

NOTE ON THIS DRAFT: Please note that this draft is substantially agreed between the parties but not all the drafting has been finalised. Square brackets have been used to indicate areas where there is likely to be further discussion and work on the drafting but there may be other changes to the drafting.

DATED

TRANSFER AGREEMENT

BRIGHTON AND HOVE CITY COUNCIL

and

THE ROYAL PAVILION AND MUSEUMS TRUST



10 Queen Street Place, London EC4R 1BE
bateswells.co.uk

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THIS TRANSFER AGREEMENT is made on

BETWEEN:

- (1) **BRIGHTON AND HOVE CITY COUNCIL** of Hove Town Hall, Norton road, Hove, BN3 3BQ (“**the Council**”); and
- (2) **THE ROYAL PAVILION AND MUSEUMS TRUST** of 4-5 Pavilion Buildings, Brighton, BN1 1EE (registered in England and Wales as a company with registered number 11774969, and as a charity with registered number [____]) (“**the Charity**”)

(each a “**Party**” and together “**the Parties**”).

BACKGROUND:

- (A) The Council operates the Undertaking. The Council and the Charity have agreed to enter into the Services Contract, under which the Council will pay a fee to the Charity in consideration of the performance of the Services by the Charity.
- (B) The Council has agreed for the Charity to assume responsibility for the Undertaking from the Transfer Date.
- (C) This Agreement sets out the terms on which the Council will Transfer to the Charity the Undertaking including the terms regarding Employees and pensions, such Transfer to be effective as of the Transfer Date.
- (D) The Employees who are engaged in the Undertaking will transfer to the Charity by operation of the Regulations with effect from the Transfer Date.
- (E) The Council will grant [(or, in the case of UB5 only, assign)] and the Charity will take the Leases from the Transfer Date.

1. INTERPRETATION

- 1.1 This Agreement shall be interpreted according to the provisions of Schedule 1 (**Definitions**).
- 1.2 References to Recitals, Clauses and Schedules are, unless otherwise stated, references to recitals, clauses and schedules to this Agreement.
- 1.3 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.
- 1.4 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.
- 1.5 The headings to the Clauses and Schedules are for convenience only and shall not affect their interpretation.
- 1.6 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.

- 1.7 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 Charity 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.
- 1.8 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.

2. APPROVALS AND CONDITIONS PRECEDENT

- 2.1 The Council confirms it has resolved to enter into this Agreement.
- 2.2 The Charity confirms its board has resolved to enter into this Agreement.
- 2.3 This Agreement is conditional upon the Admission Agreement and Other Documentation being entered into by the Charity and the Council and this Agreement shall only take effect if the Admission Agreement and Other Documentation have also taken effect.

3. TRANSFER

- 3.1 In consideration for the obligations of the Charity detailed in this Agreement, on the Transfer Date:
- 3.1.1 the Council shall transfer to the Charity with, save as disclosed, full title guarantee the following:
- (a) the legal and beneficial interest in the Transferring Assets (save where such Transferring Assets are leased which has been Disclosed);
 - (b) the benefit of all licences, consents and permissions relating to the Undertaking, including those relating to any Transferring Assets and Premises (and including those listed in Schedule 4Part 3);
 - (c) all original documentation held by the Council 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 Charity); and

- (d) 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;
- 3.1.2 the Council shall licence to the Charity in accordance with the terms of the Services Contract the Council Background IPR, the Council Service IPR, the Council Trade Marks and the Collection IPR;
- 3.1.3 the Council shall grant the Leases, save for the Lease of UB5 which the Council shall assign to the Charity;
- 3.1.4 the Services Contract shall take effect;
- 3.1.5 the Back Office Services Contract shall take effect;
- 3.1.6 the Admission Agreement shall take effect; and
- 3.1.7 the transfer (subject to the right of any Employee to object) of the contracts of employment of the Employees to the Charity shall take effect.

4. EMPLOYEES AND PENSIONS

- 4.1 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 Charity.
- 4.2 Not later than 14 days after the Transfer Date, the Council will make available to the Charity the Personnel Files in respect of the Employees so that they can be copied by the Charity and the Council warrants that such Personnel Files shall be fully and accurately completed up to the Transfer Date.
- 4.3 The Parties agree to comply with the provisions of Schedule 5 (Employees and Pensions).

5. ASSIGNMENT OF CONTRACTS AND APPORTIONMENTS

- 5.1 Subject to the other provisions of this Clause 5, the Charity 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.
- 5.2 The Council hereby assigns to the Charity 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.
- 5.3 In so far as a Contract cannot be assigned without the consent of a third party or a novation agreement:

- 5.3.1 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
- 5.3.2 the Council will, at the cost of the Council, use all reasonable endeavours (with the co-operation of the Charity, not to be unreasonably withheld or delayed by the Charity) to procure such consent or novation.
- 5.4 The Council will, at the cost of the Council (with the co-operation of the Charity, not to be unreasonably withheld or delayed by the Charity), agree and ensure that the Charity 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 Charity then the Charity will be entitled by notice in writing to the Council to require the Council to treat such contract as an Excluded Contract.
- 5.5 As soon as reasonably practicable following the Transfer Date:
- 5.5.1 the Charity shall notify all necessary third parties in writing of the completion and effect of the Transfer to the extent that the Charity deems appropriate; and
- 5.5.2 (in any event not later than 7 days after the Transfer Date) the Council shall deliver, or procure delivery, to the Charity or make available to the Charity 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.
- 5.6 In addition to the apportionments in relation to Employees set out in paragraph 2, Schedule 6Part 1 (Employees) or paragraph **Error! Reference source not found.**, Schedule 6Part 2 (Pensions):
- 5.6.1 The Charity 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 Charity in respect of all receipts paid by the Charity after the Transfer Date which relate to any Historic Liabilities.
- 5.6.2 For the purposes of calculating and reconciling any payments due under Clauses 5.6.1 above, the Charity shall provide the Council with the details of any receipts relating to Historic Liabilities and the Council shall provide the Charity 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 Charity 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.
- 5.6.3 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.

- 5.6.4 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.

6. **WARRANTIES AND DUE DILIGENCE**

- 6.1 The Parties acknowledge that the Warranties are made on the Transfer Date by reference to the circumstances prevailing on such date.

- 6.2 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.

- 6.3 The Council warrants to the Charity that as at the Transfer Date, to the extent that it is aware and except as Disclosed:

- 6.3.1 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;

- 6.3.2 there are no Contracts transferring to the Charity:

- (a) where the third party or the Council has defaulted or is in breach; and/or
- (b) 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;

- 6.3.3 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 Charity;

- 6.3.4 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;

- 6.3.5 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;

- 6.3.6 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;

- 6.3.7 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;
- 6.3.8 the Material Transferring Assets used in connection with the Undertaking:
- 6.3.9 are in good working order and have been regularly and properly maintained; and
- 6.3.10 are capable and will so far as the Council is aware continue to be capable of doing the work for which they were designed;
- 6.3.11 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;
- 6.3.12 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;
- 6.3.13 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;
- 6.3.14 [the Premises are in all material respects in a good state of repair and condition and will not require substantial expenditure in the foreseeable future]; and
- 6.3.15 the information Disclosed to the Charity is accurate and complete.
- 6.4 The Charity acknowledges and confirms that in respect of all matters not covered by the warranties in clause 6.3:
- 6.5 it has had an opportunity to carry out a thorough due diligence exercise and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of the Service Contract; and
- 6.6 [it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council].

7. **INSURANCE**

- 7.1 Subject to the terms of the Services Contract, the Council shall maintain in force up to the Transfer Date all the policies of insurance Disclosed as part of the due diligence process.
- 7.2 For insurance policies which are not Excluded Contracts, the Council undertakes to the Charity that it will notify the interest of the Charity to the relevant insurers and seek to transfer the benefit of the policies to the Charity.

8. LIABILITIES AND INDEMNITIES

- 8.1 The Parties acknowledge and agree that, from and including the Transfer Date:
- 8.1.1 the Charity shall be responsible for the operation of the Undertaking as set out in this Agreement;
- 8.1.2 all Historic Liabilities shall belong to, and be paid and discharged by, the Council and the Council undertakes to indemnify and keep the Charity indemnified against any Historic Liabilities and Insured Liabilities; and
- 8.1.3 all Future Liabilities shall belong to, and be paid and discharged by the Charity and the Charity 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.
- 8.2 From the Transfer Date the Council shall continue to be liable for all Losses in relation to the Excluded Assets and the Excluded Contracts save to the extent that any such Losses were caused or contributed to by any act or omission of the Charity.
- 8.3 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.

9. CONDUCT OF CLAIMS

- 9.1 In respect of the indemnities given in this Agreement:
- 9.1.1 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;
- 9.1.2 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
- 9.1.3 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.

10. **ANNOUNCEMENTS**

10.1 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.

10.2 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.

11. **FORCE MAJEURE**

11.1 Neither Party (provided that it has complied with this Clause 11) 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**").

11.2 The Affected Party shall:

11.2.1 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

11.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

12. **GOOD FAITH AND FURTHER ASSURANCE**

12.1 The Charity 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.

12.2 Subject to any other provisions of this Agreement, to the extent that may be necessary, both Parties will:

12.2.1 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

12.2.2 render all reasonable assistance to the other Party in connection with the conduct by the other Party of any third party claim.

13. **DISPUTE RESOLUTION**

13.1 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.

13.2 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.

14. **CONFIDENTIAL INFORMATION**

14.1 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.

14.2 Each Party may disclose the other Party's Confidential Information:

14.2.1 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 14;

14.2.2 as may be required by Law, a court of competent jurisdiction or any governmental or regulatory authority; or

14.2.3 in accordance with clause 15.

14.3 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.

14.4 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Confidential Information which:

14.4.1 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;

14.4.2 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

14.4.3 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.

14.5 Notwithstanding the obligations at Clause 14.1 above, the Council may publish the Charity's Confidential Information to the extent required by the Council to comply with:

14.5.1 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

14.5.2 any obligations for disclosure placed upon it by government guidance, provided that no information that is commercially sensitive to the Charity 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.

15. FREEDOM OF INFORMATION

15.1 The Charity shall assist and fully and promptly cooperate with the Council as required (including but not exclusively assistance in retrieving information held) to enable the Council to comply with its duties under the Freedom of Information Act 2000 (“**FoIA**”).

15.2 The Council shall not be in breach of clause 14 (Confidential Information) of this Agreement if it makes disclosures of information in accordance with the requirements of FoIA.

15.3 If the Charity receives a request for information which relates to the Council or to this Agreement to which FoIA applies or might apply it shall:

15.3.1 transfer to the Council the request for information as soon as practicable and in any event within 2 (two) Business Days of receiving it;

15.3.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 (five) working days (or such other period as the Council may reasonably specify) at the Council's request; and

15.3.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the request for information within the time for compliance set out in the FoIA.

15.4 The Charity shall not (under any circumstances) respond directly to a request for information unless expressly authorised to do so by the Council.

15.5 Notwithstanding any other provision of this Agreement, the Charity hereby gives consent for the Council to publish this Agreement in its entirety (subject to the redaction of any information which is exempt from disclosure in accordance with the provisions of FoIA to the general public in compliance with its statutory duty under the Transparency Requirements provided that no information that is commercially sensitive to the Charity shall be published and that in publishing the information the Council shall comply with the Data Protection Legislation.

16. [DATA PROTECTION]

16.1 The Council undertakes on or before the Transfer Date to disclose to the Charity in relation to any transferring Protected Data, the purpose(s) for which it collected the Protected Data, and clear records of:

16.1.1 all consents to the Processing of such Protected Data (if any) which have been obtained from the Data Subjects;

16.1.2 all privacy statements (or policies/notices) provided to the Data Subjects by the Council; and

- 16.1.3 all consents to the receipt of direct marketing by email or text, phone or other electronic means obtained from the Data Subjects and any ‘suppression lists’ of Data Subjects who have indicated that they do not wish to receive direct marketing communications from the Council.
- 16.2 The Council warrants that any Protected Data provided to the Charity pursuant to the Transfer has been collected and processed in compliance with the Data Protection Legislation.
- 16.3 As soon as is practicable after the Transfer Date and in any event within 30 days of the Transfer Date, the Charity shall notify all Data Subjects that the Charity is now the Controller of their Protected Data and shall provide them with all information which it is required to provide to them under Article 14 of the GDPR.
- 16.4 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.
- 16.5 Both the Council and the Charity 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.
- 16.6 The Council shall indemnify the Charity against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Charity in connection with or as a result of the Charity’s breach of the Data Protection Legislation and/or this clause 16. Notwithstanding any other provision in this Agreement, nothing in this Agreement shall exclude or limit the liability of the Council under the indemnity in this clause 16.6.]

17. **NOTICES**

17.1 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:

17.1.1 delivered personally; or

17.1.2 delivered by commercial courier; or

17.1.3 sent by pre-paid first-class post, registered post or recorded delivery.

17.2 The addresses for service of notice are:

17.2.1 **Council**

Address: *[Insert address]*

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

17.2.2 **Charity**

Address: [Insert address]

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

17.3 A notice is deemed to have been received:

17.3.1 if delivered personally, at the time of delivery; or

17.3.2 if delivered by commercial courier, at the time of signature of the courier's receipt; or

17.3.3 if sent by pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or

17.3.4 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.

17.4 It is sufficient, to prove service by post, that the envelope containing the notice was properly addressed and posted.

17.5 A notice under this Agreement will not be valid if sent by e-mail.

18. **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.

19. **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.

20. **ACKNOWLEDGEMENT**

20.1 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.

20.2 Nothing in this Clause shall limit or exclude any liability for fraud or fraudulent misrepresentation.

21. **SEVERANCE**

21.1 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.

21.2 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.

21.3 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.

21.4 This Agreement (other than obligations that have already been fully performed) remains in full force after the Transfer Date.

22. **ASSIGNMENT**

22.1 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.

22.2 This Agreement shall be binding on, and shall enure to the benefit of, the Council and the Charity and their respective successors and permitted transferees and assigns (if any).

23. **RELEASES AND WAIVERS**

23.1 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.

23.2 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.

23.3 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.

24. **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.

25. **CHARITIES ACT 2011**

The Premises will, as a result of the Leases be held by The Royal Pavilion and Museums Trust, a non-exempt charity, and the restrictions on dispositions imposed by sections 117 to 121 of the Charities Act 2011 will apply to the Premises (subject to section 117(3) of that Act).

26. **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.

27. **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.

28. **GOVERNING LAW AND JURISDICTION**

28.1 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.

28.2 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 CHARITY

acting by

Name of Authorised Signatory: (a Director)

Signed:

in the presence of:

Witness signature:

Witness name:

Witness occupation:

Witness address:

.....

Schedule 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”	means 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”	means 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 Charity in the Fund’s standard form [with effect from] the Transfer Date or such other form as the Parties may reasonably agree;
“Agreement”	means this agreement (including the Schedules);
“Appropriate Pension Provision”	[in respect of the Eligible Employees who are active members of (or are eligible to join the Fund immediately before the Transfer Date means continued membership or continued eligibility for membership of the LGPS as appropriate or (b) membership or eligibility for membership of a pension scheme which is certified by the Government Actuary’s Department (GAD) as being broadly comparable to the terms and value of the LGPS];
“Back Office Services Agreement”	means the agreement to be entered into for the provision of back office services to the Charity by the Council;
“Business Day”	means 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;
“Collection IPR”	has the meaning given to it in Schedule 1 of the Service Contract;

“Confidential Information”	<p>means any information which ought reasonably to be considered confidential however conveyed or presented:</p> <ul style="list-style-type: none"> - 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; - together with all information derived by the receiving Party from any such information; <p>and any other information clearly designated by the providing Party as being confidential to it (whether or not it is marked “confidential”);</p>
“Contract(s)”	<p>means 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 3Part 1 but excluding the Excluded Contracts set out in Schedule 3Part 2;</p>
“Controller”	<p>has the meaning given to it in the relevant Data Protection Legislation</p>
“Council Background IPR”	<p>has the meaning given to it in Schedule 1 of the Service Contract;</p>
“Council Service IPR”	<p>has the meaning given to it in Schedule 1 of the Service Contract;</p>
“Council Trade Marks”	<p>has the meaning given to it in Schedule 1 of the Service Contract;</p>
“Data Subjects”	<p>means the individuals whose Protected Data is being transferred from the Council to the Charity in connection with this Agreement;</p>
“Data Protection Legislation”	<p>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</p>

	Personal Data and privacy, including statutory instruments (and in each case any re-enactment or amendment);
“Disclosed”	means 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”	means any dispute, claim or difference arising out of or relating to this Agreement;
“Eligible Employees”	[means (a) the Employees who are active members of (or are eligible to join) the Fund immediately before the Transfer Date and (b) any other individuals nominated by the Charity with the agreement of the Council];
“Employee Liability Information”	means 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”	means those assets related to the Undertaking that will not transfer under this Transfer Agreement (if any) as more specifically set out in Schedule 4Part 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 Charity under this Agreement, as set out at Schedule 3Part 2;
“Fund”	means the section of the LGPS referred to as the East Sussex Pension Fund or any successor pension fund for the purposes of the LGPS Regulations;
“Future Liabilities”	means 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”	means 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”	means 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;
"Initial Contribution Rate"	[means [per cent (x.x%)] of the Eligible Employees Pensionable Pay or such alternative percentage employer contribution rate as is notified to the Charity on or around the Transfer Date by the Administering Authority];
“Insured Liabilities”	means all liabilities of the Council to the extent they are indemnified under any insurance policy of the Council;
“Intellectual Property Rights”	means 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”	means 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”	means 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;
“Leases”	[means the leases to be entered into by the Parties on the Transfer Date, (and “ Lease ” means any one of such Leases)];

“LGPS”	means the Local Government Pension Scheme;
“LGPS Regulations”	means the Local Government Pension Scheme Regulations 2013 as amended, re-enacted or superseded from time to time;
“Loss” or “Losses”	means 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”	means any matter or series of connected matters which together, or above, would, or could reasonably be expected to result in a Loss to the Charity in excess of £5,000, or have a material negative impact on its reputation;
“Material Transferring Asset”	[means any Transferring Asset which either has a value in excess of £5,000, or is identified by the Charity in writing as otherwise material to the delivery of the Services];
“Other Documentation”	means the Services Contract, the Back Office Services Agreement and the Leases;
"Pensionable Pay"	[shall have the same meaning as Pensionable Pay as defined in the LGPS Regulations];
“Personal Data”	shall have the meaning given to it in the relevant Data Protection Legislation;
“Personnel Files”	means 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”	means the premises listed in Schedule 7;
“Processing”	has the meaning given to it in the relevant Data

	Protection Legislation;
“Protected Data”	means any Personal Data which is required for the ongoing operations of the Undertaking, and which is being transferred from the Council to the Charity in connection with this Agreement;
“Regulations”	means 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 Charity;
“Services Contract”	means the contract for the provision of the Services by the Charity entered into between the Council and the Charity, if any such agreement is entered into in relation to the Transfer;
“Transfer”	means the transfer of the Undertaking from the Council to the Charity pursuant to this Agreement;
“Transfer Date”	means [<i>Insert date on which Undertaking actually transfers</i>];
“Transferring Assets”	means those assets owned or leased to the Council and required by the Charity for the purposes of enabling it to operate the Undertaking including, without limitation, those set out in Schedule 4Part 1 but excluding the Excluded Assets set out in Schedule 4Part 2;
“Transparency Requirements”	has the meaning given to it in Schedule 1 of the Service Contract;
“Undertaking”	means the business activities transferring to the Charity from the Council under this Transfer Agreement, including the Services (as relevant to the Transfer) and the Employees, Transferring Assets and Contracts as are relevant for the delivery of the Services; and
“Warranties”	means 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

Part 1 – Contracts and Grants to be assigned on Transfer

Parties	Subject	Start Date	End Date

Part 2 – Excluded Contracts

Parties	Subject	Start Date	End Date
CTS	Electrical testing (EICR) - fixed wiring installations		
BHCC	Utilities - Electricity		
BHCC	Utilities- Water		
BHCC	Utilities - Gas		
Certas Energy	Utilites - Heating oil (HMAG)		

Schedule 4 - Assets

Part 1 – Transferring Assets

1. Asset List

1.1 All equipment including IT, furniture, and tools 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 (including photocopiers, printers, desks, tables, chairs, filing cabinets etc.) as listed in the Inventory enclosed in Annex B, shop stock and other stock, an allowance for working capital, and RPM reserves held by the Council.

1.2 All goodwill associated with the operation of the Undertaking.

All Protected Data.

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

Part 2 – Excluded Assets

2. Asset List

2.1 *[Insert]*

3. Inventory

3.1 *[Insert]*

Part 3 – Consents and Licences

1. List

1.1 *[Insert]*

Annex A:

ISBN	Author/s	Title	Pub Date	pages	note	Status
09748723212	Jessica Rutherford	Pavilion Guide Book	22.11.1994			OUT OF PRINT
094872322X	Janita Bagshawe	Children's Guide to the Royal Pavilion	28.11.1994			OUT OF PRINT
0948723238	Louise Tythacott	Hold: acquisitions, representations, perceptions,	13.01.1995			OUT OF PRINT
0948723246	Francis Rose	Hold: Habitats and Vegetation of Sussex	6.3.1995			OUT OF PRINT
0948723254	David Beevers (Editor)	Brighton Revealed Catalogue	25.8.1995			OUT OF PRINT
0948723262	Donald, R. Benewick (Editor)	Belief in China: The Art of Men and Gods	31.08.1995			OUT OF PRINT
0948723279	via Camay C-C	The Brighton Panorama	14.3.1997		RPMAG Repro of W.H. Mason's original publication of 1833	OUT OF PRINT

948723270	Elizabeth Dell and Karel Arnaut (Editors)	Bedu is my Lover, Five Stories About Bondoukou and Masquerading	16.4.1996	Published by the Green Centre for Non Western art at the Royal Pavilion	IN STOCK-low stock
0948723289	Stella Beddow	Art Deco Fans	7.1.1997		In Stock-for disposal
0948723300	Andrew Barlow	The Prince and His Pleasures: Satirical Images of George IV and His Circle	12.5.1997		OUT OF PRINT
0948723327	Janita Bagshaw	Teachers Book: of Brighton as a resource the dev.	Apr-96		OUT OF PRINT
0948723319	Gerald Legg	History of Sussex Wildflowers	May-97		OUT OF PRINT
0948723343	L. Theophilus/ Janita Bagshawe	Tadek Beutlich: Off the Loom!	Jun-97		OUT OF PRINT
0948723351	Stuart Morgan (Author), Nicola Coleby (Editor)	Lure: New Paintings and Other Work by Suzanne Hutchinson - 'Ecstatic Moments'	5.8.1997		OUT OF PRINT
094872336X	Nicola Coleby (Editor)	A Surreal Life: Edward James, 1907-1984	6.11.1997		OUT OF PRINT
0948723386	Nicola Coleby (Editor)	A Surreal Life: Edward James, 1907-1984	30.1.1998	paperback edition	OUT OF PRINT
0948723378	Brighton & Hove Council	Brighton, Hove and Around Sussex	14.1.1998		OUT OF

PRINT

0948723394	Matthew (Editor), Matthew (Editor)	Thomas Hodd	Wildlife for People: A Wildlife Strategy for Brighton and Hove	May-98		Brighton & Hove Council, Booth Museum of Natural History	OUT OF PRINT
0948723408	Susan Picton (Author), Curtis (Illustrator), Eliz Dell	Helena	Access Africa Resource Pack: African Collections at Brighton Museum and Art Gallery	Jun-98			OUT OF PRINT
0948723416	Camay C-C		A Time Remembered	3.7.1998			OUT OF PRINT
0948723424	Camay C-C		Royal Pavilion Construction kit	3.7.1998			OUT OF PRINT
0948723432	Jackie Binns (Author), Jones Ed	,Mike	South East Arts Craft Collection: 1996-1997	4.9.1998	38	Hove Museum & Art Gallery	OUT OF PRINT
0948723440	Jackie Binns (Author), Jones Ed	,Mike	Hove Museum and Art Gallery, Contemporary Craft Collection		40	Hove Museum & Art Gallery	OUT OF PRINT
0948723459	David Beevers (Author)		Preston Manor, Brighton	Jun-99	60	New edition in stock	OUT OF PRINT
0948723467	Nicola Coleby (Editor)		Sculpture catalogue	1.8.1999			OUT OF PRINT
0948723475	Judy (Author), Sexton (Illustrator)	Pennington Julia Pannett -	George the Pavilion Cat	21.2.2000	32	New edition in stock	OUT OF PRINT

0948723483	Camay Chapman-Cameron, Brighton & Hove City Council	Full Local Transport Plan: 2001/02-2005/06	31.8.2000			OUT OF PRINT
09487234891	Nicola Coleby and Helen Grundy (Editors)	Kiss & Kill: Film Visions of Brighton	4.9.2001			OUT OF PRINT
0948723505	Stella Beddow (Author)	The Brighton and Hove Collections: 20th Century Decorative Art and Design	27.3.2002		New edition in stock (low stock)	OUT OF PRINT
0948723513	Andrew Barlow (Author)	The Brighton and Hove Collections ; Fine Art Highlights	27.3.2002		New edition in stock (low stock)	OUT OF PRINT
0948723521	Matthew Thomas (Editor)	School Wildlife: the Biodiversity of School Grounds in Brighton & Hove	12.6.2003		Brighton & Hove Council, Booth Museum of Natural History	OUT OF PRINT
094872353X	Michael Jones	An Introduction to The Royal Pavilion's Gardens	19.8.2003		New edition in stock (Set For A king)	OUT OF PRINT
0948723548	Jessica Rutherford (Author)	A Prince's Passion: The Life of the Royal Pavilion	5.9.2003	192	New edition out of stock	OUT OF PRINT
0948723556	Debra Rooney (Author) Camay C-C, Mike Jones, et al.	The Young Person's Guide to The Royal Pavilion	3.9.2003	34	New edition out of stock	OUT OF PRINT
0948723564	Colin Pratt - G. Legg	A Modern Review of the History of the Stag Beetle (Lucanus Cervus L) in Great Britain		64		OUT OF PRINT

0948723572	Suzie Plumb, Nicola Colby (Editors)	Guys 'n' Dolls: Art, Science, Fashion and Relationships	7.3.2005	102		OUT OF PRINT
0948723580	Peta Clancy (Author), Cynthia Troup (Author), Panos A. Ioannou (Author), Grace McQuilten (Author), Helen Mears (Editor)	Visible Human Bodies 2005: An Exhibition of Images by Artist Peta Clancy at Brighton Museum and Art Gallery, 30 April-10 July 2005	8.3.2005	140		OUT OF PRINT
0948723599	Matthew Thomas (Author)	Brighton and Hove Biodiversity Action Plan: School Grounds	18.3.2005	31	Brighton & Hove Council, Booth Museum of Natural History	OUT OF PRINT
0948723602	Rose Collis (Author)	Brighton Boozers: A History of the City's Pub Culture	Aug-05	82		OUT OF PRINT
0948723610	Camay C-C	Juvenile Varieties of Brighton	?	?	Repro of book Drawn, engraved, printed & published by I. Bruce (1831)	OUT OF PRINT
0948723629	Mike Jones (Author)	Set for a King: 200 Years of Gardening at the Royal Pavilion	1.1.2006	192	New edition in stock	OUT OF PRINT
0948723637	Jessica Rutherford (Author)	The Royal Pavilion Brighton: The Palace of King George IV	?	?	Guidebook Eng ed New edition in stock	OUT OF PRINT

0948723645	Jessica Rutherford (Author)	Le Pavillon Royal Brighton. Le palais de Georges IV	5.8.2005	80	Guidebook French ed. New edition in stock	OUT OF PRINT
0948723653	Helen Mears	Twelve'	30.8.2005			OUT OF PRINT
0948723661	Eleanor THOMPSON (Author)	A Family Of Fashion: The Messels: Six Generations Of Dress	6.9.2005	192		OUT OF PRINT
094872367x	Stephen Calloway (Author)	Rex Whistler: The Triumph of Fancy	28.2.2006	96		OUT OF PRINT
0948723688	Jessica Rutherford (Author)	Der Konigliche Pavilion'	20.6.2006	80	Guidebook German ed. New edition in stock	OUT OF PRINT
9780948723704	Gillian Perry (Author), Mac Giolla Leith, Caoimhin (Author), Nicola Coleby (Editor)	Alice Maher: Natural Artifice	Dec 18 2006	48	First 13 digit ISBN used-changed from 10 digit 0948723696 (deleted)	OUT OF PRINT
9780948723711	David Beevers (Editor)	Chinese Whispers: Chinoiserie in Britain 1650-1930	Oct 2 2007	144		OUT OF PRINT
9780948723728	Amy de la Haye	Land Girls: Cinderellas of the Soil	Aug-09	64	with Sussex land Army Map insert	In Stock-for disposal

9780948723735	Martin Pel	Dress for Excess: Fashion in Regency England	15.3.2011	Mini guide 8 panel		OUT OF PRINT
9780948723742	David Mellor	Radical Bloomsbury	15.3.2011			OUT OF PRINT
9780948723759	David Venham (Author)	Harpacticoid Copepods from the Sussex Coast (eastern English Channel): Records 1992-1997	14.11.11	133	Booth Museum of Natural History	OUT OF PRINT
9780948723766	David Beevers (Author)	Charlotte, the Forgotten Princess	21.2.12	Mini guide 8 panel		IN STOCK
9780948723773	Martin Pel, Barbara Hulanicki	Biba and Beyond: Barbara Hulanicki	Sep-12	Mini guide 8 panel		IN STOCK
9780948723780	Stella Keen, Jenny Lund	Jeff Keen Catalogue	Feb-12		Paid for and printed by Stella Keen Via Fat Flyers	OUT OF PRINT
9780948723797	Alexandra Loske	Regency Clour and Beyond, 1785 -1835	Jun-13	Mini guide 8 panel		OUT OF PRINT

9780948723803	Ian Warrell	Turner in Brighton	Oct-13	Mini guide 8 panel	IN STOCK
9780948723810	Stella Beddoe	Subversive Design	Nov-13	Mini guide 8 panel	IN STOCK
9780948723827	Alexandra Loske-Page	Exotic Creatures	Nov-15	Mini guide 8 panel	IN STOCK
9780948723834	Tracy Anderson	Backstairs at the Royal Pavilion	Oct-17	Mini guide 8 panel	IN STOCK
9780948723858	David Beevers	The History and Restoration of the Saloon at the Royal Pavilion, Brighton	Sep-18	Mini guide 8 panel	IN STOCK
9780948723858	David Beevers	The Royal Collection mini Guide (working title)		Mini guide 8 panel	Not Yet Publishe d

Annex B: Inventory

[To enclose]

Schedule 5 — [Disclosure]

Part 1 – [Emails sent by the Council as part of the due diligence process]

[Further disclosure received prior to Transfer Date to be populated]

Schedule 6 Employees and Pensions

Part 1 Employees

1. PROVISION OF STAFFING INFORMATION

- 1.1 The Council represents, warrants and undertakes to the Charity that:
- 1.1.1 no persons are employed or engaged in the Undertaking other than the Employees;
- 1.1.2 save as set out in Appendix 1 of this Schedule 56 none of the Employees has given or received notice terminating their employment or engagement;
- 1.1.3 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 Charity;
- 1.1.4 no Employee has a statutory or contractual entitlement to notice of the termination of their employment or engagement which exceeds 3 months;
- 1.1.5 save as set out in Appendix 1 of this Schedule 76, 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;
- 1.1.6 in relation to each of the Employees the Council has:
- (a) in all material respects, maintained adequate and suitable records regarding the service of each of the Employees; and
 - (b) 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;
 - (c) complied with all relevant orders and awards made under any statute affecting the conditions of service of each of the Employees;
- 1.1.7 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 Charity is likely to lead to any industrial dispute;
- 1.1.8 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
- 1.1.9 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.

- 1.2 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 Charity with such additional information in relation to the Employees as the Charity shall reasonably request.
- 1.3 The Council shall notify the Charity of any material change to the information provided to the Charity pursuant to this paragraph 1 above as soon as is reasonably practicable, and shall upon request by the Charity meet the Charity to discuss the information disclosed.
- 1.4 The Council undertakes to the Charity that during the period from the date of this Agreement up to and including the Transfer Date:
- 1.4.1 the Council shall enable and assist the Charity and such other persons as the Charity may reasonably determine to communicate with and meet the Employees and their trade union or other Employee representatives;
- 1.4.2 the Council shall not, without the prior written consent of the Charity, such consent not to be unreasonably withheld:
- (a) 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 Charity);
 - (b) 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
 - (c) 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 Charity from and against all Losses incurred by the Charity 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 Charity; 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 Charity from and against all Losses incurred by the Charity in connection with or as a result of a breach of its obligations under this paragraph.

2. **APPORTIONMENTS**

- 2.1 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 Charity against all Losses incurred by the Charity in respect of the same.
- 2.2 The Charity 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 Charity on a continuing basis against Losses suffered or incurred by the Charity 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 3 shall be limited to paying the same proportion of the total redundancy costs incurred by the Charity 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.]

4. **INFORMATION AND CONSULTATION**

- 4.1 The Charity shall comply with its obligations under Regulation 13 of the Regulations during the period prior to the Transfer Date.
- 4.2 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 Charity to comply with its duties under Regulation 13 of the Regulations.

5. **INDEMNITIES**

- 5.1 The Council shall indemnify the Charity against all Losses incurred by the Charity in connection with or as a result of:
- 5.1.1 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 the period before the Transfer Date, save to the extent that the claim arises from a wrongful act or omission of the Charity;

- 5.1.2 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 Charity to comply with its duties under Regulation 13(4) of the Regulations (unless such failure by the Charity is caused by the Council's failure to provide information to the Charity);
- 5.1.3 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 Charity); and
- 5.1.4 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 Charity 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 Charity to comply with its obligations under the Regulations.
- 5.1.5 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:
- (a) 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
 - (b) 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 Charity, 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;
- 5.1.6 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.
- 5.2 The Charity shall indemnify the Council against all Losses incurred by the Council in connection with or as a result of:
- 5.2.1 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 Charity 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, and save in each case to the extent that the claim is subject to the provisions of paragraph **Error! Reference source not found.** of Part 2 of Schedule 5,;

5.2.2 any failure by the Charity to comply with its obligations under Regulation 13(4) of the Regulations.

Appendix 1 to Part 1 of Schedule 6 - Employee Liability Information

- Details of grievances and or disciplinarys 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.
[]

Part 2 – Pensions

[Note on Pensions drafting: the drafting of these sections has started but requires further negotiations and has therefore not been included in this draft]

Schedule 7 – Premises

Part 1 – Leases

1. [Royal Pavilion and gardens];
2. [Brighton Museum and Art Gallery];
3. [Booth Museum of Natural History];
4. [Hove Museum and Art Gallery];
5. [Preston Manor];
6. [Old Court House, 118 Church Road];
7. [4/5 Pavilion Buildings];
8. [Unit B5, Meridian Industrial Estate, Peacehaven, East Sussex (“**UB5**”)].