



# The new Perth Stadium Project

## Subcontractor Deed of Novation

Western Australian Sports Centre Trust, trading as VenuesWest  
(State)

and

VenuesLive Management Services (WA) Pty Ltd  
(Operator)

and

[insert name of Subcontractor]  
(Subcontractor)

<b>1</b>	<b>Interpretation</b> .....	<b>1</b>
	1.1 Definitions .....	1
	1.2 Interpretation .....	2
	1.3 Related matters .....	3
	1.4 This Deed prevails .....	4
<b>2</b>	<b>Operation</b> .....	<b>4</b>
<b>3</b>	<b>Novation</b> .....	<b>4</b>
<b>4</b>	<b>Obligations prior to Execution Date</b> .....	<b>4</b>
<b>5</b>	<b>Acknowledgments</b> .....	<b>4</b>
<b>6</b>	<b>Release</b> .....	<b>5</b>
<b>7</b>	<b>Assignment</b> .....	<b>5</b>
<b>8</b>	<b>Further assurances</b> .....	<b>5</b>
<b>9</b>	<b>Dispute resolution</b> .....	<b>5</b>
<b>10</b>	<b>Notices</b> .....	<b>5</b>
<b>11</b>	<b>General</b> .....	<b>6</b>
	11.1 Relationship of the parties .....	6
	11.2 State's rights, duties, powers and functions .....	6
	11.3 Counterparts .....	7
	11.4 Governing law .....	7
	11.5 Waiver and estoppel .....	7
	11.6 Variations and waivers .....	7
	11.7 Joint and several liability .....	7
	11.8 Clauses to survive termination .....	7
	11.9 Costs and expenses .....	8
	11.10 Further acts and documents .....	8
	11.11 Severability of provisions .....	8
	<b>Execution page</b> .....	<b>9</b>
	<b>Schedule 1 – Particulars</b> .....	<b>10</b>

## Subcontractor Deed of Novation

This Deed is made on [insert date]

between

Western Australian Sports Centre Trust, trading as VenuesWest (ABN 47 894 197 015)  
(State)

and

VenuesLive Management Services (WA) Pty Ltd (ABN 16 612 306 377) (**Operator**)

and

[insert name of Subcontractor] (**Subcontractor**)

and the parties agree as follows:

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### Recitals

- A. The State and the Operator have entered into the Agreement for the operation of the Stadium and Sports Precinct.
- B. The Operator and the Subcontractor have entered into the Subcontract to undertake services in respect of the operation of Stadium and Sports Precinct.
- C. The Agreement and the Subcontract require the Subcontractor to enter into this Deed for the purpose of effecting a novation of the Subcontract from the Operator to the State or a third party nominated by the State.

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### Operative Provisions

#### 1 INTERPRETATION

##### 1.1 Definitions

In this Deed, unless the context indicates otherwise:

<b>Term</b>	<b>Meaning</b>
<b><i>Agreement</i></b>	means the document entitled "The new Perth Stadium Project – Operator Agreement" entered into between the State and the Operator on or about the date of this Deed.
<b><i>Business Day</i></b>	has the meaning given to it in the Agreement.
<b><i>Claim</i></b>	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made: <ul style="list-style-type: none"> <li>(a) under or arising in connection with this Deed;</li> <li>(b) at Law; or</li> <li>(c) for specific performance, restitution, payment of money (including for damages), or any other form of relief.</li> </ul>
<b><i>Deed</i></b>	has the meaning in Clause 1.3(f).
<b><i>Execution Date</i></b>	means the date that this Deed is executed by the State.
<b><i>Governance Agency</i></b>	means the party identified as such in 'Parties' above.
<b><i>Law</i></b>	means: <ul style="list-style-type: none"> <li>(a) Commonwealth, Western Australian or local government legislation, including statutes, ordinances, instruments, codes (but excluding any</li> </ul>

<b>Term</b>	<b>Meaning</b>
	building codes or Australian Standards), requirements, regulations, by-laws and other subordinate legislation;
	(b) common law; and
	(c) principles of equity.
<b>Schedule</b>	means the schedule to this Deed.
<b>Services</b>	means the services the subject of the Subcontract, described in general terms in the Schedule.
<b>Subcontract</b>	means the agreement identified as such in the Schedule.

## 1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) **(persons)**: references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)**: the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) **(or)**: the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;
- (d) **(party)**: a reference to a "party" is to a party to this Deed;
- (e) **(other persons)**: a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(Authority)**: a reference to any Authority, Utility Company, institute, association or body is:
  - (i) if that Authority, Utility Company, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, Utility Company, institute, association or body are transferred to another organisation, a reference to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as applicable; and
  - (ii) if that Authority, Utility Company, institute, association or body ceases to exist, a reference to the organisation which serves substantially the same purposes or objectives as that Authority, Utility Company, institute, association or body;
- (g) **(this Deed)**: a reference to this Deed or to any other contract, agreement, document, instrument or guidelines includes a reference to this Deed or such other contract, agreement, document, instrument or guidelines as amended, novated, supplemented, varied or replaced from time to time;
- (h) **(legislation)**: a reference to any legislation or to any section or provision of it includes any amendment to or re-enactment of, or any statutory provision substituted for, that legislation, section or provision;
- (i) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty;
- (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;

- (l) **(headings)**: headings are for convenience only and do not affect the interpretation of this Deed;
- (m) **(schedules)**: a reference to this Deed includes all Schedules;
- (n) **(Clauses)**: a reference to:
  - (i) a Clause, Schedule or Attachment is a reference to a Clause, Schedule or Attachment of or to this Deed;
  - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears; and
  - (iii) a Section is a reference to a Section of a Schedule;
- (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)**: a reference to "\$" is to Australian currency;
- (q) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (r) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (s) **(construction)**: no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward or drafted this Deed or any part;
- (t) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) **(remedy)**: the use of the word "remedy" or any form of it in this Deed means that the event to be remedied must be cured or its effects overcome;
- (v) **(may)**: the term "may", when used in the context of a power or right exercisable by the State or the State Representative, means that the State or the State Representative (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State or the State Representative (as applicable) has no obligation to the Operator or the Subcontractor to do so;
- (w) **(no double counting)**: if this Deed requires calculation of an amount payable to a party there must be no double counting in calculating that amount; and
- (x) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the Parties or expressly stated in this Deed.

### 1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this Deed which seeks either expressly or by implication to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(Cost of performing obligations)**: Each party must perform its obligations in accordance with this Deed at its own cost, unless expressly provided otherwise.
- (c) **(Subcontractor obligations)**: In complying with or accepting any obligation or risk in accordance with this Deed, the Subcontractor must procure that, to the extent applicable, each subcontractor that the Subcontractor has subcontracted with is required to comply with or accept the relevant obligation or risk and not cause the Subcontractor to breach its obligations in accordance with this Deed.
- (d) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this Deed is not a Business Day, that thing must be done on the next Business Day.
- (e) **(Discretion)**: Any consent or approval in accordance with this Deed from the State may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State (in its absolute discretion) thinks fit, unless this Deed provides otherwise.

- (f) **(Deed composition):** This Deed comprises:
  - (i) Clauses 1 to 11; and
  - (ii) Schedule 1 (Particulars).

#### **1.4 This Deed prevails**

To the extent of any inconsistency between this Deed, the Subcontract or any subcontract, this Deed prevails unless the Parties expressly agree otherwise.

## **2 OPERATION**

This Deed does not come into full force and effect until the Execution Date.

## **3 NOVATION**

From the Execution Date, subject to Clause 4, the novated Subcontract will take effect:

- (a) as an agreement between the State and the Subcontractor;
- (b) as if the State had been named as the Operator in the Subcontract;
- (c) so that each reference in the Subcontract to the Operator is a reference to the State;
- (d) so that the rights, obligations and liabilities of the Operator under the Subcontract become the rights, obligations and liabilities of the State;
- (e) so that the Subcontractor must comply with all of its obligations under the Subcontract for the benefit of the State; and
- (f) so that the Operator is released from those obligations and liabilities under the Subcontract assumed by the State.

## **4 OBLIGATIONS PRIOR TO EXECUTION DATE**

- (a) Notwithstanding Clause 3:
  - (i) the State does not accept liability for any obligations that arose under the Subcontract before the Execution Date;
  - (ii) the Subcontractor will have no entitlement to make any Claim against the State for any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor arising out of or in connection with the performance of the Services or the Subcontract prior to the Execution Date;
  - (iii) the State is entitled to all rights to which the Operator was entitled in accordance with the Subcontract including all rights which arose prior to the Execution Date; and
  - (iv) the Operator is entitled to rights which accrued prior to the Execution Date in connection with any liability of the Operator in accordance with the Subcontract which is the subject of a dispute;
- (b) The Subcontractor will continue to be bound by the Subcontract as if the State was an original party to the agreement in place of the Operator; and
- (c) The Subcontractor:
  - (i) will have the benefit of any extensions of time granted to the Subcontractor prior to the Execution Date; and
  - (ii) is not entitled to exercise any right of set-off or counterclaim against the State if, and to the extent that, such right arose prior to the Execution Date.

## **5 ACKNOWLEDGMENTS**

The Subcontractor acknowledges and agrees that as at, and from, the Execution Date, it will continue to diligently perform its obligations under the novated Subcontract notwithstanding that they were incurred prior to the Execution Date and notwithstanding any costs, losses, expenses or damages (including consequential loss) incurred by the Subcontractor in

connection with the performance of the Services or the Subcontract prior to the Execution Date.

## 6 RELEASE

- (a) The Subcontractor releases the Operator from all of its obligations in accordance with the Subcontract and all liabilities that it may have against the Operator in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Execution Date and which are not obligations or liabilities which are assumed by the State.
- (b) The Operator releases the Subcontractor from all its obligations in accordance with the Subcontract and all liabilities that it may have against the Subcontractor in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Execution Date and which are not obligations or liabilities which are assumed by the State.

## 7 ASSIGNMENT

Except as expressly contemplated by this Deed or agreed to by the State, neither the Operator nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed.

## 8 FURTHER ASSURANCES

The Operator and the Subcontractor undertake, upon request by the State, to execute all documents and do all things necessary to vest in the State the Subcontract or otherwise to give effect to the terms of this Deed.

## 9 DISPUTE RESOLUTION

- (a) Each party may refer a dispute, despite any other provision, in accordance with this deed to dispute resolution in accordance with this Clause 9.
- (b) If a matter is referred for expert determination in accordance with this Clause 9:
  - (i) any dispute or difference of opinion arising between the parties in relation to that matter must be resolved in the same manner that disputes or differences of opinion referred for expert determination in accordance with the Agreement are resolved;
  - (ii) accordingly, the provisions of Clauses 34 (Dispute Resolution) of the Agreement are incorporated into this deed but as if:
    - (A) the only persons party to the Agreement, and the only persons party to the relevant dispute or difference of opinion, are the parties to the relevant dispute in accordance with this deed; and
    - (B) the only matters for expert determination in accordance with those provisions are the matters referred for expert determination in accordance with this deed.

## 10 NOTICES

- (a) **(Form of notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this deed (in this Clause 10, "**Notices**"):
  - (i) must be in writing; and
  - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices):** All Notices must be:
  - (i) delivered or posted by prepaid post to the address; or
  - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out below (or as otherwise notified by that party to each other party from time to time).

- (c) **(Date of receipt):** Subject to Clause 10(d), a Notice is taken to be received by the addressee:
- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
  - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
  - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email):** In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the communication in accordance with this Clause 10. Any text in the body of the email or the subject line will not form part of the Notice; and
  - (ii) the Subcontractor must ensure that, in connection with any communications in accordance with or in connection with this deed:
    - (A) its firewall and/or mail server (as applicable):
      - (1) allows messages of up to 14 MB to be received;
      - (2) does not trap any messages in the spam filter which have been sent from any State or State of Western Australia domain; and
      - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
    - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

## 11 GENERAL

### 11.1 Relationship of the parties

- (a) Except to the extent expressly provided for in this Deed, no duty of good faith is implied on the State in connection with its relationship with the Subcontractor.
- (b) Neither this Deed nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) The Subcontractor must not act as or represent itself to be the servant or agent of the State, except to the extent permitted under the Agreement.

### 11.2 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this Deed expressly provides otherwise, nothing in this Deed gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this Deed or the Subcontract.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this Deed or the Subcontract to the contrary, the parties expressly agree that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other government agency or department, or to influence, over-ride or direct any government agency or department in the proper exercise and performance of its legal duties and functions.



- (c) **(No fettering):** Nothing contained in this Deed or contemplated by this Deed has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim):** Subject to Clause 11.2(e), the Subcontractor will not be entitled to make any Claim against the State for any liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach):** Clauses 11.2(a) to 11.2(d) do not limit any liability of the State which the State would have had to the Subcontractor in accordance with this Deed as a result of a breach by the State of a term of this Deed but for Clauses 11.2(a) to 11.2(d).

### 11.3 Counterparts

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

### 11.4 Governing law

This Deed is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

### 11.5 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Deed by the State does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this Deed.
- (b) A waiver given by the State under this Deed is only effective and binding on the State if it is given or confirmed in writing by the State.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.
- (d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Deed by the State does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Deed.

### 11.6 Variations and waivers

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

### 11.7 Joint and several liability

- (a) If the Operator consists of more than one person, then the rights and obligations of the Operator in accordance with this Deed are joint and several as between those persons.
- (b) If the Subcontractor consists of more than one person, then the rights and obligations of the Subcontractor in accordance with this Deed are joint and several as between those persons.

### 11.8 Clauses to survive termination

- (a) All provisions of this Deed which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Deed will survive such termination, completion or expiration.
- (b) Nothing in this Clause 11.8 prevents any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed

survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Deed.

**11.9 Costs and expenses**

Except as otherwise provided in this Deed, each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed; and
- (b) perform its obligations in accordance with this Deed at its own cost.

**11.10 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to each party) required by Law or reasonably requested by another party to give effect to this Deed.

**11.11 Severability of provisions**

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

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## Execution page

### Executed as a deed

The common seal of **Western Australian Sports Centre Trust, trading as VenuesWest** is fixed to this document in the presence of:

*sign  
here*



\_\_\_\_\_  
Authorised Representative

*print  
name*

\_\_\_\_\_  
[insert]

*sign  
here*



\_\_\_\_\_  
Authorised Representative

*print  
name*

\_\_\_\_\_  
[insert]

---

**Executed by VenuesLive Management Services (WA) Pty Ltd ACN 612 306 377** in accordance with section 127 of the *Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

**Executed by [insert Subcontractor] (ACN [insert])** in accordance with section 127 of the *Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

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**Schedule 1 – Particulars**

<b>Item</b>	<b>Particulars</b>
<b>Operator notice details</b>	[address for notices to be inserted]
<b>State notice details</b>	Attention David Etherton Address PO Box 581 Floreat WA 6014 Telephone (08) 9441 8217 Email david.etherton@venueswest.wa.gov.au
<b>Subcontractor notice details</b>	[address for notices to be inserted]
<b>Agreement</b>	[To be inserted]
<b>Subcontract</b>	[To be inserted]
<b>Services</b>	[To be inserted]