

SET-OFF AGREEMENT

(SOA – Eng Local authorities)

VF 3124072

Set-Off Agreement

Local authorities

Lloyds Bank plc

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THIS SET-OFF AGREEMENT is made on the day of 20.....

BETWEEN:

- (1) **Southampton City Council** a local authority constituted under English law and having its principal offices at **Civic Centre, Southampton, SO14 7LY** (the "**Customer**"); and
- (2) **LLOYDS BANK plc** (Company number 2065) whose address for the purposes of this agreement is at **Mid Market Securities, 5th Floor, 110 St Vincent Street, Glasgow, G2 5ER** (or at such other address as the Bank may from time to time notify to the Customer in writing for this purpose) (the "**Bank**"),

in consideration of the Bank providing or continuing facilities, products or services or giving time or releasing any security or releasing any person from any obligation in respect of facilities, products or services to or at the request of the Customer, whether alone or jointly with any other person or persons.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, so far as the context admits, the following words and expressions shall have the following meanings:

"**Accounts**" means all the present and future accounts of the Customer with the Bank and includes accounts in the Bank's name with any designation which includes the name of the Customer and "**Account**" means any one of them;

"**Credit Balance**" means any sum standing to the credit of an Account, whether in Sterling or any other currency or currency unit and the debt from time to time owing by the Bank represented by that sum and "**Credit Balances**" means all of them;

"**Liabilities**" means all money and liabilities whether actual or contingent (including further advances made hereafter by the Bank) now or at any time hereafter due, owing or incurred from or by the Customer to the Bank anywhere or for which the Customer may be or become liable to the Bank in any manner whatsoever without limitation (and (in any case) whether alone or jointly with any other person and in whatever style, name or form and whether as principal or surety and notwithstanding that the same may at any earlier time have been due, owing or incurred to some other person and have subsequently become due, owing or incurred to the Bank as a result of a transfer, assignment or other transaction or by operation of law) whether in Sterling or any other currency or currency unit and "**Liability**" means any one of them; and

"**Sterling**" means the legal currency for the time being of the United Kingdom.

1.2 In this Agreement:

- (a) the expression "**Bank**" and "**Customer**" where the context admits includes their respective successors in title and/or assigns whether immediate or derivative;
- (b) unless the context requires otherwise:
 - (i) the singular shall include the plural and vice versa;
 - (ii) any reference to a person shall include an individual, a company, corporation, limited liability partnership or other body corporate, a joint venture, society or unincorporated association, an organisation or body of persons (including a trust and a partnership) and any government, state, government or state agency or international organisation whether or not a legal entity. References to a person also include that persons successors and assigns whether immediate or derivative;

- (iii) the expression this Agreement shall mean this Set-Off Agreement and shall extend to every separate and independent stipulation contained herein;
 - (iv) any right, entitlement or power which may be exercised or any determination which may be made by the Bank under or in connection with this Agreement may be exercised or made in the absolute and unfettered discretion of the Bank and the Bank shall not be under any obligation to give reasons therefor;
 - (v) references to any statutory provisions (which for this purpose means any Act of Parliament, statutory instrument or regulation or European directive or regulation or other European legislation) shall be deemed to include a reference to any modification, re-enactment or replacement thereof for the time being in force, all regulations made thereunder from time to time and any analogous provision or rule under any applicable law; and
 - (vi) references to clauses, sub-clauses and schedules shall be references to clauses, sub-clauses and schedules of this Agreement; and
- (c) except where expressly otherwise stated or where the context requires otherwise, each of the provisions of this Agreement shall apply both before and after any demand for payment under this Agreement.

1.3 The clause headings and marginal notes shall be ignored in construing this Agreement.

2. BANK'S RIGHTS

Without prejudice to any other provisions of this Agreement, the Customer agrees that in addition to any general lien, right of set-off, combination or consolidation or other rights to which the Bank as bankers may be entitled by law, the Bank may at any time and from time to time and with or without notice to the Customer:

- (a) combine or consolidate all or any of the Accounts with all or any of the Liabilities; and
- (b) set-off or transfer any Credit Balance in or towards satisfaction of any of the Liabilities.

3. FIXED TERM DEPOSITS

The Bank may at any time and from time to time exercise any of the rights referred to in clause 2 with or without notice to the Customer notwithstanding any other term or condition applying to the Accounts and notwithstanding that any Credit Balance may have been placed with the Bank for fixed or determinable periods of time.

4. UNDERTAKINGS

4.1 In the event of:

- (a) the Customer going into liquidation whether voluntary or compulsory;
- (b) a receiver being appointed of the whole or any part of the undertaking, property or assets of the Customer;
- (c) an application for the appointment of an administrator of the Customer being presented;

- (d) a voluntary arrangement being approved in relation to the Customer; or
- (e) a notice of appointment of or notice of intention to appoint an administrator is issued by or in respect of the Customer,

the Liabilities shall be deemed to have become presently due and payable without demand or further demand immediately before the making of the interim order or the presentation of the petition or application or the passing of the resolution for such winding up or administration or the issuing of the notice of appointment of or notice of intention to appoint such administrator or the appointment of such receiver or the approval of such voluntary arrangement.

- 4.2 The Customer agrees with the Bank that it shall not (without the prior written consent of the Bank) assign, mortgage, charge or otherwise confer upon any third party any right, title or interest in or to any Credit Balance, or agree to do any such thing, or allow any such third party right, title or interest to subsist (except in each case in favour of, or upon, the Bank).
- 4.3 Upon demand at any time and at its cost, the Customer shall take all steps and do all such things as the Bank may consider to be necessary or desirable to give effect to and procure the perfection of the rights intended to be granted by this Agreement.
- 4.4 The Customer undertakes to notify the Bank of the occurrence of any of the events specified in sub-clause 4.1.

5. NO WITHDRAWALS

Until all of the Liabilities have been fully discharged and satisfied, the Bank may at any time and from time to time (including, without limitation, after the expiry of any fixed or determinable period of time during which a Credit Balance has been placed with the Bank) refuse to permit any withdrawal of the whole or any part of a Credit Balance (whether by dishonouring cheques or otherwise).

6. NO LIABILITY

The Bank shall not be liable for any loss occasioned to the Customer by reason of the exercise of the Bank's powers under this Agreement including, without limitation, any loss of interest occasioned by any deposit being terminated without notice or before its maturity.

7. CURRENCY CONVERSION

If and to the extent that the Customer fails to pay on demand the amount due under this agreement in the currency or currency unit or currencies or currency units demanded, the Bank shall be entitled in its absolute discretion with or without notice to the Customer elect to convert the whole or any part of a Credit Balance into the currency or currencies of any Liability (deducting from the proceeds of the conversion any currency premium or other expense). The Bank may take any such action as may be necessary for this purpose, including without limitation opening additional Accounts. The rate of exchange shall be the Bank's spot rate for selling the currency of the Liability for the currency of such Credit Balance at or about 11.00 a.m. on the date the Bank exercises its right to combine or consolidate and/or to set-off or transfer.

8. CONTINUING SECURITY

This Agreement shall continue to bind the Customer as a continuing security notwithstanding that the Liabilities may from time to time be reduced to nil and notwithstanding any change in the name, style, constitution or otherwise of the Customer.

9. CONCLUSIVE EVIDENCE

A certificate by an official of the Bank as to the Liabilities shall (save for manifest error) be binding and conclusive on the Customer in any legal proceedings both in relation to the existence of the liability and as to the amount thereof.

10. OTHER SECURITIES OR RIGHTS

This Agreement is in addition to and is not to prejudice or be prejudiced by any other guarantee, lien, right of set-off, combination or consolidation or other rights exercisable by the Bank in connection with all or any of the Accounts or all or any of the Liabilities and is in addition to and is not to prejudice or be prejudiced by any security the Bank may now or hereafter hold.

11. UNLAWFULNESS, PARTIAL INVALIDITY

Each of the provisions in this Agreement are severable and distinct from one another and if at any time any one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

12. NON-MERGER, ETC.

Nothing herein contained shall operate so as to merge or otherwise prejudice or affect any bill, note, guarantee, mortgage or other security or any contractual or other right which the Bank may at any time have for any of the Liabilities or any right or remedy of the Bank thereunder. Any receipt, release or discharge of the security provided by, or of any liability arising under, this Agreement shall not release or discharge the Customer from any liability to the Bank which may exist independently of this Agreement.

13. RESTRICTION ON LIABILITY OF THE BANK

Except to the extent that any such exclusion is prohibited or rendered invalid by law, neither the Bank nor its employees and agents shall:

- (a) be under any duty of care or other obligation of whatsoever description to the Bank in relation to or in connection with the exercise of any right conferred upon the Bank; or
- (b) be under any liability to the Customer as a result of, or in consequence of, the exercise, or attempted or purported exercise, or failure to exercise, any of the Bank's rights under this Agreement.

14. NO RELIANCE ON THE BANK

(a) The Customer acknowledges to and agrees with the Bank that, in entering into this Agreement:

- (i) the Customer has not relied on any oral or written statement, representation, advice, opinion or information made or given to it in good faith by the Bank

or anybody on the Bank's behalf and the Bank shall have no liability to the Customer if it has in fact so done;

- (ii) the Customer has made, independently of the Bank, its own assessment of the viability and profitability of any purchase, project or purpose for which the Customer has incurred the Liabilities and the Bank shall have no liability to the Customer if it has not in fact so done; and
 - (iii) there are no arrangements collateral or relating to this Agreement which have not been recorded in writing and signed on behalf of the Bank and the Customer.
- (b) The Customer agrees with the Bank that the Bank did not have prior to the date of this Agreement, does not have and shall not have any duty to it:
- (i) in respect of the application by the Customer of the money hereby secured; or
 - (ii) in respect of the effectiveness, appropriateness or adequacy of the security constituted by this Agreement or of any other security for the Liabilities.
- (c) The Customer agrees with the Bank for itself and as trustee for the Bank's officials, employees and agents that neither the Bank nor its officials, employees or agents shall have any liability to the Customer in respect of any act or omission by the Bank, its officials, employees or agents done or made in good faith.

15. MISCELLANEOUS

- 15.1 Any amendment of or supplement to any part of this Agreement shall only be effective and binding on the Bank and the Customer if made in writing and signed by both the Bank and the Customer. References to this Agreement include each such amendment and supplement.
- 15.2 The Customer and the Bank shall from time to time amend the provisions of this Agreement if the Bank notifies the Customer that any amendments are required to ensure that this Agreement reflects the market practice at the relevant time following the introduction of economic and monetary union and/or the euro in all or any part of the European Union.
- 15.3 The Customer and the Bank agree that the occurrence or non-occurrence of European economic and monetary union, any event or events associated with European economic and monetary union and/or the introduction of any new currency in all or any part of the European Union shall not result in the discharge, cancellation, rescission or termination in whole or in part of this Agreement or give any party hereto the right to cancel, rescind, terminate or vary this Agreement in whole or in part.
- 15.4 Any waiver, consent, receipt, settlement or release given by the Bank in relation to this Agreement shall only be effective if given in writing and then only for the purpose for and upon any terms on which it is given.
- 15.5 Any change in the constitution of the Bank or the Bank's absorption of or amalgamation with any other person shall not in any way prejudice or affect its or their rights under this Agreement and the expression "the Bank" shall include any such other person.
- 15.6 This document shall at all times be the property of the Bank.
- 15.7 Without prejudice to clause 15.6, the Customer may disclose the content of this Agreement in compliance with the Freedom of Information Act 2000 (FOIA) and/or the Environmental

Information Regulations 2004 (EIRs) or as a consequence of order by any court, tribunal or body with authority to order disclosure (including the Information Commissioner). If the Customer receives a request under Section 1 of FOIA (or, if applicable, a request under the EIRs) relating to this Agreement, the Customer may seek the consent of the Bank to release some or all of the information in response to the said request and shall do so if the Customer is minded to disclose such items, whether in terms of the public interest or otherwise. If the Bank fails to respond to such a request for consent within seven days of the request being made, it shall be deemed to have consented to the release of information as requested by the Customer. In all cases the Customer may, without the consent of the Bank, disclose the content of this Agreement if the Customer (acting reasonably) is satisfied that it is in the public interest for it to do so. In reaching this conclusion the Customer shall take into account any representations made in connection with this by the Bank but the decisions of the Customer as to what constitutes the public interest shall be final and conclusive in any dispute, difference or question arising in respect thereof.

16. LAW AND JURISDICTION

- 16.1 This Agreement and any dispute (whether contractual or non-contractual, including, without limitation, claims in tort, for breach of statutory duty or on any other basis) arising out of or in connection with it or its subject matter ("**Dispute**") shall be governed by and construed in accordance with the laws of England and Wales.
- 16.2 The parties to this Agreement irrevocably agree, for the sole benefit of the Bank, that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any Dispute. Nothing in this clause shall limit the right of the Bank to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

IN WITNESS whereof the Customer has executed this Agreement as a deed and has delivered it on its being dated.

**The COMMON SEAL of
SOUTHAMPTON CITY COUNCIL
was hereunto affixed in the presence of:**