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## **RE Public Liability Insurance and COVID-19 Return to Football Activities**

The below letter outlines the policy response of your current Public Liability Insurance as it relates to cover for liabilities associated with claims arising out of COVID-19. This is to provide clarity for Football West and your constituents during the Return to Train and Return to Play phase that you are entering.

### **Insured and Insured Persons**

The Insured under your Public Liability insurance is defined as:

***“Football West ...including all affiliated associations and their member clubs, all players and/or non playing officials including team managers, referees, trainers, coaches, masseurs, committee members, directors, office bearers, administrators, employees, executive officers, selectors, other match day officials, ball boys, medical persons, physiotherapists, ambulance officers, co-opted voluntary workers and officials of the participating Member Federations listed as The Insured's”***

As such, the insurance policy provides cover to Football West, your clubs and associations as entities as well as the other insured persons as individuals. Claims made against an individual insured person are covered under this policy in a like manner to those made against the entities. The policy includes a ‘Cross Liability’ clause which in essence allows for cover when one insured takes action against another insured.

### **Coverage**

The Public Liability insurance policy provides the following coverage:

*“This Policy insures all amounts, which the Insured becomes legally liable to pay as Compensation in respect of **Personal Injury** and/or Property Damage and/or Advertising Liability happening within the Territorial Limits during the Period of Insurance as a result of an Occurrence in connection with the **Business** or the Products, up to the Limit of Liability and subject to the other Policy terms and conditions.”*

Of relevance are the definitions of Personal Injury and Business:

*“Personal Injury” means:*

- (i) bodily injury, **death, sickness, disease, illness, disability, shock, fright, mental anguish and/or mental injury;***

As such the insurance policy provides cover to the insured and insured persons for claims for compensation from a third party in respect of their personal injury which extends to include death, sickness, disease and illness. This definition of personal injury clearly extends to cover COVID-19. There is no relevant exclusion for communicable disease, pandemics or other such illness.

Business is described in the Policy Schedule as

*The participation, administration, governance, organisation, promotion, development and/or coaching of Football (Soccer), Football Facility and Accommodation Managers, Property Owners, Occupiers and any other activities incidental thereto*

The policy also extends the Business to include

- (i) the ownership and maintenance of premises and/or the tenancy thereof by the Insured.*
- (ii) the provision of any sponsorships, charities, first aid, medical, ambulance or fire fighting services by the Insured or on the Insured's behalf.*
- (iii) private work undertaken by the Insured's employees for any of the Insured's directors, partners, proprietors, officers or executives.*
- (iv) the provision of any canteen, social and/or sporting clubs or welfare and/or child care facilities by the Insured or on the Insured's behalf, which are primarily for the benefit of the Insured's employees.*

The possible liability arising from COVID-19 needs to have arisen whilst engaged in the Business as described above.

### **Claimable Expenses**

The policy provides cover for Compensation which is defined as:

*"Compensation means monies paid or agreed to be paid by judgment, award or settlement for Personal Injury and/or Property Damage and/or Advertising Liability. Provided that such Compensation is only payable in respect of an Occurrence to which this insurance applies."*

In addition, the policy provides cover for various supplementary expenses incurred in the defence of an action. In addition to the compensation payable as outlined above the insurer will also:

- (i) defend, in the Insured's name and on the Insured's behalf, any claim or suit against the Insured alleging such Personal Injury or Property Damage or Advertising Liability and seeking damages on account thereof even if any of the allegations of such claim or suit is groundless, false or fraudulent.*
- (ii) pay all charges, expenses and legal costs incurred by the Insurer and/or by the Insured with the Insurer's written consent in the investigation, reporting, settlement or defence of such claim or suit.*
- (iii) pay all legal costs taxed against the Insured in any such suit or claim and all interest on the judgment or settlement amount accruing after the entry of judgement against the Insured until the Insurer has paid, tendered or deposited in court such part of the judgement as does not exceed the Limit of Liability.*

As such the policy provides cover for your defence costs as well as damages arising from such claims.

### **Policy Limits and Deductibles**

The Public Liability policy has a Limit of Liability of \$20,000,000 any one occurrence and there is nil excess for claims arising out of Personal Injury.

### **Policy Conditions**

All insurance policies contain terms and conditions. Of relevance under your policy is the following policy condition regarding reasonable care:

*“The Insured must:*

*...*

*(ii) take reasonable precautions to prevent:*

*a. Personal Injury and Property Damage”*

This condition required all insured parties to exercise reasonable care to prevent third parties contracting COVID-19. Reasonable care is not designed to be exhaustive and whilst we cannot prescribe the exact model for compliance, we can advise that insurers are expecting insured parties to adhere to any government and health department advice. Active refusal to adhere to such advice may jeopardise an insured’s ability to claim under the policy. That being said, this condition does not operate to deny cover for an insured party that had in good faith attempted to comply with the guidelines of the health department and Football West to demonstrate reasonable care but had inadvertently fallen short. Most claims arise out of an inadvertent breakdown in process to some degree and that is what the policy is in place to provide protection for.

### **Conclusion**

The above summary is provided to give clarity to Football West on the potential response of your Public Liability insurance should a claim be made against you, your associations or clubs or any of your other insured persons for an allegation that they have caused a third party to contract COVID-19. Whilst we cannot practically workshop every hypothetical scenario, and each claim will need to be assessed on its merits with due consideration to the policy terms and conditions and their specific application to that claim, the above does provide details of the general response of the Football West Public Liability policy to this issue



**Will MacArthur**  
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