

DRAFT

Dated: 20[●]

WORKING TOGETHER AGREEMENT

-between-

FOUNDATION OF HEARTS LIMITED

-and-

HEART OF MIDLOTHIAN PLC

Relating to management of the relationship between the Parties

Note: this draft is not a finalised legal agreement, and is subject to independent legal review to ensure full consistency with applicable law and regulation

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THIS AGREEMENT is made **BETWEEN**:

FOUNDATION OF HEARTS LIMITED, a company limited by guarantee and incorporated and registered under the laws of Scotland with number SC387126 and with its registered office at Collins House, Rutland Square, Edinburgh, Midlothian, Scotland EH1 2AA (the "**Foundation**");

and

HEART OF MIDLOTHIAN PLC a public company limited by shares and incorporated and registered under the laws of Scotland with number SC005863 and with its registered office at the aforesaid Collins House (the "**Club**").

BACKGROUND

- A. Assuming the continued performance by the Foundation of its obligations under the Bidco Agreement, the Foundation will shortly become the holder of the Bidco Shares.
- B. It is currently anticipated that the Change of Ownership will occur on or about [●].
- C. In anticipation of the Change of Ownership, the Parties have agreed to enter into this Agreement to provide a framework for a collaborative relationship between the Parties which they believe will be in their mutual best interests.

NOW IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The definitions in Schedule 1 to this Agreement apply in this Agreement, unless the context otherwise requires.

1.2 **Interpretation**

In this Agreement, except where the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to a **person** includes a natural person, company or other corporate or unincorporated body, government department, statutory body or other entity;
- 1.2.3 a reference to a **Party** means a party to this Agreement;
- 1.2.4 a reference to one gender includes the other genders;
- 1.2.5 clause, sub-clause, Schedule and paragraph headings do not affect the interpretation of this Agreement;
- 1.2.6 a reference to **writing** or **written** includes fax but not e-mail (unless otherwise expressly provided in this Agreement); and

1.2.7 words following the terms **include, includes, in particular, for example** or any similar expression are illustrative and do not limit the sense of the words, phrase or term preceding those terms.

2. COMMENCEMENT AND DURATION OF THIS AGREEMENT

2.1 This Agreement will take effect as from the day on which the Change of Ownership occurs and will continue (unless terminated earlier in accordance with this Agreement) for so long as the Foundation holds more than 50% of the rights to vote at a general meeting of the Club attaching to Shares.

3. GUIDING GOVERNANCE PRINCIPLES

3.1 The guiding principles in Schedule 2 to this Agreement are agreed by the Parties in respect of the relationship between them.

3.2 It is the intention of the Parties to honour and adhere to those principles throughout the duration of this Agreement, but no legal obligations or legal rights will arise between the Parties from this clause 3.

4. THE CLUB BOARD

4.1 The Club Board is responsible for directing the Club's affairs, setting strategic objectives, addressing and managing operational risk, conducting the Club's financial affairs, and ensuring compliance with all relevant legal and regulatory requirements.

4.2 The Club Board will consist of executive and non-executive directors.

4.3 In accordance with the Articles, the maximum number of Club Directors holding office at any one time will be such number as may be fixed by the Club from time to time by ordinary resolution.

4.4 So far as practicable, there must always be at least three non-executive directors on the Club Board, comprising:

(a) two Nominated Directors; and

(b) an Independent Director.

4.5 It will be a precondition of appointment of any person as a Club Director that such person satisfies any eligibility requirements set out in the rules of any regulatory authority to which the Club is subject.

5. APPOINTMENT AND REMOVAL OF NOMINATED DIRECTORS

5.1 The Nominated Directors will comprise:

(a) the holder of the office of chairman of the Foundation, who (subject to the Articles and applicable law and regulation) will automatically be a Club Director as long as he holds that office; and

- (b) one other director of the Foundation appointed as a Club Director by the Foundation from time to time.
- 5.2 Any Nominated Director who ceases to hold office as a director of the Foundation automatically ceases to be a Club Director. The Foundation will have the right to remove any Nominated Director appointed in accordance with clause 5.1(b) and, upon his removal (whether by the Foundation or otherwise), to appoint another director of the Foundation to act as a Nominated Director in his place.
- 5.3 Appointment and removal of a Nominated Director must be by written notice to the Club which will take effect on delivery at its registered office or at any meeting of the Club Board.
- 5.4 The Nominated Directors will be subject to the provisions of the Articles as to retirement by rotation of directors.

6. HOW THE CLUB BOARD OPERATES

- 6.1 The Club Board will meet regularly and, unless otherwise agreed, at least six times in each year.
- 6.2 The Club Board, in performing its functions, must have regard to generally accepted principles of good corporate governance, but only:
- (a) where to do so would not be incompatible with applicable law and regulation and the provisions of this Agreement and the Articles; and
 - (b) to the extent that such principles may reasonably be regarded as applicable in relation to its functions.

The Club Board must also ensure that, to the extent practicable, the business of the Club is conducted in accordance with sound and good business practice and the highest ethical standards.

- 6.3 The Club Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. In particular, the Club will send to each Club Director:
- (a) reasonable advance notice of each board meeting;
 - (b) a written agenda for each board meeting, accompanied by all relevant papers; and
 - (c) as soon as reasonably practicable after each board meeting, a copy of the minutes of such meeting.

7. COMMITTEES OF THE CLUB BOARD

- 7.1 The Club Board may set up committees of the Club Board. The number, remit and composition of committees of the Club Board are a matter for the Club Board, subject to the provisions of this Agreement.
- 7.2 There will always be a remuneration committee, a nomination committee and an audit and risk

committee. The nomination committee and remuneration committee may be combined into a single committee.

7.3 The main role of the nomination committee will be to lead the appointment process for:

- (a) new Independent Directors; and
- (b) chief executives of the Club,

and make recommendations to the Club Board on such appointments. In identifying suitable candidates for these appointments, the committee will consider candidates on merit and against objective criteria.

See also clause 15.3.

7.4 The nomination committee will comprise the chairman of the Club Board, the Independent Director and both of the Nominated Directors. The nomination committee must be chaired by the chairman of the Club Board and he will have a casting vote.

7.5 The quorum for a nomination committee meeting will be two members, of whom one will be, and the other will not be, a Nominated Director.

7.6 The Independent Director and at least one Nominated Director must be members of the remuneration committee and audit and risk committee.

7.7 No committee of the Club Board will include anyone who is not a member of the Club Board or an employee of the Club.

8 LIMITATION ON THE ROLE OF THE FOUNDATION IN OPERATIONAL MANAGEMENT

8.1 The Foundation agrees that, except with the prior consent of the Club Board, it will not, and will procure (so far as it is properly able to do so) that no director of the Foundation will (except in his capacity as a Nominated Director), become, or seek to become, directly involved in the day-to-day management of the operational affairs of the Club.

8.2 Clause 8.1 is subject to the proviso that it will not restrict or prevent the Foundation exercising its right, in respect of any Shares held by it, to vote at any general meeting or any separate meeting of the holders of any class of shares, or to exercise any other right conferred by membership in relation to any such meeting.

9. CHIEF EXECUTIVE

9.1 Executive authority and responsibility for the day-to-day management of all commercial and operational aspects of the Club will be discharged on behalf of the Club Board by the chief executive of the Club.

9.2 The chief executive must be appointed by the Club Board, on the basis of a recommendation by the nomination committee. The Chief Executive will be an executive member of the Club Board but, subject to clause 9.3, cannot also serve as the chairman.

9.3 The Parties agree that, if the current chairman of the Club Board continues in that office following the Change of Ownership, such chairman may continue to have executive responsibilities during such transition period as the Club Board considers appropriate, having regard to the need for a smooth transition and stability.

10. RESERVED SHAREHOLDER MATTERS AND RESERVED BOARD MATTERS

10.1 Any decision about a Reserved Shareholder Matter must be made by resolution at a general meeting of the shareholders of the Club (rather than a resolution of the Club Board). For this purpose, an ordinary resolution will be sufficient, subject to the provisions of the Articles and any requirement of the Companies Acts.

10.2 Any decision about a Reserved Board Matter must be taken by resolution of the Club Board (rather than delegated to management or a board committee).

10.3 Prior to casting the Foundation's votes on a Reserved Shareholder Matter at a meeting of Club shareholders, the Foundation Board must, so far as reasonably practicable, ascertain the wishes of the Foundation members whose rights as members include voting on any proposal concerning the relevant matter.

11. SUPPORT FOR THE FOUNDATION'S ACTIVITIES

11.1 The Club will provide the Foundation with appropriate support, facilities, information and services (wherever possible on a free of charge basis) to enable the Foundation to carry out its fundraising, membership communication and supporter engagement activities effectively and properly.

12. FINANCIAL SUPPORT FROM THE FOUNDATION

12.1 The Parties:

- recognise that, under the Bidco Agreement, the Foundation has been an important source of funding for the Club;
- acknowledge the outstanding commitment and loyalty of the Foundation membership in providing the funds which have made that financial support possible;
- believe it is desirable that, after the Change of Ownership, the Foundation continues to act as a source of financial support;
- recognise that the sole source of that funding will be ongoing contributions from the Foundation's membership; and
- affirm that no member of the Foundation should ever be asked or encouraged to give more than they can reasonably afford.

12.2 The Foundation will use reasonable endeavours to provide financial support for the Club by collecting contributions from the Foundation's members.

12.3 The Foundation and the Club will adopt a protocol which sets out, in appropriate detail, how

funding will be provided or advanced to the Club on a regular basis.

- 12.4 The funding from the Foundation will be applied in the furtherance of Club's business in accordance with its business plan. Within that overall parameter, it will be a matter for the Club Board and management to determine the specific purpose or purposes for which funding from the Foundation should be applied. To assist its decision-making on this matter, the Nominated Directors may communicate to the Club Board and management the views of the Foundation Board or membership.
- 12.5 Pursuant to clause 11, the Club will liaise with and support the Foundation for the purpose of maximising the sums which the Foundation is able to obtain from its members, including co-ordinating marketing and fund-raising activities.
- 12.6 The Foundation will report annually to its members on how funding to the Club has been applied.
- 12.7 The Foundation will need to meet its running costs and expenses out of members' contributions. In utilising contributions for this purpose, the Foundation Board will seek to be fully transparent with members through the annual accounts, and ensure that all funds used for this purpose are spent efficiently and appropriately.

13. ENGAGEMENT WITH FOUNDATION MEMBERS

- 13.1 The role of the Foundation will be, amongst other things, to act as the main channel of communication to enable the Club Board to understand the views of the Foundation's members. Ancillary to this, the Foundation will help to communicate the views of the wider supporter community.
- 13.2 In order to comply with clause 13.1, the Foundation will allocate appropriate resources, and have in place suitable arrangements, to enable it to:
 - (a) inform its members on the activities of the Foundation;
 - (b) actively engage with, and seek the views of, its members on matters of interest to them;
and
 - (c) represent their views and concerns on relevant matters to the Club.
- 13.3 The Foundation will discuss its arrangements for engaging with its members with the Club. Those arrangements will include designating one of the directors of the Foundation as a director of members' affairs, with responsibility for managing the arrangements and liaising with the members.
- 13.4 Pursuant to clause 11, the Club will provide the Foundation with appropriate support and co-operation (including, where appropriate, attendance at scheduled meetings with members) to enable it to carry out its function under this clause 13 effectively and properly. In particular, the Club will, wherever practicable, provide responses, verbally or in writing, to views or requests for information communicated to it by or through the Foundation. The Foundation will not communicate to the Club any views expressed in a manner which could be considered offensive, deliberately provocative or inflammatory.

14. CONFIDENTIALITY AND ANNOUNCEMENTS

- 14.1 In this clause 14 “confidential information” means all information regarding the business, affairs or financial position of the Club that might be of use to competitors or, if disclosed, harmful to the Club, or that would be regarded as confidential by a reasonable business person.
- 14.2 The Foundation will respect and safeguard all confidential information obtained from the Club as a result of the relationship established by this Agreement, and will not disclose to any third party any such information.
- 14.3 The obligation in clause 14.2 does not apply to information which (i) is in the public domain, (ii) the Foundation is required to disclose by law or by the rules of any regulatory body to which it is subject, or (iii) the Parties agree is not confidential or may be disclosed. The Foundation may also, acting reasonably, provide information concerning the overall operation of this Agreement when it consults or reports on this Agreement pursuant to clause 15.
- 14.4 Other than any information which is expressly determined by the Club Board to be held as strictly confidential, a Nominated Director may, subject always to his fiduciary duty as a director of the Club, share with the Foundation Board on a confidential basis information obtained by him as a Club Director.
- 14.5 If the Foundation receives a request from the press or other media for public comment regarding the Club or its business, it will contact the Club’s Public Relations Department to discuss the request before responding.
- 14.6 In relation to information which is not confidential information, both Parties will, wherever appropriate, seek to observe high standards of openness and transparency.

15. REVIEW PROCEDURE

- 15.1 The Parties will conduct a review of this Agreement at least annually.
- 15.2 The objective of each review will be to ensure the continued suitability, adequacy and effectiveness of this Agreement and the associated governance arrangements and other processes, and to assess opportunities for improvement and any potential changes.
- 15.3 The Parties will participate in each review in good faith (including arranging appropriate attendance at scheduled meetings), and will seek to agree decisions and actions on an amicable basis. As part of the review, the Parties may consult with individuals or groups within the governance framework (including Club personnel and the membership of the Foundation). In carrying out the review, the Parties must consider a report from the Club’s nomination committee (or, if the Club Board so determines, the chief executive) on the effectiveness of the governance arrangements under this Agreement and whether they are working in the interest of both Parties.
- 15.4 Any variation of this Agreement must be by agreement in writing signed by or behalf of each Party.
- 15.5 The Foundation Board may present a report on how this Agreement is operating to the Foundation’s annual general meeting and in its annual report and accounts.

16 GENERAL MATTERS

- 16.1 **Non-assignment** Neither Party has any power to assign or otherwise transfer any of its rights or obligations under this Agreement.
- 16.2 **Third party rights** No-one other than the Parties will have any right to enforce any of the terms of this Agreement.
- 16.3 **Entire agreement** This Agreement (together with the documents referred to in it) sets out the entire agreement between the Parties and supersedes all previous arrangements, understandings and agreements between them relating to its subject matter.
- 16.4 **Severance** If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted as aforesaid, the Parties will negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.5 **Further assurance** Each Party will co-operate with the other, and will execute such documents and perform such acts as may be reasonably necessary or helpful, for the purpose of giving full effect to this Agreement.
- 16.6 **No partnership or agency** Nothing in this Agreement is intended, or will be deemed, to establish any partnership or joint venture, constitute one Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.
- 16.7 **Disputes** The Parties will always make determined efforts to resolve tensions and conflict directly and collaboratively, through informal discussions. If a specific dispute arises which they cannot resolve by means of good faith negotiations, the Parties will endeavour to resolve the dispute through independent mediation. If the Parties enter into mediation and fail to reach an agreement which resolves all matters in the dispute within a further 30 days, then either Party will be entitled to resort to litigation.
- 16.8 **Governing Law and jurisdiction** This Agreement is to be governed by Scots law and, without affecting the procedure in clause 16.7, each Party agrees to submit to the exclusive jurisdiction of the Scottish courts.

SIGNED for FOUNDATION OF HEARTS LIMITED

✕.....
(name).....

Date:.....20[●]

SIGNED for HEART OF MIDLOTHIAN PLC

✕.....
(name).....

Date:.....20[●]

DEFINITIONS

Articles: the articles of association of the Club as amended from time to time.

Bidco: Bidco (1874) Limited (company registration number SC466630).

Bidco Shares: [117,515,152] fully paid Shares, representing 75.1% of the issued share capital of the Club, which, as at the date of execution of this Agreement, are held by Bidco.

Business Day: any day other than a Saturday or Sunday or a bank holiday in Scotland.

Change of Ownership: the Foundation becomes the registered owner of the Bidco Shares.

Club Board: the board of directors of the Club.

Club Director: a director of the Club.

Foundation Board: the board of directors of the Foundation.

Independent Director: a non-executive Club Director who is, at the relevant time, considered by the Club Board to be independent, as determined by reference to the UK Corporate Governance Code published by the Financial Reporting Council (or any successor thereto).

Nominated Directors: the directors of the Foundation who are from time to time appointed as Club Directors, and **Nominated Director** means any one of them.

Reserved Board Matters:

- (a) approval of strategy, corporate structure, corporate plans and budgets;
- (b) supervising the chief executive of the Club;
- (c) approving the acquisition or disposal of subsidiaries, or commencement or termination of any business activity;
- (d) approving financial statements;
- (e) approval of borrowings;
- (f) appointment and dismissal of the chief executive, finance director or first team manager, and determination of their remuneration; and
- (g) approval of any contract or arrangement that is not on an arm's length basis.

Reserved Shareholder Matters:

- (a) the issue of Shares;

- (b) any borrowing by the Club in excess of the limit set out in the articles;
- (c) any proposal by the Club to change the name of the football team, the design of the Club badge or the Club colours; and
- (d) any proposal to sell the Stadium.

Shares: ordinary shares in the capital of the Club.

GUIDING GOVERNANCE PRINCIPLES

1. **Ethos:** the relationship between the Parties will be built on principles of trust and mutual co-operation;
2. **Working together:** the Parties will work together and assist each other to carry out their respective roles and responsibilities (but subject always to clause 8.1) and to fulfil the Key Objectives set out below;
3. **Effective decision-making:** it is critical that the Parties maintain governance and operational structures that:
 - are based on clearly defined roles and responsibilities at all levels of the structure and within each Party; and
 - support good decision-making;
4. **Communication:** the Parties will promote an environment of clear and effective communication;
5. **High integrity:** office-holders of the Foundation and the Club should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests that may conflict with their responsibilities.

The Key Objectives referred to above are:

- ensuring the Club continues to prosper, supported by a foundation based on a stable and effective organisational structure and financial sustainability;
- maintaining and enhancing the standing and reputation of the Club, and sustaining it as a major force in Scottish football; and
- growing the Hearts family, developing fans' loyalty to, and connection with, the Club, and making them proud to be supporters of the Club.