TRANSFER AGREEMENT

These documents provide a starting point for mutuals and commissioners working on a spin-out. They have been drafted according to a series of assumptions, to be adapted on a case by case basis by professional advisors.

This template Transfer Agreement provides standard terms of transfer for those key elements we would expect to see transferred from the Local Authority to the new mutual in order for the mutual to carry out the service.

The Transfer Agreement provides the basis and parameters for the assets transferring, and protects the Local Authority as transferor and the mutual organisation as transferee through the provision of warranties and indemnities.

In particular, a spin-out transfer will usually include staff, premises, contracts, and equipment, as well as the activity itself. This template Agreement (and the assumptions preceding the template) addresses all of these elements.

This template has been prepared to provide general guidance and information to organisations considering or undertaking mutualisation. It is intended to be a starting pointonly and should not be considered a finalised legal document or as constituting legal advice. It is the responsibility of your organisation to seek legal advice and to ensure that the document is reviewed and signed off by your legal team.

The template contains a breakdown of drafting assumptions which highlight areas where additional drafting and legal advice may be required. Additional drafting is not limited to these areas and you should seek further legal guidance where you deem necessary.

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**DRAFTING ASSUMPTIONS**

In preparing this Agreement we have made a number of assumptions regarding the circumstances within which this Agreement will be used and these are set out in detail below. Please be aware that where the circumstances between the Council and the Mutual differ from our assumptions, or differ from the approach taken in any provisions of this Agreement, this Agreement may not be appropriate for use in its current form and additional drafting may be required. In such circumstances the Parties should seek additional legal advice. The capitalised terms used in these drafting assumptions are the same as in the Transfer Agreement (unless the context requires otherwise).

|  |  |  |
| --- | --- | --- |
| **Category** | **Assumption** | **Additional Drafting** |
| SERVICES/ ACTIVITIES TRANSFERRING | This Transfer Agreement is intended to be used in conjunction with either the model Funding Agreement or the model Services Agreement. The Agreement refers to the "Funding Agreement" or "Services Agreement" "as is applicable to the Transfer", so the Parties do not need to delete any Definitions in the Agreement. |  |
| INTERPRETATION | We have provided that, in the event of any conflict between the provisions of this Agreement and the provisions of any of the Other Documentation (including the Funding Agreement / Services Agreement), the terms of this Transfer Agreement will take precedence. | If the parties wish to set an alternative order of precedence or wish to provide a full clause dealing with the order of precedence in the event of a conflict between the provisions of this Agreement and any of the Other Documents, then additional drafting will be required. |
| ASSETS | The Agreement defines the assets transferring to the Mutual from the Council as the "Transferring Assets", which are all those assets used in the Undertaking other than the "Excluded Assets". This gives the Parties the opportunity to list any assets or equipment which will not transfer to the Mutual in Schedule 4 (Assets). |  |
| CONTRACTS | The Agreement defines those contracts which will transfer to the Mutual from the Council by assignment or novation as the "Contracts", which are all those contracts relating to the Undertaking which will transfer to the Mutual and which excludes the "Excluded Contracts". This gives the Parties the opportunity to list any third party contract or grants which will not transfer to the Mutual in Schedule 4 (Contracts) (e.g. Local Authority wide insurance contracts which cannot transfer to the Mutual and historic Council insurance policies which provide cover for liabilities on an "occurrence" basis). Careful consideration should be given to historic insurance policies and whether they should be included in "Excluded Contracts" or otherwise specifically mentioned in this Agreement to ensure historic liabilities do not transfer to the Mutual and/or that the insurance position is not undermined. Specific legal advice may be needed on this point.  For the avoidance of doubt these Contracts do not include those listed at clause 3.1 of this Agreement, which are new contracts to be entered into between the Council and the Mutual in the period following the Transfer. |  |
| PROPERTY | We have assumed that the Council owns the freehold of the Premises and that a single Lease and a single Licence to Occupy is granted by the Council to the Mutual. | Where there will be more than one Lease or Licence to Occupy, the Agreement will need to be amended to include the plural in all clauses regarding the Lease and Licence to Occupy. Where either a Lease or Licence to Occupy will not be granted, references to those documents will need to be deleted from this Agreement. |
| EMPLOYEES | We have assumed that all of those engaged in performing the Agreed Activities/Services are employees to whom TUPE will apply.  We have assumed that there are 50 employees engaged in the Undertaking and all will be transferring to the Mutual on the Transfer Date and that there will be no post-Transfer change in the number, terms or functions of staff. | If any employees will not be transferring or are only partially engaged in working for the Undertaking then bespoke drafting will need to be included in the Agreement to address this. |
| OTHER DOCUMENTATION | We have assumed that the other documents which form part of the transaction will be a Lease, a Licence to Occupy, a Funding Agreement or Services Agreement, and a Back Office Services Agreement. We have assumed that there are no other documents which form part of this transaction. | Where other documents form part of the transaction (and should be included in the Definitions and clause 3.1), for example a Loan Agreement or a LGPS Guarantee. |
| WARRANTIES | We have included a comprehensive set of warranties from the Council to the Mutual in respect of the Assets and Employees transferring and the Premises in respect of which the Council will grant a Lease or Licence to Occupy in connection with the Transfer. | There may be circumstances where the Council is unable to provide all of the warranties set out at clause 6 of this model Agreement, or where the Council requires additional or reciprocal warranties from the Mutual. There may also be warranties (e.g. the warranty in relation to the Council's use of IP) which will be subject to further negotiations, and which the Council may wish to limit in some way. In such circumstances bespoke drafting will be required and the parties ought to take legal advice. |
| PENSIONS | We have assumed that the Mutual will be admitted to the relevant section of the LGPS rather than provide a GAD certified 'broadly comparable scheme' (as it is very uncommon to use a broadly comparable scheme). We have assumed that the Admission Agreement will be finalised and entered into on or before the Transfer Date. We have assumed that the Council will act as the Mutual's guarantor for LGPS purposes. We have assumed that any LGPS liabilities transferred to the Mutual will be fully funded at the Transfer Date. We have assumed that the Admission Agreement will be drafted on the basis that there will be a fixed employer contribution rate payable by the Mutual and that the Mutual's LGPS assets and liabilities will be transferred back to the Council on termination of the Admission Agreement so that there is no exit debt payable by the Mutual (i.e. it is drafted on a full 'pass through' basis) or, if the LGPS does not agree to this approach in the Admission Agreement, that broadly equivalent provisions will apply between the Council and the Mutual to reimburse the Mutual. We have assumed that the Council will indemnify the Mutual in full for any strain costs payable to the LGPS as a result of making members aged 55 or over redundant during a post-Transfer restructure and on a pro rata basis going forward. We have assumed that the Council will indemnify the Mutual in full for any strain costs payable to the LGPS on the ill-health retirement of a member for those with pre-existing medical conditions and on a pro rata basis for all others. We have assumed there are no transferring employees eligible to retire early with a partially unreduced pension under the 'Rule of 85' as a result of their age and length of pensionable service adding up to 85. | Where different pensions cost and risk sharing arrangements are agreed between the Mutual and the Council (for example, a cap and collar on the employer contribution rate) the drafting will need to be revised to reflect these. |
| LIMITATION OF LIABILITY | This Agreement defines "Loss" as direct loss (i.e. loss caused to one party that flows directly from a breach by the other party) and does not include indirect or consequential losses (e.g. loss of reputation, loss of future business). Where consequential losses are to be included, we have included additional drafting to provide for this. | If the parties wish the "Losses" referred to in this Transfer Agreement to include indirect or consequential losses, or it is intended that indirect or consequential losses shall be recoverable in any circumstances not provided for in this model agreement, then the parties ought to seek legal advice and bespoke drafting will need to be included in this Agreement. |
| STATE AID | This document does not cover any provisions relating to the state aid position of the Council’s transfer of assets to the Mutual, which we assume will be considered separately, if required. The Council and Mutual should take their own advice on such issues. | Additional drafting or consideration of the legal structure of the transfer may be required depending on the application of the state aid regime. |

**TRANSFER AGREEMENT**

**[The Council** **]**

**and**

**[The Mutual** **]**

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**THIS TRANSFER AGREEMENT** is made on

**BETWEEN:**

(1) [**LOCAL AUTHORITY**] of [Address] ("**the Council**"); and

(2) [**MUTUAL**] of [Address (Company Number: []) ("[**the Mutual**]")

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

**BACKGROUND:**

1. The Council operates the Undertaking. The Council and the Mutual have agreed to either enter into the Funding Agreement, under which the Council shall pay a grant to the Mutual and the Mutual shall carry out the Agreed Activities or to enter into the Services Agreement, under which the Council will pay a fee to the Mutual in consideration of the performance of the Services by the Mutual.
2. The Council has agreed for the Mutual to assume responsibility for the Undertaking from the Transfer Date.
3. This Agreement sets out the terms on which the Council will Transfer to the Mutual the Undertaking including the terms regarding Employees and pensions, such Transfer to be effective as of the Transfer Date.
4. The Employees who are engaged in the Undertaking will transfer to the Mutual by operation of the Regulations with effect from the Transfer Date.
5. The Council owns the freehold of the Premises and the Council will grant and the Mutual will take the Lease and Licence to Occupy from the Transfer Date.
6. **INTERPRETATION**
   1. This Agreement shall be interpreted according to the provisions of Schedule 1 (**Definitions**).
   2. References to Recitals, clauses and Schedules are, unless otherwise stated, references to recitals, clauses and schedules to this Agreement.
   3. References to this Agreement include its Schedules and the Schedules shall have effect as if set out in full in the body of this Agreement.
   4. Words denoting the singular include the plural and vice versa; words denoting the masculine, feminine and neuter genders shall indicate other genders; words denoting persons include natural persons, bodies corporate and statutory bodies.
   5. The headings to the clauses and Schedules are for convenience only and shall not affect their interpretation.
   6. Reference to any statute or statutory provision shall be deemed to include any instrument, order, regulation or direction made or issued under it and shall be construed so as to include a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced except to the extent that any amendment or modification made after the date of this Agreement would increase any liability or impose any additional obligation under this Agreement.
   7. Reference to a particular government or statutory authority, or public organisation, shall be deemed to include a reference to any successor to such government or statutory authority or public organisation or any authority or organisation which has taken over any or all of either or both of the functions or responsibilities of such government or statutory authority or public organisation. In the case of the Council, its successors shall include any person to whom the Secretary of State, in exercising his statutory powers to transfer property, rights and liabilities of the Council upon the Council ceasing to exist, transfers the property, rights and liabilities of the Council under this Agreement, and any other agreement in connection with the transfer of assets and liabilities to, or services provided by, the Council to which both the Council and Mutual are a Party. References to the rights, powers and duties of the Council shall include its rights, powers and duties as the Administering Authority. References to other persons shall include their successors and permitted transferees and assigns. References to the Parties shall be construed accordingly.
   8. For the avoidance of doubt, in the event of any conflict between the provisions of this Agreement and the provisions of any of the Other Documentation the provisions of this Agreement shall take precedence.
7. **APPROVALS AND CONDITIONS PRECEDENT**
   1. The Council confirms it has resolved to enter into this Agreement.
   2. The Mutual confirms its board has resolved to enter into this Agreement.
   3. This Agreement is conditional upon the Admission Agreement and Other Documentation being entered into by the Mutual and the Council and this Agreement shall only take effect if the Admission Agreement and Other Documentation have also taken effect.
8. **TRANSFER**
   1. In consideration for the obligations of the Mutual detailed in this Agreement, on the Transfer Date:
      1. the Council shall transfer to the Mutual with full title guarantee the following:
         1. the legal and beneficial interest in the Transferring Assets;
         2. the benefit of all licences, consents and permissions relating to the Undertaking, including those relating to any Transferring Assets and Premises;
         3. all original documentation in respect of the Contracts and Transferring Assets and all other material books, files and records relating to the Undertaking including the Council's accounting records (in a form suitable for use by the Mutual); and
         4. the benefit of any rights and claims with respect to the Undertaking and of sums to which the Council is entitled either from third parties or insurers in respect of damage or injury to the Premises or other Transferring Assets save to the extent of sums expended prior to the Transfer Date in making good the damage or injury;
      2. the Council shall grant the Lease to the Mutual with full title guarantee, free from any encumbrance save for any encumbrance which has been fully and accurately Disclosed to the Mutual prior to the Transfer Date;
      3. the Council shall grant the Licence to Occupy to the Mutual;
      4. the Funding Agreement or the Services Agreement (as applicable) shall take effect;
      5. the Back Office Services Agreement shall take effect;
      6. the Admission Agreement shall take effect; and
      7. the transfer (subject to the right of any Employee to object) of the contracts of employment of the Employees to the Mutual shall take effect.
9. **EMPLOYEES AND PENSIONS**
   1. The Parties believe and acknowledge that the Transfer pursuant to this Agreement on the Transfer Date is a 'relevant transfer' within the meaning of the Regulations with the effect that on the Transfer Date (subject to the right of an Employee to object) the contracts of employment of each of the Employees will not be terminated by such Transfer but will continue to have effect (except to the extent provided by the Regulations) from the Transfer Date as if originally made between each of such Employees and the Mutual.
   2. Not later than 14 days after the Transfer Date, the Council will make available to the Mutual the Personnel Files in respect of the Employees so that they can be copied by the Mutual and the Council warrants that such Personnel Files shall be fully and accurately completed up to the Transfer Date.
   3. The Parties agree to comply with the provisions of Schedule 6 (Employees and Pensions).
10. **ASSIGNMENT OF CONTRACTS AND APPORTIONMENTS**
    1. Subject to the other provisions of this clause 5, the Mutual will with effect from the Transfer Date assume the obligations of the Council, and become entitled to the benefits of the Council, under the Contracts.
    2. The Council hereby assigns to the Mutual with effect from the Transfer Date all its rights, title and interest under or pursuant to all the Contracts which are capable of assignment without the consent of other parties.
    3. In so far as a Contract cannot be assigned without the consent of a third party or a novation agreement:
       1. this Agreement does not constitute an assignment or an attempted assignment of the Contract if such assignment or attempted assignment would constitute a breach of the Contract; and
       2. the Council will, at the cost of the Council, use all reasonable endeavours (with the co-operation of the Mutual, not to be unreasonably withheld or delayed by the Mutual) to procure such consent or novation.
    4. The Council will, at the cost of the Council (with the co-operation of the Mutual, not to be unreasonably withheld or delayed by the Mutual), agree and ensure that the Mutual is added as a party to a Contract where this is required by the original parties. Subject to clause 5.3.2, if any consent or novation is not obtained within 90 Business Days after the Transfer Date and the provisions set out in this clause 5 do not enable the full benefit of a Contract to be enjoyed by the Mutual then the Mutual will be entitled by notice in writing to the Council to require the Council to treat such contract as an Excluded Contract.
    5. As soon as reasonably practicable following the Transfer Date:
       1. the Mutual shall notify all necessary third parties in writing of the completion and effect of the Transfer to the extent that the Mutual deems appropriate; and
       2. (in any event not later than 7 days after the Transfer Date) the Council shall deliver, or procure delivery, to the Mutual or make available to the Mutual all National Insurance and PAYE records in respect of the Employees and shall warrant that such information is fully and accurately completed up to the Transfer Date.
    6. In addition to the apportionments in relation to Employees set out in paragraph 2, Schedule 6 Part 1 (Employees) or paragraph 2, Schedule 6 Part 2 (Pensions):
       1. The Mutual agrees to reimburse the Council in respect of all receipts paid by the Council before the Transfer Date which relate to any Future Liabilities and the Council agrees to reimburse the Mutual in respect of all receipts paid by the Mutual after the Transfer Date which relate to any Historic Liabilities.
       2. For the purposes of calculating and reconciling any payments due under clauses 5.6.1 above, the Mutual shall provide the Council with the details of any receipts relating to Historic Liabilities and the Council shall provide the Mutual with any receipts relating to Future Liabilities, and the Council shall prepare a schedule setting out the values of such payments as soon as reasonably practicable after the Transfer Date ("the **Reconciliation Schedule**") and in the event that either party has made an underpayment or overpayment in relation to any Historic Liabilities or Future Liabilities (including, without limitation, any payments relating to the Undertaking's accounts), the Council and the Mutual agree to make such payments to the other party as are required in order to ensure that all charges and outgoings are met by the Parties in accordance with the clause 5.6.1 and the Reconciliation Schedule.
       3. In agreeing the Reconciliation Schedule the Parties shall also agree timescales for making any payments due to each other in accordance with clause 5.6.1 and 5.6.2 and in any event any outstanding payment due from one Party to the other shall be made no later than 30 Business Days after the Reconciliation Schedule is agreed or within such other period as is agreed in writing between the Parties of the outstanding payment being agreed.
       4. All money or other items received by one Party on or after the Transfer Date which belongs to the other Party in accordance with the terms of this Agreement shall be held by the receiving Party on behalf of the other Party and shall be paid or otherwise transferred to the other Party within 30 Business Days or such other period as agreed in writing between the Parties of receipt by the Council.
11. **WARRANTIES**
    1. The Parties acknowledge that the Warranties are made on the Transfer Date by reference to the circumstances prevailing on such date.
    2. The Council shall ensure that nothing is done or omitted to be done which would, at any time before or on the Transfer Date, be materially inconsistent with its Warranties, materially breach its Warranties or make the Warranties untrue or misleading in any material respect.
    3. The Council warrants to the Mutual that as at the Transfer Date, to the extent that it is aware and except as Disclosed:
       1. it has responded diligently and in good faith to the written enquiries raised through the due diligence process documented in Schedule 5 (and has procured that its senior executive officers have done so) and that there are no Material Matters of which the Council is, or reasonably should be, aware which have not been Disclosed;
       2. it has notified the Mutual by the date of this Agreement of any health and safety hazards in relation to the activities of the Undertaking of which it is aware and which may affect the Mutual in the performance of this Agreement, or its performance of the Funding Agreement or Services Agreement (as applicable), and the Council covenants that it will notify the Mutual of any health and safety hazards of which it may become aware prior to the grant of the Lease and Licence to Occupy of the Premises under clauses 3.1.2 and 3.1.3;
       3. it is not engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or governmental body, department, board or agency (except for debt collection in the normal course of business) in relation to the Undertaking or the Premises and no such proceedings, investigation or inquiry have been threatened or are pending and so far as the Council is aware there are no circumstances likely to give rise to any such proceedings;
       4. it has notified the Mutual by the date of this Agreement of all existing insurances affecting the Undertaking or the Premises and of all claims experienced and of any outstanding, anticipated or prospective claims and the name and address of the Council's insurance brokers/providers in respect of the Undertaking, the Premises and the Transferring Assets;
       5. there are no third parties with which the Council itself is required to or chooses to register with in relation to the Undertaking or with which it is required to register any of its assets and no action has been taken by any regulator in the last 5 years either to refuse registration or to take regulatory enforcement action in relation to the Undertaking;
       6. there are no Contracts transferring to the Mutual:
          1. which require third party consent which has not been obtained and provided in writing to the Mutual; and
          2. where the third party or the Council has defaulted or is in breach; and/or
          3. where notice of termination has been received or served by the Council and there are no grounds for determination, rescission, avoidance, repudiation or a material change in the terms of any such Contract;
       7. there are no agreements, arrangements or registrations to which the Council is subject that involve obligations or liabilities that ought reasonably to be made known to the Mutual;
       8. there are no matters concerning any person engaged by the Council in relation to the Undertaking which would render or might render that person unsuitable to work with children or vulnerable adults;
       9. the Council is not aware of any breach of safeguarding legislation in relation to the Undertaking;
       10. there are no other Material Matters of which the Council is, or reasonably should be, aware of in relation to the Undertaking which have not been Disclosed to the Mutual, or of which Mutual should otherwise reasonably be aware;
       11. it is the full legal and beneficial owner of, and has good and marketable title to, all the Transferring Assets and the Premises and such Transferring Assets and the Premises are free from any encumbrance;
       12. none of the Transferring Assets nor the Premises are the subject of any lease, lease-hire agreement, hire-purchase agreement or agreement for payment on deferred terms or are the subject of any licence or factoring arrangement;
       13. it is in possession and control of all the Transferring Assets, except for those it has Disclosed as being in the possession of a third party in the normal course of business;
       14. the Transferring Assets and the Premises comprise all the assets necessary for the continuation of the Undertaking in the manner in which the Undertaking has been carried on by the Council prior to the Transfer Date;
       15. the Transferring Assets used in connection with the Undertaking:
           1. are in good working order and have been regularly and properly maintained; and
           2. are capable and will so far as the Council is aware continue to be capable of doing the work for which they were designed;
       16. the activities of the Council in relation to the Undertaking have not infringed, nor are they likely to infringe any Intellectual Property Rights of any third party. No such activities constitute, have constituted or are likely to constitute, any breach of confidence, passing off or actionable unfair competition in any jurisdiction. No such activities give or have given rise to any obligation to pay any material royalty, fee, compensation or any other sum;
       17. in relation to the Undertaking, the Council has fully complied with the requirements of all applicable legislation concerning rights in respect of privacy and Personal Data and has not been subject to any investigations by the Information Commissioner's Office in relation to its data protection practices;
       18. all necessary planning permissions and consents and approvals from all statutory and other competent authorities in relation to the Premises and their development have been obtained and are valid and subsisting;
       19. the Premises are in a good state of repair and condition and will not require substantial expenditure in the foreseeable future; and
       20. the information Disclosed to the Mutual is accurate and complete.
12. **NON-COMPETE AND DISREPUTE**
    1. The Council warrants that:
       1. other than in relation to the exercise of its statutory duties and/or where agreed with the Mutual in advance, it shall not at any time during the Non-Compete Period carry on any business or activities of a similar or competing nature to those of the Undertaking from time to time;
       2. it shall, to the extent compatible with its statutory responsibilities, use reasonable endeavours to support and provide all necessary assistance, co-operation, and access to information and materials to the Mutual throughout the Non-Compete Period as are reasonably requested by the Mutual to ensure the success of the Mutual after the Transfer Date; and
       3. it shall promptly forward any enquiries received by the Council about the Undertaking to the Mutual.
    2. Each Party warrants that it shall do nothing to, nor act in a manner that will, or is reasonably likely to, bring the other Party into disrepute.
13. **INSURANCE**
    1. The Council shall maintain in force up to the Transfer Date all the policies of insurance Disclosed as part of the due diligence process.
    2. For insurance policies which are not Excluded Contracts, the Council undertakes to the Mutual that it will notify the interest of the Mutual to the relevant insurers and seek to transfer the benefit of the policies to the Mutual.
14. **LIABILITIES AND INDEMNITIES**
    1. The Parties acknowledge and agree that, from and including the Transfer Date:
       1. the Mutual shall be responsible for the operation of the Undertaking as set out in this Agreement;
       2. all Historic Liabilities shall belong to, and be paid and discharged by, the Council and the Council undertakes to indemnify and keep the Mutual indemnified against any Historic Liabilities and Insured Liabilities; and
       3. all Future Liabilities shall belong to, and be paid and discharged by the Mutual and the Mutual undertakes to indemnify and keep the Council indemnified against any Future Liabilities save to the extent that any such liabilities and any consequential Losses were caused or contributed to by any act or omission of the Council.
    2. From the Transfer Date the Council shall continue to be liable for all Losses in relation to the Excluded Assets and the Excluded Contracts.
    3. Each Party shall provide all reasonable assistance and co-operation to the other Party (including without limitation, access to relevant records or data) as the other Party may request from time to time to enable that Party to effectively deal with or manage any claims referred to in this Agreement or that are insured under insurance policies taken out by the Council prior to the Transfer Date.
15. **CONDUCT OF CLAIMS**
    1. In respect of the indemnities given in this Agreement:
       1. the indemnified Party shall give written notice to the indemnifying Party as soon as is practicable of the details of any claim or proceedings brought or threatened against it by a third party in respect of which a claim will or may be made under the relevant indemnity;
       2. the indemnifying Party shall at its own expense have the exclusive right to defend, conduct and/or settle all claims and proceedings which may be brought by a third party to the extent that such claims or proceedings may be covered by the relevant indemnity provided that where there is an impact on the indemnified Party, the indemnifying Party shall consult with the indemnified Party and shall at all times keep the indemnified Party informed of all matters which could have a material impact on the indemnified Party; and
       3. the indemnified Party shall, at the indemnifying Party's expense, provide all reasonable assistance and documentation required by the indemnifying Party in connection with, and act as or be joined as a defendant in, any claim or proceedings brought by a third party. The indemnifying Party shall reimburse the indemnified Party for all reasonable costs and expenses (including legal costs and disbursements) incurred in providing such cooperation and/or arising as a result of the indemnifying Party's failure to defend, conduct and/or settle such claims and proceedings.
16. **ANNOUNCEMENTS**
    1. No announcement of any kind shall be made in respect of the subject matter of this Agreement except as specifically agreed between the Parties. Any announcement by either of the Parties shall in any event be issued only after prior consultation with the other and the other shall not unreasonably withhold its consent.
    2. The Parties shall prepare and release agreed joint press statements concerning the Transfer for release on the Transfer Date or such other date or dates as may be mutually agreed.
17. **FORCE MAJEURE**
    1. Neither Party (provided that it has complied with this clause 12) shall be deemed to be in breach of this Agreement, or otherwise liable to the other by reason of any delay in performance or non-performance of any of its obligations hereunder to the extent that such delay or non-performance is due to a Force Majeure Event ("**the Affected Party**").
    2. The Affected Party shall:
       1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 Business Days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
       2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

1. **GOOD FAITH AND FURTHER ASSURANCE**
   1. The Mutual and the Council shall cooperate with each other and act in fairness and in good faith to each other to enable each of them to discharge their obligations under this Agreement.
   2. Subject to any other provisions of this Agreement, to the extent that may be necessary, both Parties will:
      1. as and when reasonably required, execute and do all such agreements, conveyances, assignments, assurances, acts and things as may be necessary to give effect to the provisions of this Agreement; and
      2. render all reasonable assistance to the other Party in connection with the conduct by the other Party of any third party claim.
2. **DISPUTE RESOLUTION**
   1. In the case of any Dispute in relation to this Agreement and/or the Transfer the Parties shall use their best efforts to negotiate in good faith through their nominated representatives and settle amicably such Dispute through negotiations.
   2. If any Dispute cannot be settled within 28 days the Parties shall use their reasonable endeavours to agree to elect to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure.
3. **CONFIDENTIAL INFORMATION** 
   1. Each Party shall keep secret and confidential all Confidential Information disclosed to it as a result of this Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other Party.
   2. Each Party may disclose the other Party's Confidential Information:
      1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 15; or
      2. as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority.
   3. Neither Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
   4. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Confidential Information which:
      1. at the time of its disclosure by the disclosing Party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving Party;
      2. is already known to the receiving Party as evidenced by written records at the time of its disclosure by the disclosing Party and was not otherwise acquired by the receiving Party from the disclosing Party under any obligations of confidence; or
      3. is at any time after the date of this Agreement acquired by the receiving Party from a third party having the right to disclose the same to the receiving Party without breach of the obligations owed by that Party to the disclosing Party.
   5. Notwithstanding the obligations at clause 15.1 above, the Council may publish the Mutual's Confidential Information to the extent required by the Council to comply with:
      1. its statutory duty under The Local Government (Transparency Requirements) (England) Regulation 2015 as detailed in section 2 of The Local Government Transparency Code 2015; and
      2. any obligations for disclosure placed upon it by government guidance, provided that no information that is commercially sensitive to the Mutual shall be published and that in publishing the information the Council shall comply with the Data Protection Legislation. For the avoidance of doubt, contract information will not be considered to be commercially sensitive if the information is publicly available.
4. **DATA PROTECTION**
   1. The Council undertakes on or before the Transfer Date to disclose to the Mutual in relation to any transferring Protected Data, the purpose(s) for which it collected the Personal Data, and clear records of:
      1. all consents to the Processing of such Protected Data (if any) which have been obtained from the Data Subjects;
      2. all privacy statements (or policies/notices) provided to the Data Subjects by the Council; and
      3. all consents to the receipt of direct marketing by email or text, phone or other electronic means obtained from the Data Subjects.
   2. As soon as is practicable after the Transfer Date and in any event within 30 days of the Transfer Date, the Mutual shall notify all Data Subjects that the Mutual is now the Controller of their Protected Data and shall inform them of the purposes for which the Mutual will be Processing their Protected Data.
   3. The Parties will at all times work co-operatively together in relation to the use of Protected Data and to comply with the requirements of the Data Protection Legislation in relation to the Transfer.
   4. Both the Council and the Mutual shall take all reasonable steps to not do anything which could result in the other Party breaching the Data Protection Legislation in relation to the Protected Data.
5. **NOTICES**
   1. A notice given under this Agreement will be sent for the attention of the person, and to the address given in this clause (or such other address as the relevant Party may have notified to the other Party in accordance with this clause) and will be:
      1. delivered personally; or
      2. delivered by commercial courier; or
      3. sent by pre-paid first-class post, registered post or recorded delivery.
   2. The addresses for service of notice are:
      1. **Council**

Address: [*Insert address*]

For the attention of: *[Insert name and/or position*]

* + 1. **Mutual**

Address: [I*nsert address*]

For the attention of: [*Insert name and/or position*]

* 1. A notice is deemed to have been received:
     1. if delivered personally, at the time of delivery; or
     2. if delivered by commercial courier, at the time of signature of the courier's receipt; or
     3. if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
     4. if deemed receipt under the previous paragraphs of this clause is not within business hours (meaning any time other than 9.00 am to 5.30 pm Monday to Friday on a Business Day), at the time when business next starts in the place of receipt.
  2. It is sufficient, to prove service by post, that the envelope containing the notice was properly addressed and posted.
  3. A notice under this Agreement will not be valid if sent by e-mail.

1. **VARIATIONS**

No variation or waiver of this Agreement (or any part of this Agreement) shall be effective unless it is in writing and signed by or on behalf of each of the Parties.

1. **ENTIRE AGREEMENT**

This Agreement sets out the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes any prior drafts, agreements, understanding, undertaking, representations, warranties or arrangements of any nature, whether in writing or oral, relating to such subject matter.

1. **ACKNOWLEDGEMENT**
   1. The Parties acknowledge that they have entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in this Agreement and, save as expressly set out in this Agreement, neither Party shall have liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.
   2. Nothing in this clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.
2. **SEVERANCE**
   1. If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
   2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to give effect to the commercial intention of the Parties where this is possible.
   3. Without prejudice to clause 21.1, if, in the reasonable opinion of either of the Parties, the effect of such a deletion is to undermine the purpose of this Agreement or materially prejudice the position of either Party, the Parties shall negotiate in good faith in order to agree suitable alternative provisions to replace the deleted provisions or a suitable amendment to this Agreement.
   4. This Agreement (other than obligations that have already been fully performed) remains in full force after the Transfer Date.
3. **ASSIGNMENT**
   1. Neither Party may assign, transfer, charge, dispose of or otherwise deal in any manner with any or all its rights and liabilities under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
   2. This Agreement shall be binding on, and shall enure to the benefit of, the Council and the Mutual and their respective successors and permitted transferees and assigns (if any).
4. **RELEASES AND WAIVERS**
   1. The rights, powers and remedies conferred on any party by this Agreement and remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general Law or otherwise.
   2. Either Party may, either in whole or in part, release, compound, compromise, waive, or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by the other Party without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
   3. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.
5. **EXCLUSION OF THIRD PARTY RIGHTS**

Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

1. **NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, nor authorise either Party to make or enter into any commitments for or on behalf of the other Party.

1. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document.

1. **GOVERNING LAW AND JURISDICTION**
   1. This Agreement and any Disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes or claims) will be governed by and construed in accordance with the Laws of England and Wales.
   2. The Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any Dispute or claim that arises out of or in connection with this Agreement.

# 

**EXECUTION OF THE TRANSFER AGREEMENT**

**IN WITNESS** whereof this Agreement has been executed as a deed by the Parties and delivered by them on the date shown above.

|  |  |
| --- | --- |
| **EXECUTED** (but not delivered until the date shown above)  **AS A DEED by affixing the COMMON SEAL of COUNCIL** in the presence of:  Name of Authorised Signatory:  Signed: | )  )  )  )  ) |

**EXECUTED** (but not delivered until the date shown above)

**AS A DEED** by **THE MUTUAL**

acting by

Name of Authorised Signatory: (a Director) ……………………………………………………

Signed: ……………………………………………………

in the presence of:

Witness signature: ……………………………………………………

Witness name: ……………………………………………………

Witness occupation: ……………………………………………………

Witness address: ……………………………………………………

……………………………………………………

1. **- Definitions**

In this Agreement (including the Recitals) and unless the context otherwise requires, the following words or expressions will have the following meanings:

|  |  |  |
| --- | --- | --- |
| **"Administering Authority"** | the Council in its capacity as the administering authority of the Fund (or any successor to the administering authority from time to time); | |
| **"Admission Agreement"** | the agreement to be entered into in accordance with Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013 by the Council and the Mutual in the Fund's standard form at the Transfer Date or such other form as the Parties may reasonably agree; | |
| **"Agreed Activities"** | has the meaning given to it in the Funding Agreement entered into between the Council and the Mutual (if applicable); | |
| **"Agreement"** | this agreement (including the Schedules); | |
| **"Appropriate Pension Provision"** | in respect of the Eligible Employees means continued membership or continued eligibility for membership of the LGPS as appropriate; | |
| **"Back Office Services Agreement"** | the agreement to be entered into for the provision of back office services to the Mutual by the Council; | |
| **"Business Day"** | a day when banks in London are open for business, other than any Saturday or Sunday, any public holiday, any statutory holiday of the Council or any day between 25 December and 1 January (inclusive) each year on which the Council's offices are closed; | |
| **"Confidential Information"** | any information which ought reasonably to be considered confidential however conveyed or presented:   * + - 1. that relates to or forms part of the Transfer or to the business, affairs, operations, customers, beneficiaries, processes, budgets, pricing, policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing Party; including the disclosing Party's Intellectual Property Rights;       2. together with all information derived by the receiving Party from any such information;   and any other information clearly designated by the providing Party as being confidential to it (whether or not it is marked "confidential"); | |
| **"Contract(s)"** | any and all contracts, arrangements, licences, grant agreements and other commitments entered into by the Council in relation to the Undertaking, which are operative at the Transfer Date including, without limitation, those set out in Schedule 3 Part 1 but excluding the Excluded Contracts set out in Schedule 3 Part 2; | |
| **"Controller"** | has the meaning given to it in the relevant Data Protection Legislation | |
| **"Data Subjects"** | the individuals whose Protected Data is being transferred from the Council to the Mutual in connection with this Agreement; | |
| **"Data Protection Legislation"** | means, as applicable, (a) the General Data Protection Regulation (EU) (2016/679) ("**GDPR**"); (b) the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (d) all other applicable Laws and regulations relating to the Processing of Personal Data and privacy, including statutory instruments (and in each case any re-enactment or amendment); | |
| **"Disclosed"** | fairly disclosed by the Council prior to the Transfer Date as shown in the schedule of emails sent by the Council as part of the due diligence process set out at Schedule 5; | |
| **"Dispute"** | any dispute, claim or difference arising out of or relating to this Agreement; | |
| **"Eligible Employees"** | the Employees who are active members of (or are eligible to join) the Fund immediately before the Transfer Date; | |
| **"Employee Liability Information"** | the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations; | |
| **"Employees"** | those employees of the Council to whom the Regulations will apply on the Transfer Date as listed in Schedule 2 (List of Employees), and accurate as at the date on which this Agreement is signed by both Parties; | |
| **"Excluded Assets"** | those assets related to the Undertaking that will not transfer under this Transfer Agreement (if any) as more specifically set out in Schedule 4 Part 2; | |
| **"Excluded Contracts"** | the historic insurance policies, contracts, grant agreements and other commitments entered into by the Council in relation to the Undertaking which are operative at the Transfer Date and which shall not transfer from the Council to the Mutual under this Agreement, as set out at Schedule 3 Part 2; | |
| **"Fund"** | the section of the LGPS referred to as the [*insert name of pension fund*] Pension Fund or any successor pension fund for the purposes of the LGPS Regulations; |
| **"Funding Agreement"** | the agreement setting out the terms for grant funding to be provided to the Mutual by the Council, to support it in delivering the Agreed Activities, if any such agreement is entered into in relation to the Transfer; |
| **"Future Liabilities"** | all receipts relating to the Undertaking and all Losses and outgoings incurred or payable in relation to the Undertaking from and including the Transfer Date; |
| **"Historic Liabilities"** | all receipts relating to the Undertaking and all Losses and outgoings incurred or payable in relation to the Undertaking up to the Transfer Date; |
| **"Indirect Losses"** | loss of profits (other than profits directly and solely attributable to the Undertaking), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis; |
| **"Insured Liabilities"** | all liabilities of the Council to the extent they are indemnified under any insurance policy of the Council; |
| **"Intellectual Property Rights"** | all patents, copyright, design rights, trademarks, trade secrets, know-how and other intellectual property rights (whether registered or unregistered) and all applications of the same; |
| **"Know-how"** | information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale; |
| **"Law"** | any applicable statute or proclamation or any delegated or subordinate law;  any enforceable community right within the meaning of section 2(1) European Communities Act 1972;  any applicable guidance, direction, order or determination with which the Council is bound to comply; and  any applicable judgment of a relevant court of law which is a binding precedent in England and Wales,  in each case in force in England and Wales; |
| **"Licence to Occupy"** | the licence to occupy to be entered into by the Parties on the Transfer Date, referred to and appended as Schedule 7 Part 2; |
| **"Lease"** | the lease to be entered into by the Parties on the Transfer Date, referred to and appended as Schedule 7 Part 1; |
| **"LGPS"** | the Local Government Pension Scheme; |
| **"LGPS Regulations"** | the Local Government Pension Scheme Regulations 2013 as amended, re-enacted or superseded from time to time; |
| **"Loss" or "Losses"** | all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services), proceedings, demands and charges whether arising under statute, contract or at common law but, for the avoidance of doubt, excluding Indirect Losses; |
| **"Material Matter"** | any matter or series of connected matters which together, or above, would, or could reasonably be expected to result in a Loss to the Mutual in excess of £5,000, or have a material negative impact on its reputation; |
| **"Non-Compete Period"** | the Term of any Funding Agreement or Services Agreement (as applicable); |
| **"Other Documentation"** | either the Funding Agreement or the Services Agreement (as applicable) and the Lease, the Licence to Occupy and the Back Office Service Agreement; |
| **"Personal Data"** | shall have the meaning given to it in the relevant Data Protection Legislation; |
| **"Personnel Files"** | in respect of the Employees copies of all personnel files or records relating to their employment at the Council and any previous period of continuous employment with the Council including without limitation a copy of any contractual documentation, any documentation relating to job description, pay information, any documentation relating to membership of an occupational pension scheme, training records, information relating to sickness absence, a copy of any disciplinary warnings and a copy of any grievances; |
| **"Premises"** | the premises listed in Schedule 7; |
| **"Processing"** | has the meaning given to it in the relevant Data Protection Legislation; |
| **"Protected Data"** | any Personal Data which is required for the ongoing operations of the Undertaking, and which is being transferred from the Council to the Mutual in connection with this Agreement; |
| **"Regulations"** | the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time); |
| **"Services"** | has the meaning given to it in the Services Contract entered into between the Council and the Mutual (if applicable); |
| **"Services Contract"** | the contract for the provision of the Services by the Mutual entered into between the Council and the Mutual, if any such agreement is entered into in relation to the Transfer; |
| **"Transfer"** | the transfer of the Undertaking from the Council to the Mutual pursuant to this Agreement; |
| **"Transfer Date"** | [*Insert date on which Undertaking actually transfers*]; |
| **"Transferring Assets"** | those assets owned or leased to the Council and required by the Mutual for the purposes of enabling it to operate the Undertaking including, without limitation, those set out in Schedule 4 Part 1 but excluding the Excluded Assets set out in Schedule 4 Part 2; | |
| **"Undertaking"** | the business activities transferring to the Mutual from the Council under this Transfer Agreement, including the Agreed Activities or Services (as relevant to the Transfer) and the Employees, Transferring Assets and Contracts as are relevant for the delivery of the such Agreed Activities or Services; and | |
| **"Warranties"** | the warranties set out in clause 6. | |

**Schedule 2 - List of Employees**

This Schedule lists of all persons identified by the Council as being those individuals meeting the Definition of "Employee" in Schedule 1.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Last Name** | **First Name** | **POST** | **DOB** | **Start date** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Schedule 3 - Contracts**

* + 1. **– Contracts and Grants to be assigned on Transfer**

|  |  |  |  |
| --- | --- | --- | --- |
| **Parties** | **Subject** | **Start Date** | **End Date** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

* + 1. **– Excluded Contracts**

|  |  |  |  |
| --- | --- | --- | --- |
| **Parties** | **Subject** | **Start Date** | **End Date** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

**Schedule 4 - Assets**

**Part 1 – Transferring Assets**

1. **Asset List**
   1. All equipment including IT, furniture, fixtures and fittings on the premises currently used in the operation of the Undertaking, plant and equipment which is the subject of any leasing, hire or hire purchase agreements including, without limitation, the inventory of office equipment and furniture set out in Part 2.
   2. [*List any significant assets/equipment*].
   3. All goodwill associated with the operation of the Undertaking.
   4. All Protected Data.
   5. All proprietary rights and Intellectual Property Rights including copyright, database rights, design rights, working names and domain names owned by the Council and used exclusively by the Undertaking and in each case whether registered or unregistered and including all applications and rights to apply for and be granted, including for the avoidance of doubt the following:

|  |  |
| --- | --- |
| **Working names:** |  |
| **Logos:** |  |
| **Domain Names:** |  |
| **Social Media Accounts:** |  |
| **Publications** |  |
| **Databases** |  |

* 1. Any cash balance remaining from the Undertaking's budget following completion of due accounting procedures.

1. **Inventory**
   1. Office Equipment:

|  |  |
| --- | --- |
| **iTEM** | **UNITS** |
| [*E.g. computers, printers etc*.] |  |
|  |  |
|  |  |

* 1. Furniture:

|  |  |
| --- | --- |
| I**TEM** | **UNITS** |
| [*E.g. desks, tables, chairs, filing cabinets etc*.] |  |

**Part 2 – Excluded Assets**

1. **Asset List**
   1. [*Insert*]
2. **Inventory**
   1. [*Insert*]

**Schedule 5 - Disclosure**

**Part 1 - Emails sent by the Council as part of the due diligence process**

**Schedule 6 - Employees and Pensions**

* + 1. **[Employees**

1. **PROVISION OF STAFFING INFORMATION**
   1. *[The Council represents, warrants and undertakes to the Mutual* *that:*
      1. *no persons are employed or engaged in the Undertaking other than the Employees;*
      2. *save as set out in Appendix 1 of this Schedule 6 none of the Employees has given or received notice terminating their employment or engagement;*
      3. *full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable including pension benefits) will by not later than 84 days before the Transfer Date have been disclosed by the Council to the Mutual;*
      4. *no Employee has a statutory or contractual entitlement to notice of the termination of their employment or engagement which exceeds 3 months;*
      5. *save as set out in Appendix 1 of this Schedule 6, it has not in the last 12 months altered and shall not alter (whether to take effect before, or after the Transfer Date) any of the terms of employment or engagement of any of the Employees;*
      6. *in relation to each of the Employees the Council has:*
         1. *in all material respects, maintained adequate and suitable records regarding the service of each of the Employees; and*
         2. *complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of each of the Employees;*
         3. *complied with all relevant orders and awards made under any statute affecting the conditions of service of each of the Employees;*
      7. *to the best of the Council's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of the Mutual* *is likely to lead to any industrial dispute;*
      8. *no amounts due to or in respect of any of the Employees (including PAYE and National Insurance but excluding, to the extent provided for in Part 2 below, pension contributions) are in arrears or unpaid; and*
      9. *save as set out in Appendix 1 of this Schedule 6 no monies or benefits other than in respect of contractual emoluments or pension entitlements are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Council arising out of the employment or the termination of employment of any of the Employees for compensation for loss of office or employment or engagement otherwise and whether under contract or any statute or regulations or otherwise.*
   2. *Without prejudice to its obligation pursuant to the Regulations to provide the Employee Liability Information, the Council shall on or before the Transfer Date to the extent lawfully permitted provide the Mutual* *with such additional information in relation to the Employees as the Mutual* *shall reasonably request.*
   3. *The Council shall notify the Mutual* *of any material change to the information provided to the Mutual* *pursuant to this paragraph 1 above as soon as is reasonably practicable, and shall upon request by the Mutual* *meet the Mutual* *to discuss the information disclosed.*
   4. *The Council undertakes to the Mutual* *that during the period from the date of this Agreement up to and including the Transfer Date:*
      1. *the Council shall enable and assist the Mutual* *and such other persons as the Mutual* *may reasonably determine to communicate with and meet the Employees and their trade union or other Employee representatives;*
      2. *the Council shall not, without the prior written consent of the Mutual, such consent not to be unreasonably withheld:*
         1. *amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay and job description) of any Employees (other than where such amendment or variation has previously been agreed between the Council and the employees in the normal course of business, and where any such amendment or variation is not in any way related to the Transfer to the Mutual);*
         2. *terminate or give notice to terminate the employment or engagement of any Employees (other than in circumstances in which the termination is for reasons of misconduct or lack of capability); and*
         3. *employ or assign to the Undertaking any person who would or might as a consequence of such employment or assignment become an Employee;*

*and the Council shall indemnify the Mutual* *from and against all Losses incurred by the Mutual* *in connection with or as a result of a breach of its obligations under this paragraph 1.4, save to the extent that the Losses arise from a wrongful act or omission of the Mutual; and*

*1.4.3 the Council has not by act or omission done anything in the [6] months prior to the date of this Agreement which would, if done after the date of this Agreement, constitute a breach of paragraph 1.4.2 above and the Council shall indemnify the Mutual from and against all Losses incurred by the Mutual in connection with or as a result of a breach of its obligations under this paragraph.*

1. ***APPORTIONMENTS***
   1. *The Council shall be responsible for all emoluments and outgoings in respect of the Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions) which are attributable in whole or in part to the period up to the Transfer Date, and will indemnify the Mutual* *against all Losses incurred by the Mutual* *in respect of the same.*
   2. *The Mutual* *shall be responsible for all emoluments and outgoings in respect of the Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions) which are attributable in whole or in part to the period from and including the Transfer Date, and will indemnify the Council against all Losses incurred by the Council in respect of the same.*
   3. *The Council further agrees fully to indemnify the Mutual* *on a continuing basis against Losses suffered or incurred by the Mutual* *in consequence of the early payment of a pension entitlement on the grounds of redundancy or premature retirement in the interests of business efficiency following the Transfer. The obligation on the Council under this paragraph 2.3 shall be limited to paying the same proportion of the total redundancy costs incurred by the Mutual* *as the proportion of the Employee's total continuous service (calculated as appropriate for the relevant purpose) that was accrued by the Employee prior to the Transfer Date.*
2. ***INFORMATION AND CONSULTATION***
   1. *The Mutual* *shall comply with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.*
   2. *The Council shall comply with its obligations under Regulations 11, 13 and 14 of the Regulations during the period prior to the Transfer Date, save where the Council is unable to do so as a result of the failure of the Mutual* *to comply with its duties under Regulation 13 of the Regulations.*
3. ***INDEMNITIES***
   1. *The Council shall indemnify the Mutual* *against all Losses incurred by the Mutual* *in connection with or as a result of:*
      1. *any claim or demand by any Employee (and any other person in respect of whom it is alleged that they are an Employee) whether such claim or demand is based in contract, tort, under statute, pursuant to European law or otherwise, including but not limited to any claim for unfair dismissal, wrongful dismissal, a redundancy payment, early payment of a pension entitlement on the grounds of redundancy or premature retirement in the interests of business efficiency, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion, religious or similar belief, gender reassignment or contractual status, equal pay, personal injury, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Council in respect of any Employee relating to:*
         1. *the period before the Transfer Date, save to the extent that the claim arises from a wrongful act or omission of the Mutual; and*
         2. *any additional costs which are incurred by the Mutual* *in the period on or after the Transfer Date which relate to an Employee's entitlement to any payments, benefits, remuneration or other emoluments of any description and such costs and/or entitlements were not notified by the Council to the Mutual;*
      2. *any failure by the Council to comply with its obligations under Regulations 11, 13 and 14 of the Regulations, or any award of compensation under Regulation 15 of the Regulations, save where such failure arises from the failure of the Mutual* *to comply with its duties under Regulation 13(4) of the Regulations (unless such failure by the Mutual* *is caused by the Council's failure to provide information to the Mutual);*
      3. *any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing the Employees arising from or connected with any failure by the Council to comply with any legal obligation to such trade union, body or person before the Transfer Date (unless such claim arises in consequence of a wrongful act or omission of the Mutual); and*
      4. *any claim brought by or in respect of any employee or former employee of the Council or any other person engaged or formerly engaged in whatever capacity (other than as an Employee) in respect of which the Mutual* *incurs or is alleged to incur responsibility or liability as a result of the operation of the Regulations, save to the extent that the claim arises from a failure of the Mutual* *to comply with its obligations under the Regulations.*
      5. *any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary or secondary national insurance contributions:* 
         1. *in relation to any Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Transfer Date; and*
         2. *in relation to any employee who is not an Employee and in respect of whom it is later alleged or determined that the Regulations applied so as to transfer his/her employment from the Council to the Mutual, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Transfer Date;*
      6. *a failure of the Council to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Employees arising before the Transfer Date.*
   2. *If in connection with the Transfer of the Undertaking to the Mutual* *it is found or alleged that the employment of any person other than the Employees has transferred to the Mutual* *pursuant to the Regulations then, following consultation with the Council:*
      1. *the Mutual* *may by the 25th working day following but excluding the day upon which it becomes aware of that allegation or finding, dismiss the employee with immediate effect; and*
      2. *the Council shall indemnify and keep indemnified the Mutual* *against all Losses which the Mutual* *may suffer or incur in respect of that dismissal and the employment of that person up to the date of the dismissal, excluding any liability, or such proportion of liability, arising as a result of any unlawful discrimination or harassment by the Mutual.*
   3. *The Mutual* *shall indemnify the Council against all Losses incurred by the Council in connection with or as a result of:*
      1. *any claim or demand by any Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including any claim for unfair dismissal, wrongful dismissal, a redundancy payment, early payment of a pension entitlement on the grounds of redundancy or premature retirement in the interests of business efficiency, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Mutual* *on or after the Transfer Date, in respect of any Employee save to the extent that the claim arises from a wrongful act or omission of the Council;*
      2. *any failure by the Mutual* *to comply with its obligations under Regulation 13(4) of the Regulations.*
4. **to Part 1 of Schedule 6 - Employee Liability Information**

* Details of grievances and or disciplinaries in previous two years;

[ ]

* Details of any staff engaged in the Undertaking who have given or been given notice to terminate their employment or engagement;

[ ]

* Details of any changes to the terms & conditions in last 12 months or changes expected to take effect in next 12 months; and

[ ]

* Details of any money owed to employees.

[ ]

* + 1. **- Pensions**

1. **OFFER OF PENSION SCHEME MEMBERSHIP**
   1. The Mutual shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Transfer Date.
   2. The provisions of paragraphs 1.1 and 2.1 shall be directly enforceable by an Eligible Employee against the Mutual and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Eligible Employee shall have the right to enforce any obligation owed to him or to her by the Mutual under those paragraphs in his or her own right under section 1(1) of that Act.

1. **ADMISSION TO THE LGPS**

***Admission Agreement***

* 1. The Council and the Mutual shall enter into the Admission Agreement, to have effect from and including the Transfer Date. For the avoidance of any doubt, the Council shall bear the cost of any actuarial assessment required by the Fund in respect of the admission of the Mutual to the Fund.

***Indemnity for breach of Admission Agreement***

* 1. The Mutual shall indemnify and keep indemnified the Council from and against all Losses suffered or incurred by the Council which arise from any breach by the Mutual of the terms of the Admission Agreement, to the extent that such liability arises on or before the termination of the Admission Agreement.

***Discretionary benefits***

* 1. The Mutual shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Council.

***Fully funded at date of Transfer***

* 1. For the purposes of calculating the Mutual's employer contribution rate and any other sums due to the Administering Authority under the Admission Agreement, the Council shall ensure that the Eligible Employees' past service benefits accrued prior to the Transfer Date are treated as fully funded as at the Transfer Date, as reasonably determined by the Fund's actuary based on the assumptions used in the most recent actuarial valuation adjusted for current market conditions.

***Council guarantee***

* 1. To ensure that the Administering Authority does not require the Mutual to provide an indemnity or bond in respect of the Eligible Employees, the Council will provide the Administering Authority with an indemnity or guarantee in a form acceptable to the Administering Authority in respect of the Mutual's obligations to the Administering Authority [for the duration of the Mutual's admission of the Fund and will take any other steps required by the Administering Authority to ensure that an indemnity or bond is not required for the duration of the Mutual's participation in the Fund.

***Pass through Admission Agreement***

* 1. The Council will use all reasonable endeavours to procure that the Admission Agreement is drafted by the Administering Authority on a full 'pass-through' basis and so that the Mutual will pay a fixed employer contribution rate of [*insert rate budgeted for by Mutual*] per cent for the duration of its participation in to the Fund and no exit debt to the Fund when the Admission Agreement terminates or the Mutual ceases to employ any active members in the Fund.
  2. In the event that the Administering Authority does not agree to draft the Admission Agreement on a full 'pass-through' basis with a fixed employer contribution rate and no exit debt the provisions of paragraphs 2.12 and 2.13 shall apply.

***Protection from redundancy pension strain costs***

* 1. The Council shall indemnify the Mutual:
     1. in full from and against any costs, expenses or additional contributions arising from any pension payable as a result of the dismissal of any of the Eligible Employees on grounds of redundancy or efficiency of the service within 18 months of the Transfer Date; and
     2. on a pro rata basis from and against any costs, expenses or additional contributions arising from any pension payable as a result of the dismissal of any of the Eligible Employees on grounds of redundancy or efficiency of the service after this date.
  2. The Mutual shall carry out any restructuring resulting in the dismissal of any of the Eligible Employees on grounds of redundancy or efficiency of the service in good faith and shall use reasonable endeavours to consult in advance with the Council in relation to any proposal to dismiss any Eligible Employee on these grounds.

***Protection from ill-health pension strain costs***

* 1. The Council shall indemnify the Mutual:
     1. in full from and against all costs, expenses or additional contributions arising from the retirement of any of the Eligible Employees on grounds of ill-health or infirmity of mind or body provided that such retirement is directly or indirectly as a result of any medical condition arising or identified prior to the Transfer Date; and
     2. on a pro rata basis from and against any costs, expenses or additional contributions arising from the retirement of any of the Eligible Employees on grounds of ill-health or infirmity of mind or body where such retirement is not directly or indirectly as a result of any medical condition arising or identified prior to the Transfer Date.

***Pro rata indemnities***

* 1. For the purposes of paragraphs 2.8 and 2.10 above, the sum due from the Council pursuant to any indemnity stated to be payable on a pro rata basis shall be calculated by reference to the relevant Eligible Employee's length of pensionable service in the LGPS before the Transfer Date compared to the Eligible Employee's total pensionable service in the LGPS at the relevant date.

***Protection from volatility in employer contribution rate***

* 1. If the employer contribution rate payable by the Mutual to the Fund exceeds [*insert rate* budgeted *for by Mutual*] per cent in any pay reference period the Mutual shall notify the Council and the Council shall pay an amount equal to any such excess to the Mutual within one calendar month of notification.

***Exit from the Fund***

* 1. On termination of the Admission Agreement or on the Mutual no longer having any Eligible Employees actively contributing to the Fund, the Council shall:
     1. indemnify the Mutual for any costs, expenses or liabilities to the Fund in respect of the Eligible Employees (including for the avoidance of doubt any deferred or pensioner members of the Fund) arising on termination of the Admission Agreement or on the Mutual no longer having any Eligible Employees actively contributing to the Fund; or
     2. procure that the Administering Authority transfers all of the Fund's assets and liabilities relating to the Eligible Employees (including for the avoidance of doubt any deferred or pensioner members of the Fund) from the Mutual back to the Council and the Mutual shall not be liable to settle any costs, expenses or liabilities arising at the date of termination of the Admission Agreement or the date the Mutual no longer has any Eligible Employees actively contributing to the Fund*.*

***Payments from the Council***

* 1. Any payment due from the Council to the Mutual pursuant to paragraphs 2.8, 2.10 and 2.13 shall be paid by the Council within [one calendar month] of the Mutual providing the Council with confirmation in writing of the sum due together with such evidence of the sum due as the Council may reasonably request.

**Schedule 7 – Premises**

* + 1. **– Lease**

1. [Enter address]
   * 1. **– Licence to Occupy**
2. [Enter address]