

**Dated**

**The National Council of The Football Supporters' Federation**

**- and -**

**The Unified Football Supporters' Organisation Limited**

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**Transfer of Undertaking**

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## Transfer of Undertaking

**Date:**

**Parties:**

- (1) The Football Supporters' Federation ("FSF") acting by the individuals whose names and addresses are set out in Schedule 1 in their capacity as National Council members for the time being ("National Council Members")
- (2) The Unified Football Supporters' Organisation Limited  
Registered Office: 1 Ashmore Terrace, Stockton Road, Sunderland, Tyne and Wear, SR2 7DE  
Registered Company Number: 11660866  
("the Company")

**Background:**

- (A) By resolutions passed at general meetings on 28 July 2018 and 22 November 2018 the members of FSF:
  - agreed to merge with Supporters Direct ("SD");
  - agreed to carry on the merged business through the Company, the incorporation of which has been promoted by FSF and SD for that purpose;
  - authorised the transfer of the undertaking of FSF to the Company by a transfer agreement.
- (B) The National Council members have resolved to effect the transfer of the assets of FSF to the Company on the terms of this agreement and have delegated authority to complete this agreement (and any ancillary documents) to any two National Council members with a Transfer Date on or before 31 January 2019.
- (C) The directors of the Company have resolved or will resolve to accept the transfer on the terms of this agreement.

**It is agreed as follows:**

### 1. Interpretation

In this agreement, the following words and phrases have the following meanings:

"Assets"	all property, title, rights and other assets of FSF at (and where relevant after) the Transfer Date, as listed in Schedule 2;
"Employees"	all employees of FSF at the Transfer Date as listed in Schedule 3;
"Employee Contracts"	the employment contracts between FSF and the Employees at the Transfer Date;
"Excluded Liabilities"	all liabilities of FSF (if any) arising as a result of any act

	or omission of any of the National Council Members, which they knew to be a breach of trust or breach of duty, or in respect of which they recklessly disregarded whether the act or omission was a breach of trust or breach of duty or not;
“Indemnity”	the indemnity in respect of the Liabilities provided by the Company to the National Council Members under paragraph 3;
“Landlord”	the immediate landlord under a Lease;
“Leasehold Premises”	the premises occupied by FSF under the Leases;
“Leases”	the leases details of which are set out in Schedule 4;
“Liabilities”	all liabilities of FSF except the Excluded Liabilities;
“Pension Arrangements”	the pension arrangements in place for employees and ex-employees of FSF at the Transfer Date;
“Transfer”	the transfer of FSF’s undertaking from FSF to the Company pursuant to this agreement;
“Transfer Date”	midnight on [ insert date ];
“TUPE Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

**2. Transfer of Assets**

In consideration for the Indemnity, the National Council Members:

- 2.1 transfer to the Company, as from the Transfer Date, such of the Assets in respect of which no further formalities are required to effect the transfer;
- 2.2 undertake to transfer to the Company, on or as soon as reasonably practicable after the Transfer Date, such of the Assets in respect of which further formalities are required to effect such transfer.

**3. Indemnity**

In consideration for the Transfer, the Company undertakes to the National Council Members, from the Transfer Date, to be responsible for and to promptly discharge all the Liabilities and the Company shall indemnify and hold harmless the National Council Members against any liabilities arising in respect of any breach or non-performance of this undertaking.

**4. Premises**

- 4.1 The National Council Members and the Company shall ensure that all required further formalities in relation to the Leasehold Premises (including legal transfers from nominee trustees of legal title) are promptly effected.
- 4.2 Unless and until the further formalities referred to in paragraph 4.1 are effected the provisions of Schedule 4 shall have effect.

**5. The Football Supporters Federation Services Limited**

The National Council Members shall procure that the nominee holders of the shares in the Football Supporters Federation Services Limited shall execute stock transfer forms in favour of the Company.

## **6. Pension Arrangements**

The National Council Members and the Company shall use all reasonable endeavours to procure any changes necessary to the Pension Arrangements to ensure their continuity in the Company and to include employees and future employees of the Company or to make suitable alternative arrangements.

## **7. Completion**

7.1 On the Transfer Date, completion of the Transfer shall take place and the National Council Members shall deliver to the Company:

7.1.1 the tangible Assets referred to in Schedule 2;

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

7.1.3 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 Company may reasonably request, together with all available documents of title relating to such Assets;

7.1.4 all records of National Insurance and PAYE relating to the Employees duly completed and up to date;

7.1.5 all other material books, records and documents of FSF, relating to its undertaking.

7.2 As soon as reasonably practicable following the Transfer Date the Company shall notify all necessary third parties in writing of the completion and effect of this Transfer, including (as applicable) the Employees, the Landlords, lessees, funders, accountants, banks, insurers, contracting third parties and volunteers.

## **8. 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 VAT purposes.

## **9. Employees**

9.1 The parties agree that the TUPE Regulations apply and accordingly that the employment of all Employees shall be transferred to the Company 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).

9.2 The Company 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 National Council Members against all liabilities, claims and expenses (including legal expenses) in respect of the same.

## **10. Further Assurance**

10.1 The National Council Members and the Company 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 agreement.

**11. Insurance**

11.1 The National Council Members undertake to the Company that they will notify the interest of the Company to the relevant insurers and seek to transfer the benefit of existing insurance policies to the Company.

11.2 The Company will use its reasonable endeavours to ensure that the policies of insurance effected by it cover the liability of the past, present and future National Council Members as well as that of the Company.

**12. Variation**

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

**13. Entire Agreement**

This agreement, together with any other agreements or documents referred to herein, comprises the whole agreement between the parties in relation to the transfer of the FSF's undertaking to the Company and supersedes all other prior written or oral agreements.

**Schedule 1**

**Names and addresses of the National Council Members**

## **Schedule 2**

### **Assets**

1. all net cash assets of FSF at the Transfer Date;
2. all debts owed to FSF at the Transfer Date;
3. all equipment, furniture, furnishings, stock and other personal property of FSF at the Transfer Date;
4. the goodwill of FSF, including the exclusive right to carry on its undertaking and be recognised as the successor to FSF;
5. all investments of FSF at the Transfer Date, excluding the Trading Company Shares;
6. all rights to use names, logos, marks and domain names, and all copyrights, database rights, know-how and other intellectual property rights of FSF at the Transfer Date;
7. all rights of the FSF at the Transfer Date in respect of computer software used by FSF in relation to its undertaking whether granted by licence or otherwise;
8. the Leasehold Premises (pursuant to required legal assignments and/or land transfers);
9. the benefit (subject to the burden) of all current contracts and residual contractual commitments and obligations of FSF at the Transfer Date, excluding the Employee Contracts;
10. the benefit (subject to the burden) of all grants, (non-contractual) funding agreements and other funding commitments of which FSF has the benefit at or after the Transfer Date;
11. all other assets (if any) of whatever nature owned by the FSF at the Transfer Date.

**Schedule 3**  
**Employees**

**[Insert details]**

## Schedule 4

### Leasehold Premises

The following premises held on the following leases

<u>Premises</u>	<u>Date of Lease</u>
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[Insert details]

#### Provisions relating to Leasehold Premises

1. The transfer of the Leasehold Premises is conditional upon any required licence for assignment to the Company from any Landlord but the National Council Members shall allow the Company use and occupation of the same as from the Transfer Date on the terms set out in paragraph 6 of this Schedule.
2. The parties apprehend that if the Landlord's licence for assignment is not forthcoming by the Transfer Date (at which time the Company will take over use and occupation of the Leasehold Premises) such use and occupation may or will be in breach of the terms of the Leases and it is accepted by the Company that it will be responsible therefor and (without prejudice to the generality of paragraph 3 of this agreement) the Company shall indemnify the National Council Members and keep the National Council Members fully and effectively indemnified in respect of all actions, proceedings, demands, payments, claims, damages, losses, costs and expenses howsoever arising as a result of any and every such breach.
3. The transfer of the Leasehold Premises is for the unexpired residue of the term of the Leases and is at the rent reserved and subject to the covenants on the part of the tenant and the conditions which it contains.
4. The Company's right to the benefit of any Leases pursuant to this Schedule shall be in consideration of a covenant on the part of the Company, as from the Transfer Date, to pay the rent reserved by the Leases and to observe and perform the covenants on the part of the tenant and the conditions contained in the Leases and (without prejudice to the generality of paragraph 3 of this agreement) to indemnify the National Council Members and keep the National Council Members fully and effectively indemnified against all actions, proceedings, demands, payments, claims, damages, costs, losses and expenses arising out of or incidental to the breach, non-observance or non-performance of the Company's covenant.
5. The National Council Members shall use all reasonable endeavours to secure the Landlord's consent to the assignment of the Leases and the Company shall co-operate in obtaining the said consent by supplying such information and references as may reasonably be required and by offering to covenant directly with the Landlord, with effect from the Transfer Date, to pay the rent and observe and perform the covenants contained in the Leases.

6. The provisions of this paragraph shall apply to the Leasehold Premises with respect to the period from the Transfer Date to the date upon which the relevant consent is effective (if later):
  - 6.1 The Company may enter and occupy the Leasehold Premises as licensee of the National Council Members and the National Council Members shall hold the Leasehold Premises upon trust for the Company according to the terms of this Schedule;
  - 6.2 Notwithstanding the capacity of the Company as licensee of the National Council Members, with respect to the occupation of the Leasehold Premises, the Company may carry on operations at the Leasehold Premises for its own account;
  - 6.3 The Company shall be responsible for, and if necessary indemnify the National Council Members against, all rates, water rates, insurance premiums and other outgoings of an annual or recurring nature (apportioned on a day to day basis) in respect of the Leasehold Premises and also for all gas and electricity consumed on the Leasehold Premises;
  - 6.4 The Company shall pay to the National Council Members an amount equal to the rent reserved by the Leases as and when the rent falls due from the National Council Members and shall act or conduct itself in such a manner that the covenants (other than for the payment of rent and against alienation without prior consent) on the part of the tenant contained in the Leases are fully observed and performed and shall indemnify (without prejudice to the generality of paragraph 3 of this agreement) the National Council Members and keep the National Council Members fully and effectively indemnified against the breach, non-observance or non-performance of those covenants (including the covenant against alienation without prior consent); and
  - 6.5 The Company shall bear all third party public liability and employer's liability risks attached to the occupation and use of the Leasehold Premises and shall (without prejudice to the generality of paragraph 3 of this agreement) indemnify and keep the National Council Members fully and effectively indemnified against them.

**This agreement has been executed by the parties on the date shown above.**

Executed on behalf of The Football Supporters' Federation by:

SIGNED )  
by [Name] )

SIGNED )  
by [Name] )

EXECUTED by The Unified Football Supporters' Organisation Limited  
acting by:

.....  
**Director**

.....  
**Director/Company Secretary**