

## MONMOUTHSHIRE COUNTY COUNCIL

### MONLIFE – DRAFT HEADS OF TERMS MAY 2018

This document sets out the heads of terms for the proposed establishment of an Alternative Delivery Model (MonLife) for the Council, in relation to the key documents. The memorandum and articles of association for MonLife are dealt with separately. The principle agreements are:

1. Grant Agreement – this sets out the basis of how the Council will fund MonLife and the key outcomes MonLife will seek in return;
2. Leases – sets out the buildings and property which are to be leased and the principle term;
3. Transfer Agreement – what other assets and transfer provisions there are, which only apply at point of transfer;
4. Support Services Agreement – the basis on which the Council will continue to supply services to MonLife.

The tables below set out these key agreements.

#### 1. GRANT MANAGEMENT AGREEMENT

ISSUE	AGREED POSITION
Scope of Services	Management of the facilities, including operation, programming, events, catering, retail, activities, services: <ul style="list-style-type: none"><li>• Leisure</li><li>• Heritage sites</li><li>• Youth service</li><li>• Museum service</li><li>• Outdoor Education</li><li>• Attractions including Shire Hall; Old Station and Caldicot Castle</li><li>• Chepstow TIC</li></ul>
Duty to Co-operate	<p>There is an overarching duty for both parties to work in partnership with each other and to collaborate in delivering the services and the public health responsibilities. The parties agree to act in good faith and cooperate with one another to deliver the agreed common objectives. Monmouthshire County Council (MCC) recognise that MonLife will, through the grant funding, be the key source of these services and sites for the public.</p> <p>This Agreement relates solely to the funding of MonLife's delivery of the Services and management of the Facilities and does not preclude MonLife from entering another arrangement with another organisation to assist MonLife in achieving its charitable objects, provided that arrangement does not have an adverse impact on MonLife's ability to deliver under the Grant Agreement.</p>
Length of Term	<p>The Grant Agreement to be 5 years, with a review of the funding every year (or at other times if agreed by both parties), as set out below</p> <p>Both lease and grant agreement to be terminated if the other one is terminated.</p> <p>To be fixed for each 5 year period of the grant agreement prior to review, which would reflect any efficiencies delivered in the business plan and indexation costs.</p>

ISSUE	AGREED POSITION
Funding & Review of Funding	<p>Funding would be provided quarterly in advance (except Year 1, which is to be agreed subject to business plan)</p> <p>The funding will be renegotiated in accordance with the following process (during every 5 year process)</p> <ul style="list-style-type: none"> <li>• In Year 4 [April] – Council confirms the funding, priorities and areas they wish to fund for the subsequent 5 year period</li> <li>• MonLife prepares a draft 5 year funding proposal in response to priorities by [September] in Year 4</li> <li>• funding proposal and grant of funding discussed between parties</li> <li>• Seek to agree by [December] in Year 4 (15 months prior to end of existing funding period)</li> <li>• If no agreement to future funding then Council voluntary terminates the agreement</li> </ul>
Surplus Share	<p>MonLife will prepare its funding proposal which allows for reserves to be developed over time, which can be used for reinvestment in the services and facilities.</p> <p>Once the reserve has reached its funding proposal level then surpluses over and above an agreed level will be shared between Council and MonLife in the proportion of 50:50</p> <p>The agreed level to be set to incentivise MonLife once the funding proposal has been developed, and would be at a level which is above the funding proposal projections</p>
Insurance	<p>Council responsible for organising and paying for Building Insurance</p> <p>MonLife responsible for organising and paying for Employers Liability, Public Liability, contents, business interruption insurances</p>
Opening Hours	<p>At the start of the Grant Agreement, these will be broadly based upon the existing opening hours and will be responsive to customer needs. MonLife shall review periodically.</p>
Programming and Bookings	<p>Protected bookings to be identified, which could include protection of casual use at certain facilities and other groups rather than purely clubs. Schedule to be developed.</p>
Pricing	<p>The Charity has full discretion to establish fees for the Facilities and Services.</p>
Council Use of Facilities	<p>Four leisure centres and Shire Hall to be emergency rest / care centres and Council to be able to use these centres for use in line with Council's business continuity plan, with compensation being paid for loss of income (mitigate by any cost savings)</p> <p>Four leisure centres required for use at elections and for other meetings with the use to be paid for at the standard rate (or community rate for meetings) Other use will be paid for at prevailing rate</p>
Utilities	<p>Council to take tariff risk, over and above inflation (using CPI) or above an agreed level</p> <p>Payments for increased tariff will only be paid if MonLife has not met their target financial levels in the funding proposal. MonLife to take consumption risk.</p>
Service Development	<p>MonLife responsible for delivery of strategic business plan to optimise business opportunities in response to Council outcomes, corporate plan and</p>

ISSUE	AGREED POSITION
	<p>Public Service Board. Plan produced for 5 year period, reviewed and updated annually. Performance monitored and reported quarterly.</p> <p>Annual outcomes report to be prepared setting out how MonLife has delivered against the evaluation framework and key performance indicators.</p>
Policies and Procedures	MonLife will initially adopt policies and procedures of the Council, but will have the discretion following commencement to review and revise this as it sees fit.
Quality of Service	MonLife will be required to achieve and maintain appropriate quality standards.
Customer Service	MonLife will be required to meet reasonable customer care standards in terms of response times and values.
Health and Safety	MonLife will be responsible for Health and Safety at all facilities.
Marketing and use of Council	MonLife will need to establish its own identity however the Council will still be recognised as a key partner.
Change in Law	<p>General change in Law – MonLife responsibility</p> <p>Specific change in Law – Council responsibility</p>
Monitoring & Performance	<p>MonLife to report on the funding proposal and Council to be able to monitor performance. Reports to be presented in a format to be agreed.</p> <p>Annual review of performance and delivery against outcomes – preparation of funding proposals.</p> <p>MonLife may need to attend Members presentations and meetings.</p>
Transfer of additional services	<p>The parties acknowledge the importance of delivering a range of high quality affordable services to benefit the local community. The Council may wish to explore the option of transferring Additional Services to the Trust.</p> <p>In determining which Additional Services the Council wish to transfer to the Trust, the Council shall: act reasonably, in good faith, regard the capacity, resources and expertise of the Trust, and regard the “business fit” of the Additional Service. It is recognised that these will be on a grant funded basis.</p>
Dispute Resolution	<p>Procedure as follows:</p> <ul style="list-style-type: none"> <li>• MonLife Authorised Officer and Council Authorised Officer seek to agree</li> <li>• Chief Executive of MonLife and Chief Executive of Council seek to agree</li> <li>• Third Party determines through mediation</li> <li>• Going to court can only be implemented if mediation fails (unless ability to take proceedings is jeopardised)</li> </ul>
Termination	<p>Can be terminated by either party based on default by the other party which would include the following</p> <ul style="list-style-type: none"> <li>• Notice by the Council in the face of funding constraints.</li> <li>• Council default – material breach, non-payment of funding</li> </ul> <p><b>Consequences of termination</b> To follow the requirements under exit and handover</p> <ul style="list-style-type: none"> <li>•</li> </ul>
Partial Termination	Council able to partially terminate the services which would link to partial termination of one of the leases.

ISSUE	AGREED POSITION
	Any compensation would be as set out for termination. MonLife unable to partially terminate.
Exit and Handover	<p>MonLife will be required to</p> <ul style="list-style-type: none"> <li>• Deliver the assets associated with the service back to the Council (in the agreed state of repair)</li> <li>• Provide TUPE information</li> <li>• Apportion the costs/income</li> <li>• Cooperate with the Council</li> </ul>

## 2. Leases

ISSUE	AGREED POSITION
Scope of Services	<p>Leases for the following buildings:</p> <p>To be confirmed [Any specific amendments known about]. Drawings to be prepared to include car parks where relevant, although maintenance of car parks may be retained by Council</p>
Length of Term	<p>Leases to be for 7 years</p> <p>The Council will have a right to voluntary terminate the agreement (as set out in the funding and management agreement and lease will terminate on Council using its voluntary right to terminate). Both lease and management agreement to be terminated if the other one is terminated.</p>
Rent	Peppercorn rent
Use of Buildings	<p>Can only be used for its existing use or similar (sport, leisure, tourism, youth and cultural activities)</p> <p>Prohibited uses are any use which would bring Council into disrepute.</p> <p>Change of use would require Council agreement.</p> <p>Sub-letting of buildings is only allowed with agreement of Council (and would be contracted out of the 1954 act), excluding the current contracts and uses. Should not stop MonLife from entering into hire arrangements with clubs, etc.</p>
Partial Termination	<p>Council able to partially terminate one of the leases in the portfolio, as a result of the partial termination of the management agreement.</p> <p>MonLife unable to partially terminate.</p>
Maintenance	<p>Council responsible for building and structural maintenance, including plant replacement and day to day planned maintenance.</p> <p>MonLife responsible for day to day reactive maintenance.</p> <p>Responsibility matrix to be developed based on current responsibilities– will be attached as a schedule to the management and funding agreement</p>
Equipment	All equipment would be under licence to MonLife and responsibilities for the repair and replacement of the equipment would be split in accordance with the Responsibility schedule.

<b>ISSUE</b>	<b>AGREED POSITION</b>
Change in Ownership/ Control of MonLife	Requires Council agreement
Assignment of Lease	Not allowed without agreement of Council
Charges over Lease	Not allowed without agreement of Council
Landlord & Tenant Act 1954	Contracted Out

### 3. TRANSFER AGREEMENT

<b>ISSUE</b>	<b>AGREED POSITION</b>
Assets	<p>To be confirmed but expected to include</p> <ul style="list-style-type: none"> <li>• Equipment</li> <li>• Membership Data</li> <li>• ICT</li> <li>• Stock</li> <li>• Intellectual Property (if appropriate)</li> </ul> <p>Principle is that Council would transfer through licence with expectation of return.</p> <p>Apportionment of income and expenditure allocations at the transfer date to be agreed with a long stop date of 4 months after date of transfer.</p> <p>Joint stock take to be undertaken the day before transfer to agree valuation of stock. Any payments for stock and apportionments to be made within 3 months of transfer.</p>
Pensions	<p>MonLife to obtain admitted body status with GGPS</p> <p>Council to act as guarantor</p> <p>The Pension scheme contribution rate will assume a fully funded Scheme</p> <p>Consideration as to whether it is to be an open or closed scheme.</p> <p>Risk on contribution rates will sit with the party who is in control of the risk, thus any changes in benefits would sit with MonLife</p> <p>Scheme to be returned on a fully funded basis, for the areas which MonLife can control.</p>
Existing Contracts	<p>Will be novated to MonLife</p> <p>Consider if there are any contracts to be retained by Council</p>
Utilities	Transfer of existing contracts for Utilities, with Council acting as Guarantor
Staff	<p>Transferred under TUPE</p> <p>Both parties will have an obligation to consult</p>

<b>ISSUE</b>	<b>AGREED POSITION</b>
	<p>An indemnity will exist in relation to existing liabilities</p> <p>Council will meet all remuneration costs up to the point of transfer</p> <p>Agreement to be sought regarding funding future redundancies costs</p>
Liabilities	Existing debts and liabilities will be excluded from the Transfer
Dispute Resolution	<p>Procedure as follows:</p> <ul style="list-style-type: none"> <li>• MonLife Authorised Officer and Council Authorised Officer seek to agree</li> <li>• Chief Executive of MonLife and Chief Executive of Council seek to agree</li> <li>• Third Party determines through mediation</li> <li>• Going to court can only be implemented if mediation fails</li> </ul>

#### 4. SUPPORT SERVICES PROGRAMME

<b>ISSUE</b>	<b>AGREED POSITION</b>
Services	<p>The following services to be provided (to be confirmed). Examples below</p> <ul style="list-style-type: none"> <li>• Payroll Services</li> <li>• HR</li> <li>• Legal Services</li> <li>• IT Management</li> <li>• Health and Safety</li> </ul> <p>Services to be provided by Council to be set out in specification with appropriate KPIs. Services can only be provided where there is no conflict of interest.</p>
Length of Agreement	<p>Length to be agreed for an initial term</p> <p>Potential to extend on agreement of both parties, with the need for 6 months' notice if agreement is terminated</p>
Termination	<p>During the initial term the agreement can only be terminated by either party through default on performance.</p> <p>MonLife can terminate if KPIs not delivered. Council can terminate for non-payment of fees.</p>
Charges & Payment	The charges will be as specified in the pricing schedule – will reflect the amounts in Budget for 18/19, subject to review and subject to indexation (CPI)
Dispute Resolution	<p>Procedure as follows:</p> <ul style="list-style-type: none"> <li>• MonLife Authorised Officer and Council Authorised Officer seek to agree</li> <li>• Chief Executive of MonLife and Chief Executive of Council seek to agree</li> <li>• Third Party determines through mediation</li> <li>• Going to court can only be implemented if mediation fails</li> </ul>
Review	To be reviewed as part of annual review process