Participation Agreement

Football West Limited

ACN 109 919 324

and

Club Legal Entity Name

Participation Agreement

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_ 2021

Party Details

|  |  |  |
| --- | --- | --- |
|  | **Short Name** | **Details** |
| 1. | **Football West** | **Name:** Football West Limited (ACN 109 919 324)  **Address:** Unit 94, 262 Lord Street Perth, Western Australia  **Email:** clubs@footballwest.com.au  **Attention:** Matthew Courtney |
| 2. | **Association** | **Name:** Club Legal Entity Name ABN [Incorporation Number]  **Address:** Club Postal Address  **Email:** [insert]  **Attention:** [insert]  **Region of Responsibility:** [insert]  **Ground:** [insert] |

Recitals

1. Football Australia Limited (ACN 106 478 068)(**FA**) is the premier body for football in Australia.
2. Football West is the recognised state body of FA for football in Western Australia.
3. Football West owns the Competition and proposes to conduct the Competition during all Seasons up to and including the 2022 Season.
4. Under the FA Constitution, Football West must organise, promote and administer football throughout Western Australia and must ensure compliance with the FA Statutes by the District Associations, Competition Administrators and Clubs within its jurisdiction.
5. The Association is the District Association for its Region of Responsibility.
6. As District Association for the Region of Responsibility, the Association organises, promotes and administers Football in the Region of Responsibility.
7. This Agreement admits the Association as a participant in the Competition as a Competition Administrator from the date of this Agreement for the Seasons up to and including the 2022 Season.
8. The Association has agreed to participate in and administer the Competition on the terms and conditions set out in this Agreement and to meet their administration and governance requirements as a District Association of FA and as an incorporated association in Western Australia.
9. This Agreement commences on the date this agreement is signed and concludes on 31 December 2022 unless terminated earlier.

Contents

[1. Definitions and Interpretation 5](#_Toc71626510)

[1.1 Definitions 5](#_Toc71626511)

[1.2 Interpretation 8](#_Toc71626512)

[2. Conditions Precedent 9](#_Toc71626513)

[2.1 Conditions Precedent 9](#_Toc71626514)

[2.2 Costs Relating to Conditions Precedent 9](#_Toc71626515)

[2.3 Failure to Satisfy Conditions Precedent 9](#_Toc71626516)

[3. Grant of Right to Participate and Administer 9](#_Toc71626517)

[3.1 Football West Grants the Association the Right to Participate 9](#_Toc71626518)

[3.2 Right to Participate is Subject to Compliance with the Agreement 9](#_Toc71626519)

[3.3 Football West Grants the Association the Right to Administer 9](#_Toc71626520)

[3.4 Variation of Competition Structure 10](#_Toc71626521)

[3.5 Football West may Consult 10](#_Toc71626522)

[4. Football West General Obligations 10](#_Toc71626523)

[5. Association General Obligations 11](#_Toc71626524)

[6. Disciplinary and Grievance Procedures 12](#_Toc71626525)

[6.1 Disputes Governed by Disciplinary and Grievance Regulations 12](#_Toc71626526)

[6.2 Anti-Doping 13](#_Toc71626527)

[6.3 Behaviour of Supporters and Spectators 13](#_Toc71626528)

[6.4 Recourse to Courts 13](#_Toc71626529)

[7. Non-Sanctioned Competitions and Programs 13](#_Toc71626530)

[7.1 Written Permission from Football West 13](#_Toc71626531)

[7.2 Football West Matches take Priority 13](#_Toc71626532)

[8. Commercial Rights 13](#_Toc71626533)

[8.1 Commercial Rights Owned by Football West 13](#_Toc71626534)

[8.2 Access to Ground to be Provided Free of Charge 13](#_Toc71626535)

[8.3 Rights Associated with Matches 14](#_Toc71626536)

[9. Intellectual Property 14](#_Toc71626537)

[9.1 Football West Competition Property 14](#_Toc71626538)

[9.2 Association Intellectual Property 14](#_Toc71626539)

[9.3 Association Representations and Warranties 14](#_Toc71626540)

[10. Marketing, Sponsorship, Media and Communications 14](#_Toc71626541)

[10.1 Football West Responsibilities 14](#_Toc71626542)

[10.2 Association Responsibilities 15](#_Toc71626543)

[10.3 Joint Responsibilities 15](#_Toc71626544)

[11. Association Representations and Warranties 15](#_Toc71626545)

[11.1 Association Representations and Warranties 15](#_Toc71626546)

[11.2 Change of Circumstances 15](#_Toc71626547)

[12. Indemnities and Liability 16](#_Toc71626548)

[12.1 Indemnities 16](#_Toc71626549)

[12.2 Liability 16](#_Toc71626550)

[13. Right of Audit and Inspection 16](#_Toc71626551)

[13.1 Audits 16](#_Toc71626552)

[13.2 Each Association must: 17](#_Toc71626553)

[13.3 Non-disclosure 17](#_Toc71626554)

[14. Goods and Services Tax (GST) 17](#_Toc71626555)

[14.1 Calculating GST 17](#_Toc71626556)

[14.2 Payment of GST 17](#_Toc71626557)

[14.3 Definition of GST 18](#_Toc71626558)

[15. Confidentiality 18](#_Toc71626559)

[16. Term and Termination 18](#_Toc71626560)

[16.1 No Right of Renewal 18](#_Toc71626561)

[16.2 Football West Right to Make Good any Default 18](#_Toc71626562)

[16.3 Termination by Either Party 19](#_Toc71626563)

[16.4 Termination by Football West 19](#_Toc71626564)

[16.5 Notification of Insolvency Event 19](#_Toc71626565)

[16.6 Suspension of Rights 19](#_Toc71626566)

[Without prejudice to Football West’s rights under this deed or otherwise, if: 19](#_Toc71626567)

[17. Consequences of Termination 20](#_Toc71626568)

[17.1 Rights to Participate 20](#_Toc71626569)

[17.2 Clauses that Bind the Parties after Termination or Expiry 20](#_Toc71626570)

[18. Force Majeure 20](#_Toc71626571)

[19. Co-operation and Good Faith 20](#_Toc71626572)

[20. General 20](#_Toc71626573)

[20.1 Assignment 20](#_Toc71626574)

[20.2 Amendments 20](#_Toc71626575)

[20.3 Waiver 20](#_Toc71626576)

[20.4 Non merger 21](#_Toc71626577)

[20.5 Non performance 21](#_Toc71626578)

[20.6 Entire agreement 21](#_Toc71626579)

[20.7 Notices 21](#_Toc71626580)

[20.8 Severability 21](#_Toc71626581)

[20.9 Jurisdiction 21](#_Toc71626582)

[20.10 Relationship 22](#_Toc71626583)

# Definitions and Interpretation

## Definitions

In this Agreement, unless the contrary interpretation appears:

Agreement means this agreement including all schedules, annexures and special conditions.

Application means the Association’s application to affiliate with Football West to participate in the Competition.

Associate means any Official, any Team (at any age level) that represents, is connected with or is controlled or influenced by or falls within the jurisdiction of the Club or Association, any of its Players, or any incorporated or unincorporated association or company that is related to or connected with the Club or Association (including within the meaning of section 50 of the *Corporations Act 2001* (Cth)).

Association means

### a body incorporated under the Associations Act incorporated Association recognised by Football West and that:

#### is registered with FA in accordance with the National Registration Regulations; and

#### organises teams to participate in competitions sanctioned by Football West or FA; or

### any legal entity deemed to be an Association by Football West in its discretion.

Associations Act means the *Associations Incorporation Act 2015* (WA).

Board means all or some of the Directors of Football West acting as a board.

**Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

Broadcast Rights mean the right to record Matches for transmission, display and distribution by way of audio, audio-visual, television (including free-to-air, subscription, multichannel, closed circuit and interactive television), televisual exhibition, internet, broadband, mobile and video, in all forms whenever devised in any part of the world, including rights to Virtual Signage.

Club means:

### a body corporate or incorporated Association recognised by Football West and that:

#### is registered with FA in accordance with the National Registration Regulations; and

#### organises teams to participate in competitions sanctioned by Football West or FA; or

### any legal entity deemed to be a Club by Football West in its discretion.

Competition means any league, competition or tournament administered, controlled or sanctioned by Football West including pre-season, season proper, finals series and any post season tournament or competition.

Competition Administrator means the entity responsible for the conduct and staging of a Competition, being the Association in accordance with clause 3.3, or if clause 16.6 applies, Football West.

Competition Property means all Intellectual Property rights associated with the Competition or any Commercial Rights, including the names and logos of Football West as notified by Football West from time to time.

Competition Rules means the Football West competition rules that govern the Competition, as amended from time to time.

Conditions Precedent means each of the conditions precedent set out in clause 2.

District Association means a district or regional association of Football West

End Date means 31 December 2022 unless it is otherwise extended or terminated earlier in accordance with this Agreement.

**FA Statutes** means the statutes and any accompanying standing orders, by-laws and regulations governing football in Australia as promulgated by FA from time to time and as amended from time to time.

Dispute and Grievance Regulations means the Football West Disciplinary and Grievance Regulations specified by Football West, as amended from time to time.

FA Rules and Regulations mean the FA Statutes and any other rules, regulations, policies, procedures, codes of conduct and guidelines developed, promulgated and implemented by FA from time to time, as they apply to Football West, the Competition, the Competition Administrator, the Club, Officials, Players, supporters or spectators as amended from time to time;

Football West Rules and Regulations means the rules, regulations, by-laws, policies, directives, procedures, codes of conduct and guidelines developed, promulgated and implemented by Football West from time to time applying to Football West, the Competition, the Competition Administrator, the Club, Club Officials, Players, supporters or spectators as amended from time to time, including, without limitation, the Dispute Resolution Policy, the Competition Rules, the NPL Compliance By-Law, the Disciplinary By-law, the Dispute Resolution By-law and any policies or guidelines issued by Football West from time to time.

Governing Document means the constitution, articles of association or any other constituent or governing documents relating to the Association.

Ground means the home ground of the Club from time to time or as set out in the details section of this Agreement and including all surrounding areas owned, occupied, leased, licensed or otherwise controlled or used by the Club.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in relation to a party, any of the following:

1. the party disposes of all or substantially all of its assets, operations or business (other than in the case of Football West, a voluntary liquidation for the purpose of amalgamation or reconstruction if the new company assumes all of the legal obligations of Football West);
2. an arrangement is entered into between the party and its creditors;
3. the party ceases to be able to pay its debts as they become due;
4. the party ceases to carry on business;
5. a mortgagee enters into possession or disposes of the whole or any part of the party’s assets or business; or
6. a person is entitled to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person of the whole or any part of the party’s assets or business.

**Intellectual Property** meansall intellectual property rights of any kind in any jurisdiction, whether registered or unregistered, including, a trade mark, trade secret, design, copyright, process, patent, computer software, confidential information, logo, know-how, moral rights, the right to apply for or renew the registration of such rights and rights the subject of any lapsed application or registration.

Match means any football match played in Western Australia administered by Football West, FA or an Association or otherwise played under Football West’s direction or control.

Match Official means a referee, assistant referee, fourth official, referee assessor or match commissioner or any other person appointed by Football West Administration or a Competition Administrator to assume responsibility in connection with a Match.

Member Federation means a State, Territory or regional federation or association that is a member of FA from time to time.

National Registration Regulations means the National Registration Regulations contained in the FA Statutes.

Non-Sanctioned Competition means any football match, event or competition that is not sanctioned or approved by FA, Football West or another Member Federation.

Non-Sanctioned Program means any football competition, program, club, team, association or private academy, college or school that is not sanctioned or approved by FFA, Football West or another Member Federation.

Official means any person involved in the administration, management or organisation of a Club or Association (whether paid or unpaid), including employees, contractors, consultant, officers, directors, representatives and volunteers.

Player means any person who is registered with a Club or Association in accordance with the National Registration Regulations from time to time.

Region of Responsibility means the region of Western Australia for which the Association can be reasonably viewed as operating the Competition in.

Right to Administer means the rights to administer Football West Sanctioned Competitions as set out in clause 3.3.

Right to Participate means the rights to participate in Football West Competitions as set out in Football West Competitions as set out in clause 3.1.

Season means from the period from the commencement of pre-season Matches to the conclusion of the Competition in respect of the competitions conducted within any one year.

Special Conditions means the special conditions contained in this Agreement applying to the Association as set out in Schedule 1 (if any).

State means the state of Western Australia.

Team means the team(s) representing the Club in a Competition.

Term means the term of this Agreement commencing on the date the last party signs this Agreement and ending on the End Date unless terminated earlier.

Virtual Signage means any form of signage or advertising that is not physically at the Ground, including the electronic or other digital insertion of words, figures, numbers, information, visual images or other material into a television or other broadcast in any place.

## Interpretation

In this Agreement, unless the context otherwise requires:

### headings are for convenience of reference only and do not affect interpretation;

### references to any gender include all genders;

### references to the singular apply to the plural and vice versa;

### references to a person include any other entity recognised by law and vice versa;

### where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

### any reference to a paragraph number refers to a paragraph in the same sub-section unless otherwise stated;

### any reference to a party to this document includes its successors and permitted assigns;

### any reference to any agreement or document includes that agreement or document as amended or amended and restated at any time;

### the use of the word ‘includes’ or ‘including’ is not to be taken as limiting the meaning of the words preceding it;

### the expression at any time includes reference to past, present and future time and the performance of any action from time to time;

### reference to a statute, legislation or law includes all regulations and other instruments under it and amendments, consolidations, re-enactments and replacements to that statute, legislation or law and any statute passed in substitution for that statute, legislation or law or incorporating any of its provisions to the extent that they are incorporated;

### a reference to a regulation or rule refers to those regulations or rules as renamed, amended or replaced from time to time; and

### all monetary amounts are inclusive of GST unless stated otherwise.

# Conditions Precedent

## Conditions Precedent

This Agreement is subject to and conditional upon the satisfaction of the following conditions precedent:

### the Association lodging with Football West a duly executed Application containing true and correct information as at that date;

### Football West determining that the Association has satisfied the requirements necessary to be eligible to enter into this Agreement; and

### Football West and the Association executing this Agreement.

## Costs Relating to Conditions Precedent

Each party is responsible for all costs and expenses associated with the satisfaction of its respective conditions set out in clause 2.1.

## Failure to Satisfy Conditions Precedent

Until all of the conditions precedent set out in clause 2.1 are satisfied, this Agreement is not binding on either party and neither party is liable to the other party.

# Grant of Right to Participate and Administer

## Football West Grants the Association the Right to Participate

Subject to clause 2 and this clause 3 (including clause 3.2) and any Special Conditions to this document, Football West grants the Association the right to participate in Football West Competitions. The Association acknowledges and agrees that the rights granted under this Agreement are for the term of this Agreement only and are personal, non-assignable and non-transferable.

## Right to Participate is Subject to Compliance with the Agreement

The Association acknowledges and agrees that the Right to Participate is subject to the Club complying with the terms of this Agreement and any other conditions imposed on the Association by Football West from time to time in accordance with this Agreement, the Application and the Football West Rules and Regulations.

## Football West Grants the Association the Right to Administer

### The parties acknowledge and agree that Football West is entitled to administer Competitions under the FA Governance structure. Football West grants the Association the right to administer Football West Sanctioned Competitions in the Association’s Region of Responsibility in accordance with the Special Conditions.

### Specific obligations and rights delegated to the Association under this Agreement are set out in the Special Conditions to this Agreement;

### Details of this delegation must be made available to clubs participating in affected competitions; and

### Football West may not delegate responsibility for clause 4(e).

## Variation of Competition Structure

The parties acknowledge and agree that Football West may:

### review and vary the Competition structure and format during the Season (in consultation with the Association) in its absolute discretion, including:

#### the scheduling and rescheduling of the date, time and location at which Matches are played;

#### the timing of the Season;

#### the staging and format of any final series for the Competition including the location of Matches in the final series;

#### the number of clubs in the Competition;

#### introduction of a system for promotion or relegation as a criterion for participation in the Competition after completion of the Season;

#### without limiting clause 3.4(a)(iv), by allowing a vacancy caused by the termination of a club’s right to participate to continue until the end of the Season, or by granting the right to participate to another club to replace a terminated club for the duration of the Season; and

### may delegate responsibilities and obligations regarding the Competition to the Association in its capacity as Competition Administrator, including as set out in Schedule 1.

## Football West may Consult

Football West may, as it deems appropriate, consult with the Clubs participating in the Competition during the Season regarding the matters outlined in clause 3.4 but determinations on those matters remain at the absolute discretion of Football West.

# Football West General Obligations

Football West must:

### regulate, organise and promote the Competition;

### implement and enforce as it sees fit:

#### this Agreement;

#### the FA Rules and Regulations; and

#### the Football West Rules and Regulations.

### engage and appoint Match Officials for the Competition, with the exclusion of the MiniRoos Competition;

### as a Member Federation, comply with, and ensure compliance with, the FA Rules and Regulations;

### use reasonable endeavours to arrange insurance cover for the Association, Club, Players, Officials and Teams in relation to personal injury and public liability but only in relation to activities sanctioned or approved by Football West;

### notify Clubs of the delegation of the Right to Administer under this Agreement; and

### provide member protection information and support to the Club.

### The obligations of Football West in clauses 4(a) to (d) (inclusive) may be delegated to the Association by Football West and if so delegated the Association must comply with those obligations.

# Association General Obligations

The Association must:

### trade and operate as an incorporated association for the Term of this Agreement;

### comply with:

#### this Agreement;

#### the FA Rules and Regulations;

#### the Football West Rules and Regulations;

#### its Governing Document;

#### the Associations Act and all other applicable laws; and

#### any reasonable directions issued by Football West from time to time.

### educate its Associates about, and enforce, the Football West Rules and Regulations and the FA Rules and Regulations;

### act reasonably and in good faith at all times in exercising its rights under this Agreement and while participating in and administering the Competition more generally;

### ensure the Association, Clubs, Associates, Officials, Teams and Players comply with directions provided by the Competition Administrator and/or Football West including, without limitation, directions in relation to the scheduling or rescheduling of Matches;

### use its best endeavours to ensure that it and each of its Clubs, Players, Teams, Officials, Associates, members, and supporters:

#### do not adversely impact the image or reputation of or bring into disrepute FIFA, FA, Football West, commercial partners, sponsors or supporters of FIFA, FA or Football West, the Competition, the Competition Administrator, Match Officials, Officials, Teams, other parties participating in the Competition (including club officials, players and supporters of those clubs) or football in general; and

#### do not alone, jointly or severally, engage in any conduct or behaviour which, in Football West’s opinion, is prejudicial or likely to be prejudicial to the interests or reputation of Football West, the Competition or the playing of football;

### ensure that its Officials are fit and proper persons to participate in or be associated with the Association as a participant in the Competition;

### ensure that each of its Players, Club Officials and Team Officials are registered in accordance with the FA National Registration Regulations;

### at any time provide all necessary information reasonably requested by Football West;

### obtain and maintain all rights, consents and authorisations necessary to participate in the Competition and to comply with this Agreement, and provide Football West with copies of all materials reasonably required by Football West on request;

### prepare and submit to Football West, on an annual basis, or as otherwise requested by Football West, a financial report to show the financial viability of the Association;

### keep adequate records in sufficient detail to enable its compliance with this Agreement and the Football West Rules and Regulations to be verified;

### participate in and cooperate fully with any end of season review conducted by Football West in relation to the Association’s participation in and administration of the Competition during the Season, including compliance with the terms of this Agreement and the Football West Rules and Regulations;

### not change the name of the Association, any Club or any Team without the prior written consent of Football West, such consent not to be unreasonably withheld;

### ensure that if any Players are selected to compete for an Australian or Western Australian representative side, the Association:

#### releases and make such Players available to participate in the matches in which such representative sides compete and attend any camps, training sessions, media conferences, promotional activities or other official functions in relation to those matches on notice from Football West acting reasonably; and

#### otherwise fully co-operate with Football West with respect to such representative sides and matches and related functions; and

### comply with the Special Conditions (if any).

# Disciplinary and Grievance Procedures

## Disputes Governed by Disciplinary and Grievance Regulations

All disciplinary matters, disputes, grievances or other incidents involving the Association, its Players, Team Officials, Club Officials supporters and/or spectators that occur during the term of this Agreement are governed by the Football West Dispute and Grievance Regulations and/or the equivalent regulations set out by the Competition Administrator.

## Anti-Doping

All matters relating to anti-doping are governed by FA’s Anti-Doping Policy. The Association must comply with and procure all Players comply with the Anti-Doping Policy.

## Behaviour of Supporters and Spectators

The Association is responsible, and liable, for the conduct and behaviour of its supporters and spectators, whether at home or away Matches.

## Recourse to Courts

The Association agrees to submit to the jurisdiction of the Dispute and Grievance Regulations and agrees that it will exhaust all avenues open to it under those Regulations to resolve any grievance, disciplinary or other incident in relation to the Competition, before commencing any action in any court of law or external tribunal.

# Non-Sanctioned Competitions and Programs

## Written Permission from Football West

The Association acknowledges and agrees that neither the Association nor any Associate of the Association may participate in any Non-Sanctioned Competitions and Non-Sanctioned Programs without the prior express written consent of Football West. Football West may provide consent in its sole discretion and subject to any terms and conditions it may impose.

## Football West Matches take Priority

For the avoidance of doubt, the Association acknowledges and agrees that if express written consent is given by Football West for the Association to participate in a Non-Sanctioned Competition, Football West Matches take priority over the Non-Sanctioned Competitions.

# Commercial Rights

## Commercial Rights Owned by Football West

### The Association acknowledges and agrees that the Competition and all commercial rights associated with the Competition, are (unless otherwise agreed in writing signed by the parties) owned by Football West (including but not limited to all commercial rights such as sponsorship rights, licensing rights, Broadcast Rights, Match statistics, rights to commercialise the Football West website and gaming and wagering rights) (**Commercial Rights**). The Association must do all things including obtaining any consent or approval to facilitate or allow Football West to exploit the Commercial Rights.

### The Association must not seek to exploit or grant any such Commercial Rights.

## Access to Ground to be Provided Free of Charge

The Association acknowledges and agrees that, in consideration for the grant of the rights under this Agreement, it must provide Football West and its licensees, including a reasonable number of vehicles for the carriage of any equipment, with access to the Ground free of charge to facilitate activation or utilisation of Football West’s Commercial Rights under this Agreement. The Association is entitled to charge fees to Football West for the hire of rooms and other facilities located at the Association’s Ground or facilities on terms agreed between the parties.

## Rights Associated with Matches

The parties acknowledge and agree that, subject to the terms of this Agreement (in particular, clause 8.1), all rights that are not Commercial Rights associated with Matches hosted by the Association at the Ground are owned by the Association (including Match day revenue sources such as ticketing, signage, catering and hospitality).

# Intellectual Property

## Football West Competition Property

The Association:

### acknowledges that Football West owns all right, title and interest in the Competition Property, and, to the extent that any such rights vest in the Association, agrees to assign such rights to Football West without charge;

### must not use any of the Competition Property without the prior written consent of Football West; and

### must use any Competition Property in respect of which it has been granted rights of use by Football West in accordance with the terms of that grant of rights, including in accordance with the terms of any branding guidelines.

## Association Intellectual Property

The Association grants to Football West a non-exclusive non-transferable licence during the Term to use the Association’s Intellectual Property for the promotion of football related activities and the Competition. A football related use might be the use of a club’s/association’s logo in promotion of a match.

## Association Representations and Warranties

The Association represents and warrants that:

### it has all the rights and consents necessary to grant rights to Football West under this clause 9; and

### no Intellectual Property rights of any person will be infringed by Football West’s use of the Association’s Intellectual Property.

# Marketing, Sponsorship, Media and Communications

## Football West Responsibilities

Football West is solely responsible for:

### the marketing, sponsorship and promotion of the Competition;

### controlling media accreditation to all Matches, including processing applications and issuing accreditation terms;

### handling all media enquiries that relate to Football West or the Competition; and

### the development and maintenance of the Football West website.

## Association Responsibilities

### The Association must comply with any directions or guidelines issued by Football West in relation to the branding and marketing of the Competition including, but not limited to, any requirement to have Football West’s sponsors at the Ground or on Association or Team clothing; and

### The Association acknowledges that Football West has and retains all rights associated with the matters set out in this clause 10. The Association must not grant to any person any rights in relation to those matters.

## Joint Responsibilities

### The parties agree to actively work together in relation to the marketing and promotion of the Competition and, where appropriate, Football West will use reasonable endeavours to assist the Association with the marketing and promotion of the Association and Matches.

### Each party must comply with the *Privacy Act 1988* (Cth), including obtaining appropriate consent for the collection, use and disclosure of personal information.

# Association Representations and Warranties

## Association Representations and Warranties

The Association represents and warrants that:

### it has the power to enter into and perform its obligations under this Agreement and the capacity and expertise to do so;

### the information provided in its Application was, to the best of its knowledge accurate, complete and up-to-date and acknowledges that Football West relied on that information in entering into this Agreement;

### the Association has made its own enquiries and undertaken independent accounting and financial advice and confirms that it is a validly incorporated and registered incorporated association, which validly exists under the laws of its place of incorporation;

### it complies with the Associations Act, its Governing Document and all applicable laws;

### it is presently solvent and is able to pay its debts as and when they fall due; and

### is not aware of any matter, event or circumstance which would prevent it from being able to pay its debts as and when they fall due or to otherwise perform its obligations under this Agreement.

## Change of Circumstances

In the event of any change of circumstances in relation to the representations and warranties provided by the Association under this clause 11 (including with respect to information contained in the Application), the Association will notify Football West as soon as practicable, and in any event within 7 Business Days, of becoming aware of the occurrence of such an event or change in circumstances.

# Indemnities and Liability

## Indemnities

The Association agrees to indemnify Football West and its directors, officers, servants, employees and agents against all actions, claims, losses, damages and expenses howsoever arising, that they may directly or indirectly sustain or incur in connection with this Agreement, the Club’s participation in the Competition or the use of any rights granted under this Agreement, including, but not limited to:

### any loss or damage (save for consequential loss) sustained as a result of any breach of this Agreement by the Association;

### any loss or damage to any property or injury to, or death of, any person caused by the negligent act or omission or wilful misconduct of the Association or its officers, employees, agents, independent contractors, players or volunteers;

### any debts or charges including statutory charges, fees or monies payable in connection with this Agreement; or

### any loss or damage (save for consequential loss) as a result of a breach of warranty,

except to the extent that such loss is due to any wrongful or negligent act or omission of Football West or its directors, officers, servants and employees.

## Liability

### To the extent permitted by law, the Association agrees not to bring any claim or proceeding against Football West for any damage, loss, injury or liability which the Association or any Player or Official may suffer as a result of participating in, attempting to participate in or being excluded from, a Competition.

### Except for liability that by law cannot be excluded, Football West is by this clause 12 irrevocably released from any and all liability to the Association in tort (including negligence), contract or bailment for acts or omissions of Football West and its directors, officers, servants, employees and agents arising out of or in relation to the Competition or this Agreement, and the Association agrees to indemnify and hold harmless Football West and its directors, officers, servants, employees and agents from any such liability.

### This clause 12 continues to apply after any termination or expiry of this Agreement.

# Right of Audit and Inspection

## Audits

### Football West may carry out audits to ensure the Association’s compliance with the Associations Act and its Governing Documents.

## Each Association must:

### keep adequate records, documents and financial accounts in sufficient detail to enable compliance with the Associations Act, its Governing Documents or this Agreementto be verified;

### permit Football West full and free access to records for the purpose of verifying compliance with the Associations Act, its Governing Documents or this Agreement;

### produce copies of records and any other reports requested by Football West from time to time for the purpose of verifying compliance with the Associations Act, its Governing Documents or this Agreement;

### ensure a representative from the Association is available to respond to any query in relation to compliance and verification issues in relation to the Associations Act, its Governing Documents or this Agreement; and

### promptly notify Football West about a dispute, disagreement, deadlock or any other matter impacting or relating to the governance, operation, conduct or control of the Association which:

#### has caused, or would be reasonably likely to cause, a breach of this Agreement, its Governing Documents, the Competition Rules or the Act; or

#### has had, or would be reasonably likely to have, a material or adverse effect on the operation, conduct or affairs of the Association (including its ability to comply with this Agreement or act as Competition Administrator); or

#### has caused, or would be reasonably likely to cause, damage the reputation of Football West, FA, FIFA or any of their sponsors.

## Non-disclosure

Football West may not disclose any information received as part of these audits to any third party and may only use the information for the purpose of establishing compliance with the Associations Act, its Governing Documents and this Agreement.

# Goods and Services Tax (GST)

## Calculating GST

Any monetary amounts referred to in this Agreement are stated as a figure exclusive of GST.

## Payment of GST

Notwithstanding any other provision in this Agreement, if a party makes a supply under or in connection with this Agreement upon which GST is imposed pursuant to the GST laws, then the consideration payable or to be provided by the other party under this Agreement shall be increased by an amount determined by multiplying the amount of the consideration in question by the applicable rate for GST as determined from time to time by the GST Law.

## Definition of GST

For the purposes of this clause 14, unless otherwise provided under this Agreement, words and expressions used in this clause 14 that are defined in the GST Law have the same meaning in this clause 14.

# Confidentiality

### Upon execution of this Agreement, Football West and the Association may:

#### each publicly disclose that it is a party to this Agreement and the rights and obligations under clause 3 (including that the Association has been granted the Right to Participate, Right to Administer and the rights and functions set out in Schedule 1); and

#### disclose the terms of this Agreement for the purpose of performing the responsibilities in clause 10.

### Unless otherwise specified in this Agreement, the terms of this Agreement and any related negotiations, dealings, discussions or correspondence whatsoever, including all material in whatever form provided to each party or their agents prior to or subsequent to execution of this Agreement, are confidential except where they are in the public domain otherwise than as a result of a breach of the terms of this Agreement or are required to be made available to third parties as part of this Agreement.

### Each party undertakes not to disclose the matters referred to in this Agreement under any circumstances, except to its accountants, legal advisers or as required by law, without the prior written consent of the other party.

# Term and Termination

## No Right of Renewal

### Football West may renew or extend this Agreement by providing written notice to the Association no less than 20 Business Days’ before the End Date.

### The Association agrees that it has no automatic right to any renewal or extension of this Agreement or a right to participate in any future competitions administered by Football West (including the Competition), and Football West has the right to determine in its absolute discretion whether any right to participate in any competition (including the Competition) is renewed or extended.

## Football West Right to Make Good any Default

If the Association defaults in fully and punctually performing any obligation contained or implied in this Agreement, Football West may, without prejudice to any right, do all things necessary or desirable in Football West’s opinion to make good or attempt to make good that default to the satisfaction of Football West.

## Termination by Either Party

Either party (the first party) may terminate this Agreement with immediate effect by giving notice to the other party if:

### that other party breaches any term of this Agreement capable of remedy and fails to remedy the breach within 14 days, or such other time as the first party considers reasonable, after receiving written notice requiring it to do so;

### that other party breaches any material term of this Agreement not capable of remedy; or

### an Insolvency Event happens to that other party (whether or not notified).

## Termination by Football West

Football West may terminate this Agreement immediately due to an act by the Association or its Associates which may damage the reputation of Football West, FA, FIFA or any of their sponsors.

## Notification of Insolvency Event

Each party must notify the other party immediately if an Insolvency Event occurs that affects that party.

## Suspension of Rights

## Without prejudice to Football West’s rights under this deed or otherwise, if:

### Football West is entitled to terminate this agreement under clause 16.3 or 16.4;

### the Association does not, or in Football West’s reasonable opinion cannot, perform a function delegated to it under the Special Conditions;

### the Association does not, or in Football West’s reasonable opinion cannot, perform an obligation under this Agreement or comply with a term in this Agreement; or

### Football West considers (acting reasonably) that an event has occurred in relation to the Association which:

#### has caused, or would be reasonably likely to cause, a breach of this Agreement, the Association’s Governing Documents, the Competition Rules or the Act; or

#### has had, or would be reasonably likely to have, a material or adverse effect on the operation, conduct or affairs of the Competition or the Association,

#### then:

#### Football West may: (i) suspend the Association’s Right to Participate and/or Right to Administer for a period determined by Football West on any conditions determined by Football West; and (ii) step-in and perform the functions of the Competition Administrator that were performed by (or delegated to) the Association; and

#### the Association must do all things required to assist Football West in connection with the exercise of its rights.

# Consequences of Termination

## Rights to Participate

On termination or expiry of this Agreement, the Association will cease to have the rights and entitlements granted to it under this Agreement, including without limitation the Right to Administer and the Right to Participate.

## Clauses that Bind the Parties after Termination or Expiry

Clause 6 (Disciplinary and Grievance Procedures), clause 12 (Indemnities and Liability), clause 15 (Confidentiality), and clause 17 (Consequences of Termination) and each other clause required to make these clauses effective continue to bind the parties after termination or expiration of this Agreement for any reason.

# Force Majeure

Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement (other than any obligation to pay money) if that failure or delay is due to:

### any force majeure including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, strike, sabotage, epidemic provided that any such event was not reasonably capable of being contemplated at the date of this Agreement; or

### any government restriction, ruling or response to the COVID-19 pandemic.

# Co-operation and Good Faith

Each party must act in good faith and do or cause to be done all acts and things necessary or desirable to give effect to, and refrain from doing all acts that could hinder performance by any party of, this Agreement.

# General

## Assignment

The Association must not assign, sub-contract or otherwise deal with its rights or obligations under this Agreement.

## Amendments

Amendments to this Agreement will only be valid if made in writing and signed by both parties.

## Waiver

### Failure by Football West to require strict compliance with any provision of this Agreement will not be a waiver of Football West’s rights to enforce that provision later.

### Any waiver by Football West of any breach of this Agreement must be in writing.

## Non merger

Any obligations of the Association to be performed after termination or expiry of this Agreement survive such termination or expiry.

## Non performance

If the Association does not perform any obligation under this Agreement, Football West may perform that obligation and Football West’s costs of performing that obligation will be a debt due and payable by the Association to Football West on demand.

## Entire agreement

### The terms and conditions set out in this Agreement contain the entire agreement between the parties.

### The Association acknowledges that it has not been induced to enter into this Agreement by any representation (verbal or otherwise) made by or on behalf of Football West that is not set out in this Agreement.

## Notices

### A notice given or made under this Agreement:

### must be in writing, dated and signed (or, the case of email, sent) by the sender or a person duly authorised by the sender; and

### must be addressed and delivered to the intended recipient and sent to the address set out in the Party Details section of this Agreement or as otherwise notified by a party in writing from time to time. A notice given in accordance with clause 20.7(a) will be deemed received:

#### if delivered by hand to the recipient’s address, on the date of delivery;

#### if sent by post, 4 Business Days after the posting; and

#### if sent by email, on receipt by the intended recipient unless the sender received notification that the email was not sent.

## Severability

If it is held by a Court that any part of this Agreement is void, voidable, illegal, or unenforceable or this Agreement would be void, voidable, illegal, or unenforceable unless any part of this Agreement were severed, that part will be severed from this Agreement and will not affect the continued operation of the balance of this Agreement.

## Jurisdiction

The laws of Western Australia govern this Agreement and the parties agree to the exclusive jurisdiction of the Courts exercising jurisdiction in Western Australia in relation to any dispute arising out of, or incidental to, this Agreement.

## Relationship

Except where this Agreement expressly states otherwise, this Agreement does not create a relationship of employment, trust, agency, partnership or joint venture between the parties.

Schedule 1 - Special Conditions

In accordance with clause 3 the following Rights to Administer are delegated to the Association as Competition Administrator in the Region of Responsibility:

1. The Competition Administrator may, as it deems appropriate, review and vary the Competition structure and format during the Season including:

### the scheduling and rescheduling of the date, time and location at which Matches are played;

### the timing of the Season;

### the staging and format of any final series for the Competition including the location of Matches in the final series;

### the number of Clubs in the Competition;

### introduction of a system for promotion or relegation as a criterion for participation in the Competition after completion of the Season; and

### by allowing a vacancy caused by the termination of a Club’s right to participate to continue until the end of the Season, or by granting the right to participate to another club to replace a terminated Club for the duration of the Season.

1. The Competition Administrator may, as it deems appropriate, consult with the Clubs participating in the Competition during the Season regarding the matters outlined in clause 1 of these Special Conditions.
2. The Competition Administrator must, as Competition Administrator:

### regulate, organise and promote the Competition;

### implement and enforce:

#### this Agreement;

#### the FA Rules and Regulations; and

#### the Football West Rules and Regulations.

### as an Association, comply with, and ensure compliance with, the FA Rules and Regulations, the Associations Act, its Governing Documents and all applicable laws;

### engage and appoint Match Officials for the Competition;

### provide member protection information and support to the Club; and

### not do or omit to do anything which would breach the Agreement.

1. The Competition Administrator must work in conjunction with Football West to:
   1. Market, promote and arrange sponsorship and licensing agreements for the Competition;
   2. Control media accreditation to all Matches, including processing applications and issuing accreditation terms; and
   3. Respond to all media enquiries that relate to the Association and the Competition.

Executed as an Agreement:

|  |  |  |
| --- | --- | --- |
| EXECUTED for and on behalf of FOOTBALL WEST LTD (ACN 109 919 324) by RYAN LENEGAN who certifies he is authorised to do so in the presence of: | )  )  )  ) | Signature of **Ryan Lenegan**  General Manager – Participation, Community and Clubs |
| Signature of Witness    Name of Witness (Please Print)    Occupation of Witness (Please Print) |  |  |

|  |  |  |
| --- | --- | --- |
| EXECUTED for and on behalf of Club Legal Entity Name ABN Incorporation Number in accordance with section 15 of the *Associations Incorporation Act 2015* (WA): |  |  |
| Signature of Authorised Signatory    Name of Authorised Signatory |  | Signature of Authorised Signatory    Name of Authorised Signatory |

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_