

The new Perth Stadium Project

Operational Interface Agreement

SP0793712

The State of Western Australia
(State of Western Australia)

and

Minister for Works
(Minister for Works)

and

Western Australian Sports Centre Trust, trading as VenuesWest
(Governance Agency)

and

Westadium Project Co Pty Ltd in its personal capacity and as trustee for
Westadium Project Unit Trust
(Project Co)

and

VenuesLive Management Services (WA) Pty Ltd
(Operator)

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Interface Agreement

This agreement is made on
between

2016

The State of Western Australia (**State of Western Australia**)

and

The Minister for Works, a body corporate constituted under section 5 of the *Public Works Act 1902 (WA)* (**Minister for Works**)

and

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

and

Westadium Project Co Pty Ltd (ACN 91 169 900 547) in its personal capacity and as trustee for Westadium Project Unit Trust (ABN 27 901 829 646) (**Project Co**)

and

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

and the parties agree as follows:

Recitals

- A. The State has entered into the DBFM Project Agreement with Project Co under which Project Co must carry out the DBFM Works and provide the DBFM Services.
- B. The Governance Agency has entered into the Operator Agreement with the Operator under which the Operator must perform the Operator Obligations.
- C. In order for the Project Co Obligations and Operator Obligations to be carried out in the most effective and efficient way, the Contractors must co-operate, co-ordinate and collaborate with one another in the delivery of their respective obligations under the DBFM Project Agreement and the Operator Agreement.
- D. This agreement sets out the rights and obligations of the parties in relation to the co-ordination and co-operation of, and interface between, the Project Co Obligations and the Operator Obligations and the performance of the parties' respective obligations under the DBFM Project Agreement and the Operator Agreement.

Operative Provisions

1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

1.1 Definitions

In this agreement, unless the context indicates otherwise:

Term	Meaning
Active Profile Period	has the meaning given in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Activity	has the meaning given in the DBFM Project Agreement.
Activity Adjustment Threshold	has the meaning given in the DBFM Project Agreement.
Authorisation	means any consent, authorisation, registration, filing, agreement,

Term	Meaning
	notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with, an Authority, judicial body, stock exchange or any other person.
Authority	means: <ul style="list-style-type: none"> <li data-bbox="622 448 1359 515">(a) any Government Agency, administrative or judicial body or tribunal; and <li data-bbox="622 526 1359 593">(b) any private electricity, telecommunications, gas or other Utility Company.
AV Systems	has the meaning given in Part G (Glossary) of the Design Specification.
Best for Event	means obtaining the best outcome for an Event or Function, consistent with the Contractors' undertaking and commitment to work together in accordance with Clause 3.
Best Operating Practice	has the meaning given in the DBFM Project Agreement.
Bookings Schedule	means the electronic schedule to be maintained by the Operator, listing all of the booked or tentatively booked Events, Functions and Permitted Training as well as when Project Co is required to make all Functional Units required for the Events, Functions and Permitted Training available in accordance with the DBFM Project Agreement.
Builder	means Brookfield Multiplex Engineering and Infrastructure Pty Ltd (ACN 095 282 992) or any other person approved by the State who, in addition or substitution, is engaged by Project Co in accordance with the DBFM Project Agreement to undertake all of the DBFM Works.
Builder Guarantor	means Brookfield Australia Investments Limited ACN 008 687 063 and Brookfield Multiplex Constructions Pty Ltd ACN 107 007 527 and any person who, in addition or substitution, guarantees the obligations of a Builder in accordance with a D&C Subcontract.
Business Day	means any day other than: <ul style="list-style-type: none"> <li data-bbox="622 1713 1359 1747">(a) a Saturday or a Sunday; or <li data-bbox="622 1758 1359 1825">(b) a gazetted holiday in Perth, Western Australia under the <i>Public and Bank Holidays Act 1972 (WA)</i>.
Catering Facilities	has the meaning given in Part G (Glossary) of the Design Specification.
Claim	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), made:

Term	Meaning
	<ul style="list-style-type: none"> (a) in connection with this agreement, the Stadium, the Sports Precinct, the DBFM Project or the Operator Services; (b) at Law; or (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
Commercial Acceptance	means the Commercial Acceptance Criteria have been satisfied to the reasonable satisfaction of the Independent Certifier or State Representative (as applicable) in accordance with the requirements of the DBFM Project Agreement.
Commercial Acceptance Criteria	means those criteria that are required to be satisfied to achieve Commercial Acceptance as set out in Schedule 7 (Completion Criteria) of the DBFM Project Agreement.
Commercial Acceptance Plan	means the plan of that name to be prepared and updated by Project Co in accordance with the DBFM Project Agreement.
Commercial Acceptance Tests	means all tests (excluding the Technical Completion Tests as defined in the DBFM Project Agreement) required to be carried out in accordance with the DBFM Project Agreement or as may be required by the Independent Certifier or the State Representative to assist in determining that Commercial Acceptance has been achieved.
Commercial Opportunities	means the commercial opportunities which are permitted by the State to be delivered by Project Co in accordance with the DBFM Project Agreement.
Commissioning Period	means the period commencing on the Date of Technical Completion and ending on the Date of Commercial Acceptance.
Contractor	means either Project Co or the Operator as the context requires.
Contractors	means Project Co and the Operator.
Contracts	means the DBFM Project Agreement and the Operator Agreement.
Co-ordination Issue	<p>means any issue between the Contractors with regards to the delivery of the Project Co Obligations and the Operator Obligations, including in relation to any Project Interface, but does not include a Dispute or any matter which is likely to:</p> <ul style="list-style-type: none"> (a) increase the net costs or reduce the revenue opportunities of the Stadium Personnel; (b) result in a loss of revenue from the Commercial Opportunities for Project Co; (c) increase the net costs or Liabilities of Project Co or Project

Term	Meaning
	<p>Co Associates;</p> <p>(d) cause the Operator or Project Co to breach their respective Contracts which breach is not excused or relief granted under the relevant Contract; or</p> <p>(e) relate to Stadium User Related Damage claimed by Project Co against Stadium Personnel.</p>
D&C Phase	means the period commencing on Financial Close and ending on the Date of Commercial Acceptance.
D&C Stadium Personnel	means the Operator and employees, agents, contractors, subcontractors, consultants and authorised officers of the Operator involved in the provision of the State Operational Commissioning (as defined in the DBFM Project Agreement) during the Commissioning Period but does not include the State, State Associates, Project Co, Project Co Associates, Hirers, Performers, Patrons or Media Personnel.
D&C Subcontract	means the contract for the DBFM Works entered into between Project Co and a Builder.
Damage Claim	has the meaning given to it in Clause 14.2(b), as amended in accordance with Clause 14.2(c).
Date for Commercial Acceptance	means 31 December 2017, as amended in accordance with the DBFM Project Agreement.
Date for Technical Completion	means 1 October 2017, as amended in accordance with the DBFM Project Agreement.
Date of Commercial Acceptance	means the date on which Commercial Acceptance was achieved, as specified in the certificate of Commercial Acceptance.
Date of Technical Completion	means the date on which Technical Completion was achieved, as specified in the certificate of Technical Completion.
DBFM Abatement	<p>means an amount in dollars deducted from a:</p> <p>(a) Monthly Service Payment (as defined in the DBFM Project Agreement) in accordance with Schedule 14 (Payment Schedule) to the DBFM Project Agreement; or</p> <p>(b) State Loan Payment (as defined in the DBFM Project Agreement) in accordance with Clause 36.3 of the DBFM Project Agreement.</p>
DBFM Project	<p>means:</p> <p>(a) designing, constructing and partially financing the DBFM Works;</p>

Term	Meaning
	<ul style="list-style-type: none"> (b) the performance of the DBFM Services; (c) the undertaking of the Commercial Opportunities; and (d) handover of the Stadium, Sports Precinct and Off-Site Infrastructure, <p>in accordance with the DBFM Project Agreement.</p>
DBFM Project Agreement	means the document entitled "The new Perth Stadium DBFM Project Design, Build, Finance and Maintain (DBFM) – Project Agreement" between the State and Project Co executed on 13 August 2014.
DBFM Services	means the services to be performed by Project Co, as described in the DBFM Services Specification as amended in accordance with the DBFM Project Agreement.
DBFM Services Specification	means the services specification set out at Schedule 13 (Services Specification) of the DBFM Project Agreement.
DBFM Works	means the Stadium Works, the Sports Precinct Works and the Off-Site Infrastructure Works, as defined in the DBFM Project Agreement.
DBFM Works Program	means a program of the activities required to undertake the DBFM Works, containing the details required by Schedule 6 (Programming Requirements) of the DBFM Project Agreement, as prepared and updated in accordance with the DBFM Project Agreement.
Defect	means: <ul style="list-style-type: none"> (a) any component of the DBFM Works, Stadium, Sports Precinct or Off-Site Infrastructure which does not comply with the requirements of the DBFM Project Agreement; or (b) any defect, shrinkage, fault, or omission in the DBFM Works, Stadium, Sports Precinct, Off-Site Infrastructure or Group 1 FF&E (excluding any normal shrinkage of materials unless that shrinkage would have been accommodated for in accordance with Good Industry Practice).
Delayed Design Procurement Schedule	means the draft scope developed by the State and Project Co in respect of the delayed design and procurement which is included in Schedule 44 (Delayed Design and Procurement Schedule) of the DBFM Project Agreement.
Design Documentation	means all design documentation (including all drawings, specifications, models, samples and calculations) in computer readable or written form or stored by any other means, that Project Co creates or must necessarily create to undertake the DBFM Works including all design deliverables.

Term	Meaning
Design Requirements	<p>means the requirements for the design of the Stadium, Sports Precinct and Off-Site Infrastructure set out in:</p> <ul style="list-style-type: none"> (a) the Design Specification; (b) Attachment 1 (Contract Close Design Documentation) of the DBFM Project Agreement; and (c) the remainder of the DBFM Project Agreement, <p>including all requirements to meet the relevant Quality Standards (as defined in the DBFM Project Agreement) and Laws and Authorisations and as amended in accordance with the DBFM Project Agreement.</p>
Design Specification	means the design specifications set out at Schedule 12 (Design Specifications) of the DBFM Project Agreement.
Dispute	means a dispute arising under this agreement, excluding any dispute relating to or that is a Co-ordination Issue.
Document Owner	has the meaning given to it in Clause 5(c).
Document Reviewer	has the meaning given to it in Clause 5(c)(i).
Drop-In Cricket Wicket	has the meaning given to it in Part G (Glossary) of the Design Specification.
Event	has the meaning given to it in Part G (Glossary) of the Design Specification.
Event Activity	has the meaning given to it in in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Event Cleaning Time	has the meaning given to it in the DBFM Services Specification.
Event Control Room	has the meaning given to it in Part G (Glossary) of the Design Specification.
Event Profile Period	has the meaning given to it in in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Executive Negotiator	has the meaning given to it in Clause 13.4(a).
Fair Wear and Tear	means fair wear and tear that can be reasonably expected to occur as a result of the Stadium Activities or in a facility of the type and nature and at the location of the Stadium and Sports Precinct, examples of which are included in Schedule 3.

Term	Meaning
Fault	means an Availability Fault or a Performance Fault, as those terms are defined in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
FFP Warranty	has the meaning given in the DBFM Project Agreement.
FF&E	has the meaning given in the DBFM Project Agreement.
FF&E List	means the list of Project Co FF&E set out in Schedule 18 (FF&E List) of the DBFM Project Agreement, as amended in accordance with the DBFM Project Agreement.
Financial Close	means when the last condition precedent to be satisfied (or waived in accordance with clause 2.4 of the DBFM Project Agreement) under the DBFM Project Agreement has been satisfied (or waived in accordance with clause 2.4 of the DBFM Project Agreement) as set out in a notice given by the State to Project Co in accordance with the DBFM Project Agreement.
FM Help Desk	means the contact point to be established by Project Co which will provide the services in respect of the facilities management help desk.
FM Helpdesk Workflow Chart	means the chart which provides a guide as to flow of communications between the Operator and Project Co, attached as Schedule 2 (FM Helpdesk Workflow Chart).
FM Subcontract	means a contract for the performance of all or part of the DBFM Services entered into between Project Co and a FM Subcontractor.
FM Subcontractor	means Brookfield Johnson Controls Pty Ltd (ACN 064 638 197) at Level 22, 135 King St Sydney NSW 2000 and any other person approved by the State who in addition or substitution is engaged by Project Co in accordance with the DBFM Project Agreement to perform any of the DBFM Services.
FM Subcontractor Guarantor	means Johnson Controls, Inc. a company incorporated in the State of Wisconsin, United States of America and any person who, in addition or substitution, guarantees the obligations of an FM Subcontractor in accordance with an FM Subcontract.
Function	has the meaning given to it in Part G (Glossary) of the Design Specification.
Function Activity	has the meaning given to it in in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.

Term	Meaning
Functional Unit	has the meaning given to it in Part G (Glossary) of the Design Specification.
Good Industry Practice	means: <ul style="list-style-type: none"> (a) with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor undertaking works similar to the DBFM Works or providing services similar to the DBFM Services or the Operator Services, as the case may be, under conditions comparable to those applicable to the DBFM Project; and (b) in accordance with all Laws, Authorisations and relevant Quality Standards (as that term is defined in the DBFM Project Agreement).
Government Agency	means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department.
Group 1 FF&E	means any furniture, fittings or equipment identified as 'Group 1 FF&E' in the FF&E List, being furniture, fittings or equipment which is to be provided and installed or located (as applicable, depending on whether the relevant FF&E is loose or fixed) by Project Co in accordance with the obligations of the DBFM Project Agreement and described in the Design Specification and to be maintained by Project Co for the duration of the Operating Phase in accordance with the DBFM Services Specification, but excludes Services Equipment.
Group 2 FF&E	has the meaning given in the DBFM Project Agreement.
Group 3 FF&E	has the meaning given in the DBFM Project Agreement.
Group 4 FF&E	has the meaning given in the DBFM Project Agreement.
Hirers	means those bodies, including their employees, agents, contractors, advisers, consultants and officers, that enter into an agreement with the Operator or the State in relation to the presentation or hosting of an Event or Function at the Stadium.
ICT Systems	has the meaning given in Part G (Glossary) of the Design Specification.
Incident	has the meaning given to it in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Independent Certifier	has the meaning given in the DBFM Project Agreement.

Term	Meaning
Independent Expert	means a person with suitable expertise and experience required to determine a Dispute, having regard to the nature of the Dispute, appointed in accordance with Clause 13.
Indirect or Consequential Loss	<p>means, subject to Clause 14.6(a)(i) to Clause 14.6(a)(vi) and Clause 14.6(b)(i) to Clause 14.6(b)(vi), any:</p> <ul style="list-style-type: none"> (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, including any failure to realise anticipated savings or the costs and Liabilities relating to the hiring of a venue to hold Stadium Activities not otherwise capable of being held at the Stadium from time to time; (b) any penalties payable under contracts other than this agreement; (c) cost of capital and financing costs; or (d) damage to reputation.
Insurance and Security Details	has the meaning given to it in Clause 3.3(i).
Interface Matrix	means the matrix which details the responsibility for the provision of Services as between Project Co and the Operator, attached as Schedule 1 (Interface Matrix).
Key Subcontractors	means the key subcontractors as defined in the DBFM Project Agreement.
Law	<p>means:</p> <ul style="list-style-type: none"> (a) Commonwealth, Western Australian and local government legislation, including statutes, ordinances, instruments, codes (but excluding any building codes or Quality Standards (as that term is defined in the DBFM Project Agreement)), requirements, regulations, by-laws and other subordinate legislation; (b) common law; and (c) principles of equity.
Liability	includes any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums), expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.
Main Security Office	has the meaning given to it in Part G (Glossary) of the Design Specification.
Make Safe	means, in respect of a Functional Unit affected by a Fault, that Functional Unit is, following the Fault, restored to a state or

Term	Meaning
	<p>condition such that, in the reasonable opinion of the State:</p> <ul style="list-style-type: none"> (a) persons who are entitled to enter, occupy or leave that Functional Unit are able to do so safely and conveniently; and (b) any further loss or damage to that Functional Unit which could occur as a result of that Fault has been mitigated.
Media Facilities	has the meaning given to in Part G (Glossary) of the Design Specification.
Media Personnel	means members of the media and press associated with broadcast and narrowcast mediums (including radio, television, newspapers, magazines, journals and the internet) attending the Stadium and Sports Precinct for the purposes of covering an Event, including all associated activities undertaken before, during and after that Event.
Minor Works	<p>means any:</p> <ul style="list-style-type: none"> (a) services or change to the Stadium or Sports Precinct (or both) required by the State or the Operator during the Operating Phase which has a total minor works price less than \$20,000 (excluding GST) (as indexed in accordance with the DBFM Project Agreement) in connection with each Minor Works Notice; and (b) any other works agreed by the parties to be Minor Works, <p>but does not include:</p> <ul style="list-style-type: none"> (c) a Modification, a FF&E Modification or a Minor Modification, as those terms are defined in the DBFM Project Agreement; (d) any change required to ensure the Stadium, Sports Precinct or the Off-Site Infrastructure satisfy the FFP Warranty, is Fit For Purpose (excluding Group 2 FF&E, Group 3 FF&E and Group 4 FF&E) or to rectify a Defect, as those terms are defined in the DBFM Project Agreement if not defined in this agreement; or (e) any works or services that form part of the DBFM Works or DBFM Services, including rectifying Faults or Incidents.
Minor Works Notice	means a notice of Minor Works required by the State, provided to Project Co in accordance with the DBFM Project Agreement.
Minor Works Quote	means a quote for Minor Works prepared in accordance with the DBFM Project Agreement.
Modification	means a modification as defined under the DBFM Project Agreement or a modification as defined under the Operator Agreement, as the context requires.
Modification Order	<p>means:</p> <ul style="list-style-type: none"> (a) a Modification request by the State to the Operator under the Operator Agreement; or (b) an order issued by the State to Project Co under the DBFM

Term	Meaning
	<p>Project Agreement to proceed with the Modification or FF&E Modification, as those terms are defined under the DBFM Project Agreement,</p> <p>as the context requires.</p>
Modification Quote	<p>means:</p> <ul style="list-style-type: none"> (a) a modification quote provided by the Operator in accordance with the Operator Agreement; or (b) a modification quote provided by Project Co in accordance with the DBFM Project Agreement, <p>as the context requires.</p>
Month	<p>means a calendar month.</p>
Notice of Dispute	<p>has the meaning given to it in Clause 13.3(a).</p>
Off-Site Infrastructure	<p>means each item of infrastructure identified in Schedule 8 (Off-Site Infrastructure Works) of the DBFM Project Agreement to the extent that Project Co is required, in accordance with the DBFM Project Agreement, to construct or maintain that infrastructure.</p>
Operating and Maintenance Manual	<p>has the meaning given in the DBFM Project Agreement.</p>
Operating Phase	<p>means the period commencing on the Operational Commencement Date and ending on the date on which the DBFM Project Agreement expires or is terminated.</p>
Operating Phase Objectives	<p>means each of the following mutual objectives, being:</p> <ul style="list-style-type: none"> (a) a Best for Event outcome is achieved in every case; (b) the State can comply with its obligations under the Contracts; (c) the Stadium and Sports Precinct is operated and maintained in a way that: <ul style="list-style-type: none"> (i) caters for Stadium Users by adopting a “fans-first” approach; (ii) is maintained to the standards set out in the DBFM Services Specification; (iii) is revered for its world class playing surface and excellent support facilities for sporting teams and performers; (iv) ensures the safety and security of all Stadium Users; (v) responds and adapts to changes in technology; and (vi) adapts to changing trends within stadia and their usage; (d) the use of the Stadium and Sports Precinct with Events and Functions is maximised year round to ensure that:

Term	Meaning
	<ul style="list-style-type: none"> (i) the Stadium generates sufficient overall revenue to meet the cost of its operating overheads, fund life cycle costs and return a net operating profit; and (ii) the Sports Precinct is activated and becomes a destination in itself, including on non-Event days; (e) the Stadium and Sports Precinct is designed, constructed and maintained to minimise the risk of damage caused by Stadium Users; (f) an environment in which the Stadium and Sports Precinct can host as many Events and Functions as the market allows is provided; (g) a positive image of the Stadium and Sports Precinct, the State and the Operator, particularly to Hirers, Stadium Users, potential Stadium Users and television audiences is provided and enhanced; (h) the Operator's ability to market and maximise the economic benefit and profitability, as well as the social benefit of the Stadium and Sports Precinct is supported and enhanced; and (i) the Operator and Project Co are not hindered in performing their respective obligations under each of their respective Contracts and can perform such obligations to maximise efficiencies and outcomes for the parties in accordance with the Contracts.
Operating Phase Site	means the area on which the Stadium and Sports Precinct are located as described and shown on the Operating Phase Site Plan as updated in accordance with the DBFM Project Agreement and notified to the Operator.
Operating Phase Site Plan	has the meaning given in the DBFM Project Agreement.
Operational Commencement Date	means the day after the Date of Commercial Acceptance for the Stadium and Sports Precinct.
Operations Commencement Plan	means the sub-plan of that name which forms part of the State Operational Commissioning Plan.
Operator Agreement	means the contract entitled "The new Perth Stadium Project – Operator Agreement" between the Governance Agency and the Operator dated 27 June 2016.
Operator Good Industry Practice	<p>means:</p> <ul style="list-style-type: none"> (a) with the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a professional, reputable and prudent contractor providing services similar to the Operator Services under conditions comparable to those applicable to the Operator Services; and (b) in accordance with all Laws, Authorisations obtained by the

Term	Meaning
	Operator and Quality Standards (as that term is defined in the Operator Agreement).
Operator Obligations	means the obligations of the Operator under the Operator Agreement.
Operator Services	means the day to day running of the Stadium and Sports Precinct and the scheduling, management and organisation of Events Functions and Permitted Training and all support activities, excluding the DBFM Services.
Operator's Site Plans	means the site plans included in Attachment 1 of this Agreement.
OHS Laws	has the meaning given in the DBFM Project Agreement.
Other Contractor	means: <ul style="list-style-type: none"> (a) with respect to Project Co, the Operator; and (b) with respect to the Operator, Project Co.
Patron	means: <ul style="list-style-type: none"> (a) any person attending an Event at the Stadium in the capacity of a spectator; (b) any person attending a Function at the Stadium in the capacity of a guest or attendee; or (c) any person attending the Sports Precinct for enjoyment, as the context requires, but does not include Stadium Personnel, Hirers, Performers or any of the persons referred to in paragraph (e) of the definition of Stadium Users.
Performer	means any: <ul style="list-style-type: none"> (a) home or away sporting team; or (b) performer, entertainer, musician or band, playing or performing at the Stadium or Sports Precinct (or both), and includes any of their employees, agents, contractors, advisers, consultants and officers.
Permitted Training	has the meaning given to it in Part G (Glossary) of the Design Specification.
Permitted Training Activity	has the meaning given to it in in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Permitted Training Profile Period	has the meaning given to it in in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.

Term	Meaning
Pest	has the meaning given to it in the DBFM Services Specification.
Post Match Inspection	has the meaning given to it in Clause 14.2(a)(i).
Precinct Partner	has the meaning given to it in the DBFM Project Agreement.
Profile Period	means an Event Profile Period, Non-Event Profile Period (Active), Permitted Training Profile Period or Non-Event Profile Period (Inactive), as the context requires, as those terms are defined in Schedule 14 (Payment Schedule) of the DBFM Project Agreement to the extent not defined in this agreement.
Project Co Associates	<p>means:</p> <ul style="list-style-type: none"> (a) the Project Co representative nominated as such in Schedule 1 (Contract Particulars) of the DBFM Project Agreement, or such other person as may be appointed from time to time to replace that person in accordance with the DBFM Project Agreement; (b) officers, agents, advisers, consultants, contractors and employees of Project Co; (c) the Builder, the FM Subcontractor and any other subcontractor and their respective officers, agents, advisers, consultants, contractors and employees; (d) tenants of the Commercial Opportunities; and (e) any visitor to the Site invited onto the Site by Project Co or any of the persons set out in paragraphs (a), (b), (c) or (d) of this definition other than the State, any State Associate or Stadium Personnel, <p>but does not include the State, any State Associate, the Independent Certifier, the PCS Works Independent Certifier, the ISGS Expert, the Stadium Personnel, any Precinct Partner or the Head Lessee (as those terms are defined in the DBFM Project Agreement to the extent not defined in this agreement).</p>
Project Co Obligations	means the obligations of Project Co under the DBFM Project Agreement.
Project Interface	<p>means each of:</p> <ul style="list-style-type: none"> (a) any interface between the Project Co Obligations and the Operator Obligations; (b) any interface between the Contracts; and (c) any issue which arises in the course of undertaking the Project Co Obligations and the Operator Obligations, which requires co-ordination between the Contractors.
Proposed Services	means the Services required to be performed by Project Co on a regular basis as part of the DBFM Services and which Project Co needs unobstructed access to all or a part of the Stadium to perform, as outlined in the Estate Services Plans, the Playing Surface Management Plan, the Grounds and Gardens

Term	Meaning
	Management Plan and the Pest Control Plan prepared in accordance with the DBFM Project Agreement.
Requested Services	has the meaning given to it in Section 17.1(b) of Part D of the DBFM Services Specification.
Restricted Access	has the meaning given to it in Schedule 14 (Payment Schedule) of the DBFM Project Agreement.
Restricted Area	means an area that is subject to Restricted Access.
Scheduled Services	means the Proposed Services that have been reviewed and confirmed in accordance with Clause 8.1.
Seating Bowl	has the meaning given to it in Part G (Glossary) of the Design Specification.
Services	means the DBFM Services or the Operator Services, or both of them, as the case requires.
Services Equipment	means: <ul style="list-style-type: none"> (a) items of equipment used by Project Co in the performance of the DBFM Services; and (b) any materials and goods required by Project Co to perform the DBFM Services which are used up or worn out by use rather than fair wear and tear.
Site	means the construction site, as detailed in Schedule 11 (Site Plans) of the DBFM Project Agreement, and the Operating Phase Site, or either one of them, as the context requires.
Site Access and Interface Protocols	means Project Co's or the Builder's protocols for accessing the Construction Site (as that term is defined in the DBFM Project Agreement) during the D&C Phase as set out in the Project Management Plan.
Sporting Event	has the meaning given to it in Part G (Glossary) of the Design Specification.
Sports Precinct	means the parkland precinct surrounding the Stadium situated on the Site, and includes the Group 1 FF&E and transport infrastructure described in the Design Specification and all improvements to be situated on the Site including as depicted on Project Co's Development Concept Plan to be designed, constructed, partially financed and maintained by Project Co in accordance with the DBFM Project Agreement, and excludes the Head Lease Area (as that term is defined in the DBFM Project Agreement).

Term	Meaning
Stadium	means the entire physical infrastructure comprising the stadium building and the Controlled Area (as defined in the DBFM Project Agreement) situated on the Site, to be designed, constructed, partially financed and maintained by Project Co for the purpose of accommodating the Stadium Activities in accordance with the DBFM Project Agreement, including as described in the Design Specification and Attachment 1 (Contract Close Design Documentation) of the DBFM Project Agreement and, for the avoidance of doubt, includes the Group 1 FF&E, the Pitch and Playing Surface (as each of those terms are defined in the DBFM Project Agreement).
Stadium Activities	means all services which the Operator, the State or other State Associates will undertake at the Stadium or Sports Precinct (or both) during the Operating Phase as specified or reasonably inferred from the Output Specifications (as defined in the DBFM Project Agreement), including Events and Functions.
Stadium Personnel	means the Operator and employees, agents, contractors, subcontractors, consultants and authorised officers of the Operator involved in the provision of the Stadium Activities but does not include Project Co, Project Co Associates, Hirers, Performers, Patrons or Media Personnel, the State or State Associates.
Stadium Systems	has the meaning given in the DBFM Project Agreement.
Stadium User Related Damage	<p>means damage to the Stadium, Sports Precinct or Off-Site Infrastructure during the Operating Phase which is caused by:</p> <ul style="list-style-type: none"> (a) Stadium Personnel at any time; (b) Hirers, Performers and Media Personnel during an Active Profile Period; or (c) Patrons: <ul style="list-style-type: none"> (i) both during an Event Profile Period or Permitted Training Profile Period and in respect of an Event Activity or Permitted Training Activity; or (ii) during and in respect of a Function Activity, <p>excluding damage which:</p> <ul style="list-style-type: none"> (d) arises as a result of Fair Wear and Tear; (e) occurred because Project Co failed to comply with its obligations under the State Project Documents; or (f) arises out of a Defect caused or contributed to by Project Co.
Stadium Users	<p>means:</p> <ul style="list-style-type: none"> (a) Stadium Personnel; (b) Hirers; (c) Performers; (d) any Patron; and (e) Media Personnel.

Term	Meaning
State	<p>means:</p> <ul style="list-style-type: none"> (a) during the D&C Phase, the Minister for Works, the Governance Agency and the State of Western Australia; and (b) during the Operating Phase, the Governance Agency and the State of Western Australia.
State Associate	<p>means State Entities (including the Commissioner of Main Roads (Western Australia) and the Public Transport Authority of the State of Western Australia) to the extent that they are carrying out activities, works or performing services on the Site related to the Stadium, the Sports Precinct, the Off-Site Infrastructure or the Stadium Activities.</p>
State Entities	<p>means the State of Western Australia, including any department and any entity, agency or instrumentality of the State of Western Australia and any Minister (including the Minister for Works), whether body corporate or otherwise and their respective officers, employees, agents, contractors and consultants (but does not include the Operator, Project Co, any Project Co Associate, the PCS Works Independent Certifier, the Independent Certifier, the ISGS Expert, any Precinct Partner or the Head Lessee (as those terms are defined in the DBFM Project Agreement to the extent not defined in this agreement)), and 'State Entity' means any one of them.</p>
State FF&E	<p>has the meaning given in the DBFM Project Agreement.</p>
State Operational Commissioning Plan	<p>means the plan of that name to be prepared in accordance with Clauses 19.2(b), 19.2(d) and 19.2(f) of the DBFM Project Agreement and Clause 11.1 of the Operator Agreement, which sets out the State Operational Commissioning (as defined in the DBFM Project Agreement), including the State's methodology for that operational commissioning.</p>
State Project Documents	<p>means the documents specified as such in the DBFM Project Agreement.</p>
State Representative	<p>means the person identified as such in Schedule 1 (Contract Particulars) of the DBFM Project Agreement, or such other person as may be appointed from time to time to replace that person in accordance with Clause 5.2 of the DBFM Project Agreement.</p>
Team Facilities	<p>has the meaning given to in Part G (Glossary) of the Design Specification.</p>
Technical Completion	<p>means the Technical Completion Criteria have been satisfied to the satisfaction of the Independent Certifier in accordance with the requirements of the DBFM Project Agreement.</p>
Technical Completion	<p>means those criteria that are required to be satisfied to achieve</p>

Term	Meaning
Criteria	Technical Completion as set out in Schedule 7 (Completion Criteria) of the DBFM Project Agreement.
Technical Completion Plan	means the plan of that name to be prepared by Project Co in accordance with the DBFM Project Agreement.
Unscheduled Services	means maintenance or repairs that are not Scheduled Services but which are required to be undertaken by Project Co to comply with its obligations under the DBFM Project Agreement, including: <ul style="list-style-type: none"> (a) works required to Make Safe; (b) rectification; and (c) remediation, for which Project Co needs unobstructed access to all or a part of the Stadium.
Urgent Issue	means any Defect, Fault, Incident or deficiency which, in the reasonable opinion of Project Co, will adversely affect the health or safety of persons.
Utility	means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater and communications services, but not including communications systems provided as part of the Stadium or Sports Precinct (or both) as generally described in the Output Specifications, as that term is defined in the DBFM Project Agreement.
Utility Company	means any public authority or public or private body who provides a Utility.
Variable Resourcing Regime	means the variable resourcing and management requirements set out in Section 17 of Part D of the DBFM Services Specification.
Vertical Transportation	has the meaning given in Part G (Glossary) of the Design Specification.

1.2 Interpretation

In this agreement 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 agreement;

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- (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 agreement)**: a reference to this agreement or to any other deed, agreement, document, circular, policy or instrument includes a reference to this agreement or such other deed, agreement, document, circular, policy or instrument 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) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (k) **(headings)**: headings are for convenience only and do not affect the interpretation of this agreement;
- (l) **(schedules)**: a reference to this agreement includes all Schedules;
- (m) **(Clauses)**: a reference to:
- (i) a Clause or Schedule is a reference to a Clause or Schedule of or to this agreement, unless otherwise stated;
 - (ii) a paragraph is a reference to a paragraph in the Clause in which the reference appears; and
 - (iii) a Section is a section of a Schedule;
- (n) **(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;
- (o) **(\$)**: a reference to "\$" is to Australian currency;
- (p) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (q) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (r) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this agreement or any part;
- (s) **(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;
- (t) **(remedy)**: the use of the word "remedy" or any form of it in this agreement means that the event to be remedied must be cured or its effects overcome;
- (u) **(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
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absolute and unfettered discretion and the State or the State Representative (as applicable) has no obligation to Project Co or the Operator to do so;

- (v) **(no double counting)**: if this agreement requires calculation of an amount payable to a party there must be no double counting in calculating that amount; and
- (w) **(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 agreement.

1.3 Related matters

- (a) **(Provisions limiting or excluding Liability)**: Any provision of this agreement 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 agreement at its own cost, unless expressly provided otherwise.
- (c) **(Project Co and Operator obligations)**: In complying with or accepting any obligation or risk in accordance with this agreement, Project Co and the Operator must procure that, to the extent applicable, each Project Co Associate and member of Stadium Personnel is required to comply with or accept the relevant obligation or risk and not cause Project Co or the Operator to breach its obligations in accordance with this agreement.
- (d) **(Business Day)**: If the day on or by which any thing is to be done in accordance with this agreement 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 agreement from the State or the State Representative may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State or a State Representative (in its absolute discretion thinks fit), unless this agreement provides otherwise.
- (f) **(Agreement composition)**: This agreement comprises:
 - (i) Clauses 1 to 17; and
 - (ii) Schedule 1 (Interface Matrix) to Schedule 3 (Fair Wear and Tear).

1.4 Project Co Records

Notwithstanding any other provision of this agreement and without limiting clause 1.7 of the DBFM Project Agreement, Project Co is not required to provide the Operator with:

- (a) reports or communications prepared for internal management, internal audit, credit and executive group or board reports in relation to the Builder, a Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor;
- (b) any documents or communications where Project Co, the Builder, a Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor has contractual or statutory confidentiality obligations to third parties that are unable to be waived and are unable to be excluded;
- (c) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
- (d) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against the Operator under this agreement; or
- (e) documents relating to the Builder, a Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to Project Co's obligations or the DBFM Project.

1.5 Operator Records

Notwithstanding any other provision of this agreement and without limiting clause 1.7 of the Operator Agreement, the Operator is not required to provide Project Co with:

- (a) reports or communications prepared for internal management, internal audit, credit and executive group or board reports of any person other than the Operator;
- (b) any documents or communications where the Operator has contractual or statutory confidentiality obligations to third parties that are unable to be waived and are unable to be excluded;
- (c) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
- (d) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against Project Co under this agreement; or
- (e) documents relating to the Operator's internal costs structures and treatment of non-project related overheads, but only to the extent that those cost structures are not related to the Operator Obligations.

2 TERM

- (a) This agreement commences on the date of the last to occur of:
 - (i) the DBFM Project Agreement becoming unconditional; and
 - (ii) the Operator Agreement becoming unconditional.
- (b) If the DBFM Project Agreement is terminated because Commercial Acceptance is not achieved, this agreement will terminate and no party will be entitled to make any Claim against any other party under this agreement, except in respect of a breach which occurred prior to termination.
- (c) On termination under this Clause 2, this agreement has no further effect other than Clause 17.10, and the Clauses described in that Clause, and each party is released from its obligations under this agreement. No party will have any liability to another party except in respect of a breach of the Clauses described in Clause 17.10.

3 GENERAL OBLIGATIONS

3.1 Co-ordination and culture

Each of the Contractors agrees, and will procure that their respective subcontractors (as applicable to each respective subcontractor) agree, to:

- (a) establish and maintain day to day, open and honest communications with the Other Contractor;
- (b) at all times act reasonably and in good faith in exercising their rights and performing their obligations under this agreement, so that the Operating Phase Objectives are met at all relevant times;
- (c) actively encourage a "one team" culture between the parties;
- (d) perform its obligations in a way that encourages the efficient and effective delivery of the Stadium and Sports Precinct;
- (e) perform its obligations in a way that encourages the efficient and effective operation and maintenance of the Stadium and Sports Precinct;
- (f) co-operate and work collaboratively with the Other Contractor to maximise innovation, continuous improvement and flexibility in the planning and performance of their respective obligations;
- (g) identify ways in which the Contractors, the Project Co Associates and the Stadium Personnel can be encouraged and incentivised to achieve its obligations under this Clause 3.1;
- (h) proactively consider the effect of the carrying out of its Services on the Other Contractor and liaise with the Other Contractor to eliminate or reduce any adverse or disruptive effect;
- (i) regularly inform and update the Other Contractor and the State in a timely manner of:

- (i) any problems which the performance or intended performance of its Services may cause to the State or the Other Contractor in the performance of the Other Contractor's Services; and
 - (ii) any causes, or likely causes, of interruption to the provision of its Services, as soon as practicable after becoming aware of those problems or causes (as applicable); and
- (j) regularly engage with the other parties to ensure that any issues of concern in relation to its compliance with this Clause 3 are addressed in a timely manner.

3.2 Project Co and Operator Obligations

- (a) Project Co acknowledges that the State has procured the Operator to perform the Operator Obligations pursuant to the Operator Agreement and understands the effect and interaction of the Operator Agreement and the Operator Obligations on the DBFM Project Agreement and the Project Co Obligations.
- (b) Project Co must carry out the Project Co Obligations so as to co-ordinate the Project Co Obligations with the Operator Obligations performed by the Operator and Project Co must, in so doing, subject to the express terms of this agreement:
 - (i) co-operate with the Operator and any other subcontractor of the Operator carrying out the Operator Obligations;
 - (ii) use reasonable endeavours not to delay or interfere with the Operator Obligations; and
 - (iii) act in accordance with the Operating Phase Objectives.
- (c) Subject to Clause 3.2(d), in performing its obligations under this agreement, Project Co:
 - (i) is not obliged to act in a manner that places or would place it in breach of the DBFM Project Agreement, be in a position to be subject to a DBFM Abatement or incur costs or perform activities not reasonably required by its obligations pursuant to the DBFM Project Agreement except:
 - (A) in the circumstances expressly provided for in Clause 8 and for which relief is granted in accordance with Clause 8; or
 - (B) for which relief (including compensation if any) is granted in accordance with the DBFM Project Agreement;
 - (ii) subject to Clause 3.2(c)(i), must not act in a manner that places or would place the State in breach of the Operator Agreement or in a position to incur additional costs under the Operator Agreement, unless compliance with this Clause 3.2(c)(ii) would cause Project Co to breach the DBFM Project Agreement or incur DBFM Abatement; and
 - (iii) subject to Clause 3.5, must not act in a manner that places the Operator in breach of the Operator Agreement or in a position to incur Liability under the Operator Agreement other than as expressly contemplated by this agreement, including Clause 3.5 and Clause 8.3.
- (d) Project Co must ensure that its operation of the Commercial Opportunities does not interfere with the performance of the Operator Obligations.
- (e) Without limiting the State's right to direct a Modification, Project Co is not obliged to perform tasks or duties which it is not required to perform under the DBFM Project Agreement, save as expressly provided under this agreement.
- (f) Any issues or differences of opinion between the Contractors arising under this Clause 3.2 are to be resolved in accordance with Clause 13

3.3 Operator and Project Co Obligations

- (a) The Operator acknowledges that the State has procured Project Co to perform the Project Co Obligations pursuant to the DBFM Project Agreement, and understands the effect of the DBFM Project Agreement and the Project Co Obligations on the Operator Agreement and the Operator Obligations.

- (b) The Operator must carry out the Operator Obligations so as to co-ordinate the Operator Obligations with the Project Co Obligations performed by Project Co, and the Operator must, in doing so, subject to the express terms of this agreement:
- (i) co-operate with Project Co and any subcontractor of Project Co carrying out the Project Co Obligations;
 - (ii) use reasonable endeavours not to delay or interfere with the Project Co Obligations; and
 - (iii) act in accordance with the Operating Phase Objectives.
- (c) In performing its obligations under this agreement, the Operator:
- (i) is not obliged to act in a manner that places or would place it in breach of the Operator Agreement, be in a position to be subject to an abatement under the Operator Agreement or incur costs or perform activities not reasonably required by its obligations pursuant to the Operator Agreement;
 - (ii) subject to Clause 3.3(c)(i), must not act in a manner that places or would place the State in breach of the DBFM Project Agreement or in a position to incur additional costs under the DBFM Project Agreement; and
 - (iii) must not act in a manner that places Project Co in breach of the DBFM Project Agreement or in a position to incur Liability under the DBFM Project Agreement other than as expressly contemplated by this agreement, including Clause 3.5 and Clause 8.3.
- (d) Without limiting the State's right to direct a Modification, the Operator is not obliged to perform tasks or duties which it is not required to perform under the Operator Agreement, save as expressly provided under this agreement.
- (e) Any issues or differences of opinion between the Contractors arising under this Clause 3.3 are to be resolved in accordance with Clause 13.
- (f) The Operator acknowledges and agrees that:
- (i) it has reviewed a redacted copy of the DBFM Project Agreement;
 - (ii) as at the date of this agreement, it has reviewed the current Design Documentation; and
 - (iii) if Project Co:
 - (A) develops the design for the DBFM Works in accordance with the DBFM Project Agreement (including the Design Documentation reviewed by it) and any Modification to the DBFM Works as at the date of this Agreement; and
 - (B) undertakes the DBFM Works in accordance with the DBFM Project Agreement, including the Design Requirements as at the date of this Agreement,

then, from the Date of Commercial Acceptance, the Operator will be able to perform the Operator Obligations in accordance with the Operator Agreement.
- (g) The Operator acknowledges and agrees that if Project Co performs the Services in accordance with the DBFM Project Agreement then, from the Date of Commercial Acceptance, the Operator will be able to perform the Operator Obligations in accordance with the Operator Agreement.
- (h) Subject to Clause 3.3(i) the Operator must enter into hiring arrangements with Hirers for Events in accordance with Clauses 3.3(h) to 3.3(l) and having regard to the event market, nature of the Event and the identity of the Hirer.
- (i) In entering in the hiring arrangements set out in Clause 3.3(h) the Operator must use its reasonable endeavours to ensure that such arrangements include:
- (i) to the extent that attendance is practicable and in accordance with Operator Good Industry Practice, an obligation for the relevant Hirer to attend Operator and Project Co pre-Event co-ordination meetings and post Event debriefings;

- (ii) to the extent in accordance with Operator Good Industry Practice, an obligation for the relevant Hirer to report damage (other than Fair Wear and Tear) caused at or in respect of their Events; and
- (iii) appropriate:
 - (A) insurances that will be maintained by the Hirer in relation to that Event; and
 - (B) security or cash retention mechanisms that the Operator will maintain in relation to each Hirer,
 (together the **Insurance and Security Details**) that reflect the Event and Functions Management Plan.
- (j) If the Operator intends on entering into any hiring agreement set out in Clause 3.3(h), where in the Operator's opinion, the Insurance and Security Details do not reflect Operator Good Industry Practice (having regard to the event market, nature of the Event and the identity of the Hirer), the Operator may set different Insurance and Security Details from those in the Event and Functions Management Plan and provide the Insurance and Security Details to Project Co.
- (k) If Project Co provides comments on the Insurance and Security Details, the comments will be considered by the Operator, but neither the State nor the Operator are under an obligation to incorporate those comments.
- (l) The Events and Functions Management Plan must include Insurance and Security Details. The Operator must ensure that the Insurance and Security Details in the Event and Functions Management Plan are updated from time to time to reflect Operator Good Industry Practice, having regard to the event market, the nature of the respective Events and the identity of Hirers.

3.4 Interface Matrix

- (a) Project Co and the Operator acknowledge that certain aspects of the Project Co Obligations and the Operator Obligations will interface significantly.
- (b) At least 3 Months before the Date of Commercial Acceptance, the Contractors (in conjunction with their relevant subcontractors) must prepare operational protocols to assist with defining their day to day dealings with each other (**Interface Matrix**).
- (c) The Interface Matrix must be consistent with the draft Interface Matrix set out in Schedule 1 (Interface Matrix). If the Contractors are unable to mutually agree changes to the form of the draft Interface Matrix in accordance with this Clause 3.4(b), or the State Representative has not approved those changes, the draft Interface Matrix set out in Schedule 1 (Interface Matrix) will become the Interface Matrix until the Contractors and the State Representative otherwise mutually agree a revised form.
- (d) Where interfaces occur, the Contractors agree that the Interface Matrix provides a guide as to the appropriate division of the Project Co Obligations and the Operator Obligations and will use the Interface Matrix as a means of determining how to carry out their respective obligations.
- (e) Project Co and the State acknowledge that, on occasion:
 - (i) calls or requests relating to the Operator's Obligations will be made to the FM Help Desk; and
 - (ii) calls or requests relating to Project Co's Obligations will be made to the Operator's communications centre.
- (f) If Clause 3.4(e) applies, the Contractors agree that the FM Helpdesk Workflow Chart provides a guide as to flow of communications between the parties and will use the FM Helpdesk Workflow Chart as a means of determining how to carry out their respective obligations.
- (g) The State, Operator and any authorised delegate may, upon giving reasonable notice to Project Co, require an audit of Project Co's records in respect of the FM Help Desk at any time up to 6 Months after the end of the expiry date of the DBFM Project Agreement. Any such audit will be carried out in accordance with Clause 48 of the DBFM Project Agreement.

- (h) Any changes to the Interface Matrix set out in Schedule 1 (Interface Matrix) must be agreed by the Contractors and approved by the State Representative in writing. If the parties cannot agree to changes to the Interface Matrix, the then current version of the Interface Matrix will continue to apply until the Contractors and the State Representative agree otherwise. However, if the Interface Matrix would cause either party to be in breach of its obligations at Law at any time and the Contractors and the State Representative are not able to agree on the change to the Interface Matrix, the change is to be resolved under the Dispute resolution process described in Clause 13.

3.5 Priority of obligations

- (a) Other than where Clause 8.3 applies, the following applies to determine the priority of the Project Co Obligations and Operator Obligations if the performance of an Operator Obligation would cause Project Co to breach the DBFM Project Agreement or incur DBFM Abatement.
- (b) If Project Co is of the view that a breach or DBFM Abatement referred to in Clause 3.5(a) is likely to occur, Project Co must immediately give notice to the State and the Operator.
- (c) If Project Co considers (acting reasonably) that the Project Co Obligations can be rescheduled or altered at no cost and without adversely affecting the performance by Project Co of its obligations under the DBFM Project Agreement, Project Co must reschedule or alter the Project Co Obligations to accommodate the Operator Obligations.
- (d) If Project Co, acting reasonably, objects to rescheduling or altering the Project Co Obligations because:
- (i) it will incur additional cost, the Project Co Obligations may only be rescheduled or altered if the Operator agrees in writing to pay Project Co's additional costs properly and reasonably incurred in rescheduling the Project Co Obligations; and/or
 - (ii) rescheduling or altering the Project Co Obligations will prevent it from meeting its obligations under the DBFM Project Agreement, the Project Co Obligations may only be rescheduled or altered if the State, acting reasonably, agrees in writing that Project Co is relieved from the performance of those Project Co Obligations. If the relevant rescheduling or altering of the Project Co Obligations:
 - (A) creates a temporary incapacity for Project Co to be able to perform the relevant Project Co Obligations, then Project Co's relief from performance of the relevant Project Co Obligations will be in the form of a written waiver by the State, which sets out sufficiently Project Co's relief as to both time and nature of the Project Co Obligations that are waived; or
 - (B) creates a permanent incapacity for Project Co to be able to perform the relevant Project Co Obligations, then the State must issue a Modification Order to permanently relieve Project Co from performing the relevant Project Co Obligations.
- (e) If the Operator agrees to pay Project Co's additional costs under Clause 3.5(d)(i), such costs will be a debt due and payable to Project Co and the Operator must pay those costs to Project Co on a Monthly or one off basis (as relevant) for the Month or Months in which Project Co incurs those costs.
- (f) If the Operator or the State (as relevant) do not provide the agreement required under Clause 3.5(d) or make the payment under Clause 3.5(e):
- (i) the Operator must not perform the Operator Obligations in a manner to cause Project Co to breach its obligations under the DBFM Project Agreement or cause a DBFM Abatement; and
 - (ii) where the Operator's failure to comply with Clause 3.5(f)(i) causes Project Co's breach or a DBFM Abatement, then:
 - (A) that is a breach of this agreement by the Operator for the purpose of the DBFM Project Agreement;

- (B) the breach by Project Co referred to in this Clause 3.5(f)(ii) will not be a breach of the DBFM Project Agreement; and
- (C) Project Co is not liable to the Operator for any breach of Clause 3.2(c)(iii).

4 CROSS UNDERTAKING

- (a) The parties acknowledge that:
 - (i) the Contracts set out the primary obligations of Project Co and the Operator and their rights, obligations and liabilities, as between those parties and the State, in relation to the DBFM Project and Operator Services and nothing in this agreement will derogate from or increase the rights, obligations and liabilities of the Contractors under their respective Contracts, except as expressly set out in this agreement; and
 - (ii) this agreement sets out the procedures by which the legal and technical interface of the parties is to be managed.
- (b) Each of the parties acknowledge that as of the date of this agreement it has received and examined the terms and conditions of each of the Contracts with pricing and other commercially sensitive information redacted.
- (c) This agreement does not impose, or imply, an obligation on Project Co to perform any of the Operator Obligations or on the Operator to perform any of the Project Co Obligations.

5 REVIEW AND AMENDMENT OF DOCUMENTATION DURING THE D&C PHASE

- (a) The Operator must provide input to Project Co in respect of Project Co's preparation and any update of:
 - (i) if requested by the State, the Design Documentation (including the FF&E List and the Delayed Design Procurement Schedule);
 - (ii) the following Operating Phase Plans, as described in Schedule 19 (Plans) of the DBFM Project Agreement:
 - (A) the Stadium Personnel Induction and Training Program;
 - (B) the Playing Surface Management Plan;
 - (C) each of the Asset Security Plan and Security Management Treatment Plan, to ensure alignment with the Operator's Security Management Plan;
 - (D) the Pest Control Plan; and
 - (E) the Handover Package;
 - (iii) the Commercial Acceptance Plan, as described in Schedule 19 (Plans) of the DBFM Project Agreement;
 - (iv) the Technical Completion Plan, as described in Schedule 19 (Plans) of the DBFM Project Agreement;
 - (v) the Operational Handover Plan, as described in Schedule 19 (Plans) of the DBFM Project Agreement; and
 - (vi) the Communications Plan, as described in Schedule 19 (Plans) of the DBFM Project Agreement.
- (b) Project Co must provide input to the Operator in respect of the Operator's preparation and any update of the following plans described in the Operator Agreement:
 - (i) the State Operational Commissioning Plan;
 - (ii) the Emergency Management Plan, being a sub-plan to the Safety Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement;

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- (iii) the Event Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement, including any Event Specific Management Plan requested by the Operator;
 - (iv) the Safety Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement, including to ensure alignment with Project Co's Asset Security Plan and Security Management and Treatment Plan;
 - (v) the Asset Cleaning Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement;
 - (vi) the Waste Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement;
 - (vii) that part of the Operator Facility Services Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement, which relates to management of the loading dock;
 - (viii) the Parking and Traffic Management Plan; and
 - (ix) the Operator Handover Package.
- (c) The party preparing the relevant document (**Document Owner**) must:
- (i) provide the document to the party required to provide input into the document (**Document Reviewer**) in sufficient time for the Document Owner to receive input from the Document Reviewer to be included in a revised document submitted to the State for review in accordance with the relevant Contract, or in respect of the Design Documentation the User Consultation Period identified in the DBFM Works Program;
 - (ii) when submitting the document to the State, include a schedule of comments received from the Document Reviewer and how each of those comments have been addressed; and
 - (iii) act in good faith and seek to engage and co-operate with the Document Reviewer for the purpose of preparing or reviewing and amending the relevant document.
- (d) Subject to the Document Owner having complied with Clause 5(c)(i), the Document Reviewer must provide input into the relevant document in sufficient time for the Document Owner to comply with its obligations under the relevant Contract in respect of submitting the relevant document to the State. The Document Reviewer's comments must be reasonable and must be supported by sufficient information so that the Document Owner can understand and consider the comment.
- (e) Subject to the Document Reviewer's comments complying with Clause 5(d), the Document Owner must amend the relevant document to incorporate the Document Reviewer's input, or provide its reasons to the Document Reviewer and the State as to why it is not amending the relevant document to incorporate the Document Reviewer's input.
- (f) Subject to Clause 5(g), if the Document Owner does not incorporate the input from the Document Reviewer, the Document Reviewer may refer the matter for resolution in accordance with the relevant Contract.
- (g) If the Document Owner reasonably considers that the amendment to the document would give rise to a Modification:
- (i) it must notify the State of that fact in accordance with the relevant Modification clause in the relevant Contract as if the amendment was a direction by the State which the Document Owner believes gave rise to a Modification;
 - (ii) the Document Owner is not required to amend the document until it is determined in accordance with the relevant Contract whether the amendment gives rise to a Modification and, if so, whether the Document Owner is required to undertake the Modification; and
 - (iii) the Document Owner is not entitled to any relief (including an extension of time) whilst it is being determined whether the amendment to the
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Document gives rise to a Modification and, if so, whether the Document Owner is required to undertake the Modification.

- (h) If Project Co provides comments, in accordance with Clause 5(d), on the Events and Functions Management Plan and those comments relate to the Insurance and Security Details, the comments will be considered by the Operator, but neither the State nor the Operator are under an obligation to incorporate those comments.

6 TESTING AND COMMISSIONING

6.1 Inspection and testing of the DBFM Works

- (a) Project Co and the Operator must ensure that the Commercial Acceptance Plan and the State Operational Commissioning Plan are consistent, including stating the times when the Other Contractor's assistance will be required with the performance of the obligations under the relevant plan.
- (b) Project Co must give the Operator written notice, at the same time as it gives notice to the State under the DBFM Project Agreement, of any planned or anticipated delay:
 - (i) to the Date for Technical Completion;
 - (ii) in passing the Commercial Acceptance Tests; and
 - (iii) to the Date for Commercial Acceptance.

The Operator has no Claim against Project Co for any such delay and must (subject to the Operator Agreement) adjust its Operations Commencement Plan so that it remains consistent with the timing and other matters in the Commercial Acceptance Plan and the State Operational Commissioning Plan.

6.2 Testing

- (a) Project Co must give the Operator notice of any Commercial Acceptance Tests required to be conducted under the DBFM Project Agreement at the same time as it provides such notice to the State and the Operator may attend any of those tests.
- (b) The Operator must comply with the obligations placed on it in the Commercial Acceptance Plan, in order to achieve Commercial Acceptance.
- (c) Project Co must not include any additional obligations in the Commercial Acceptance Plan which involve the participation of the Operator without the prior written consent of the Operator (not to be unreasonably withheld).

6.3 Commissioning

- (a) The Operator must give Project Co notice in accordance with the Operations Commencement Plan of any activities that it requires Project Co to perform as set out in the Operations Commencement Plan.
- (b) Without limiting its obligations under the DBFM Project Agreement, Project Co must comply with the obligations placed on it in the Operations Commencement Plan, in order to achieve Commercial Acceptance.
- (c) The Operator must not include any additional obligations in the Operations Commencement Plan which involve the participation of Project Co without the prior written consent of Project Co (not to be unreasonably withheld).

7 ACCESS

7.1 Access during the D&C Phase

- (a) The Operator acknowledges that, prior to Commercial Acceptance, the Builder, in its capacity as a subcontractor to Project Co, controls access to the Site, and the Operator:
 - (i) does not have control of the Site;
 - (ii) is not in any way relieved of its obligations under the Operator Agreement because it does not have control of the Site;

- (iii) must notify the State and seek approval from the Builder and Project Co (such approval not to be unreasonably withheld) prior to the Operator or D&C Stadium Personnel accessing the Site;
 - (iv) must not enter the Site without the Builder's and Project Co's prior approval; and
 - (v) must comply, and ensure that the D&C Stadium Personnel comply, with the Builder's health, safety, security and site rules, including the Site Access and Interface Protocols and any instructions given by the Builder when the Operator is on the Site.
- (b) Prior to Commercial Acceptance, in addition to its obligations under the DBFM Project Agreement in respect of access during the Commissioning Period, Project Co must, upon reasonable notice from the Operator and subject to the Operator complying with the Site Access and Interface Protocols, allow the Operator reasonable access to the Site at any time during working hours to:
- (i) participate as necessary in the testing and commissioning process in accordance with the Technical Completion Plan and the Commercial Acceptance Plan; and
 - (ii) bring persons to the Site for the purposes of marketing and promoting the Stadium and Sports Precinct prior to opening.
- (c) The parties acknowledge that the Operator will occupy temporary offices on the Site prior to the Operational Commencement Date. Without limiting Clause 7.1(a)(v), the Stadium Personnel who are required to attend the offices will (subject to compliance with the Site Access and Interface Protocols) be allowed access to the Site during the carrying out of the DBFM Works at any time, solely for the purposes of accessing the relevant office space.
- (d) In exercising its rights of access under this Clause 7.1, the Operator must not, and must ensure that the D&C Stadium Personnel do not, cause any interference, hindrance, loss or delay to Project Co in the performance of its obligations under the DBFM Project Agreement.

7.2 Access during Operating Phase

- (a) Following Commercial Acceptance, the Operator:
- (i) subject to Clause 7.2(a)(ii), must not hinder or prevent Project Co from accessing any part of the Operating Phase Site (with the exception of a Restricted Area during the relevant Profile Period) to comply with its obligations under the DBFM Project Agreement;
 - (ii) may prevent Project Co from accessing certain parts of the Operating Phase Site during an Event, Function or Permitted Training if Project Co's presence would disrupt the Event, Function or Permitted Training, other than if there is an Urgent Issue in that part of the Operating Phase Site, in which case access must be provided; and
 - (iii) acknowledges that Project Co has dedicated areas (such as a project office and areas for storing equipment) which the Operator must not access or allow any other person to access, except for the purpose of the Operator performing the Operator Obligations. Project Co's dedicated areas are the areas marked as 'Project Co dedicated areas' in the Operating Phase Site Plan and the Site Plans (as defined under the Operator Agreement).
- (b) When preparing the Operating Phase Site Plan in accordance with clause 7.5(a) of the DBFM Project Agreement, Project Co must include in that Operating Phase Site Plan the areas marked as 'Project Co dedicated areas' in Attachment 1 (Operator's Site Plans) and if the parties agree to amend those areas, Project Co must include these areas as amended.
- (c) Without limiting Clause 8, Project Co must review the Bookings Schedule when accessing any part of the Operating Phase Site for the purpose of ensuring that Project Co does not interfere with an Event, Function or Permitted Training in the performance of the Project Co Obligations.

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- (d) When accessing any part of the Operating Phase Site during the Operating Phase, Project Co must:
 - (i) comply with, and ensure that Project Co Associates comply with, all reasonable health, safety, security, site rules and other operational requirements of the Operator whilst on or at any part of the Operating Phase Site; and
 - (ii) ensure that the exercise of its access rights does not cause any material loss of revenue to the Operator or interfere with the Operator performing the Operator Obligations other than that which is reasonable as part of performing the Project Co Obligations.

8 MAINTENANCE REQUIREMENTS

8.1 Scheduled Services

- (a) The Operator must maintain the Bookings Schedule at all times. The Operator must ensure that the Bookings Schedule is up to date at all times.
- (b) The Operator must ensure that Project Co and the State each have real time access to the Bookings Schedule.
- (c) Project Co and the Operator must meet periodically, and at a minimum twice per year at 6 Monthly intervals, to discuss the Proposed Services to be conducted in the next year with a view to co-ordinate the maintenance activities for the upcoming year and minimise disruption to the Stadium and the carrying out of Events, Functions and Permitted Training.
- (d) Each Month, Project Co must provide the Operator with its plan for Proposed Services and Scheduled Services for the next 6 Months.
- (e) In including Proposed Services in the plan, Project Co must abide by:
 - (i) the Bookings Schedule so as not to program Proposed Services at a time which will interfere with an Event, Function or Permitted Training;
 - (ii) any Requested Services, in accordance with the Variable Resourcing Regime; and
 - (iii) any agreement reached at its meetings with the Operator described in Clause 8.1(c).
- (f) Subject to Clause 8.1(h), the Operator may provide comments on the Proposed Services to Project Co. The Operator must not provide comments on Scheduled Services.
- (g) The Operator must provide its comments, or confirm that it has no comments, to Project Co within 10 Business Days of receipt of the plan for Proposed Services from Project Co. Project Co must amend the plan for Proposed Services to take account of the Operator's reasonable comments and objections provided in accordance with Clause 8.1(h).
- (h) The Operator may provide comments or object to any Proposed Services only to the extent that the Proposed Services:
 - (i) would breach any Law or cause the Operator to breach any Law;
 - (ii) would directly or indirectly interfere with or otherwise adversely affect an Event, Function or Permitted Training scheduled or reasonably anticipated to be scheduled for the upcoming year;
 - (iii) would interfere with the Operator's performance of its obligations under the Operator Agreement which cannot be reasonably altered to accommodate the Proposed Services; or
 - (iv) could be rescheduled to alternative dates to streamline the Proposed Services and minimise disruption to the Stadium and the Sports Precinct without materially prejudicing Project Co.
- (i) All notices of Proposed Services from Project Co and amendments required by the Operator must be copied to the State.

- (j) Once Project Co has incorporated all the relevant comments from the Operator in accordance with Clause 8.1(e), the Proposed Services which are the subject of the plan provided under Clause 8.1(e) become Scheduled Services. Project Co, if Project Co has access to the Bookings Schedule for the purpose of making amendments and if not, then the Operator, must include the Scheduled Services in the Bookings Schedule.

8.2 **Unscheduled Services**

- (a) Immediately upon a party identifying a need for Unscheduled Services that party must give notice to the Other Contractor and to the State.
- (b) If Project Co identifies a requirement for Unscheduled Services or receives a notice under Clause 8.2(a), Project Co must notify the Operator and the State immediately, specifying whether the Unscheduled Services will or are likely to affect any Requested Services, Event, Function or Permitted Training or the daily operations of the Operator provided pursuant to the Operator Agreement.
- (c) Except if there is an Urgent Issue, Project Co must inform the Operator and the State of:
- (i) the proposed commencement date;
 - (ii) the proposed hours of work;
 - (iii) the nature of the works and the equipment to be used;
 - (iv) whether the services to be performed are 'construction work' (as that term is defined in the OHS Laws); and
 - (v) the proposed duration,
- of the proposed Unscheduled Services.
- (d) Except if there is an Urgent Issue, the Operator may raise comments or objections to any item of Unscheduled Services on the grounds that the Unscheduled Services would interfere with an Event, Function or Permitted Training or the performance of the Operator Obligations or require access to a Restricted Area during the relevant Profile Period and the interference could be reasonably avoided or mitigated by rescheduling the Unscheduled Services.
- (e) Except if there is an Urgent Issue, and without limiting the application of Schedule 14 of the DBFM Project Agreement, Project Co must not carry out Unscheduled Services that will, or will be likely to, adversely affect any Event, Function or Permitted Training or the performance of the Operator's Obligations or require access to a Restricted Area during the relevant Profile Period unless agreed to by the Operator.
- (f) If there is an Urgent Issue, Project Co may carry out Unscheduled Services to Make Safe only, provided that:
- (i) it notifies the Operator and the State as soon as possible of the need for the Unscheduled Services (and no more than 30 minutes after it becomes aware of the Urgent Issue); and
 - (ii) as soon as practicable, it notifies the Operator and the State of the duration of the Unscheduled Services that are necessary to Make Safe the Urgent Issue and the access that Project Co must require to Make Safe the Urgent Issue.
- (g) When undertaking Unscheduled Services to rectify an Urgent Issue, Project Co must:
- (i) identify that part of the Unscheduled Services that must be carried out in order to rectify the Urgent Issue to Make Safe the Urgent Issue and defer all other aspects of the Unscheduled Services to be managed in accordance with the remainder of this Clause 8.2; and
 - (ii) take all reasonable steps to minimise the duration of the Unscheduled Services that are necessary to Make Safe the Urgent Issue and their effect on any Event, Function or Permitted Training and the performance of the Operator Obligations.

8.3 Deferral of Scheduled Services

- (a) If a booking is requested in respect of a part of the Stadium or Sports Precinct on dates which Project Co is scheduled to undertake Scheduled Services, the Operator must immediately give written notice to Project Co and the State of the Event, Function or Permitted Training request.
- (b) Without limiting Clause 8.2(f) and Clause 8.2(g), the following applies to determine the priority of the Project Co and Operator activities:
 - (i) if the Scheduled Services can be rescheduled at no cost and without adversely affecting the performance by Project Co of its obligations under the DBFM Project Agreement, Project Co must reschedule the Scheduled Services to accommodate the Event, Function or Permitted Training;
 - (ii) if the Scheduled Services can be carried out at the planned time without interfering with the Event, Function or Permitted Training, the Operator must allow Project Co to carry out the Scheduled Services in accordance with the original schedule; or
 - (iii) if Project Co objects to rescheduling the Scheduled Services because:
 - (A) it will incur additional cost, the Scheduled Services may only be rescheduled if the Operator agrees to pay Project Co's additional costs properly and reasonably incurred in rescheduling the Scheduled Services, and that cost will be accounted for as part of the cost of the Event, Function or Permitted Training; and/or
 - (B) rescheduling the Scheduled Services will prevent it from meeting its obligations under the DBFM Project Agreement, the Scheduled Services may only be rescheduled if the State agrees that Project Co is relieved from the performance of those obligations and will be relieved from any associated DBFM Abatement that arises as a result of such non-performance.
- (c) If the parties cannot agree whether Scheduled Services are to be rescheduled in accordance with this Clause 8.3, the issue is to be referred for resolution in accordance with Clause 13.

9 MODIFICATIONS AND MINOR WORKS

9.1 Project Co changes

- (a) If Project Co receives a Modification Order or Minor Works Notice under the DBFM Project Agreement or proposes a Modification it must notify the Operator in writing within 5 Business Days.
- (b) The Operator must co-operate with Project Co and provide information to Project Co promptly so that Project Co is able to compile a single Modification Quote or Minor Works Quote:
 - (i) containing any information that Project Co is required to supply to the State under, and within the time frame required by, the DBFM Project Agreement; and
 - (ii) indicating any increases in costs that the State will incur under the Operator Agreement as a result of implementing the Modification or additional Minor Works.
- (c) If the Operator fails to provide information to Project Co at least:
 - (i) 5 Business Days prior to expiry of the time required for submission of a Modification Quote; or
 - (ii) 2 Business Days prior to expiry of the time required for submission of a Minor Works Quote,

Project Co must notify the State of the Operator's failure to provide information in respect of the Modification Quote or Minor Works Quote.

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- (d) Following receipt of a notice under Clause 9.1(c), the State may by notice to Project Co extend any period for submitting a Modification Quote or Minor Works Quote under the DBFM Project Agreement. If the State does not provide a notice under this Clause 9.1(d), Project Co may submit the Modification Quote or Minor Works Quote (as the case may be) in accordance with the DBFM Project Agreement.
 - (e) Project Co will endeavour to include any information of the Operator in its Modification Quote or Minor Works Quote but the parties agree that Project Co will have no Liability in respect of the Operator failing to provide the information in accordance with this agreement or failing to comply with the terms of a Modification Quote or Minor Works Quote.
 - (f) The process of approving the proposed Modification Quote or Minor Works Quote will then be in accordance with the DBFM Project Agreement.
 - (g) Without limiting Clause 9.1(f), no Modification or Minor Works may be carried out by Project Co without the prior approval of the State.
 - (h) If, as a result of a Project Co initiated request for a Modification or Minor Works, the Operator necessarily incurs extra costs (being costs not required to be incurred by the Operator under the Operator Agreement), the State's approval of the Modification or Minor Works will be conditional on Project Co paying those costs (unless the State agrees to pay those costs itself).

9.2 Operator changes

- (a) If the Operator receives a request from the State for a proposed Modification, or proposes a Modification under the Operator Agreement it must notify Project Co in writing within 5 Business Days.
- (b) Project Co must co-operate with the Operator and provide information to the Operator promptly so that the Operator is able to compile a single Modification Quote:
 - (i) containing any information that the Operator is required to supply to the State under, and within the time frame required by, the Operator Agreement; and
 - (ii) indicating any increases in costs that the State will incur under the DBFM Project Agreement as a result of implementing the Modification.
- (c) If Project Co fails to provide information to the Operator at least 5 Business Days prior to expiry of the time required for submission of a Modification Quote, the Operator must notify the State of Project Co's failure to provide information in respect of the Modification Quote.
- (d) Following receipt of a notice under Clause 9.2(c), the State may by notice to the Operator extend any period for submitting a Modification Quote under the Operator Agreement. If the State does not provide a notice under this Clause 9.1(d), the Operator may submit the Modification Quote in accordance with the Operator Agreement.
- (e) The Operator will endeavour to include any information of Project Co in its Modification Quote but the parties agree that the Operator will have no liability in respect of Project Co failing to provide the information in accordance with this agreement or failing to comply with the terms of a Modification Quote.
- (f) The process of approving the proposed Modification Quote will then be in accordance with the Operator Agreement.
- (g) Without limiting Clause 9.2(f), no Modification may be carried out by the Operator without the prior approval of the State.
- (h) If, as a result of an Operator initiated request for a Modification, Project Co necessarily incurs extra costs (being costs not required to be incurred by Project Co under the DBFM Project Agreement), the State's approval of the Modification will be conditional on the Operator paying those costs (unless the State agrees to pay those costs itself).

10 EQUIPMENT

- (a) Prior to the delivery of any Group 1 FF&E or Services Equipment, Project Co must provide notice to the Operator of the delivery details including:
 - (i) the intended date and time of delivery;
 - (ii) the intended location within the Stadium; and
 - (iii) the quantity and sizes of Group 1 FF&E or Services Equipment being delivered.
- (b) Except to the extent that the Group 1 FF&E or Services Equipment is required to rectify an Urgent Issue (in which case, Clause 8.2(f) and Clause 8.2(g) apply), the delivery of Group 1 FF&E or Services Equipment must not be scheduled for times during which an Event is scheduled to be held or which would interfere with the Operator Obligations.
- (c) During the Operating Phase, Project Co must comply with that part of the Operator Facility Services Management Plan, as described in Schedule 8 (Services Specifications) of the Operator Agreement, which relates to management of the loading dock in respect of the delivery of Group 1 FF&E and Services Equipment.
- (d) Project Co must ensure that there are dedicated storage areas within the Stadium or Sports Precinct for Project Co to store Services Equipment and the Operator must ensure that these areas remain available for Project Co's use during the Operating Phase. The dedicated storage areas must:
 - (i) be reasonably located to allow Project Co to perform the Services;
 - (ii) be identified and agreed prior to the Date of Commercial Acceptance;
 - (iii) be available to and accessible by Project Co at all times; and
 - (iv) not be changed without Project Co's prior written consent.
- (e) Without limiting Project Co's right to undertake Scheduled Services at the time that it is scheduled, the Operator must co-ordinate or remove any equipment of the Operator or Stadium Personnel that is present on the Operating Phase Site and cannot be worked around or accommodated by Project Co in its performance of the Scheduled Services without requiring Project Co to incur additional cost or giving rise to a DBFM Abatement.

11 PERSONNEL

- (a) Project Co must give reasonable consideration to any issues raised by the Operator in relation to the presentation, behaviour or performance of any employees of Project Co or Project Co Associates and must address any issue, which in the opinion of the Operator, acting reasonably, has the potential to have a negative effect on the operation, reputation or presentation of the Stadium or Sports Precinct, or on the Stadium Users' experience at the Stadium or Sports Precinct.
- (b) The Operator must give reasonable consideration to any issue raised by Project Co in relation to presentation, behaviour or performance of any employees of the Operator or Stadium Personnel and must address any issues which, in the opinion of Project Co, acting reasonably, has the potential to have a negative effect on the performance of the Project Co Obligations.

12 CO-ORDINATION ISSUE

- (a) As soon as reasonably practicable after a party becomes aware of a Co-ordination Issue which is unable to be resolved between the relevant parties, the party must provide written notice to the State.
- (b) The State must decide the matter within 10 Business Days of referral of the Co-ordination Issue. The State's decision will be final and binding upon the parties.

13 DISPUTE RESOLUTION

13.1 Dispute resolution principles

- (a) A Dispute will be determined in accordance with this Clause 13.

- (b) This Clause 13 takes precedence over the dispute resolution procedures in the DBFM Project Agreement and the Operator Agreement in respect of the Dispute to which it relates.
- (c) The parties agree to work co-operatively together to identify, resolve and avoid Disputes.

13.2 Disputes under Contracts

- (a) This Clause 13 applies to Disputes that arise between:
 - (i) the Contractors only; or
 - (ii) both of the Contractors and the State.
- (b) Any Dispute between:
 - (i) the State and Project Co; or
 - (ii) the State and the Operator,
 must be determined in accordance with the dispute resolution procedures under the relevant Contract.

13.3 Notice of Dispute

- (a) Subject to Clause 13.2, if a Dispute arises, a party must give written notice to the State and the Other Contractor:
 - (i) adequately identifying the details of the Dispute;
 - (ii) detailing particulars of the party's reason for being dissatisfied; and
 - (iii) detailing the position that the party believes is correct,**(Notice of Dispute).**
- (b) Unless a party has complied with the procedure to resolve a Dispute by negotiation of a Dispute under Clause 13.4, that party must not commence the dispute resolution process under Clause 13.6.

13.4 Dispute resolution mechanism

If a Notice of Dispute is issued under Clause 13.3(a), the following procedure will apply.

- (a) Each Contractor and the State will appoint a representative being a managing director or equivalent officer (**Executive Negotiator**), to resolve the Dispute and will notify the Other Contractor and the State of this appointment within 5 Business Days of the Notice of Dispute being issued.
- (b) The Executive Negotiators must, within:
 - (i) 10 Business Days of the receipt of the Notice of Dispute under Clause 13.3(a); or
 - (ii) a longer period of time as the Executive Negotiators agree in writing, meet and undertake genuine and good faith negotiations with a view to resolving the Dispute within 15 Business Days (or any longer time as the Executive Negotiators may agree in writing) of receipt of the Notice of Dispute under Clause 13.3(a).
- (c) The Executive Negotiators may not resolve a Dispute in such a way that either of the Contractors are or will be in breach of their obligations under their respective Contract.
- (d) If a Dispute has not been resolved by the Executive Negotiators under Clause 13.4(b), or if a decision has been made in contravention of this Clause 13.4, the Dispute will be referred to the Independent Expert.

13.5 Independent Expert

- (a) (**Referral to Independent Expert**): Disputes that are not resolved by the Executive Negotiators will be referred to an Independent Expert for resolution in accordance with this agreement.

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- (b) **(Appointment):** Within 5 Business Days of the delivery of the Notice of Dispute in accordance with Clause 13.5(a), the parties must agree on an Independent Expert to determine the Dispute.
- (c) **(Failure to agree on Independent Expert):** If the parties fail to agree on the Independent Expert within the time referred to in Clause 13.5(b), then an Independent Expert will be nominated by the President of the Institute of Arbitrators and Mediators Australia, having regard to any Independent Experts proposed by the parties as notified in writing to the President and to the other party (which in the case of each party, must not exceed 2 proposed Independent Experts).
- (d) **(Agreement):** The agreed or nominated Independent Expert must execute an agreement with the parties within 10 Business Days after the agreement on, or nomination of, the Independent Expert in accordance with Clause 13.5(b) or Clause 13.5(c) (as applicable).
- (e) **(Referral):** If the Independent Expert so agreed or nominated executes an agreement in accordance with Clause 13.5(d), then the Dispute must be referred to that Independent Expert for determination.
- (f) **(New Independent Expert):** If the Independent Expert agreed or nominated does not, or either party does not, execute an agreement in accordance with Clause 13.5(d), then the parties must agree or nominate another Independent Expert in accordance with this Clause 13.5 (but the parties will only have the opportunity to agree or nominate 1 further Independent Expert after the initial Independent Expert).
- (g) **(Basis for determination):** The Independent Expert will make its determination based upon:
- (i) the Notice of Dispute;
 - (ii) the submissions provided by the parties which, unless the Independent Expert extends the time for delivery, must be delivered within 5 Business Days of the Independent Expert signing the agreement referred to in Clause 13.5(d); and
 - (iii) any further information provided by the parties in accordance with any request by the Independent Expert for further submissions, documents or information from either or both parties.
- (h) **(No breach):** The Independent Expert's determination must not result in either of the Contractors being in breach of its obligations under its respective Contract.
- (i) **(Conference):** After the Dispute has been referred to the Independent Expert, the Independent Expert may call and conduct a conference, or any number of conferences, as the Independent Expert sees fit, between the parties, but will give the parties reasonable notice of the matters to be addressed at that conference.
- (j) **(Representation):** The parties may be legally represented at the conference.
- (k) **(Privacy):** All conferences will be held in private except to the extent that representatives of the Key Subcontractors will be permitted to attend on reasonable notice, where the Dispute may affect their rights or liabilities under their subcontracts.
- (l) **(Visit):** The Independent Expert may visit the Site, the Stadium and the Sports Precinct (as applicable), and the parties will facilitate the Independent Expert's access to any of those areas.
- (m) **(Timing):** The Independent Expert must make a determination in connection with the Dispute by the later of:
- (i) within 10 Business Days after the last of the steps set out in Clause 13.5(a) to Clause 13.5(l); or
 - (ii) within 30 Business Days after receipt of submissions in accordance with Clause 13.5(g)(ii).
- (n) **(Not arbitrator):** The Independent Expert will act as an expert and not an arbitrator and may make a decision from his or her own knowledge and expertise.

- (o) **(Final and binding):** The determination of the Independent Expert will be final and binding on the parties, unless within 15 Business Days of the determination, a party notifies the other party that it intends to commence litigation to challenge the determination.
- (p) **(Mistake):** The Independent Expert may correct the determination by notice to the parties where its determination contains:
 - (i) a clerical mistake or an error arising from an accidental slip or omission; or
 - (ii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter.
- (q) **(Costs):** The cost of the Independent Expert will be borne equally by each of the parties to the Dispute (excluding the State) unless the determination is made against the party who issued the Notice of Dispute, in which case the Independent Expert may determine that that party will bear all or a greater proportion of the Independent Expert's costs in connection with that Dispute.

13.6 Litigation

If a Dispute which has been referred to the Independent Expert pursuant to Clause 13.4(c) remains unresolved (in whole or part) after the expiration of 45 Business Days of the receipt of the Notice of Dispute under Clause 13.3(a) or any longer period agreed between the parties, any party to the Dispute may commence legal proceedings to resolve any unresolved part of the Dispute.

13.7 Injunctive or urgent relief

Nothing in this Clause 13 prevents a party instituting proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute.

13.8 Continuity

Despite the existence of a Dispute between the parties or the referral of a Dispute for resolution, all of the parties must continue to perform their obligations under their respective Contracts and under this agreement.

14 LIABILITY

14.1 Liability

Each Contractor acknowledges and agrees that, subject to the remainder of this Clause 14 and any Claim either Contractor may have under its respective Contracts, any Claim or Liability a Contractor has arising out of the performance or non-performance of the Other Contractor of its obligations under this agreement must, in the first instance, be brought against the Other Contractor.

14.2 *[Not Disclosed]*

14.3 *[Not Disclosed]*

14.4 *[Not Disclosed]*

14.5 *[Not Disclosed]*

14.6 Indirect or Consequential Loss

- (a) Despite any other provision of this agreement, neither Project Co nor any Project Co Associate has any Liability to the Operator, any D&C Stadium Personnel or any Stadium Personnel, nor is the Operator, any D&C Stadium Personnel or any Stadium Personnel entitled to make any Claim against Project Co or any Project Co Associate, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the Operator, any D&C Stadium Personnel or any Stadium Personnel arising out of or in connection with this agreement. The exclusion of Liability for any Indirect or Consequential Loss in this Clause 14.6(a) does not apply to exclude Liability for:
 - (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by, Project Co or any Project Co Associate;

- (ii) wilful misconduct under this agreement by Project Co or any Project Co Associate;
 - (iii) or arising from, any loss of or damage to third party property or injury to, disease or death of a person;
 - (iv) matters which, by Law, the parties cannot limit or exclude;
 - (v) any statutory fine arising from any breach of Law or Authorisation by Project Co or a Project Co Associate; or
 - (vi) any other moneys expressly payable to the Operator under this agreement other than for loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, any failure to realise anticipated savings and cost of capital and other financing costs.
- (b) Despite any other provision of this agreement, none of the Operator, any D&C Stadium Personnel or any Stadium Personnel has Liability to the Project Co or any Project Co Associate, nor is Project Co or any Project Co Associate entitled to make any Claim against the Operator, any D&C Stadium Personnel or any Stadium Personnel, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by Project Co or any Project Co Associate arising out of or in connection with this agreement. The exclusion of Liability for any Indirect or Consequential Loss in this Clause 14.6(b) does not apply to exclude Liability for:
- (i) criminal acts or fraudulent acts or omissions of, or fraudulent misrepresentation by the Operator, any D&C Stadium Personnel or any Stadium Personnel;
 - (ii) wilful misconduct under this agreement by the Operator, any D&C Stadium Personnel or any Stadium Personnel;
 - (iii) or arising from, any loss of or damage to third party property or injury to, disease or death of a person;
 - (iv) matters which, by Law, the parties cannot limit or exclude;
 - (v) any statutory fine arising from any breach of Law or Authorisation by the Operator, any D&C Stadium Personnel or any Stadium Personnel; or
 - (vi) any other moneys expressly payable to Project Co under this agreement other than for loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, any failure to realise anticipated savings and cost of capital and other financing costs.
- (c) **(Trust – Project Co Associates):**
- (i) Project Co declares that it holds on trust for each of the Project Co Associates, the benefit of the Indirect and Consequential Loss exclusion in Clause 14.6(a) given by the Operator under this agreement in favour of each Project Co Associate.
 - (ii) The Operator acknowledges the existence of such trusts and consents to:
 - (A) Project Co exercising rights in relation to, or otherwise enforcing, the Indirect and Consequential Loss exclusion in Clause 14.6(a) on behalf of the Project Co Associates; and
 - (B) the Project Co Associates exercising rights in relation to, or otherwise enforcing the Indirect and Consequential Loss exclusion in Clause 14.6(a).
 - (iii) Project Co and the Operator agree that the consent of the Project Co Associates will not be required for any amendment to, or waiver of, rights in accordance with this agreement.
- (d) **(Trust – Stadium Personnel and D&C Stadium Personnel):**
- (i) The Operator declares that it holds on trust for each of the Stadium Personnel and D&C Stadium Personnel, the benefit of the Indirect and Consequential Loss exclusion in Clause 14.6(a) given by Project Co under this agreement in favour of each Stadium Personnel and D&C Stadium Personnel.

- (ii) Project Co acknowledges the existence of such trusts and consents to:
 - (A) the Operator exercising rights in relation to, or otherwise enforcing, the Indirect and Consequential Loss exclusion in 14.6(b) on behalf of the Stadium Personnel and D&C Stadium Personnel; and
 - (B) the Stadium Personnel and D&C Stadium Personnel exercising rights in relation to, or otherwise enforcing the Indirect and Consequential Loss exclusion in Clause 14.6(b).
- (iii) Project Co and the Operator agree that the consent of the Stadium Personnel and D&C Stadium Personnel will not be required for any amendment to, or waiver of, rights in accordance with this agreement.

14.7 Contractor agreement to perform

Each Contractor covenants to the State that it will perform the obligations under their respective Contracts and this agreement, to the extent their respective Contracts contain obligations which might affect the services or obligations of the Other Contractor.

14.8 Mitigation

Each party must use its reasonable endeavours to mitigate any Liabilities (including under any indemnity) suffered or incurred by it and which would otherwise be passed to another party.

14.9 Insurance

- (a) The Operator acknowledges that in accordance with the DBFM Project Agreement, the State and Project Co have agreed a regime under which there is a regular review of various aspects of the public and product liability insurance, professional indemnity insurance and industrial special risks insurance required to be put in place by Project Co and maintained during the Operating Phase.
- (b) In accordance with the process referred to in Clause 14.9(a) each of the State and Project Co bear responsibility for increases in premiums to the extent those premiums have increased as a result of claims made against insurances arising out of acts or omissions of the State, State Associates, Project Co or Project Co Associates (as applicable).
- (c) The Operator acknowledges and agrees that to the extent Project Co insurances suffer increases in premiums, then to the extent those premiums have increased as a result of claims made against those insurances arising out of:
 - (i) acts or omissions of Stadium Personnel; or
 - (ii) Stadium User Related Damage in circumstances where the Operator has not managed the security of the Stadium in a manner consistent with Operator Good Industry Practice,

then those amounts will be due and payable by the Operator to Project Co within 10 Business Days of Project Co providing the Operator with an invoice and evidence of payment of the increased premiums. Project Co agrees that it will not claim payments under this Clause 14.9 more than once per year after it has renewed the insurances required of it in accordance with the DBFM Project Agreement.

- (d) Project Co must provide a written notice from its insurance brokers or its insurer(s) setting out that part of the relevant insurance which has increased as a result of the events specified in Clause 14.9(c). If there is any Dispute in relation to such notice (including the quantum of the increase), the matter will be referred to the dispute resolution process in the DBFM Agreement (including to an Independent Expert).

15 TERMINATION

- (a) This agreement will terminate on:
 - (i) the expiration, or earlier termination, of the DBFM Project Agreement; or
 - (ii) the expiration, or earlier termination, of the Operator Agreement, unless a replacement operator is contracted by the State, in which case Clause 15(d) will apply.

- (b) Other than under Clause 15(a), none of the parties will have any right to terminate this agreement.
- (c) No compensation will be due to or from any party as a consequence of termination of this agreement, but this Clause 15 will not prejudice a party's rights to damages for breach of this agreement that accrued prior to termination.
- (d) If the State terminates the Operator Agreement or the Operator Agreement expires and the State appoints a replacement operator:
 - (i) the State will procure that all or substantially all of the rights and obligations of the Operator under this agreement will be novated to that operator from the date of the termination of the Operator Agreement;
 - (ii) the Operator agrees to the novation of its rights and obligations under this agreement to the replacement operator as and from the date of the novation and must enter into and execute any document, give any notice, obtain any consent and sign and produce any document which is reasonably requested by the State as is necessary to effect or complete the novation (or as applicable novation and amendment) as required by this Clause 15; and
 - (iii) the other parties agree to the replacement operator taking the place of the Operator in this agreement on and from that date of novation.
- (e) The parties agree that if there is a novation as contemplated under this Clause 15, any existing rights and obligations of the parties as between each other will not be extinguished.

16 NOTICES

16.1 General Notices

- (a) **(Form of Notices):** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this agreement (in this Clause 16, "**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, except where a Notice is a:
 - (A) Notice of Dispute; or
 - (B) notice of a Co-ordination Issue in accordance with Clause 12(a),
 which in each case must be delivered in accordance with Clause 16.1(a)(i)),

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

The State's notice details are as follows:

[Not Disclosed]
- (c) **(Date of receipt):** Subject to Clause 16.1(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 stated in Schedule 1 (Contract Particulars) to the DBFM Project Agreement; 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 5.00pm, it is taken to be received at 9.00am on the next Business Day.
- (e) **(Notices sent by email):** In connection with communications 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 16. Any text in the body of the email or the subject line will not form part of the communication; and
 - (ii) the Operator and Project Co must ensure that, in connection with any communications in accordance with or in connection with this agreement:
 - (A) its firewall or mail server (or both) (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 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.

16.2 Project Co and Operator Notices

If Project Co issues a Notice to the Operator, or the Operator issues a Notice to Project Co, the party that issued the Notice must provide a copy of that Notice to the State within 5 Business Days of other party receiving that Notice.

17 GENERAL

17.1 Relationship of the parties

- (a) No duty of good faith is implied on the State in connection with its relationship with the Contractors.
- (b) Neither this agreement nor the relationships 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 Contractors must not act as or represent themselves to be the servant or agent of the State, except to the extent permitted in their relevant Contract.

17.2 State's rights, duties, powers and functions

- (a) **(State's own interests):** Unless this agreement expressly provides otherwise, nothing in this agreement 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 agreement.
- (b) **(State's powers, functions or duties):** Notwithstanding anything contained or implied in this agreement 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 to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering):** Nothing contained in this agreement or contemplated by this agreement 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 17.2(e), neither Project Co nor the Operator will be entitled to make any Claim against the State under the State Project Documents for any Liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach)**: Clauses 17.2(a) to 17.2(d) do not limit any Liability of the State which the State would have had to any party in accordance with this agreement as a result of a breach by the State of a term of this agreement but for Clauses 17.2(a) to 17.2(d).

17.3 Reasonable endeavours

If there is any statement in this agreement that the State will use “reasonable endeavours” in relation to an outcome it means that:

- (a) the State will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its resources and other responsibilities;
- (b) the State cannot guarantee the relevant outcome; and
- (c) the State by undertaking to exercise reasonable endeavours, is not required to:
 - (i) interfere with or influence the exercise of any statutory power or discretion by any body, including a Government Agency; or
 - (ii) act in any other way that the State regards as not in the public interest.

17.4 Counterparts

This agreement 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.

17.5 Governing law

This agreement 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.

17.6 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 agreement 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 agreement.
- (b) A waiver given by the State under this agreement 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 agreement 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 agreement 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 agreement.

17.7 Variations and waivers

No variation, modification or waiver of any provision in this agreement, 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.

17.8 Amendments to this agreement

This agreement may only be varied by a deed executed by or on behalf of each party.

17.9 Joint and several liability

- (a) If Project Co consists of more than 1 person, then the rights and obligations of Project Co in accordance with this agreement are joint and several as between those persons.

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- (b) If the Operator consists of more than 1 person, then the rights and obligations of the Operator in accordance with this agreement are joint and several as between those persons.

17.10 Clauses to survive termination

- (a) All provisions of this agreement which expressly or by implication from their nature are intended to survive termination, completion or expiration of this agreement will survive such termination, completion or expiration.
- (b) Nothing in this Clause 17.10 prevents any other provision of this agreement, as a matter of interpretation, also surviving the termination of this agreement.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this agreement. All rights and obligations in accordance with this agreement survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this agreement.

17.11 Costs and expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

17.12 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 agreement.

17.13 Severability of provisions

Any provision of this agreement 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 agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

Execution page

Executed as an agreement

SIGNED for the **STATE OF WESTERN AUSTRALIA** by Ronald James Alexander, the Director General of the Department of Sport and Recreation, in the presence of:

sign here ►

Ronald James Alexander

*print name of
witness*

*Witness sign
here* ►

*Witness
address*

*Witness
occupation*

SIGNED for and on behalf of the **MINISTER FOR WORKS** by the Under Treasurer for the time being, acting under delegated authority pursuant to a delegation from the Minister for Works to the Treasurer dated 1 July 2011 made pursuant to section 5A(f) of the *Public Works Act 1902* (WA) and a subdelegation from the Treasurer dated 1 September 2011 made pursuant to section 5B(1)(db) of the *Public Works Act 1902* (WA), in the presence of:

sign here ►

Under Treasurer
Michael Anthony Barnes

*print name of
witness* _____

*Witness sign
here* ► _____

*Witness
address* _____

*Witness
occupation* _____

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

Richard Muirhead

sign here
►

Authorised Representative

print name

David Etherton

Signed, sealed and delivered for and on behalf of **Westadium Project Co Pty Ltd ACN 169 900 547** in its personal capacity and as trustee for the **Westadium Project Unit Trust** by its attorney under a power of attorney dated _____ in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Executed by VenuesLive Management Services (WA) Pty Ltd ACN 612 306 377 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary

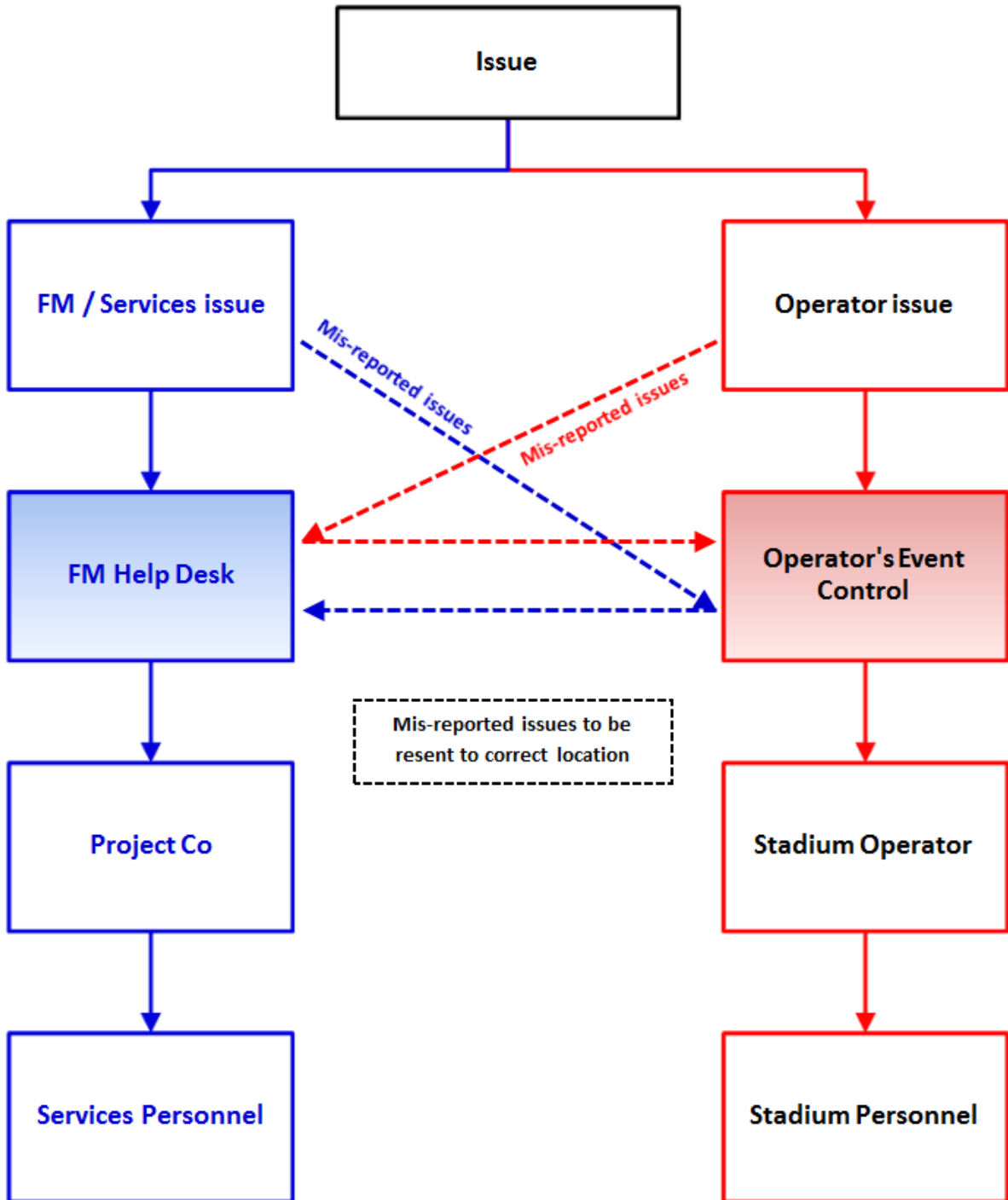
Daryl Robert Kerry

Stephen Campbell Heytman

Schedule 1 – Interface Matrix

[Not Disclosed]

Schedule 2 – FM Helpdesk Workflow Chart



Schedule 3 – Fair Wear and Tear

[Not Disclosed]

Attachment 1 – Operator’s Site Plans

[Not Disclosed]