

dated

2012

[

]

and

Exeter City Council

Lease agreement

in relation to [

]

Trowers & Hamblins LLP
The Senate
Southernhay Gardens
Exeter
EX1 1UG
t +44 (0)1392 217466
f +44 (0)1392 221047
www.trowers.com

Lease agreement

dated 2012

Parties

- (1) [] of [] (the **Landlord**)
- (2) **Exeter City Council** of the Civic Centre, Paris Street, Exeter acting by BAAN AL-KHAFAJI its Head of Legal Services (the **Council**)

Agreed terms

1 Definitions and Interpretations

1.1 In this Lease the following terms have the following meanings unless inconsistent with the context:

Excluded Items means those items listed in Schedule 3 (if any)

Fixtures and Fittings means the fixtures and fittings supplied by the Landlord and listed in Schedule 1

Landlord Repairs means the repairs to the Premises or Fixtures and Fittings which are the Landlord's responsibility under clauses 5.2 and 5.3 of this Lease

Maximum Expenditure Limit means the sum of £

Net Rent means £[] per calendar month

Occupier means any person authorised by the Council to occupy the Premises

Premises means []

Private Sector Renewal Cost means

Rent means £[] per calendar month

Rent Commencement Date means

Term means [] years less one day from the date hereof (subject to the provisions of clauses 6.9 and 6.10)

Termination Bonus means the sum of £[] (subject to the provisions of clause 6.8)

1.2 Any reference in these terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these terms are for convenience only and shall not affect their interpretation.

2 **Letting**

The Landlord lets and the Council takes the Premises together with all rights and easements reasonably necessary for the proper enjoyment of the Premises together with all Fixtures and Fittings PROVIDED THAT there is not included in the demise any Excluded Items and the Landlord and the Council agree the same shall be subject to the provisions of clause 6.11.

3 **Consideration**

3.1 The Council agrees to pay to the Landlord from and including the Rent Commencement Date the Net Rent in advance by four equal quarterly amounts on the 1st January, 1st April, 1st July and 1st October each year and for any part of the term which is less than a full quarter the Rent shall be calculated on a daily basis and by reference to the monthly rent stated in this Lease.

3.2 The Private Sector Renewal Cost represents the sum paid or being paid by the Council toward improvements to the Property.

3.3 The Net Rent is the amount payable to the Landlord once the Private Sector Renewal Cost is deducted from the Rent due and payable each quarter.

3.4 If applicable and if the Council has been notified by the Landlord in writing prior to the commencement of this Lease that the Premises are in mortgage and the Landlord irrevocably authorises the Council to do so the Council will on receiving written notification from the mortgagee make such payments of rent to the mortgagee in lieu

of the Landlord until otherwise notified and such payments shall be received in full and final settlement of the Rent then due.

4 **The Council's Obligations**

The Council agrees with the Landlord:-

- 4.1 To pay the Rent at the time and in the manner specified in this Lease.
- 4.2 To arrange for all accounts and records for council tax, water and sewerage, gas and electric to be transferred into the name of the Council and thereafter to ensure the same is transferred into the name of any Occupier.
- 4.3 To use reasonable endeavours to require the Occupier to use the Premises in a tenant-like manner.
- 4.4 To keep the grass and hedges on the Premises cut and trimmed.
- 4.5.1 To inspect the Premises at reasonable intervals for any defect or disrepair for which the Landlord is responsible and
- 4.5.2 To report to the Landlord as soon as is reasonably possible any defect or disrepair in the structure or exterior of the Premises or in any installation for which the Landlord is responsible.
- 4.6 Not to make any alteration or additions to the Premises subject to the provisions of clause 4.8.
- 4.7 Not to alter any of the Landlord's Fixtures and Fittings or appliances subject to the provisions of clause 4.12.1.
- 4.8 At any time the Council may redecorate alter or interfere with the internal decorations and painting of the Premises PROVIDED that the Council shall not be under any obligation to do so.
- 4.9.1 In the event the Premises are unoccupied, to inspect the Premises every seven days.
- 4.9.2 To ensure that the Premises are not left unoccupied for more than ninety consecutive days **PROVIDED THAT** this clause shall not apply where the Premises cannot reasonably be occupied because of outstanding Landlord Repairs.

- 4.10 Not to underlet the Premises save for the purpose of providing temporary housing accommodation under its powers and duties under the Housing Act 1996 (as may be amended from time to time) or any other relevant legislation.
- 4.11 To use reasonable endeavours to prevent in connection with the Premises anything which may be or become a nuisance or annoyance to the Landlord and to any neighbouring or adjoining property or the owners or occupiers of it.
- 4.12.1 To repair any damage caused during the Term by the Council or the Occupier to the Premises or the Landlord's Fixtures and Fittings PROVIDED THAT the Council's obligation in this clause shall not extend to:
- i damage caused by fair wear and tear
 - ii damage caused by risks required to be insured by the Landlord pursuant to clause 5.5.1
 - iii Excluded Items
 - iv interior decoration including all wall coverings, wallpaper and wall tiles
- and FURTHER PROVIDED THAT where the Council is required to repair damage pursuant to this clause the Council shall
- (i) only repair or replace such items which require repair or replacement; and
 - (ii) not be required to replace like with like but shall be entitled to replace any items with items purchased new off the shelf which are of sound quality and broadly similar appearance and
 - (iii) not be required to replace items other than those which are damaged (and nor to replace the remainder of any sets of items or fittings where one or more parts are damaged)
- 4.12.2 To yield up the Premises at the determination of the Term with vacant possession in accordance with the Council's covenants contained in this Lease and to hand over all keys to the Premises by 4.30pm on the day of expiration of the Term.
- 4.13 To give to the Landlord as soon as is reasonably practicable full particulars of any notice or order which shall have come to the attention of the Council by virtue of any

statute (whether public or local) or any regulation order or direction under any such statute or under the byelaws of any competent authority.

4.14 To permit the Landlord and his duly authorised agents upon giving reasonable previous notice in writing to the Council and the Occupier at all reasonable times to enter with such workmen and appliances as may be necessary to execute repairs to the Premises or any adjoining premises belonging to the Landlord.

4.15 To permit the Landlord during the three months immediately preceding the determination of the Term to affix and retain without interference upon any part of the Premises a notice for the sale or reletting of the same.

4.16 To comply with all statutory provisions and obligation imposed by law with regard to the use of the Premises and to indemnify the Landlord from and against all actions claims demands and expenses, which may be brought, made or incurred against or by the Landlord in consequence of such non-compliance.

4.17 That any works procured by the Council shall be carried out in a good and workmanlike manner.

5 **The Landlord's Obligations**

The Landlord agrees with the Council:

5.1 That the Council performing and observing the covenants and its part contained in the Lease shall peaceably hold and enjoy the Premises without any interruptions from the Landlord and any person claiming under or in trust for him.

5.2 To put and keep the Premises and Fixtures and Fittings in good safe and lettable repair and working order including without prejudice to the generality hereof:

5.2.1 the structure and exterior of the Premises (including drains, gutters and external pipes and exterior decorations)

5.2.2 the installations and payment for any repairs to the installations in the Premises including those for the supply of water, gas and electricity (in accordance with clause 6.14) and for sanitation (including basins, sink, baths and sanitary conveniences and for space heating, heating water and cooking)

5.2.3 the interior of the Premises (including all internal doors and windows)

- 5.2.4 external paths, steps, ramps, boundary walls, fences and gates and outbuildings
- 5.3 To remedy any faults of construction inside or outside the Premises affecting the convenient use and occupation of the Premises.
- 5.4 To pay all outgoings which in the absence of any agreement would be payable by the Landlord in respect of the Premises PROVIDED that this shall not include any charges for council tax, water and sewerage, telephone, gas and electricity supplied to the Premises during the Term.
- 5.5.1 To take out and maintain at all times throughout the Term Public Liability insurance to the value of two million pounds in respect of the Premises and to keep the Premises insured at all times throughout the Term and at the Landlord's cost against loss or damage by fire, lightning, explosion, malicious damage, storm or tempest, bursting or overflowing of water or leaks to apparatus or pipes and to provide evidence of all such insurances to the Council upon request PROVIDED that the Landlord's obligation does not extend to any contents belonging to either the Council or the Occupier.
- 5.5.2 To reinstate the Premises following the occurrence of any said risks as soon as reasonably practicable and to make up any shortfall in insurance proceeds out of the Landlord's own money PROVIDED always that if the occurrence of the said risk arises due to the act or omission of the Occupier or Council the Council shall be responsible for paying the excess on the insurance policy up to a maximum sum of £150.
- 5.6 To give to the Council at least 48 hours notice in writing (except in cases of emergency) before carrying out any repair or work for which access to the Premises is required.
- 5.7 To act carefully and reasonably when exercising any right of access to the Premises doing as little damage as possible and making good all damage done.
- 5.8 To comply with all statutory provisions and any obligations imposed by law in regard to the use of the Premises save where the breach of the same is as a result of any act or omission of the Council or permitted Occupiers and to indemnify the Council from and against all actions claims demands and expenses which may be brought made or

incurred against or by the Council in consequence of such non-compliance as aforesaid.

- 5.9 To terminate any contract relating to any telephone, cable or other similar service supplied to the Premises prior to the commencement of the Term.
- 5.10 To take out and maintain at all times throughout the Term an annual agreement for the maintenance of the central heating and hot water system (being of no less a specification than a British Gas Three Star Central Heating Care agreement) and to provide to the Council evidence of the same
- 5.11 To notify the Council in writing within seven days of any permanent change of address, telephone or other contact details and to notify the Council immediately of any temporary change of contact details if the Landlord will be away from home for any period of time in excess of three days

6 **Mutual Agreement**

The Landlord and Council jointly agree as follows:-

- 6.1 If at any time during the Term the Rent or any part of it is unpaid for a period of 28 days after becoming payable (whether formally demanded or not) it shall be lawful for the Landlord at any time after that to re enter upon the Premises or any part of the Premises in the name of the whole and upon re-entry this Lease shall absolutely determine.
- 6.2 If contrary to the covenants contained in this Lease the Landlord fails or neglects to carry out the Landlord Repairs or fails to insure the Premises (in accordance with 5.5.1) or fails to arrange a service agreement for the maintenance of the central heating or hot water system (in accordance with 5.10) after notice given by the Council requiring the same to be done within a reasonable length of time (save in cases of emergency) then the Council may make such repairs or insure the same or arrange a service agreement in the manner required by the Landlord's covenants and may retain the amount of any expense incurred (together with an additional sum equivalent to 15% of the amount of such expense plus VAT in order to meet the Council's administrative costs) out of the rent then due or in the future becoming due.

- 6.3 No liability shall attach in respect of any breach of any positive covenant (other than covenants for the payment of money) on the part of the Landlord or the Council contained or implied in this Lease so long as they are prevented from performing the covenant by statutory restriction non availability of labour or materials in matters beyond their control.
- 6.4.1 The Council shall have the right to terminate this Lease upon giving the Landlord three months' notice in writing on any day after the end of the first six months of the Term
- 6.4.2 In the event that the Council exercises its rights to terminate this Lease in accordance with clause 6.4.1 then the Landlord shall be liable to pay to the Council on the date of termination of the Lease the outstanding Private Sector Renewal Costs as defined in this Lease and which has not been recovered in accordance with clause 3 of this Lease. The outstanding Private Sector Renewal Cost will be due on the date of termination of this Lease
- 6.5 In the event of the Premises or any part being damaged or destroyed by any risk required to be insured pursuant to clause 5.5.1 so as to be unfit for habitation and use and provided the insurance of the Premises shall not have been vitiated or payment of the policy monies refused in whole or in part by reason of a breach of this lease by the Council the Rent or a fair proportion of it according to the nature and the extent of the damage sustained shall be suspended until the Premises are again rendered fit for habitation and use and insofar as the Rent for the period of suspension has been paid in advance the Landlord shall be repay it or a fair proportion of it to the Council. For the avoidance of doubt this clause shall not apply where the policy of insurance effected by the Landlord has been vitiated in whole or in part as a consequence of any breach of this Lease or default of the Council or the Occupier.
- 6.6 Any notice under this Lease shall be in writing and shall be served on the Landlord either personally or by leaving it for him at the above address or such other address or which the Council shall have previously been given written notice by the Council and shall be served on the Council by sending it to the Council for the attention of The

Head of Legal Services at the Civic Centre Paris Street aforesaid (with a copy sent simultaneously to the Temporary Accommodation Service at the Civic Centre Paris Street aforesaid).

6.7 The Landlord hereby warrants that he has full power and authority to enter into this Lease and that all necessary consents and permissions have been obtained including those required to be obtained from any mortgagee or chargee of the Premises

6.8 The redecoration of the Premises shall be the responsibility of the Landlord at the end of the Term but the Council shall pay the Landlord the Termination Bonus at the determination of this Lease towards decorating costs PROVIDED THAT this Lease shall have run for at least two years before such determination.

6.9.1 No later than three months prior to the end of the Term the Landlord shall confirm to the Council whether the Landlord will require to recover possession at the end of the Term or whether the Landlord is prepared to allow the Council to hold over at the expiry of the Term.

6.9.2 In the event that the Landlord and the Council agree such holding over (for the avoidance of doubt) this Lease shall become a periodic lease from quarter to quarter

6.10 At any time before the end of the Term the Council may by giving written notice to the Landlord extend the Term by such period as the Council shall specify (such period not to exceed six months) from the date on which the Term would otherwise have expired and if such a notice is given by the Landlord references to the Term in this Lease shall be to the Term so extended **PROVIDED THAT** the Council's right to extend the Term under this clause shall be exercisable only once.

6.11 Excluded Items shall be deemed to be a gift from the Landlord to the Council which the Council may deal with dispose of or replace as it sees fit and the Landlord agrees at the end of the Term:

6.11.1 to accept back at the end of the Term such Excluded Items as remain in the Premises in the condition in which they then stand and on the basis that there is no obligation on the part of the Council to have maintained repaired or replaced them; and

- 6.11.2 in the event that the Council has chosen to replace any Excluded Items to accept back at the end of the Term such replacements as are in the Premises in the condition in which they then stand and on the basis that there is no obligation on the part of the Council to have maintained repaired or replaced them
- 6.12 Where necessary but on no more than three occasions in any one calendar year (commencing on the 1st January) the Council shall without prior authorisation from the Landlord arrange for the carrying out of minor Landlord Repairs PROVIDED THAT
- i the cost of any such repairs shall be borne by the Council
 - ii the cost to the Council of any such repair shall not exceed £80 (excluding VAT)
 - iii such repairs are done without prejudice to the Landlord's statutory and contractual repair obligations
 - iv the Council shall on request by the Landlord inform the Landlord in writing of such repairs as have been effected under this clause.
- 6.13 The Landlord authorises the Council to arrange for the carrying out of Landlord's Repairs PROVIDED THAT
- i the cost (excluding VAT) of such repairs shall not exceed the Maximum Expenditure Limit
 - ii the Council shall provide to the Landlord documentary evidence of the extent and cost of any such repairs such as copies of invoices estimates and quotations from contractors
 - iii the Council may at its discretion recover the cost of such repairs (together with an additional sum equivalent to 15% of the relevant costs plus VAT in order to meet the Council's administrative costs) either by deduction out of the rent then due (or in the future becoming due) or by invoice to the Landlord.
- 6.14 The Landlord authorises the Council to arrange on the Landlord's behalf such checks on the electric (including the NICIEC Code of Practice for the purposes of which the Council shall be the Arbiter) and gas installations and appliances as the Council may

deem necessary to establish that the repairing obligations of the Landlord are being met PROVIDED THAT

- i the cost of such checks shall be borne by the Council
- ii on request by the Landlord the Council shall make available to the Landlord copies of any certificates or reports arising from such checks.

6.15 The Council shall arrange on behalf of the Landlord the improvement works listed in Schedule 2 and the cost of such works shall be borne by the Council.

6.16 The Landlord authorises the Council to initiate such action under the Landlord's service agreement for the central heating and hot water system as the Council may deem fit to ensure the effective and safe operation of central heating and hot water system and shall include such actions as out of hours emergency call outs and emergency action if the Temporary Accommodation Team are unable to contact the Landlord.

6.17 (a) The Rent payable shall be reviewed on the first of April each year by reference to the General Index of Retail Prices compiled and published by the Office for National Statistics (hereinafter called "the RPI") in manner hereinafter appearing

(b) "Review Date" shall mean the date on which the Rent payable is being reviewed in accordance with the preceding clause

(c) The Rent shall be increased on the Review Date in accordance with the following formula

$$R = C \text{ times } (1 + (A - B) \text{ divided by } B) \text{ times } (D \text{ divided by } E)$$

Where

R is the revised rent to be paid with effect from the Review Date

C is the Rent payable in the year of the said term immediately prior to the Review Date

A is the value of the RPI last published before the Review Date

B is the value of the RPI last published one year before the RPI last published before the Review Date

D is the number of days during which the lease has been in effect since the first of April of the preceding year

E is 366 if the year in which the Review Date falls is a Leap Year of 365 in all other cases

- (d) If the application of the above formula should not produce an increase in the Rent on the Review Date the Rent shall remain the same
- (e) In the event of the RPI being recalibrated such adjustments shall be made to the formula set out above as to fulfil the intention of the parties that Rent should be increased in line with inflation as measured by the RPI
- (f) If it becomes impossible by reason of any change after today's date in the methods used to compile the RPI or for any other reason whatever to calculate the Rent by reference to the RPI or if any dispute or question whatever shall arise between the parties with respect to the amount of the Rent or the construction or effect of this Clause the dispute or question shall be determined by an arbitrator to be appointed either by agreement between the parties or in the absence of agreement between the parties by the President for the time being of the Royal Institution of Chartered Surveyors (or his duly appointed deputy or any person authorised by him to make appointments on his behalf) on the application of either party being deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force who shall have full power to determine what would have been the increase in the RPI had it continued on the basis and in view of the information assumed to be available for the operation of this review or (if that determination shall also be impossible) shall determine a reasonable Rent on such dates having regard to the purposes and intent of the provisions in this Lease for the review of the Rent and his decision shall be binding on both parties

Schedule 1
Fixtures and Fittings

DRAFT

Schedule 2

Improvement works to be carried out by ECC on behalf of the owner

DRAFT

Schedule 3
Excluded Items

DRAFT

SIGNED as a Deed by the said)

[])
in the presence of:-)

Witness signature

Witness name

Witness address

Executed as a Deed by)
affixing the Common Seal)
of EXETER CITY COUNCIL)
in the presence of:-)

DRAFT