

HEADS OF TERMS

SUBJECT TO CONTRACT

This heads of terms is made on the date of last signature below between:

1. **AFC WIGAN ATHLETIC LIMITED**, a company incorporated in England and Wales under No.12926841 whose registered address is The DW Stadium, Loire Drive, Robin Park, Wigan WN5 0UZ (the **Company**), from now on referred as AFC WA
2. **WIGAN ATHLETIC SUPPORTERS CLUB** whose address is The DW Stadium, Loire Drive, Robin Park, Wigan WN5 0UZ (**WASC**)

(together, the **Parties**)

1. Background

- 1.1. The Company has submitted an offer to the administrators of Wigan Athletic Football Club to acquire the business and assets of the Club (**Acquisition**).
- 1.2. These heads of terms set out the principal terms and conditions upon which WASC agrees to subscribe for shares in the Company.

2. Status of heads of terms

- 2.1. The terms in this heads of terms are not exhaustive and are expressly 'subject to contract'.
- 2.2. The terms are not intended to be legally binding between the Parties except where specifically stated.

3. Structure of the Company

- 3.1. In order to effect the Acquisition, the Company will be capitalised initially by the issue of the following classes of Ordinary Shares:
 - 3.1.1. 'A' Ordinary Shares to be issued to XXXXXXXXXX (48% of the issued share capital);
 - 3.1.2. 'A' Ordinary Shares to be issued to XXXXXXXXXX (48% of the issued share capital);
and
 - 3.1.3. 'B' Ordinary Shares to be issued to WASC (4% of the issued share capital);
- 3.2. The A and B Ordinary Shares will rank pari passu in all respects regarding voting, dividends, returns of capital.

4. WASC subscription for shares and further funding

- 4.1. It is intended that WASC (or Wigan Athletic Supporters Club Limited, incorporated in England and Wales under No. 12856773, a company limited by guarantee which has been formed as the successor organization to WASC) will commit to advance a total of £870,000 to the Company (the **Subscription**), at completion.
- 4.2. The money will enter the company as capital on day one, but WASC will determine in the SPA the final destiny of that money once they know the budget in detail, for example they could determine that those monies are fully dedicated to pay the academy cost and they will have access to control this fact along the season.

5. Conditions

5.1. The Subscription is conditional on:

- 5.1.1. approval and consent to the Acquisition being given by any relevant third parties including, without limitation the English Football League;
- 5.1.2. the approval of and consent to the Subscription being given by (i) the Parties (including any necessary internal, shareholder, board of directors, or partner consents, as appropriate) and (ii) any relevant third party agencies including (without limitation) any tax, regulatory, export, certification or competition authorities;
- 5.1.3. release by the administrators of the Club of the sum of £170,000 to WASC;
- 5.1.4. completion of the Acquisition;
- 5.1.5. the Parties negotiating, drafting and agreeing in terms satisfactory to them both a shareholders agreement (the **SHA**) and accompanying articles of association governed by English law;
- 5.1.6. the subscription for 'A' Ordinary Shares referred to at 3.1.1 and 3.1.2 above;
- 5.1.7. WASC's sight of and satisfaction with:
 - 5.1.7.1. the Company's budget and business plan;
 - 5.1.7.2. such details as WASC shall reasonably require regarding the shareholders of the Company and their beneficial ownership, and the proposed directors of the Company; and
- 5.1.8. each Party, or either Party, as required, conducting, to its satisfaction, any required due diligence and investigation of the business of the other Party and upon the other Party granting such access for this to take place.

6. Documents

6.1. The SHA will include the following key terms:

6.1.1. Directors

WASC will appoint one director to the board of the Company (**Board**).

It is expected that the number of directors shall initially be no more than five.

6.1.2. Finance

WASC shall not be required to provide further equity funding. The articles of association of the Company will include an anti-dilution mechanism whereby the B Ordinary Shares will retain their respective equity percentage.

6.1.3. Heritage Assets and Location

The parties will commit to the retention by the Club of its team colours and crest and the continuation of the Club under the name 'Wigan Athletic'.

The Club shall continue to hold its fixtures at the DW Stadium.

The parties will commit to the safeguarding and retention of other heritage assets of the Club, for example trophies and historic memorabilia.

6.1.4. Fan Engagement

The parties will commit to establishing a suitable forum for communication with the supporters of the Club and reasonable consultation (within the bounds of commercial confidentiality) on matters of importance to the supporters (including seating, ticket pricing and availability).

6.1.5. Crowdfunder Rewards

It is acknowledged that in the course of fundraising prior to the date of these Heads of Terms Wigan Athletic Supporters Club have sought to make available certain rewards to providers of funds. The parties will use their reasonable endeavours to procure that the Club is able to honour those rewards.

6.2. The other principal documents in relation to the Subscription will comprise, amongst others and as required:

6.2.1. articles of association for the Company;

6.2.2. a business plan and annual budget for the first financial year of the Company (to be prepared by the Company and approved by WASC);

and such other documents usually required for a transaction of this nature and as agreed to by the parties' advisers.

7. Sale or transfer of the B Ordinary Shares

7.1. The other shareholders will have a first right of refusal to purchase the B Ordinary Shares at a price equal to the total funds advanced by WASC (plus 2% 'interest').

7.2. The Company shall have the option to buy back the B Ordinary Shares at any time following a month notice and a period of consultation not longer than 1 month starting from the date of communication, at a price equal to the total funds advanced by WASC (plus 2% 'interest').

8. Confidentiality

- 8.1. This paragraph 8 is legally binding.
- 8.2. Each party undertakes that it shall not for a period of one year after the date of these heads of terms disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers, plans, intentions, or market opportunities, the operations, processes, product information, know-how, designs, trade secrets or software of the other Party (**'Confidential Information'**), except as permitted by paragraph 8.3 below.
- 8.3. Each Party may disclose the other Party's Confidential Information in the following circumstances:
 - 8.3.1. to its employees, officers, representatives or advisers who need to know such Information for the purposes of this heads of terms and the evaluation and negotiation of the Proposed 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 paragraph; and
 - 8.3.2. as may be required by law, court order or any governmental or regulatory authority.
- 8.4. No Party shall use the other Party's Confidential Information for any purpose other than the purpose contained within this heads of terms and the evaluation and negotiation of the SHA.
- 8.5. If negotiations are terminated, each Party must return or destroy all Confidential Information supplied to it by the other Party.

9. Costs

- 9.1. This paragraph 9 is legally binding.
- 9.2. Each Party is responsible for its own costs in connection with the Subscription, whether or not it proceeds (including, without limitation, the preparation and negotiation of this heads of terms, the negotiation and drafting of the SHA and any documents contemplated by it).

10. Timing

- 10.1. The Parties agree to negotiate in good faith with a view to completing the Subscription and entering into the SHA no later than 26 October 2020.
- 10.2. Either Party may at any time, by giving notice to the other in writing, terminate negotiations for the Subscription, without having to give any reasons for doing so.

11. General

- 11.1. These heads of terms constitute the sole agreement between the parties with respect to their subject matter.
- 11.2. Each Party agrees that damages alone would not be an adequate remedy for any breach of a legally binding obligation by the other Party. In such an event, the non-defaulting Party shall be entitled to the remedies of an injunction, specific performance or other equitable relief in addition to any other remedy including damages.

11.3. These heads of terms are for the benefit of the Parties to it and are not intended to benefit, or be enforceable by, anyone else.

12. Governing law and jurisdiction

12.1. This paragraph is legally binding.

12.2. These heads of terms shall be governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction for all matters arising under them (including non-contractual disputes).

The Parties have signed these heads of terms on the date(s) below:

XXXXXXXXXXXXX for and on behalf of AFC WIGAN
ATHLETIC

Date:

XXXXXXXXXXXXX for and on behalf of WIGAN
ATHLETIC SUPPORTERS CLUB LIMITED

Date: