



**Registration of a Charge**

Company name: **EVERTON FOOTBALL CLUB COMPANY, LIMITED**

Company number: **00036624**



X836OHS0

Received for Electronic Filing: **11/04/2019**

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**Details of Charge**

Date of creation: **10/04/2019**

Charge code: **0003 6624 0067**

Persons entitled: **INDUSTRIAL AND COMMERCIAL BANK OF CHINA LIMITED, LONDON  
BRANCH**

Brief description:

**Contains fixed charge(s).**

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**Authentication of Form**

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

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**Authentication of Instrument**

Certification statement: **WE CERTIFY THAT, SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006, THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE PART OF THE CHARGING INSTRUMENT SIGNED BY OR ON BEHALF OF THE CHARGOR, AND A CORRECT COPY OF THE SIGNATURE PAGE TO EACH OTHER PART OF SUCH CHARGING INSTRUMENT.**





## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 36624

Charge code: 0003 6624 0067

The Registrar of Companies for England and Wales hereby certifies that a charge dated 10th April 2019 and created by **EVERTON FOOTBALL CLUB COMPANY, LIMITED** was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 11th April 2019 .

Given at Companies House, Cardiff on 12th April 2019

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**

## **Security over cash deposits - Distributions Account, Mandatory Prepayment Account and OBM Holding Account**

**Dated**                      10 April                      **2019**

**The Everton Football Club Company Limited**  
(the Chargor)

**Industrial and Commercial Bank of China Limited, London Branch**  
(the Lender)

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# Deed

**Dated** 10 April 2019

## Between

- (1) **The Everton Football Club Company Limited**, a company incorporated under the laws of England and Wales, with company number 0036624 whose registered office is at Goodison Park, Liverpool L4 4EL (the **Chargor**); and
- (2) **Industrial and Commercial Bank of China Limited, London Branch** (the **Lender**).

## Recitals

- A. The Lender has agreed to make revolving credit facilities available on the terms of the Facility Agreement.
- B. The Chargor has agreed to provide Security to the Lender to secure the payment and discharge of the Secured Liabilities.
- C. This Deed constitutes a Security Financial Collateral Arrangement for the purposes of the Financial Collateral Arrangements (No 2) Regulations 2003 (S.I. 2003/3226) or equivalent legislation in any applicable jurisdiction bringing into effect Directive 2002/47/EC on financial collateral arrangements.

## This deed witnesses

### 1 Definitions and interpretation

#### 1.1 Definitions

Words and expressions defined in the Facility Agreement have the same meanings in this Deed unless they are expressly defined herein and, in addition, in this Deed:

**Account** means each of the Distributions Account, the Mandatory Prepayment Account and the OBM Holding Account (as any such account may from time to time be re-designated or re-numbered), and **Accounts** means all of them.

**Account Bank** means:

- (a) in respect of the Distributions Account and the OBM Holding Account, Metro Bank PLC or such replacement account bank appointed or to be appointed pursuant to clause 17.2.2 of the Facility Agreement; and
- (b) in respect of the Mandatory Prepayment Account, the Lender.

**Account Rights** means:

- (a) each Deposit; and
- (b) the Ancillary Account Rights.

**Act** means the Law of Property Act 1925.

**Ancillary Account Rights** means all the Chargor's rights in respect of an Account other than to a Deposit, including any right to interest on a Deposit.

**Default Rate** means the rate of interest specified in, and calculated in accordance with, clause 8.3 of the Facility Agreement.

**Deposit** means each amount standing to the credit of an Account from time to time.

**Facility Agreement** means the facility agreement dated 30 June 2017 (as amended prior to and on or about the date of this Deed) between the Chargor and the Lender.

**Receiver** means a receiver appointed pursuant to this Deed or to any applicable law, whether alone or jointly, and includes a receiver and/or manager and, if the Lender is permitted by law to appoint an administrative receiver, includes an administrative receiver.

**Secured Liabilities** means the liabilities of the Chargor to the Lender under or pursuant to the Finance Documents.

**Security** means a mortgage, charge, pledge, lien, assignment by way of security, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or other security interest securing any obligation of any person or any other agreement or arrangement in any jurisdiction having a similar effect.

**Security Period** means the period starting on the date of this Deed and ending on the date on which the Lender is satisfied that:

- (a) all of the Secured Liabilities have been fully and finally discharged; and
- (b) it is under no commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to the Chargor pursuant to the Finance Documents.

## 1.2 Construction

1.2.1 The principles of construction set out in clause 1.2 (*Construction*) of the Facility Agreement apply to this Deed, insofar as they are relevant to it and subject to any necessary changes, as they apply to the Facility Agreement.

1.2.2 Unless a contrary intention appears, any reference to:

- (a) this Deed is a reference to this Deed as amended, varied, novated, supplemented and replaced from time to time;
- (b) the **Account Bank**, the **Chargor**, the **Lender** or a **Receiver** includes any one or more of its assigns, transferees and successors in title, so far as any such is permitted; and
- (c) the **Lender** or a **Receiver** (except for the references in Clause 16 (*Power of attorney*)) includes its duly appointed nominees, attorneys, correspondents, trustees, advisers, agents, delegates and sub-delegates.

### **1.3 Third party rights**

- 1.3.1 Unless expressly provided to the contrary in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any term of this Deed.
- 1.3.2 The parties to this Deed may rescind, vary, waive, release, assign, novate or otherwise dispose of all or any of their respective rights or obligations under this Deed without the consent of any person that is not a party.
- 1.3.3 Any person described in Clause 12 (*Protection of the Lender and Receivers*) may, subject to this Clause 1.3 (*Third party rights*) and the Third Parties Act, rely on any Clause of this Deed which expressly confers rights on it.

### **1.4 Effect as a deed**

This Deed shall take effect as a deed even if it is signed under hand on behalf of the Lender.

## **2 Covenant to pay**

The Chargor covenants with the Lender that it will on demand pay and discharge the Secured Liabilities when due.

## **3 Security**

### **3.1 Fixed charge**

The Chargor charges by way of fixed charge:

- (a) each Deposit; and
- (b) the Ancillary Account Rights.

### **3.2 Trust**

If or to the extent that the charging of the Account Rights under this Deed is ineffective because of a prohibition on that charging (and without prejudice to the representation and warranty in paragraph (b) of Clause 6 (*Representations and warranties by the Chargor*)), the Chargor holds the Account Rights on trust for the Lender.

## **4 Nature of Security created**

The Security created under this Deed is created:

- (a) as a continuing security to secure the payment and discharge of the Secured Liabilities;
- (b) in favour of the Lender; and
- (c) with full title guarantee.



## **5 Interest**

The Lender may, and may instruct the Account Bank to, pay any accrued interest on a Deposit into the relevant Account or, once the Security created by this Deed becomes enforceable, otherwise as the Lender may direct.

## **6 Representations and warranties by the Chargor**

In entering into this Deed the Lender has relied on the representations of the Chargor that, and the Chargor warrants to the Lender that:

- (a) immediately before the charging of the Account Rights under this Deed, it was the sole legal and beneficial owner of them; and
- (b) the Chargor is freely entitled to charge the Account Rights.

## **7 Positive covenants**

The covenants in this Clause 7 remain in force from the date of this Deed until the expiry of the Security Period.

### **7.1 Notice to Account Bank**

After executing this Deed the Chargor shall:

- (a) promptly give notice to the Account Bank in the form set out in Part 1 of Schedule 1 (*Forms of letter to and from Account Bank*) in respect of the Distributions Account and the OBM Holding Account; and
- (b) procure that the Account Bank promptly acknowledges that notice in the form set out in Part 2 of Schedule 1 (*Forms of letter to and from Account Bank*), or in any other form agreed by the Lender.

### **7.2 Third party claims**

The Chargor shall promptly inform the Lender of any claim or notice relating to the Account Rights which it receives from any third party.

## **8 Negative covenant**

8.1.1 The covenant in this Clause 8 remains in force from the date of this Deed until the expiry of the Security Period.

8.1.2 Except where to do so would be permitted by the terms of the Facility Agreement, the Chargor shall not

- (a) request, demand or claim to be entitled to withdraw any amount from an Account except as the Lender may from time to time permit; or
- (b) otherwise enter into a single transaction or a series of transactions (whether related or not), whether voluntary or involuntary and whether at the same time or over a period of time, to withdraw, charge, assign or otherwise dispose of the Account Rights, nor enter into an agreement to make any such disposal (other than, in the case of a withdrawal, where the Lender otherwise permits).

## **9 Enforcement**

### **9.1 When Security becomes enforceable**

The Security created by this Deed shall become enforceable:

- (a) on the occurrence of an Event of Default which is continuing; or
- (b) if the Chargor so requests.

### **9.2 Powers on enforcement**

At any time after the Security created by this Deed has become enforceable in accordance with Clause 9.1 (*When Security becomes enforceable*) the Lender may (without prejudice to any of its other rights and remedies and without notice to the Chargor) do all or any of the following:

- (a) withdraw any Deposit and collect in or otherwise recover any other amounts owed pursuant to the Account Rights and apply them in or towards satisfaction of the Secured Liabilities in accordance with Clause 9.4 (*Application of moneys*);
- (b) exercise any other powers and rights which may be exercisable by the owner of the Account Rights and all other powers conferred on mortgagees by the Act, as varied and extended by this Deed, without the restrictions contained in sections 103 or 109(1) of the Act; and
- (c) subject to Clause 10.1.1 (*Method of appointment and removal*), appoint one or more persons to be a Receiver or Receivers of all or any of the Account Rights.

### **9.3 Disposal of the Account Rights**

In exercising the powers referred to in paragraph (a) of Clause 9.2 (*Powers on enforcement*), the Lender or any Receiver may sell or dispose of all or any of the Account Rights at the times, in the manner and order, on the terms and conditions and for the consideration determined by it.

### **9.4 Application of moneys**

9.4.1 Any moneys received or recovered by the Lender or a Receiver pursuant to this Deed after the Security created by it has become enforceable shall, subject to any claims having priority, be applied in the following order of priority:

- (a) in or towards the pro rata payment or provision for:
  - (i) all costs and expenses incurred by the Lender under or in connection with this Deed; and
  - (ii) all sums owing to a Receiver;
- (b) in or towards the discharge of the Secured Liabilities in any order chosen by the Lender; and
- (c) then, in the payment of any surplus to the Chargor or other person entitled to it,

and section 109(8) of the Act shall not apply.

## **10 Appointment and powers of Receivers**

### **10.1 Method of appointment and removal**

10.1.1 The Lender may not appoint a Receiver by reason only of a moratorium being obtained, or anything being done with a view to a moratorium being obtained, under section 1A of the Insolvency Act 1986.

10.1.2 Every appointment or removal of a Receiver, of any delegate or of any other person by the Lender pursuant to this Deed may be made in writing under the hand of any officer or manager of the Lender (subject to any requirement for a court order in the removal of an administrative receiver).

### **10.2 Powers of Receiver**

Every Receiver shall have all the powers:

- (a) of the Lender under this Deed;
- (b) conferred by the Act on mortgagees in possession and on receivers appointed under the Act;
- (c) which are specified in Schedule 1 of the Insolvency Act 1986 in relation to, and to the extent applicable to, the Account Rights or any of them (whether or not the Receiver is an administrative receiver within the meaning of that Act); and
- (d) in relation to any Account Rights, which he would have if he were its only absolute owner.

### **10.3 Joint or several**

If two or more persons are appointed as Receivers of the same assets, they may act jointly and/or severally so that (unless any instrument appointing them specifies to the contrary) each of them may exercise individually all the powers and discretions conferred on Receivers by this Deed.

### **10.4 Receiver as agent**

Every Receiver shall be the agent of the Chargor which shall be solely responsible for his acts and defaults and for the payment of his remuneration.

### **10.5 Receiver's remuneration**

Every Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Lender, and the maximum rate specified in section 109(6) of the Act shall not apply.

## **11 Protection of purchasers**

No purchaser or other person dealing with the Lender or any Receiver shall be bound or concerned:

- (a) to see or enquire whether the right of the Lender or any Receiver to exercise any of the powers conferred by this Deed has arisen or not;
- (b) with the propriety of the exercise or purported exercise of those powers; or
- (c) with the application of any moneys paid to the Lender, to any Receiver or to any other person.

## **12 Protection of the Lender and Receivers**

### **12.1 Exclusion of liability**

Neither the Lender, any Receiver nor any of its officers or employees shall have any responsibility or liability:

- (a) for any action taken in relation to the Account Rights;
- (b) for any failure to take any action in relation to the Account Rights;
- (c) to account as mortgagee in possession or for any loss upon realisation of the Account Rights;
- (d) for any loss resulting from any fluctuation in exchange rates in connection with any purchase of currencies under Clause 17 (*Currency*); or
- (e) for any other default or omission in relation to the Account Rights for which a mortgagee in possession might be liable,

except in the case of gross negligence or wilful misconduct on the part of that person.

### **12.2 General indemnity**

12.2.1 The Chargor shall indemnify the Lender, any Receiver and their respective officers and employees against all actions, proceedings, demands, claims, costs, expenses and other liabilities incurred by them in respect of all or any of the following:

- (a) any act or omission by any of them in relation to the Account Rights pursuant to and in accordance with the terms of this Deed;
- (b) any payment relating to the Account Rights which is made at any time by any of them in connection with this Deed or by operation of law;
- (c) any stamp, registration or similar Tax or duty which becomes payable in connection with the entry into, or the performance or enforcement of, this Deed;
- (d) carrying out any of the rights, powers and discretions conferred on them by or permitted under this Deed; and
- (e) any breach by the Chargor of any of its covenants or other obligations to the Lender in connection with this Deed,

except in the case of gross negligence or wilful misconduct on the part of that person.

12.2.2 The Chargor shall pay interest at the Default Rate on the sums payable under this Clause from the date on which the liability was incurred to the date of actual payment (both before and after judgment).

### **12.3 Indemnity out of the Account Rights**

The Lender, any Receiver and their respective officers and employees shall be entitled to be indemnified out of the Account Rights in respect of the actions, proceedings, demands, claims, costs, expenses and liabilities referred to in Clause 12.2 (*General indemnity*).

## **13 Preservation of Security**

### **13.1 Reinstatement**

If any payment by the Chargor or any other person or discharge given by the Lender (whether in respect of the obligations of the Chargor or any Security for those obligations or otherwise) is reasonably considered by the Lender to be capable of being avoided or reduced or is avoided or reduced as a result of insolvency, liquidation, administration or any similar event:

- (a) the liability of the Chargor and the Security created by this Deed shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Lender 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.

### **13.2 Waiver of defences**

Neither the Security created by this Deed nor the obligations of the Chargor under this Deed will be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice that Security or any of those obligations (whether or not known to the Chargor or the Lender) including:

- (a) any time, waiver or consent granted to, or composition with, any person;
- (b) the release of any person under the terms of any composition or arrangement with any person;
- (c) the taking, variation, compromise, exchange, renewal, enforcement or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or Security over assets of, any 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 any person;
- (e) any amendment (however fundamental), replacement, variation, novation, assignment or the avoidance or termination of a Finance Document or any other document or Security;
- (f) any unenforceability, illegality or invalidity of any obligation of, or any Security created by, any person under any Finance Document or any other document; or

- (g) any insolvency, liquidation, administration or similar procedure.

### **13.3 Chargor intent**

Without prejudice to the generality of Clause 13.2 (*Waiver of defences*), the Chargor expressly confirms that it intends that the Security created by this Deed shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following:

- (a) acquisitions of any nature;
- (b) increasing working capital;
- (c) enabling investor distributions to be made;
- (d) carrying out restructurings;
- (e) refinancing existing facilities;
- (f) refinancing any other indebtedness;
- (g) making facilities available to new borrowers;
- (h) any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and
- (i) any fees, costs and/or expenses associated with any of the foregoing.

### **13.4 Immediate recourse**

The Chargor waives any right it may have of first requiring the Lender (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 Finance Document to the contrary.

### **13.5 Appropriations**

During the Security Period the Lender may:

- (a) refrain from applying or enforcing any moneys, Security or rights held or received by it (or any trustee or agent on its behalf) in respect of the Secured Liabilities recovered under this Deed or, subject to Clause 9.4.1 (*Application of moneys*), apply and enforce the same in such manner and order as it sees fit (whether against the Secured Liabilities 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 or recovered from the Chargor in connection with this Deed or on account of any of the Secured Liabilities.

### **13.6 Additional Security**

This Deed is in addition to, is not in any way prejudiced by and shall not merge with any contractual right or remedy or other Security now or in the future held by or available to the Lender.

### **13.7 New accounts**

If the Lender receives notice (actual or otherwise) of any subsequent Security over or affecting the Account Rights it may open a new account or accounts in the name of the Chargor and, if it does not do so, it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice of that subsequent Security, and as from that time all payments made by or on behalf of the Chargor to the Lender:

- (a) shall be credited or be treated as having been credited to the new account; and
- (b) shall not operate to reduce the Secured Liabilities at the time when the Lender received or was deemed to have received such notice.

### **14 Tacking**

For the purposes of section 94(1) of the Act, the Lender shall make further advances to the Chargor on the terms and subject to the conditions of the Finance Documents.

### **15 Further assurance**

#### **15.1 Registration at Companies House**

The Chargor consents to the registration of this Deed at Companies House pursuant to Part 25 of the Companies Act 2006.

#### **15.2 Further action**

The Chargor shall, at its own expense, promptly take any action and sign or execute any further documents which the Lender may reasonably require in order to:

- (a) give effect to the terms of this Deed;
- (b) protect, preserve and perfect the rights of the Lender and the Security intended to be created by or pursuant to this Deed;
- (c) protect and preserve the ranking of the Security intended to be created by or pursuant to this Deed with any other Security over the Account Rights; or
- (d) facilitate the realisation of the Account Rights or the exercise of any rights, powers and discretions conferred on the Lender or any Receiver in connection with the Account Rights,

and any such document may disapply section 93 of the Act.

### **16 Power of attorney**

The Chargor irrevocably and by way of security appoints each of:

- (a) the Lender;
- (b) any delegate or sub-delegate of, or other person nominated in writing by, an officer of the Lender; and
- (c) any Receiver,

jointly and severally as the Chargor's attorney, in the Chargor's name, on its behalf and in such manner as the attorney may in its or his absolute discretion think fit following the occurrence of an Event of Default which is continuing or following the failure by the Chargor to comply with a written request from the Lender, to take any action and sign or execute any further documents which the Chargor is required to take, sign or execute in accordance with this Deed. The Chargor agrees, promptly on the written request of the Lender or any Receiver, to ratify and confirm all such actions taken and documents signed or executed.

## **17 Currency**

### **17.1 The Spot Rate**

In this Clause, the **Spot Rate** means, in relation to the Lender, the spot rate of exchange of the Lender for the purchase of any currency with any other currency in the London foreign exchange market.

### **17.2 Conversion of moneys received**

The Lender may convert any moneys received, recovered or realised under this Deed (including the proceeds of any previous conversion under this Clause) from their existing currency into any other currency, by purchasing that other currency at the Spot Rate.

## **18 Discharge of Security**

Upon the irrevocable and unconditional payment and discharge in full of the Secured Liabilities, unless any third party has any subrogation or other rights in respect of the Security created by this Deed at that time, the Lender shall, or shall procure that its appointees will, at the request and cost of the Chargor, release the Account Rights from the charge contained in this Deed. Section 93 of the Act shall not apply to this Deed.

## **19 Assignment**

The Lender may assign any of its rights under this Deed to any person to whom it assigns or transfers any of its rights or obligations under and in accordance with the terms of the Facility Agreement.

## **20 Notices**

### **20.1 Communications in writing**

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by email, fax or letter.

### **20.2 Addresses**

- 20.2.1 The postal address, email address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or



document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute postal address, email address, fax number or department or officer as either party may notify to the other by not less than five Business Days' notice.

20.2.2 The addresses referred to in Clause 20.2.1 are:

(a) The Chargor:

Goodison Park  
Goodison Road  
Liverpool  
L4 4EL

Attention: Annmarie Kearsley (Interim Finance Director)  
Email: [Annmarie.Kearsley@evertonfc.com](mailto:Annmarie.Kearsley@evertonfc.com)  
Fax: 0151 530 4896

with a copy of any notice to go to Head of Legal and Company Secretary -  
Christopher Anderson, [chris.anderson@evertonfc.com](mailto:chris.anderson@evertonfc.com)

(b) The Lender:

81, King William Street  
London  
EC4N 7BG

Attention: Jothann Durnall  
Email: [jothann.durnall@icbclondon.com](mailto:jothann.durnall@icbclondon.com)  
Fax: 020 7397 8890

### 20.3 Delivery

20.3.1 Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (a) if by way of fax or email, when received in legible form; or
- (b) if by way of letter, (i) when it has been left at the relevant address or (ii) two Business Days (or, in the case of airmail, five Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 20.2 (*Addresses*), if addressed to that department or officer.

20.3.2 Any communication or document to be made or delivered to the Lender will be effective only when actually received by the Lender and then only if it is expressly marked for the attention of the department or officer identified in Clause 20.2.2 (or any substitute department or officer as the Lender shall specify for this purpose).

### 20.4 English language

20.4.1 Any notice given under or in connection with this Deed must be in English.

20.4.2 All other documents provided under or in connection with this Deed must be:

- (a) in English; or
- (b) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **21 Calculations and certificates**

### **21.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this Deed, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

### **21.2 Certificates and determinations**

Any certification or determination by the Lender of a rate or amount under this Deed is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## **22 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.

## **23 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under this Deed 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 this Deed are cumulative and not exclusive of any rights or remedies provided by law.

## **24 Amendments and waivers**

Any term of this Deed may be amended or waived only with the written consent of the Chargor and the Lender.

## **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 and enforcement**

### **26.1 Governing law**

English law governs this Deed, its interpretation and any non-contractual obligations arising from or connected with it.

## **26.2 Jurisdiction**

- 26.2.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a **Dispute**).
- 26.2.2 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.
- 26.2.3 Notwithstanding Clause 26.2.1, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**Executed** as a deed and delivered on the date appearing at the beginning of this Deed.

## Schedule 1 – Forms of letter to and from Account Bank

### Part 1– Notice to Account Bank regarding the Distribution Account and the OBM Holding Account

On Chargor's notepaper.

To:       \*\*               [insert name and address of Account Bank]

Date:     \*\*

Dear Sirs

**Account numbers \*\*               [insert account numbers and sort codes of the Distribution Account and the OBM Holding Account] (the Accounts)**

We refer to our above accounts with you, as they may from time to time be re-designated or re-numbered.

We give you notice that by a fixed charge dated \*\*               2019 (the **Charge**) between us and Industrial and Commercial Bank of China Limited, London Branch (the **Lender**) we have charged to the Lender all amounts standing to the credit of the Accounts from time to time (the **Deposits**) and all of our other right, title and interest in, and relating to, the Accounts (together with the Deposits, the **Account Rights**).

We irrevocably authorise and instruct you to disclose to the Lender any information relating to us, the Accounts and the Account Rights which the Lender may from time to time request you to disclose to it.

We irrevocably authorise and instruct you, upon the earlier of: (i) written notice from the Lender that it is accelerating the debt made available under the Facility Agreement referred to in the Charge; and (ii) written notice from the Lender that it is enforcing its security over the Account Rights:

- (a) to hold the Account Rights to the order of the Lender, and not permit the whole or any part of:
  - (i) the Deposits to be withdrawn by us; or
  - (ii) any other amounts payable pursuant to the Account Rights to be paid to us, other than as authorised by the Lender;
- (b) to pay or release all or any part of the Deposits and any other amounts payable pursuant to the Account Rights, and generally to act in relation to the Account Rights, only in accordance with the written instructions of the Lender; and
- (c) to comply with the terms of any written notice or instructions in any way relating to or purporting to relate to the Accounts or the Account Rights which you may receive from the Lender.

Prior to the receipt by you of such notice from the Lender the Accounts shall otherwise be operated in accordance with the terms of the mandates relating thereto.

The instructions and authorisations contained in this letter may not be revoked or varied without the written agreement of the Lender and supersede any prior instructions and authorisations to the contrary given to you by us or on our behalf.

This letter is governed by English law.

Please acknowledge and confirm the above to the Lender in the form attached with a copy to us.

Yours faithfully,

.....  
for and on behalf of **The Everton Football Club Company Limited**

Copy: the Lender

## Part 2 – Form of acknowledgement and confirmation from the Account Bank

On Account Bank's notepaper.

To: Industrial and Commercial Bank of China Limited, London Branch, 81, King William Street, London EC4N 7BG (the **Lender**)

Attention: \*\*

Date: \*\*

Dear Sirs

**Account numbers \*\*** *[insert account numbers and sort codes of the Distributions Account and the OBM Holding Account]* (the **Accounts**)

We acknowledge receipt of a notice (the **Notice**) from The Everton Football Club Company Limited (the **Chargor**) dated \*\* of a fixed charge by the Chargor in your favour in respect of all amounts standing to the credit of the Accounts from time to time (the **Deposits**) and all of its other right, title and interest in, and relating to, the Accounts (together with the Deposits, the **Account Rights**).

We confirm that:

- (a) we are not holding the Deposits for a fixed term and no minimum notice period is required for the Lender to make a withdrawal from the Accounts;
- (b) we accept the authorisations and instructions contained in the Notice and we undertake to comply with its terms unless we are prevented from doing so at the relevant time by applicable law or by an order of an English court;
- (c) we have not received notice of:
  - (i) any other charge, assignment of or encumbrance over the Accounts or the Account Rights; or
  - (ii) any interest, claim or right in or to either of them by any third party,and we shall but without incurring any liability in respect of the obligation promptly give you notice of any such actual, potential or asserted charge, assignment, encumbrance, interest, claim or right of which we become aware;
- (d) we do not, and will not, hold or otherwise have the benefit of any security interest or other encumbrance over the Accounts or the Account Rights other than by way of floating charge only; and
- (e) we will not exercise any right of combination, consolidation, merger or set-off which we may have in respect of the Account Rights.

We are aware that you are relying on this letter in connection with your rights to the Accounts and the Account Rights.

This letter is governed by English law.

Yours faithfully,

.....  
for and on behalf of \*\*

[Account Bank]

copy: The Everton Football Club Company Limited

Executed as a deed by )  
The **Everton Football Club Company Limited** )  
acting by a director in the presence of: )  
**DENISE BARRETT-BAXENDALE**

Signature of witness:

Name of witness:

Address

GRANT INGLE S

FINANCE DIRECTOR

Executed as a deed by )  
**Industrial and Commercial Bank** )  
**of China Limited, London Branch** )  
acting by )  
being a person or persons who, )  
in accordance with the law of its )  
jurisdiction of incorporation, is or are )  
acting under the authority of the )  
company )



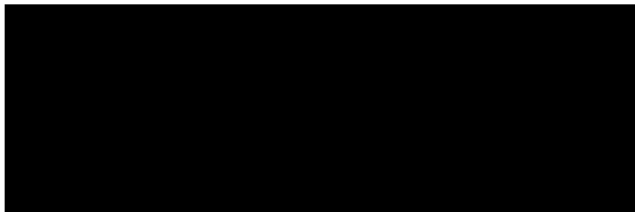
Executed as a deed by )  
The Everton Football Club Company Limited )  
acting by a director in the presence of: )

Signature of witness: .....

Name of witness: .....

Address .....  
.....  
.....

Executed as a deed by  
Industrial and Commercial Bank  
of China Limited, London Branch  
acting by



being a person or persons who, )  
in accordance with the law of its )  
jurisdiction of incorporation, is or are )  
acting under the authority of the )  
company )