

Dated

2017

Ipswich Sports Club

- and -

Ipswich Sports Club

Transfer from a community amateur sports club to a charitable incorporated organisation

gotelee
SOLICITORS

**31-41 Elm Street, Ipswich, Suffolk, IP1 2AY
6 Church Street, Hadleigh, Suffolk, IP6 5DU
97 Hamilton Road, Felixstowe, Suffolk, IP11 7AH**

PS/41507.27.2

Date:

2017

Parties:

- (1) The individuals whose names and addresses are set out in Schedule 1 in their capacity as members of the council for the time being of Ipswich Sports Club, carried on at Henley Road, Ipswich IP1 4NJ (“the CASC”) (“the CASC Council Members”)
- (2) Ipswich Sports Club, of Henley Road, Ipswich IP1 4NJ with Registered Charity Number: [] (“the CIO”)

Background:

- (A) The CASC Council Members consider that the purposes of the CASC would be best achieved through the transfer of the undertaking of the CASC to the CIO and the CASC has promoted the establishment of the CIO for this purpose.
- (B) The CASC Council Members have resolved, pursuant to the CASC Constitution, to effect such transfer on the terms of this deed [and have delegated authority to complete this deed (and any ancillary documents) to any two trustees pursuant to clause 5.6 of the CASC Constitution].
- (C) The trustees of the CIO have resolved, pursuant to its charitable objects, to accept such transfer on such terms.

It is hereby agreed as follows:

1. Interpretation

In this deed, the following words and phrases shall have the following meanings:

“Accounts”	the last accounts of the CASC;
“Accounts Date”	31 December;
“Act”	the Charities Act 1993;
“Assets”	all property, title, rights and other assets of the CASC at (and where relevant after) the Transfer Date, as listed in Schedule 2;
“Cash”	all net cash assets of the CASC at the Transfer Date;
“CASC Constitution”	the current constitution of the CASC adopted on 30 June 2016;
“CASC Council Members Warranties”	the warranties in respect of the CASC Undertaking provided by the CASC Council Members to the CIO under Clause 6 and set out in Schedule 5;
“CASC Undertaking”	the Assets, the Liabilities, the Employees and the operations and activities of the CASC collectively as a

	going concern;
“Charitable Objects”	the charitable objects of the CIO;
“CIO Warranties”	the warranties in respect of the future application of the Assets provided by the CIO under Clause 3;
“Contracts”	all current contracts and residual contractual commitments and obligations of the CASC at the Transfer Date, excluding the Employee Contracts;
“Debts”	all debts owed to the CASC at the Transfer Date;
“Employees”	all employees of the CASC at the Transfer Date as listed in Schedule 3;
“Employee Contracts”	the employment contracts between the CASC and the Employees at the Transfer Date;
“Equipment”	all equipment, furniture, furnishings, stock and other personal property of the CASC at the Transfer Date;
“Excluded Liabilities”	all liabilities of the CASC (if any) arising as a result of any act or omission of any of the CASC Council Members, which such trustee(s) knew to be a breach of trust or breach of duty, or in respect of which such trustee(s) recklessly disregarded whether such act or omission was a breach of trust or breach of duty or not;
“Freehold Premises”	the freehold premises detailed in Part 1 of Schedule 4;
“Further Indemnity”	the further indemnity in respect of Excluded Liabilities provided by the CIO to the CASC Council Members under Clause 5;
“Goodwill”	the goodwill in relation to the CASC Undertaking, including the exclusive right to carry on the CASC Undertaking and be recognised as the successor to the CASC;
“Indemnity”	the indemnity in respect of the Liabilities provided by the CIO to the CASC Council Members under Clause 4;
“IP Rights”	all rights to use names, logos, marks and domain names, and all copyrights, database rights, know-how and other intellectual property rights of the CASC at the Transfer Date;
“Landlord”	the immediate landlord under a Lease;
“Liabilities”	all liabilities of the CASC except the Excluded Liabilities;
“Pension Arrangements”	the pension arrangements in place for the Employees (and ex-employees of the CASC) at the Transfer Date;
“Premises”	the Freehold Premises;
“Software Rights”	all rights of the CASC at the Transfer Date in respect of computer software used by the CASC in relation to the CASC Undertaking whether granted by licence or

6.1.3 to the best of his/her personal knowledge and belief; and

6.1.4 without any obligation to make any personal special enquiry.

6.2 The CASC Council Members shall not be liable for any claim under the CASC Warranties unless such claim has been notified in writing to the CASC Council Members summarising the nature of the Claim (in so far as it is known to the CIO) and, as far as is reasonably practicable, the amount claimed on or before the first anniversary of the Transfer Date.

7. Contracts and Software Rights

Where the benefit of a Contract or any Software Right cannot be assigned to the CIO without the consent of a third party or except by an agreement of novation:

7.1 the CASC Council Members and the CIO shall use their reasonable endeavours to obtain any such consent or novation;

7.2 unless and until any such consent is obtained or any such novation is effected the CIO will, to its own benefit, perform on behalf of the CASC (at the CIO's expense) all the obligations of the CASC in relation to such Contract or Software Right;

7.3 to the extent that the terms of the Transfer may or will result in any breach of the provisions of a relevant Contract or software licence, the CIO shall take responsibility for any such breach and any liabilities arising from it shall be covered by the Indemnity.

8. Premises

8.1 The CASC Council Members and the CIO shall ensure that all required further formalities in relation to the Premises (including legal transfers from nominee trustees of legal title) are promptly effected.

8.2 The Premises are held by or on trust for the CASC.

8.3 The Premises will as a result of the transfer pursuant to this agreement be held by the CIO, and the restrictions on disposition imposed by section 36 of the Act will apply to the Premises subject to section 36(9) of the Act.

9. Pension Arrangements

The CASC Council Members shall procure any changes necessary to the Pension Arrangements to ensure their continuity in the CIO and to include the Employees and future employees of the CIO.

10. Completion

10.1 On the Transfer Date, completion of the Transfer shall take place and the CASC Council Members shall deliver to the CIO:

10.1.1 the tangible Assets referred to in Schedule 2;

10.1.2 copies of all required consents obtained in respect of the transfer of Assets;

- 10.1.3 all further transfers, assignments and other documents necessary to perfect the transfer of all the Assets other than Assets passing by physical delivery, in such form as the CIO may reasonably request, together with all available documents of title relating to such Assets;
- 10.1.4 all records of National Insurance and PAYE relating to the Employees duly completed and up to date;
- 10.1.5 all other material books, records and documents of the CASC, relating to the CASC Undertaking.
- 10.2 As soon as reasonably practicable following the Transfer Date the CIO shall notify all necessary third parties in writing of the completion and effect of this Transfer, including but not limited to (as applicable) the Employees, lessees, accountants, banks, insurers, contracting third parties and volunteers.

11. VAT

The parties shall use all reasonable endeavours to procure that the Transfer is deemed to be a transfer of a business as a going concern for the purposes of Section 49 of the VAT Act and Regulation 5 of the Value Added Tax (Special Provisions) Order 1995.

12. Employees

- 12.1 The parties agree that the TUPE Regulations apply and accordingly that the employment of all Employees shall be transferred to the CIO with effect from the Transfer Date (subject to the right of any Employee to object to the transfer of their employment pursuant to the TUPE Regulations).
- 12.2 The CIO shall be responsible for all emoluments and outgoings in respect of the Employees (including without limitation all wages, bonuses, commissions, PAYE, National Insurance contributions, pension contributions and otherwise) from the Transfer Date and shall indemnify the CASC Trustees against all liabilities, claims and expenses (including legal expenses) in respect of the same.

13. Further Assurance

- 13.1 The CASC Council Members and the CIO shall do and execute, and shall use their respective best endeavours to procure that any other necessary parties do and execute all such further acts, things, deeds and documents as may be necessary to give effect to the terms of this deed.

14. Insurance

- 14.1 The CASC Council Members undertake to the CIO that they will notify the interest of the CIO to the relevant insurers and seek to transfer the benefit of existing insurance policies to the CIO.
- 14.2 The CIO will use its reasonable endeavours to ensure that the policies of insurance effected by it cover the liability of the past, present and future members of the CASC Council as well as that of the CIO.

15. Access to Records

The CIO shall provide reasonable access to records of the CASC which are transferred under this deed upon reasonable request to any of the CASC Council Members.

16. Notices

All notices in relation to this deed shall be in writing and shall be deemed to have been duly given if personally delivered, faxed, e-mailed or mailed (first class postage pre-paid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if faxed or e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

17. Variation

No variation of this deed shall be effective unless made in writing signed by or on behalf of the parties.

18. Entire Agreement

This deed, together with any other agreements or documents referred to herein, comprises the whole agreement between the parties in relation to the transfer of the Charitable Undertaking and supersedes all other prior written or oral agreements.

Schedule 1

Names and addresses of the CASC Council Members

Schedule 2

Assets

1. the Cash;
2. the Debts;
3. the Equipment;
4. the Goodwill;
5. the IP Rights;
6. the Software Rights;
7. the Freehold Premises (pursuant to required land transfers);
8. the benefit (subject to the burden) of the Contracts;
9. all other assets (if any) of whatever nature owned by the CASC at the Transfer Date.

Schedule 3

Employees

[Insert details]

Schedule 4

Premises

Part 1

Freehold Premises

[Insert details]

Schedule 5

CASC Trustee Warranties

1. All outstanding liabilities of the CASC in relation to the Undertaking and relating to the period prior to the Transfer Date have been duly settled by the CASC or have been disclosed to the CIO.
2. At the Transfer Date the CASC through the CASC Council Members owned absolutely all its assets (including without limitation the IP Rights and the Software Rights), except as disclosed to the CIO.
3. At the Transfer Date no third party had any rights whether as licensee or otherwise in respect of any of the IP Rights or the Software Rights, (except as disclosed to the CIO).
4. From the Accounts Date to the Transfer Date the CASC continued the CASC Undertaking in the ordinary and normal course and did not do or omit to do anything which might have materially and adversely affected the standing or reputation of the CASC or the CIO's willingness to enter into this deed.
5. At the Transfer Date the CASC was not engaged in any litigation or arbitration proceedings as claimant or defendant and there were no such proceedings pending either by or against the CASC.
6. At the Transfer Date there was in respect of the CASC Undertaking no outstanding guarantee or agreement for indemnity or for suretyship by or for the accommodation of the CASC Undertaking otherwise than as given by the CASC Trustees.
7. At the Transfer Date the CASC was not involved in any contract of an unusually onerous nature.
8. The accounts to the Accounts Date:
 - (i) give a true and fair view of the financial position of the affairs of the CASC and the CASC Undertaking;
 - (ii) comply with the then current statements of recommended accounting practice applicable to a community amateur sports club;
 - (iii) disclose all the assets and liabilities (including contingent, unquantified or disputed liabilities) of the CASC Undertaking as at the Accounts Date.
9. There was no substantial deterioration in the state of the Charitable Undertaking between the Accounts Date and the Transfer Date.
10. The CASC is registered for VAT purposes.
11. No third party has any rights as a lessee or licensee of the CASC in respect of any of the Premises except as disclosed to the CIO.
12. [The CASC has made no election (having effect under paragraph 2 of Schedule 10 to the VAT Act) to waive an exemption (under item 1 Group 1 of Schedule 9 to the VAT Act) in respect of any Premises leased or licensed to any third party so that it may charge VAT on rent.]

In witness whereof this agreement has been executed as a deed by the parties and delivered by them on the date shown above.

[This Deed is executed on behalf of the CASC Council Members by [] and [], two of their number, under an authority conferred on them by the CASC Constitution and the said signatories are also signing personally and as agents of the non-signatory CASC Council Members in respect of the provision of the CASC Trustee Warranties.]

SIGNED as a deed)
by the said [Name of signing council member])
in the presence of:)

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

SIGNED as a deed)
by the said [Name of signing council member])
in the presence of:)

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:

Executed as a deed by IPSWICH SPORTS CLUB
Charitable Incorporated Organisation acting by
[NAME OF FIRST CHARITY TRUSTEE SIGNING] [SIGNATURE OF CHARITY
and [NAME OF SECOND CHARITY TRUSTEE TRUSTEE] OF CHARITY
SIGNING], two of its charity trustees.

Charity trustee

.....
[SIGNATURE OF CHARITY
TRUSTEE] OF CHARITY
TRUSTEE]

Charity trustee