98 (*Reinstatement*) of the Contract.

9.2 Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Global Agent shall not take any steps to procure any release from the Excess Cashflow Account otherwise than in accordance with the terms of Part B of Schedule 23 (Excess Cash Flow Sharing Mechanism) of the Contract and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Excess Cashflow Account in accordance with the provisions of Part B of Schedule 23 (Excess Cash Flow Sharing Mechanism) of the Contract.

## 10. MISCELLANEOUS

10.1 The Authority shall at the Contractor's expense, take whatever action the Global Agent, the Security Agent or an Appointed Representative or a Suitable Substitute Contractor

taking a transfer in accordance with Clause 8.1 (Novation) above may require for perfecting any transfer or release under Clauses 5 (*Representative*), 7 (*Step-out*) and 8 (*Novation*) of this Agreement, including the execution of any transfer or assignment and the giving of any notice, order or direction and the making of any registration which, in each case, the Global Agent or Appointed Representative reasonably requires.

- 10.2 The Authority shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Contractor.
- 10.3 If the Authority elects to pay the Adjusted Estimated Fair Value of the Contract or the Base Senior Debt Termination Amount element or Revised Senior Debt Termination Amount element of any Termination Sum in instalments in accordance with Clause 9.4 (*Instalments*) of the Contract, the Authority shall not exercise any right of set off or make any deduction from any instalment or interest relating thereto save to the extent that after such amount has been set off, the termination payment made would be an amount equal to or greater than the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be at that time.
- 10.4 Subject always to the continuing obligations of the Authority under Clause 10.3 of this Agreement, this Agreement shall remain in effect until the date on which all amounts which may be or become owing by the Authority to the Contractor under Part K (*Compensation on Termination*) of the Contract have been irrevocably paid in full, whereupon the Global Agent agrees on behalf of itself and the Senior Lenders to procure the release by the Security Agent of any security granted in their favour over the Handback Assets and the Authority Sites which has not previously been assigned to the Authority.
- 10.5 The Global Agent, in respect of Clauses 10.5(a), 10.5(b) and 10.5(c), and the Contractor in respect of Clause 10.5(d), shall promptly notify the Authority of:
- (a) any decisions to accelerate the maturity of any amounts owing by the Contractor to the Senior Lenders under any Senior Financing Agreement and/or demand repayment;
  - (b) the date referred to in Clause 10.4 above on or before the date falling 30 days after its occurrence;
  - (c) the details and amount of any proposed Additional Permitted Borrowing, including:
    - (i) the circumstances giving rise to it and reasons for it; and
    - (ii) the terms on which it will be borrowed; and
  - (d) the amount outstanding under the Senior Financing Agreements, and, to the extent it is aware (having made reasonable and proper enquiry):
    - (i) the amount of any Distribution made by the Contractor; and
    - (ii) the amount of any credit balance on any account of the Contractor;

(on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting).
- 10.6 The Contractor joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any Party from enforcing its rights under this Agreement.
- 10.7 For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Contract, the provisions of this Agreement shall prevail.

10.8 Where the retendering procedure described in Clause 90.3 (*Retendering Procedure*) of the Contract applies, the Authority's obligation to pay the Contractor pursuant to Clause 90.3(a) and/or Clause 90.3(k) of the Contract shall be extinguished and replaced by an obligation of the Authority to pay to the Global Agent an amount equal to the Adjusted Highest Compliant Tender Price no later than (to the extent that Clause 90.3(k) of the Contract applies) the date falling twenty (20) Business Days after the date of determination or (to the extent that Clause 90.3(k) of the Contract applies) the date falling twenty (20) Business Days after the date of the New Contract. The Authority shall, where instructed to do so by the Global Agent, direct the successful bidder to pay directly to the Global Agent an amount equal to the lesser of the Highest Compliant Tender Price and the Adjusted Highest Compliant Tender Price. The irrevocable payment of such amount by the successful bidder directly to the Global Agent shall discharge, but only to the extent of such amount, the Authority's obligation to pay the Global Agent pursuant to this Clause 10.8.

**10A. COMPENSATION ON TERMINATION**

10A.1 The Authority shall pay all amounts described, or referred to, in Clause 93(Compensation on Authority Voluntary Termination) of the Contract directly to the Security Agent on behalf of the Senior Lenders.

10A.2 For the purposes of Clause 95.4(b) of the Contract the parties have agreed that in any circumstances in which the Authority has elected to pay amounts by instalments pursuant to Clause 95.4(Calculation and Payment of Early Termination Payments: Instalment) of the Contract the instalments will be paid in the amounts as described pursuant to Clause 95.4(a) and will be paid directly to the Security Agent on behalf of the Senior Lenders.

10A.3 In any circumstances in which the Contractor would be entitled to give notice pursuant to Clause 95.7(Calculation and Payment of Early Termination Payments: Authority Default in Payment) of the Contract it is agreed that such notice may be given by the Security Agent to the Authority, and any payment then due pursuant to Clause 95.8 will be made directly to the Security Agent on behalf of the Senior Lenders.

**11. ASSIGNMENT**

11.1 No Party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save that:

- (a) each of the Security Agent and the Global Agent may assign or transfer its rights and obligations under this Agreement to a successor Security Agent or successor Global Agent in accordance with the Senior Financing Agreements without the consent of the Authority;
- (b) any Finance Party may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements; and
- (c) the Authority shall assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any public body which the Authority assigns, novates or otherwise transfers its rights and/or obligations under the Contract in accordance with Clause 107.10 (*Restrictions on Transfer of the Contract by the Authority*) of the Contract.

11.2 If Clause 11.1 applies then the Authority and the Contractor shall enter into a direct agreement with the new security agent and the new global agent on substantially the same terms as this Agreement.

## 12. AUTHORITY'S RIGHTS

12.1 Without prejudice to Clause 12.2, the Authority shall not prior to the Senior Lenders Release Date:

- (a) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Authority Collateral Agreement (and/or any Subcontract) from any Authority Collateral Agreement counterparty;
- (b) compete with the Global Agent's rights on a winding up or any other insolvency of any Authority Collateral Agreement counterparty nor claim to be subrogated to any rights of the Global Agent or any Senior Lender; or
- (c) petition for or otherwise be a party to any proceedings for winding up any Authority Collateral Agreement counterparty or any other insolvency proceedings in respect of any Authority Collateral Agreement counterparty.

12.2 The Authority agrees and undertakes that if it receives any amount in contravention of the provisions of Clause 12.1, it will immediately turn the same over to the Security Agent for the account of the Security Agent and the Senior Lenders and pending such payment hold the same on trust for the Security Agent and the Senior Lenders provided that such trust shall not create any registerable security interest over such amount.

12.3 Notwithstanding any provision in the Authority Collateral Agreements, the Authority hereby undertakes that it will not, and it will procure that no permitted successor or assignor of it will exercise any rights it may have under or arising out of any of the Authority Collateral Agreements, except as provided in Clauses 12.3(a) to 12.3(c) inclusive:

- (a) Following termination of the Contract in accordance with this Agreement, the Authority shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Authority Collateral Agreements to step in to and/or novate any Subcontract in accordance with the Authority Collateral Agreement.
- (b) Until the Senior Lenders Release Date, but following the Exercise Date, the Authority shall not do anything to prejudice the rights which are not transferred to it pursuant to the Authority Collateral Agreement.
- (c) Notwithstanding the terms of the Authority Collateral Agreements and any other provisions of this Clause 12.3, each of the Subcontractors (and any guarantors thereof) shall remain responsible, and be liable, to the Contractor in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the relevant Subcontract in respect of the period prior to the Exercise Date in relation to which the Global Agent acting on behalf of the Contractor or the Senior Lenders shall retain the benefit of all and any rights to all such costs, claims, damage, losses and liabilities.

12.4 Notwithstanding the terms of the Contract and Security Documents, the Security Agent and Global Agent agree that the Authority may exercise its rights to have transferred any Unrestricted Assets to the Authority or its nominee following the Termination Date and the Security Agent and/or Global Agent will not exercise or seek to exercise any enforcement rights and shall, on or before the date any Unrestricted Assets are transferred to the Authority or its nominee, as the case may be, release its security over them.

## 13. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it is governed by the laws of England.

14. **THIRD PARTY RIGHTS**

A person who is not a party to this Agreement shall have no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

15. **ENTIRE AGREEMENT**

Except where expressly provided in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

17. **WAIVER**

17.1 **Waiver to be Written**

No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party and each other Party has consented.

**Extent of Waiver**

No waiver under Clause 17.1 (*Waiver to be Written*) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.

18. **SEVERABILITY**

If any term, condition or provision of this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Agreement.

19. **NOTICES**

19.1 **Form and Service of Notices**

19.2 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, facsimile or by hand, or leaving the same at:

<b>Contractor</b>
Company Secretary
SITA House, Grenfell Road, Maidenhead, Berkshire SL6 1ES
Fax: 01628 513101

<b>Authority</b>
Head of PFI Unit
New County Hall, Treyew Road, Truro TR1 3AY Cornwall
Fax no.: 01872 323833



<b>Security Agent</b>
Fifth Floor 100 Wood Street London EC2V 7EX (with registered number 01675231)
Attention: The Manager, Commercial Trusts (Ref: 200227)
Fax: 020 7606 0643

<b>Global Agent</b>
Bracken House One Friday Street London EC4M 9JA
Fax: +44 207 012 4053

### 19.3 Change of Details

A Party to this Agreement may change its nominated address or facsimile number by prior notice to the other Parties.

### 19.4 Notices by Post

Notices given by post shall be effected upon the earlier of actual receipt and five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notices given by facsimile shall be deemed to have been received where there is confirmation of uninterrupted transmission by a transmission report and where there has been no telephonic communication by the recipient to the senders (to be confirmed in writing) that the facsimile has not been received in legible form:

- (a) within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 4pm; or
- (b) by 11am on the next following Business Day, if sent after 4pm on a Business Day but before 9am on that next following Business Day.

## 20. SURVIVING CLAUSES

Notwithstanding the provisions of Clause 10.4 (*Miscellaneous*), Clause 12 (*Subordination*) shall survive termination of this Agreement.

## 21. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

21.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Agreement and the Contract before the end of the Certification Period relating to each such agreement.

21.2 The Global Agent, the Security Agent and the Contractor each hereby consent to the issue by the Authority of a certificate under Section 3 of the Local Government (Contracts) Act 1997 which relates to this Agreement.

21.3 The parties to this Agreement agree that the relevant discharge terms as applied by and in accordance with clause 123.5 of the Contract and schedule 31 of the Contract shall apply to this Agreement and the Contract.

**IN WITNESS WHEREOF** this Agreement has been duly executed as a deed on the date first above written:

**EXECUTED as a DEED by** )  
**THE CORNWALL COUNCIL** )  
whose Common Seal was hereunto )  
affixed in the presence of: )

Authorised Officer

\_\_\_\_\_

Authorised Signatory

**Contractor**

**EXECUTED and DELIVERED as a** )  
**DEED** for and on behalf of **SITA** )  
**CORNWALL LIMITED** acting by: )  
)

\_\_\_\_\_

Director

\_\_\_\_\_

Director/Secretary

**The Security Agent**

**EXECUTED and DELIVERED by** )  
Julian Mason-Jebb for and on behalf of )  
**THE LAW DEBENTURE TRUST** )  
**CORPORATION P.L.C.** )  
under a power of attorney dated 18 )  
March 2013 in the presence of: )

Signature of witness:

Witness' Name:

Witness' Address:

Witness' Occupation:

**The Global Agent**

**EXECUTED and DELIVERED** by )  
**MIZUHO CORPORATE BANK, LTD.** )  
acting by two duly authorised )  
signatories: )