



The new Perth Stadium Project

Independent Certifier 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 the Westadium Project Unit Trust
(**Project Co**)

and

[Insert name of Independent Certifier]
(**Independent Certifier**)

and

National Australia Bank Limited
(**Security Trustee**)

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INDEPENDENT CERTIFIER AGREEMENT

This agreement is made on

between

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 (ABN 91 169 900 547) in its personal capacity and as trustee for the Westadium Project Unit Trust (**Project Co**)

and

[insert name and ABN of independent certifier] (**Independent Certifier**)

and

National Australia Bank Limited (ABN 12 004 044 937) (**Security Trustee**)

and the parties agree as follows:

Recitals

- A. The State and Project Co entered into the Project Agreement in connection with the DBFM Project.
- B. It is anticipated that the Stadium Operator will enter into a contract with the State for the operation of the Stadium.
- C. It is a condition of the Project Agreement that the State and Project Co enter into this agreement.
- D. The State and Project Co wish to appoint the Independent Certifier to perform the Services on the terms and conditions set out in this agreement.
- E. Once executed, it is a condition of the Operator Agreement that the Stadium Operator become a party to this agreement.
- F. This is the "Independent Certifier Agreement" as referred to in the Project Agreement.

The parties agree as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

Operative provisions

1 DEFINITIONS AND INTERPRETATION

1.1 General

Unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this agreement have the meaning given to them in Clause 1.1 of the Project Agreement.

1.2 Definitions

In this agreement:

Term	Meaning
APRA	means the Australian Prudential Regulation Authority.
Authorisation	means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, approval, authority or exemption from, by or with, an Authority, judicial body, stock exchange or any other person.
Best Industry Practice	means: <ul style="list-style-type: none">(a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person with skill and experience in, and resources necessary to complete, works and services similar to the Independent Certifier's Obligations and under conditions comparable with those applicable to the Independent Certifier's Obligations;(b) compliance with applicable standards and codes, being the standards and codes specified in this agreement or, if this agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and(c) compliance with all applicable Laws.
Business Day	means any day other than: <ul style="list-style-type: none">(a) a Saturday or a Sunday; or(b) a gazetted holiday in Perth, Western Australia under the <i>Public and Bank Holidays Act 1972 (WA)</i>.
Change in Control	means in respect of any person, a change in the person or persons who, directly or indirectly, ultimately Control that person other than as a result of any dealing in securities listed on a stock exchange.
Change Notice	has the meaning given to it in the Project Agreement.

Term	Meaning
<i>Claim</i>	<p>means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made:</p> <ul style="list-style-type: none"> (a) under, or arising in connection with, this agreement or the DBFM Project; (b) under any Law; or (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
<i>Client Parties</i>	<p>means the State, Project Co, the Security Trustee and the Stadium Operator once the Stadium Operator executes the Deed of Accession.</p>
<i>Commercial Acceptance Criteria</i>	<p>has the meaning given to it in the Project Agreement.</p>
<i>Commercial Acceptance Plan</i>	<p>has the meaning given to it in the Project Agreement.</p>
<i>Confidential Information</i>	<p>means any information relating to the affairs of the State, the State Entities, Project Co's Activities, the Independent Certifier's Obligations or the DBFM Project generally that:</p> <ul style="list-style-type: none"> (a) is, by its nature, confidential; (b) is specified by the State to be confidential, including any information specified to be confidential in this agreement or the Project Agreement; or (c) the Independent Certifier knows, or exercising Best Industry Practice, ought to know, is confidential, <p>and includes the Project Information.</p>
<i>Conflict Management Protocols</i>	<p>has the meaning given to it in Clause 6.3A.</p>
<i>Corporations Act</i>	<p>means the <i>Corporations Act 2001</i> (Cth).</p>
<i>D&C Documents</i>	<p>has the meaning given to it in the Project Agreement.</p>

Term	Meaning
<i>D&C Payment Claim</i>	has the meaning given to it in the Project Agreement.
<i>D&C Payment Statement</i>	has the meaning given to it in the Project Agreement.
<i>D&C Phase</i>	has the meaning given to it in the Project Agreement.
<i>D&C Phase Plans</i>	has the meaning given to it in the Project Agreement.
<i>Date for Commercial Acceptance</i>	has the meaning given to it in the Project Agreement.
<i>Date for Technical Completion</i>	has the meaning given to it in the Project Agreement.
<i>DBFM Project</i>	means: <ul style="list-style-type: none"> (a) designing, constructing and partially financing the DBFM Works; (b) the performance of the Services (as defined in the Project Agreement); (c) the undertaking of the Commercial Opportunities; and (d) Handover of the Stadium and Sports Precinct.
<i>DBFM Works</i>	means the Stadium Works, Sport Precinct Works and the Off-Site Infrastructure Works.
<i>DBFM Works Program</i>	means a program of the activities required to undertake the DBFM Works, containing the details required by Schedule 6 (Programming Requirements) to the Project Agreement, as prepared and updated in accordance with the Project Agreement.
<i>Deed of Accession</i>	a deed of accession in the form set out in Schedule 4 (Deed of Accession).
<i>Deed of Reliance</i>	means the document entitled "The new Perth Stadium Project – Deed of Reliance" between the Independent Certifier and Brookfield Multiplex Engineering and

Term	Meaning
	Infrastructure Pty Ltd executed on or around the date of this agreement.
<i>Defect</i>	means: <ul style="list-style-type: none"> (a) any component of the DBFM Works, Stadium, Sports Precinct, or the Off-Site Infrastructure which does not comply with the requirements of the Project Agreement; or (b) any defect, shrinkage, fault, or omission in the DBFM Works, Stadium, Sports Precinct or the Off-Site Infrastructure (excluding any normal shrinkage of materials unless that shrinkage would have been accommodated for in accordance with Good Industry Practice).
<i>Design Deliverables</i>	has the meaning given to it in the Project Agreement.
<i>Design Development Process</i>	has the meaning given to it in the Project Agreement.
<i>Design Documentation</i>	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.
<i>Design Reports</i>	means a report documenting the development of the design of an element of the DBFM Works.
<i>Dispute</i>	means any real or perceived conflict, difference of opinion, or unresolved issue in relation to this agreement or the parties' rights or obligations under this agreement.
<i>Downstream Services</i>	has the meaning given to it in Clause 6.2(a).
<i>Explanation</i>	has the meaning given to it in the Project Agreement.
<i>Fee</i>	means the amount payable to the Independent Certifier for the performance of the Services in accordance with Clause 3.3 and Schedule 3 (Payment Schedule).

Term	Meaning
<i>Fee Paying Parties</i>	the State and Project Co.
<i>FF&E List</i>	has the meaning given to it in the Project Agreement.
<i>Financiers' Certifier Agreement</i>	means the document entitled "The new Perth Stadium Project – Financiers' Certifier Agreement" between Project Co, the Security Trustee and the Independent Certifier executed on or around the date of this agreement.
<i>Fit for Purpose</i>	has the meaning given to it in the Project Agreement.
<i>Good Industry Practice</i>	has the meaning given to it in the Project Agreement.
<i>Government Agency</i>	means any government or any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, Minister of the Crown, agency, entity or Parliament and includes any State Entity.
<i>Handover</i>	has the meaning given to it in the Project Agreement.
<i>Independent Certifier's Obligations</i>	means all of the liabilities, obligations and requirements imposed or assumed by the Independent Certifier under this agreement, express or implied, or arising from or in connection with this agreement from time to time including the performance of the Independent Certifier's obligations as amended by any variation to this agreement.
<i>Independent Certifier's Representative</i>	[insert name of representative]
<i>Independent Expert</i>	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 45 of the Project Agreement.
<i>Industrial Award,</i>	means an award, a registered or certified agreement or an order of the Western Australian Industrial Relations

Term	Meaning
<i>Agreement or Order</i>	Commission, Australian Industrial Relations Commission or Fair Work Australia and includes transitional instruments under schedule 3 of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth), and any agreement including a workplace or enterprise agreement between an individual or group of individuals or the Independent Certifier that is lodged, registered or certified under any Law applying in Western Australia.
<i>Insolvency Event</i>	<p>means the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (a) (informs creditors): the Independent Certifier informs its creditors generally that it is insolvent; (b) (receiver): a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in respect of any of the assets of the Independent Certifier; (c) (execution): a distress, attachment or other execution is levied or enforced upon or against any assets of the Independent Certifier and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days; (d) (voluntary liquidation): the Independent Certifier enters into voluntary liquidation; (e) (application): an application is made for the administration, dissolution or winding up of the Independent Certifier, which application is not stayed, withdrawn or dismissed within 10 Business Days of being made; (f) (winding up): an order is made for the administration, dissolution or winding up, of the Independent Certifier other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State; (g) (resolution): a resolution is passed for the administration or winding up of the Independent Certifier; (h) (arrangement or composition): the Independent Certifier enters into, or resolves to enter into or has a meeting of its creditors called to enter into, any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the State;

Term	Meaning
	<ul style="list-style-type: none"> (i) (statutory demand): <ul style="list-style-type: none"> (i) the Independent Certifier fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days of the time for compliance; or (ii) if the Independent Certifier applies to have the statutory demand set aside within 10 Business Days of the time for compliance, the application to set aside the statutory demand is unsuccessful and the Independent Certifier fails to comply with the statutory demand within 5 Business Days of the order of the court dismissing the application; (j) (execution levied against it): the Independent Certifier has execution levied against it by creditors, debenture holders or trustees or under a floating charge; or (k) (insolvency): the Independent Certifier is unable to pay its debts when they fall due, or is deemed unable to pay its debts in accordance with any applicable Law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute).
<i>Insurance Policies</i>	means the insurance policies described in Clause 8.1.
<i>Interim Certifier</i>	has the meaning given to it in Clause 10.1(b).
<i>Key Personnel</i>	each of the Independent Certifier's personnel identified in Section 2 of Schedule 1 (Project Documents and Key Personnel).
<i>Law</i>	<p>means all applicable present and future laws comprised of:</p> <ul style="list-style-type: none"> (a) all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State of Western Australia, the Commonwealth of Australia or a local authority; (a) Authorisations; and (b) principles of common law or equity, <p>whether or not existing at the date of this agreement.</p>

Term	Meaning
Loss	means any liability, cost, expense, loss, personal injury (including illness), death or damage whether or not such liability, cost, expense, loss, personal injury, death or damage is based on contract, statute, warranty, tort (including negligence), indemnity or otherwise.
Monitoring and Tests	means any testing, monitoring, calibrating, assessing or evaluating (as applicable) required to be performed by Project Co under the Project Agreement, including as set out in the D&C Phase Plans and including all testing and monitoring to determine whether the Technical Completion Criteria and the Off-Site Infrastructure Works Completion Criteria have been satisfied or achieved, and Monitoring and Testing is to be construed accordingly.
Month	means a calendar month.
Monthly Works Report	has the meaning given to it in the Project Agreement.
Off-Site Infrastructure	has the meaning give to it in the Project Agreement.
Off-Site Infrastructure Completion	has the meaning given to it in the Project Agreement.
Off-Site Infrastructure Works	has the meaning given to it in the Project Agreement.
Off-Site Infrastructure Works Completion Criteria	has the meaning given to it in the Project Agreement.
Operating Phase	has the meaning given to it in the Project Agreement.

Term	Meaning
<i>Operational Handover Plan</i>	has the meaning given to it in the Project Agreement.
<i>Operator Agreement</i>	has the meaning given to it in the Deed of Accession.
<i>Outstanding Item</i>	has the meaning given to it in the Project Agreement.
<i>Payment Certificate</i>	means a written notice issued by a Fee Paying Party in accordance with Section 2(a)(i) or 2(a)(ii) of Schedule 3 (Payment Schedule), which sets out the amount which the Fee Paying Party considers is payable to the Independent Certifier in respect of a Payment Claim.
<i>Payment Claim</i>	has the meaning given to it in Section 1(b) of Schedule 3 (Payment Schedule).
<i>Project Agreement</i>	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 [insert] .
<i>Project Co’s Activities</i>	means all of the activities which Project Co is required to perform for the DBFM Project, including the DBFM Works and all incidental and ancillary works and services required to carry out and complete the activities.
<i>Project Documents</i>	means the agreements described in Schedule 1 (Project Documents and Key Personnel).
<i>Project Information</i>	means each of the documents provided in Volume 4 of the Request for Proposal.
<i>Proposed Joint Action</i>	has the meaning given to it in Clause 4A.
<i>Records</i>	means all records and information of any kind (including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents, drawings, diagrams, graphs, photographs, videos, computer models, design models and other

Term	Meaning
	<p>materials) created for, or relating to, or used in connection with, the DBFM Project or the performance of the Independent Certifier's Obligations, whether or not containing Confidential Information, and however those records and information are held, stored or recorded. Records include:</p> <ul style="list-style-type: none"> (a) all documentation and information relevant to the DBFM Works; (b) any electronic communication in any format; (c) the results of any Monitoring and Testing; (d) anything which is a "record" under the <i>State Records Act 2000</i> (WA); and (e) any Industrial Award, Agreement or Order.
<i>Rectification Plan</i>	has the meaning given to it in the Project Agreement.
<i>Related Entity</i>	means a "related entity" as defined in the Corporations Act.
<i>Relevant Parties</i>	has the meaning given to it in Clause 10.1(a).
<i>Relevant Period</i>	<p>means, in respect of any Record:</p> <ul style="list-style-type: none"> (a) a minimum of 7 years after the creation of the Record; and (b) any additional length of time required under any Law or by any Government Agency.
<i>Request for Proposal</i>	means the document entitled 'Request for Proposal' issued by the State in connection with the DBFM Project on 12 July 2013.
<i>Schedule</i>	means a schedule to this agreement unless expressly stated otherwise.
<i>Schedule of Rates</i>	means the schedule of rates in Section 7 of Schedule 3 (Payment Schedule).
<i>Scope of Work and Technical Criteria</i>	means the State's requirements for the DBFM Works, as set out in Schedule 12 (Design Specifications) of the Project Agreement and Schedule 7 (Completion Criteria)

Term	Meaning
	of the Project Agreement.
<i>Security Trust</i>	means the security trust established under the Security Trust Deed.
<i>Services</i>	means those services to be provided by the Independent Certifier in respect of the Project Agreement as listed in Schedule 2 (Services).
<i>Site</i>	means the area where the DBFM Works will be carried out, being the area contained within the site boundary as shown in the plans in Schedule 11 (Site Plans) of the Project Agreement as amended from time to time in accordance with the Project Agreement.
<i>Sports Precinct</i>	has the meaning given to it in the Project Agreement.
<i>Sports Precinct Works</i>	has the meaning given to it in the Project Agreement.
<i>Stadium</i>	has the meaning given to it in the Project Agreement.
<i>Stadium Works</i>	has the meaning given to it in the Project Agreement.
<i>State</i>	means: <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.
<i>State Entities</i>	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 Stadium Operator, Project Co, any Project Co Associate, the PCS Works Independent Certifier, the Independent Certifier, the ISGS Expert or the Head

Term	Meaning
	Lessee), and the term 'State Entity' means any one of them.
<i>State's Preferred Panel</i>	means the panel of quantity surveyors listed in the Department of Finance (Building Management and Works) Buyer's Guide Cost Management Services 2011, Panel Arrangement 210757/11 as updated from time to time.
<i>Supplier</i>	has the meaning set out in Clause 13(e).
<i>Technical Completion</i>	has the meaning given to it in the Project Agreement.
<i>Technical Completion Criteria</i>	has the meaning given to it in the Project Agreement.
<i>Technical Completion Plan</i>	has the meaning given to it in the Project Agreement.
<i>Technical Completion Report</i>	has the meaning given to it in the Project Agreement.
<i>Technical Completion Tests</i>	has the meaning given to it in the Project Agreement.
<i>Term</i>	has the meaning set out in Clause 2.
<i>Upstream Services</i>	has the meaning given to it in Clause 6.2.

1.3 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;

- (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) **(plan)**: a reference to any of the D&C Phase Plans or Operating Phase Plans is a reference to that D&C Phase Plan or Operating Phase Plan as amended or updated from time to time in accordance with this agreement;
- (i) **(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;
- (j) **(rights)**: a reference to a right includes any benefit, remedy, discretion, authority or power;
- (k) **(singular)**: words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (l) **(headings)**: headings are for convenience only and do not affect the interpretation of this agreement;
- (m) **(schedules)**: a reference to this agreement includes all Schedules;
- (n) **(Clauses)**: a reference to:
 - (i) a Clause, Schedule or Attachment is a reference to a Clause, Schedule or Attachment of or to this 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;
- (o) **(defined meaning)**: where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)**: a reference to "\$" is to Australian currency;
- (q) **(time)**: a reference to time is a reference to Australian Western Standard Time;
- (r) **(form)**: writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (s) **(construction)**: no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this agreement or any part;

- (t) **(information)**: a reference to "information" includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (u) **(remedy)**: the use of the word "remedy" or any form of it in this agreement means that the event to be remedied must be cured or its effects overcome;
- (v) **(may)**: the term "may", when used in the context of a power or right exercisable by the State, the State Representative, the Security Trustee or the Stadium Operator, means that the State, the State Representative, the Security Trustee or the Stadium Operator (as the case may be) can exercise that right or power in its absolute and unfettered discretion and the State, the State Representative, the Security Trustee or the Stadium Operator (as applicable) has no obligation to the Independent Certifier to do so;
- (w) **(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, which, for the avoidance of doubt includes amounts calculated in accordance with the Schedules of this agreement;
- (x) **(writing)**: references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this agreement; and
- (y) **(obligations)**: a reference to an obligation includes a warranty and a reference to a failure to observe or perform an obligation includes a breach of warranty.

1.4 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) **(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.
- (d) **(Standards)**: Unless agreed or notified in writing by the State, a reference to Australian standards, overseas standards or other similar reference documents in this agreement is a reference to the edition last published prior to the preparation of the relevant documentation unless otherwise agreed by the State.
- (e) **(Day of event)**: Where time is to be reckoned by reference to a day or event, that day or the day of the event is excluded.
- (f) **(Month)**: Where time is to be counted in Months and the period commences on the 29th, 30th or 31st day of a Month and the Month at the end of the period does not have a 29th, 30th or 31st day (as applicable), then the period will end on the last day of that Month (for example, a period of 2 Months which begins on 31 July will end on 30 September; a period which begins 30 July will end on 30 September).
- (g) **(Agreement composition)**: This agreement comprises:
 - (i) Clauses 1 to 15; and
 - (ii) Schedule 1 (Project Documents and Key Personnel) to Schedule 5 (Deed of Reliance).

1.5 Several liability

If a provision of this agreement binds any or all of the Client Parties, that provision binds each of the relevant Client Parties severally and not jointly and severally.

1.6 Civil liability

- (a) The operation of Part 1F of the *Civil Liability Act 2002 (WA)* is excluded to the extent necessary for the Independent Certifier to be liable, in accordance with the terms of this agreement, for any Loss suffered by one or more of the Client Parties arising out of or in connection with the acts or omissions of its personnel or its subcontractors, other contractors, consultants (or any of their personnel).
- (b) The Independent Certifier must ensure that:
 - (i) its professional indemnity insurance policy covers the Independent Certifier for potential liability to the Client Parties assumed by reason of the exclusion of Part 1F provided for in Clause 1.6(a); and
 - (ii) other than potential liability to the Client Parties assumed by reason of the exclusion of Part 1F provided for in Clause 1.6(a) (and subject at all times to Clause 1.6(b)(i)), all Insurance Policies required by this agreement do not exclude cover for any potential liability the Independent Certifier may have to the Client Parties under or by reason of this agreement.

1.7 Ambiguity

- (a) If any party discovers any inconsistency, ambiguity or discrepancy in this agreement, that party must promptly notify the other parties.
- (b) To the extent of any inconsistency between this agreement and the Project Agreement, the Project Agreement prevails.

1.8 Stadium Operator

- (a) At the date of execution of this agreement, the Stadium Operator has not been appointed.
- (b) The State wishes the Stadium Operator to receive the benefit of, and be bound by, this agreement.
- (c) Until the Deed of Accession is executed by the Stadium Operator, this agreement will be read as if there is no reference to the Stadium Operator, except for this Clause 1.8.

2 TERM

The term of this agreement commences on the date this agreement is executed and will continue until 30 days after the Independent Certifier has completed all the Services and discharged all of its obligations, functions and duties under this agreement (as notified by the Independent Certifier and agreed by the Client Parties), subject to the earlier termination of this agreement in accordance with its terms or at Law (**Term**).

3 APPOINTMENT OF INDEPENDENT CERTIFIER

3.1 Appointment

- (a) The Client Parties appoint the Independent Certifier to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment in this Clause 3 and agrees to perform the Services as required by this agreement.

3.2 Accession of Stadium Operator

- (a) The parties acknowledge that, as at the date of this agreement, the Stadium Operator and the State have not entered into the Operator Agreement.
- (b) As soon as reasonably practicable after execution of the Operator Agreement:
 - (i) the State and the Independent Certifier must execute the Deed of Accession; and
 - (ii) the State must ensure that the Stadium Operator becomes a party to this agreement by executing the Deed of Accession.
- (c) Each party to this agreement consents to the Stadium Operator becoming a party to this agreement and agrees to perform their obligations under this agreement in favour of the Stadium Operator (to the extent relevant) as if the Stadium Operator had originally been a party to this agreement.

3.3 Payment

- (a) In consideration of the provision of the Services under this agreement, the Fee Paying Parties are severally liable to each pay the Independent Certifier 50% of the Fee.
- (b) The relevant Fee Paying Party must pay its proportion of the Fee calculated as set out in Schedule 3 (Payment Schedule) and otherwise in accordance with Schedule 3 (Payment Schedule).
- (c) Nothing in this agreement makes any Fee Paying Party liable for any other Fee Paying Party's proportion of the Fee.
- (d) Unless expressly stated otherwise in this agreement, the Fee is the Independent Certifier's sole entitlement to payment.

4 SECURITY TRUSTEE LIMITATION OF LIABILITY

4.1 Security Trustee limitation of liability

- (a) The Security Trustee enters into and performs this agreement and the transactions it contemplates only as the trustee of the Security Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this agreement or those transactions.
- (b) Under and in connection with this agreement and those transactions and conduct:
 - (i) the Security Trustee's liability (including for negligence) to the parties is limited to the extent it can be satisfied out of the assets of the Security Trust. The Security Trustee need not pay any such liability out of other assets;
 - (ii) another party may only do the following with respect to the Security Trustee (but any resulting liability remains subject to the limitations in this Clause):
 - (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of the Security Trustee but only with respect to Security Trust assets;
 - (B) exercise rights and remedies with respect to Security Trust assets, including set-off;
 - (C) enforce its security (if any) and exercise contractual rights; and
 - (D) bring any proceedings against the Security Trustee seeking relief or orders that are not inconsistent with the limitations in this Clause,

and may not:

- (E) bring other proceedings against the Security Trustee;
 - (F) take any steps to have the Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or
 - (G) seek by any means (including set-off) to have a liability of the Security Trustee to that party (including for negligence) satisfied out of any assets of the Security Trustee other than Security Trust assets.
- (c) Clauses 4.1(a) and 4.1(b) apply despite any other provision in this agreement but do not apply with respect to any liability of the Security Trustee to another party (including for negligence) to the extent that the Security Trustee has no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Security Trustee's behaviour was beyond power or improper in relation to the Security Trust.
- (d) The limitation in Clause 4.1(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in Clause 4.1(b)(ii), and interpreting this agreement and any security for it, including determining the following:
- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under Clause 4.1(b)(ii) been brought);
 - (ii) the calculation of amounts owing; or
 - (iii) whether a breach or default has occurred,
- but any resulting liability will be subject to the limitations in this Clause.

4.2 Liability must be limited and must be indemnified

The Security Trustee is not obliged to do or not do anything in connection with this agreement (including entering into any transaction or incurring any liability) unless:

- (a) the Security Trustee's liability is limited in a manner which is consistent with Clause 4.1;
- (b) the Security Trustee is indemnified (or otherwise put in funds) to its reasonable satisfaction against any liability or loss arising from, and any costs, charges and expenses (including those incurred in connection with advisers) properly incurred in connection with, doing or not doing that thing in accordance with the Security Trust Deed; and
- (c) it has received the relevant instructions from the relevant Financiers.

4A NON-ACTING CLIENT PARTY

If one or more of the Client Parties request the Security Trustee to take action in accordance with this agreement and such action may only be taken jointly with the Security Trustee (**Proposed Joint Action**) and, as a result of one or more of the conditions in Clause 4.2(a), Clause 4.2(b) or Clause 4.2(c), the Security Trustee does not respond to that request within 10 Business Days following receipt of the request by the other Client Party or Client Parties (as applicable) to take the Proposed Joint Action, the other Client Party or other Client Parties (as applicable) may take the Proposed Joint Action without the involvement of the Security Trustee and the Security Trustee's rights in relation to that Proposed Joint Action will not apply.

5 ACKNOWLEDGEMENTS AND RELIANCE

The Independent Certifier acknowledges and agrees that:

- (a) it has received a copy of the Project Agreement and that it has read, and is familiar with, the terms of the Project Agreement to the extent that it relates to the Services and will perform the Services in the Project Agreement (including the obligations, functions, duties and services of the “Independent Certifier” as described in the Project Agreement) in accordance with this agreement;
- (b) each of the Client Parties:
 - (i) is relying on the skill and expertise of the Independent Certifier in performing its obligations under this agreement; and
 - (ii) may suffer Loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this agreement;
- (c) without limiting Clauses 5(b) and 6.1(b), the Client Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under this agreement;
- (d) it must perform the Services in a manner which will not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person, except where it is the unavoidable consequence of performing the Services; and
- (e) as it will be certifying D&C Payment Claims pursuant to Clause 35 of the Project Agreement which are to be funded by the State under the Project Agreement and the Financiers (subject to and in accordance with the Financing Documents) and also for the purposes of the D&C Contract, the Builder requires a direct agreement with the Independent Certifier in relation to the performance of the relevant Services (including the benefit of rights equivalent to those available to the State under this agreement). The Independent Certifier agrees to enter into an obligations deed with the Builder substantially in the form included in Schedule 5 (**Deed of Reliance**), on or before Contractual Close.

6 INDEPENDENT CERTIFIER’S OBLIGATIONS

6.1 Performance of the Services

- (a) The Independent Certifier must perform the Services in accordance with this agreement and at the times specified in this agreement, the Project Agreement, the DBFM Works Program and the D&C Phase Plans.
- (b) The Independent Certifier must, in performing the Services:
 - (i) exercise the reasonable skill, care and diligence to be expected from a competent and qualified independent certifier that is experienced in providing services similar to the Services for projects similar to this project;
 - (ii) comply with all Laws and act honestly;
 - (iii) act independently and impartially of the Client Parties;
 - (iv) subject to Clause 6.1(b)(i), take into consideration all documents, information and material (whether written or oral) that any Client Party places before the Independent Certifier provided that it is relevant to the decision being made by the Independent Certifier at that time;
 - (v) subject to Clause 6.1(b)(i), make a reasonable determination on any matter which it is required to make in respect of the Services in any form the Independent Certifier so desires and stating the Independent Certifier's determination;

- (vi) not waive, act in a manner which waives or gives effect to any waiver of any terms or conditions of the Project Documents, or any amendments or variations to the Project Documents; and
- (vii) not act in a way which discharges or releases the respective obligations of the parties to the Project Documents, without the prior written consent of those parties, except as required in order to perform the Services (such as certifying that Off-Site Infrastructure Completion or Technical Completion has occurred).

6.2 Independent Certifier Services paramount

The parties acknowledge and agree that the functions of the Independent Certifier in respect of the Project Agreement (**Upstream Services**) represent the paramount role of the Independent Certifier, with the intent that:

- (a) to the extent that the Upstream Services and functions of the Independent Certifier in respect of Project Documents other than the Project Agreement (**Downstream Services**) are equivalent in nature and extent, the Downstream Services will be dischargeable by the exercise of the relevant Upstream Services and deemed to be discharged by the exercise of the corresponding Upstream Services, subject only to any additional requirements under the Downstream Services;
- (b) if there is any ambiguity, conflict, discrepancy or inconsistency between any Upstream Services and any Downstream Services, the Upstream Services will prevail as between the parties;
- (c) neither the existence nor terms of the Downstream Services nor the exercise, failure to exercise or manner of exercise of a Downstream Service will be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as an aid to interpretation of, an Upstream Service; and
- (d) neither:
 - (i) the receipt by the Independent Certifier of any notice, claim, plan, program, report, manual, model or any other document or information nor the giving of any notice, the making of any comment or any other act or omission by the Independent Certifier arising from, in relation to, in respect of or in connection with, a Downstream Service; nor
 - (ii) the existence or performance of any function by, any consultation with, or any notice, report, certificate, comment or any other document or information provided to the Independent Certifier (in its capacity as provider of the Downstream Services) by any other reviewer, certifier, engineer, adviser or other consultant engaged by any party other than the State,

will:

 - (iii) give rise to any obligation on the part of the Independent Certifier to exercise (or exercise in a particular manner) any Upstream Service;
 - (iv) relieve Project Co from the giving of any notice, claim, plan, program, report, manual, model or any other document or information, or the doing of any other thing in respect of any Services, in order to give rise to any obligation on the part of the Independent Certifier to exercise that Upstream Service; or
 - (v) be a precedent for, limit or otherwise affect the exercise of, or be construed in any way as to aid the interpretation of, an Upstream Service.

6.3 Conflict of interest

- (a) The Independent Certifier represents and warrants to the Client Parties that:

- (i) no conflict of interest exists or is likely to arise in the performance of the Services and its other obligations and the discharge of its duties and functions under this agreement;
 - (ii) it and its Related Entities are not a partner, joint venturer, employee or agent of any of the Client Parties (unless each of the Client Parties has otherwise agreed in writing); and
 - (iii) it has disclosed in writing to all other parties all contractual relationships that it and any of its Related Entities has in connection with the DBFM Project and all contractual relationships that it and any of its Related Entities has with any of the Client Parties.
- (b) If any conflict of interest or risk of conflict of interest arises during the Term, the Independent Certifier must:
- (i) immediately notify the Client Parties in writing of that conflict or risk; and
 - (ii) take such action as directed by a Client Party (such direction which must be approved by the other Client Parties unless it is reasonable to object to that direction) to avoid, prevent or mitigate a conflict of interest or risk of conflict of interest arising out of, or in connection with, the performance of the Services.
- (c) If:
- (i) the Independent Certifier gives a notice under Clause 6.3(b)(i) as a result of the Security Trustee increasing the scope of the services (beyond those set out in Schedule 2 of the Financiers' Certifier Agreement) that the Independent Certifier or Independent Certifier's organisation is performing for the Security Trustee under another contract on the DBFM Project; and
 - (ii) the State is of the opinion (acting reasonably that there are no appropriate actions which can be taken by the Independent Certifier to avoid, prevent or mitigate the conflict of interest arising out of, or in connection with, the performance of those additional services,
- the Independent Certifier's organisation must cease providing those additional services under that contract upon receipt of notice from the State (copied to the Security Trustee) directing it to do so).
- (d) If the circumstances described in Clause 6.3(c) arise, no party may object to the Independent Certifier continuing its role under this agreement on the basis of that conflict of interest.
- (e) Subject to Clause 6.3(f), without the prior written consent of the Client Parties and on such terms approved by the Client Parties, the Independent Certifier will not be appointed or accept any appointment to act:
- (i) in any other role under or relating to the D&C Subcontract or the FM Subcontract; or
 - (ii) for any other person in respect of the DBFM Project.
- (f) The Client Parties approve the appointment of the Independent Certifier as the Financiers' Certifier for the purposes of the Facility Agreement in connection with the DBFM Project.

6.3A Conflict Management Protocols

- (a) The Client Parties and the Independent Certifier have agreed protocols to be complied with by the Independent Certifier and its directors, agents and employees in the performance of the separate roles of Independent Certifier and Financiers' Certifier in connection with the DBFM Project (**Conflict Management Protocols**).

- (b) The Independent Certifier must, and must ensure its directors, agents and employees, comply with the Conflict Management Protocols in the performance of separate roles of Independent Certifier and Financiers' Certifier in connection with the DBFM Project.
- (c) If the Independent Certifier is in breach of Clause 6.3A(b), the Client Parties must promptly meet to jointly agree the actions to be taken by the Independent Certifier to remedy or overcome the effects of such breach and prevent its reoccurrence.
- (d) If no agreement is reached in accordance with Clause 6.3A(c) within 20 Business Days of the Client Parties first meeting in accordance with Clause 6.3A(c) or the Independent Certifier does not comply with the actions agreed by the Client Parties under Clause 6.3A(c), either the State or the Security Trustee may serve a written notice on the Independent Certifier terminating this agreement and the Financiers' Certifier Agreement. For the avoidance of doubt, any termination of the Financiers' Certifier Agreement pursuant to this Clause 6.3A(d) is subject to Clause 10.1(b) of the Financiers' Certifier Agreement.

6.4 Independent Certifier's Representative

The Independent Certifier must:

- (a) appoint an Independent Certifier's Representative to carry out all of the functions of the Independent Certifier in accordance with this agreement;
- (b) ensure that the Independent Certifier's Representative:
 - (i) is engaged on a day to day basis in the performance of the Services;
 - (ii) is available by telephone and email at all reasonable times during the Term; and
 - (iii) responds to all communications from the Client Parties within 24 hours;
- (c) procure that the Independent Certifier's Representative attends all meetings as requested by Project Co or the State for the duration of the Term; and
- (d) not, without the prior written consent of the Client Parties:
 - (i) remove the Independent Certifier's Representative; or
 - (ii) substitute another person as the Independent Certifier's Representative.

6.5 Key Personnel

- (a) The Independent Certifier acknowledges that the State and Project Co have engaged the Independent Certifier on the basis that the Key Personnel will be involved in the performance of the Services.
- (b) The Independent Certifier must:
 - (i) ensure that the Key Personnel are employed or otherwise retained by the Independent Certifier to carry out the functions of the Independent Certifier assigned to them in Section 2 of Schedule 1 (Project Documents and Key Personnel); and
 - (ii) not, without the prior written consent of the Client Parties:
 - (A) remove any of the Key Personnel; or
 - (B) substitute another person for one or more of the Key Personnel.
- (c) Without limiting Clause 6.5(b), if any of the Key Personnel cease to perform the Services, the Independent Certifier must provide a replacement acceptable to the Client Parties at no additional cost to the Client Parties.
- (d) The Independent Certifier must procure that the relevant Key Personnel attend all meetings as requested by a Client Party for the duration of the Term.

- (e) To the extent that the Security Trustee requires that any Key Personnel that was not going to attend a meeting, attend that meeting, Project Co will be responsible for the payment of that part of the additional Fee attributable to that Key Personnel attending that meeting.

6.6 Quality assurance and audit

- (a) The Independent Certifier must implement a quality assurance system complying with the requirements of ISO AS NZS 9001:2000 to ensure that the Services comply with the requirements of this agreement.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this agreement as a result of:
 - (i) its compliance with the quality assurance requirements of this agreement; or
 - (ii) any acts or omissions of the Client Parties with respect to the quality assurance requirements of this agreement, including any audit under Clause 6.6(c).
- (c) The Independent Certifier must:
 - (i) at the request of any Client Party in respect of the performance of the Independent Certifier's Obligations, allow any audit of its quality assurance system under this agreement by a third party;
 - (ii) give that third party access to premises occupied by the Independent Certifier where the Independent Certifier's Obligations are being performed;
 - (iii) permit that third party to inspect applicable information relevant to the quality assurance audit; and
 - (iv) fully cooperate with that third party in respect of the carrying out of the quality assurance audit.

6.7 Time requirements

- (a) If, at any time during the performance of the Services, the Independent Certifier is of the opinion that it will not be able to perform the Services within the time specified in this agreement, the Project Agreement, the DBFM Works Program or the D&C Phase Plans (or any combination of them), the Independent Certifier must provide notice of that opinion to the Client Parties.
- (b) The giving of notice by the Independent Certifier under this Clause 6.7 does not constitute, nor will it be taken to constitute, any waiver by any party of any breach of this agreement or the granting of any extension of time or other indulgence by any Client Party in respect of the performance of the Services.

6.8 Records, access and audit

- (a) The Independent Certifier must maintain for the Relevant Period a complete set of all Records in whatever form that relate to the performance of the Independent Certifier's Obligations.
- (b) Without limiting its obligations under Clause 6.8(a), the Independent Certifier must comply with the requirements of the *State Records Act 2000 (WA)*, insofar as that Act applies to any of the Records.
- (c) At any time and from time to time during the Relevant Period, each Client Party has the right to inspect and audit the Records held and maintained by the Independent Certifier in accordance with this agreement. Upon a Client Party's request, the Independent Certifier must make such Records available to that Client Party (including proper access to the Independent Certifier's Representative and the Key Personnel or, as the case may be, replacement key personnel, and

facilities) to enable that Client Party to perform any inspection and audit of such Records.

6.9 Additional reports requested by a Client Party

- (a) A Client Party may require the Independent Certifier to prepare an additional report which is not otherwise required by a Project Document. Where so requested, the Independent Certifier must (except where the Independent Certifier is of the reasonable opinion that it would be inappropriate, in light of the performance and nature of the Services, to prepare such report) provide such report if it is reasonably capable of doing so.
- (b) Subject to the Financing Documents and unless separately agreed, the Client Party requesting an additional report under Clause 6.9(a) is responsible for the payment of the reasonable costs and expenses of the Independent Certifier in preparing such additional report.
- (c) For the avoidance of doubt, the request by one of the Client Parties to the Independent Certifier to prepare an additional report under Clause 6.9(a) is not a variation to the Services or an Upstream Service under this agreement and cannot, by reason of the report, create an additional payment certification requirement.
- (d) Notwithstanding that one Client Party has paid the costs and expenses of the Independent Certifier in preparing an additional report in accordance with this Clause 6.9, the Independent Certifier must provide a copy of the report prepared by the Independent Certifier to each of the Client Parties.

6.10 Confidentiality and publicity

- (a) The Independent Certifier must keep confidential details of this agreement, the Project Documents and all information and documents (including the Confidential Information) provided to, or by, the Independent Certifier in connection with the Services and not provide, disclose, or use such information or documents except:
 - (i) to the extent necessary for the purpose of performing the Independent Certifier's Obligations under this agreement, provided that the persons to whom the information is disclosed are bound by the confidentiality obligations imposed on the Independent Certifier under this Clause 6.10;
 - (ii) as authorised in writing by the State and, if the information to be disclosed relates to Project Co, the Security Trustee or the Stadium Operator, by Project Co, the Security Trustee or the Stadium Operator, whichever party the information relates to;
 - (iii) as is required by a Law or to the extent required by a stock exchange, and no more; or
 - (iv) when required (and only to the extent required), to the Independent Certifier's professional advisers and the Independent Certifier must ensure that those professional advisers are bound by the confidentiality obligations imposed on the Independent Certifier under this Clause 6.10.
- (b) The Independent Certifier must not make or publicise any announcements, advertisements or releases relating to this agreement or the DBFM Project without the prior approval of the Client Parties, except to the extent that the Independent Certifier is required by Law to make a statement, in which case, the Independent Certifier must:
 - (i) first provide a draft of the proposed statement to the Client Parties; and
 - (ii) make such changes as the Client Parties may reasonably require (having regard to the nature and content of the requirement of Law to make the statement).

6.11 Public disclosure of agreement details

- (a) The State may publicly disclose the identity of the Independent Certifier, the value of this agreement and this agreement (other than information that the State considers is confidential or which would involve the disclosure of information that has a commercial value).
- (b) The Independent Certifier, Project Co and the Stadium Operator acknowledge that this agreement and the information held or compiled by the State in relation to this agreement and the Independent Certifier's Obligations supplied under this agreement are subject to the *Freedom of Information Act 1992 (WA)*.

6.12 Document management

- (a) Without limiting Clause 6.8, the Independent Certifier must:
 - (i) implement and maintain a document management system acceptable to the State which must be used by the Independent Certifier to record all documents and written communications sent and received by the Independent Certifier in relation to this agreement, the Services, the DBFM Works and the Project Agreement; and
 - (ii) ensure that the Client Parties are provided with access to the document management system required under Clause 6.12(a)(i) at all times during the Term.
- (b) Without limiting Clause 6.12(a), the Independent Certifier must ensure that a copy of each written communication between the Independent Certifier and the Client Parties, or third parties which relates to the performance of the Services, is promptly given to the other parties, and in any event within 2 Business Days.

7 OBLIGATIONS OF THE CLIENT PARTIES

7.1 No interference or influence

The Client Parties must not interfere with, or attempt to influence or direct, the Independent Certifier in the performance of any of the Services.

7.2 Cooperation

- (a) The Client Parties must cooperate with the Independent Certifier.
- (b) The Client Parties (other than the Security Trustee) must provide the Independent Certifier with all information, documents and materials within its possession, custody or control reasonably requested by the Independent Certifier for the purpose of the performance of the Services or required to be provided to the Independent Certifier under this agreement or the Project Agreement, at the times reasonably required by the Independent Certifier.
- (c) Each party acknowledges that the Security Trustee:
 - (i) has not reviewed; and
 - (ii) is not liable,in respect of any information, documents and materials provided to the Independent Certifier.
- (d) The Client Parties must provide the Independent Certifier with such support as is reasonable to facilitate the performance of the Services in accordance with this agreement.
- (e) Project Co must provide the Independent Certifier with the latest:
 - (i) D&C Phase Plans;
 - (ii) DBFM Works Program;

- (iii) Design Documentation;
- (iv) Technical Completion Plan;
- (v) Technical Completion Report;
- (vi) Commercial Acceptance Plan;
- (vii) Operational Handover Plan;
- (viii) FF&E List;
- (ix) Monthly Works Report;
- (x) results of all Monitoring and Tests conducted in accordance with the D&C Phase Plans, including the results of Technical Completion Tests and any tests undertaken in connection with the Off-Site Infrastructure Works; and
- (xi) documents and information, including any other plans, required to be provided to the Independent Certifier in accordance with the Project Agreement,

as and when amended.

7.3 Right to enter, inspect, monitor and test

- (a) The Independent Certifier (and any person authorised by the Independent Certifier) for the purposes of performing the Services may, at any time before the expiry of the Term, upon giving reasonable notice to the Client Parties, enter the Site and any other place where the DBFM Works or materials are being tested.
- (b) Project Co and the Stadium Operator must give such assistance as is reasonably required by the Independent Certifier in respect of any inspection or certifying any testing under Clause 7.3(a).
- (c) When the Independent Certifier accesses the Site, the Independent Certifier must at all times comply with the safety and security requirements of Project Co set out in the Site Access and Interface Protocols.

7.4 Client Parties to have no liability

- (a) Each party acknowledges that none of the Client Parties is liable, or may be taken to have assumed a liability, or to have become (on enforcement of any of their powers or otherwise) liable, for the performance or non-performance of any obligation of any other Client Party under this agreement or the Project Documents.
- (b) Each Client Party acknowledges that no other Client Party is liable, or may be taken to have assumed a liability, or to have become (on enforcement of any of their powers or otherwise) liable, for any act or omission of the Independent Certifier or for any Claim or liability arising from the Independent Certifier's exercise of its functions, or a failure to exercise its functions, under this agreement.
- (c) Clauses 7.4(a) and 7.4(b) do not apply to relieve any party from any obligation arising under this agreement.

7.5 Acknowledgement

- (a) If the Security Trustee is entitled to bring a claim, action, demand or proceeding in respect of a liability, loss, damage, cost or expense (**Relevant Loss**) under both this agreement and the Financiers' Certifier Agreement, the Security Trustee agrees for the benefit of each of the Client Parties, that:
 - (i) the Security Trustee will not seek to recover the Relevant Loss under this agreement unless it is seeking to recover the Relevant Loss under the Financier's Certifier Agreement; and

- (ii) the Security Trustee is only entitled to receive the proceeds of a Relevant Loss under this agreement to the extent the Security Trustee has sought to recover the Relevant Loss under the Financier's Certifier Agreement and has been unable to recover it under the Financier's Certifier Agreement (including to the extent the operation of the liability cap in the Financiers' Certifier Agreement prevents the recovery of the Relevant Loss).
- (b) The Security Trustee must notify the Client Parties of all claims, actions, demands or proceedings brought under the Financiers' Certifier Agreement.
- (c) The Independent Certifier acknowledges and agrees that:
 - (i) its maximum aggregate liability to the Builder under the Deed of Reliance is \$3 million pursuant to clause 4(a) of the Deed of Reliance (**Deed of Reliance Liability Limit**);
 - (ii) it will not vary the Deed of Reliance Liability Limit without the written approval of all Client Parties;
 - (iii) the liability cap of \$30,000,000 referred to in Clause 8.8(d) does not apply in respect of a breach by the Independent Certifier of Clause 7.5(c)(ii);
 - (iv) until the \$10,000,000 liability cap referred to in clause 8.8(d) of the Financiers' Certifier Agreement is reached, any Relevant Loss that is recovered by the Security Trustee is recovered (in whole or in part) under the Financier's Certifier Agreement and not under this agreement; and
 - (v) it will notify the Client Parties of all claims, actions, demands or proceedings brought by the Builder under the Deed of Reliance.

7.6 Change to Services and suspension of Services

- (a) (**Change to Services**): Subject to Clause 7.6(b), the Fee Paying Parties may jointly, by written notice to the Independent Certifier, direct the Independent Certifier to make a change to the Services (including an addition or omission) which is within the general scope of this agreement. The Independent Certifier must comply with the direction, provided the increase or decrease in the Fee payable in relation to the change is agreed or determined in accordance with Clause 7.6(d).
- (b) (**Security Trustee consent**): The Fee Paying Parties may only direct the Independent Certifier to omit Services in accordance with Clause 7.6(a) with the prior written consent of the Security Trustee.
- (c) (**Upstream Services**): The parties acknowledge and agree that any addition to the Services in accordance with Clause 7.6(a) will not constitute Upstream Services.
- (d) (**Change to Fee**): The increase or decrease in the Fee to be paid to the Independent Certifier due to a change to the Services referred to in Clause 7.6(a) is to be determined in accordance with the Schedule of Rates.
- (e) (**Change to Fee cannot be determined**): If the increase or decrease in the Fee cannot be determined by reference to the Schedule of Rates, it will be a reasonable amount agreed between the Independent Certifier and the Fee Paying Parties. If those parties are unable to agree, the matter will be referred for resolution in accordance with Clause 11.
- (f) (**Suspension of Services**): The Fee Paying Parties may jointly, by written notice to the Independent Certifier, direct the Independent Certifier to suspend any or all of the Services for the period specified in that notice.

8 INSURANCE

8.1 Insurance Policies

- (a) **(Public Liability Policy):** The Independent Certifier must maintain a public liability policy. The public liability policy must:
- (i) cover liability for loss of, or damage to, property and the death or sickness of, or injury to, any person (other than liability which is required by Law to be insured under a workers' compensation policy of insurance);
 - (ii) be endorsed to cover sudden and accidental pollution; and
 - (iii) be for an amount of \$20 million in respect of any one occurrence and unlimited in the aggregate during any one 12 Month period of insurance.
- (b) **(Professional Indemnity Policy):** The Independent Certifier must maintain a professional indemnity policy. The professional indemnity policy must:
- (i) be for an amount of \$20 million in respect of any one claim and \$20 million in the aggregate during any one 12 Month period of insurance;
 - (ii) cover liability arising from any act, error or omission in connection with, or arising out of breach of the Independent Certifier's professional duties and obligations under this agreement;
 - (iii) cover claims in respect of this agreement under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in any other State or Territory insofar as they relate to the provision of professional advice;
 - (iv) cover fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property and trademark;
 - (v) be extended to include the vicarious liability of the Independent Certifier arising out of the breach of professional duties of all persons engaged by the Independent Certifier in connection with the Services; and
 - (vi) include unlimited reinstatements of the full sum insured in any one period of insurance.
- (c) **(Insurance of employees):** The Independent Certifier must insure against liability for death of, or injury to, natural persons employed or engaged by the Independent Certifier including liability by statute and at common law. This insurance cover must:
- (i) to the extent permitted by Law, be extended to indemnify the Client Parties for their statutory and common law liability to natural persons employed or engaged by the Independent Certifier; and
 - (ii) be for not less than \$50 million common law liability in respect of any one event.

8.2 General

- (a) The Independent Certifier must, at its own cost and expense, as a minimum, effect and maintain the Insurance Policies set out in Clause 8.1:
- (i) on the terms and conditions set out in Clause 8.1; and
 - (ii) from insurers with a credit rating of A- or better with Standard and Poors (Australia) Pty Ltd, which either:
 - (A) carry on business in Australia and are authorised by APRA; or

- (B) if overseas insurers, cover claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified to, and agreed to by, the Client Parties.
- (b) Without limiting Clause 8.2(a), the Independent Certifier must:
 - (i) pay all premiums and all deductibles applicable to the Insurance Policies when due; and
 - (ii) promptly reinstate any insurance required under this Clause 8 if it lapses or if cover is exhausted.
- (c) For the purposes of the Insurance Policies, the State includes the State of Western Australia, any Parliament, department, agency or instrumentality of the State of Western Australia, the Governance Agency, any Minister (including the State), whether body corporate or otherwise, and their officers, employees, consultants, contractors, agents, and personnel.
- (d) To the extent appropriate, the Insurance Policies must state they are governed by the laws of a state or territory of Australia and that each insurer irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising in connection with the Insurance Policies as well as waiving any objection to the venue of any legal process in these courts on the basis that the process has been brought in any inconvenient forum.
- (e) The effecting and maintaining of insurance by the Independent Certifier does not, in any way, affect or limit the liabilities or obligations of the Independent Certifier under this agreement.

8.3 Term

- (a) The Insurance Policies must come into effect on or before the commencement of the Independent Certifier's Obligations under this agreement or before the Independent Certifier first comes onto Site, whichever is the earlier.
- (b) Subject to Clause 8.3(c), the Insurance Policies must be maintained until the Independent Certifier has fully complied with and discharged all the Independent Certifier's Obligations or the end of the Term or any extension of the Term, whichever is the later.
- (c) If the wording of any Insurance Policy required by this Clause 8 is constructed on a claims made basis, the insurance must be renewed or otherwise maintained without interruption for a period of 7 years after the expiration or termination of this agreement.

8.4 Approval of the proposed terms and conditions of the Insurance Policies

- (a) The proof of the Insurance Policies required by Clause 8.5 must be provided by the Independent Certifier to the Client Parties for approval:
 - (i) prior to the date that the Independent Certifier is to begin performing its obligations under this agreement (or such other period as may be agreed to by the Client Parties); and
 - (ii) within 28 days of the date set for each annual renewal with respect to the Services.

8.5 Proof of Insurance Policies

Whenever requested in writing by the Client Parties, the Independent Certifier must produce to the Client Parties:

- (a) certificates of currency for its public liability, workers compensation insurance and professional indemnity policies; and

- (b) a letter from the Independent Certifier's professional indemnity insurance broker that confirms (as at the date the letter is issued) that the Independent Certifier has in place a professional indemnity insurance policy that complies with the requirements of this Clause 8 (such letter must not include any statement that it cannot be relied upon).

8.6 Failure to produce proof of Insurance Policies

- (a) If, after being requested in writing by the Client Parties to do so, the Independent Certifier fails to produce evidence of compliance with its insurance obligations under this Clause 8 to the satisfaction and approval of the Client Parties within 10 Business Days of the request, then the Client Parties may:
 - (i) exercise their rights under Clause 10; or
 - (ii) refuse payment of any amount due to the Independent Certifier until evidence of insurance required by this Clause 8 is produced to the Client Parties.
- (b) The rights given to the Client Parties by this Clause 8.6 are in addition to any other rights the Client Parties may have.

8.7 Independent Certifier's further obligations

- (a) The Independent Certifier must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.
- (b) The Independent Certifier must, other than in relation to renewal of the Insurance Policies (in which case the Independent Certifier must comply with Clause 8.5) not alter an Insurance Policy such that it no longer complies with the requirements of this agreement, or discontinue or cancel any of the Insurance Policies, or allow any of the Insurance Policies to lapse, without the prior approval of the Client Parties.
- (c) The Independent Certifier must, except to the extent that such action prejudices the Independent Certifier's right to indemnity under a policy of insurance, promptly notify the Client Parties of any occurrence that may give rise to a claim, or any claim made, under any of the Insurance Policies in connection with this agreement.
- (d) The Independent Certifier must give the Client Parties notice of cancellation, non-renewal or a material alteration of any of the Insurance Policies within 3 Business Days of receiving such notice from an insurer.

8.8 Insurance Policies primary

- (a) The Insurance Policies are primary and not secondary to the indemnities referred to in this agreement. However, the Client Parties are not obliged to make a claim or institute proceedings against any insurer under the Insurance Policies before enforcing any of its rights or remedies under the indemnities referred to in this agreement, or generally.
- (b) The parties acknowledge that if a claim is made under an Insurance Policy by a Client Party, it is their intention that the insurer cannot require the Client Party to exhaust any indemnities referred to in this agreement before the insurer considers or meets the relevant claim.
- (c) The Independent Certifier acknowledges that regardless of whether the Insurance Policies respond or not, and regardless of the reason why the Insurance Policies respond or fail to respond, the Independent Certifier is not released (in whole or in part), from any of its obligations under the indemnities referred to in this agreement, or generally.
- (d) Subject to Clauses 8.8(e) and 7.5(c)(iii), the Independent Certifier's total liability to the Client Parties and Brookfield Multiplex Engineering and Infrastructure Pty Ltd (jointly) under this agreement, the Financiers' Certifier Agreement and the Deed of Reliance combined is limited to the sum of \$30,000,000.

- (e) The limitation of liability in Clause 8.8(d) does not apply to any Loss (and such Loss is excluded from the calculation of the limit of liability in Clause 8.8(d)):
 - (i) that arises in connection with personal injury or death;
 - (ii) that arise in connection with third party property damage; or
 - (iii) that arises as a direct result of a breach of a third party's intellectual property by, or the fraud or unlawful act of, the Independent Certifier.

9 LIABILITY AND INDEMNITIES

9.1 References to Independent Certifier

For the purposes of this Clause 9, any act, error or omission caused by the Independent Certifier's officers, directors, employees or contractors is deemed to be an act, error or omission of the Independent Certifier.

9.2 General indemnity

The Independent Certifier indemnifies the Client Parties jointly and severally against any Loss suffered by the Client Parties arising out of, or in connection with, and to the extent caused by any negligent act, error or omission by the Independent Certifier or its officers, directors, employees or contractors in breach of this agreement or any negligent or unlawful act or omission, in connection with the provision of the Services under this agreement.

9.3 Exclusion

Each of the Client Parties, separately, are not entitled to recover Loss under the indemnity in Clause 9.2 to the extent that party has caused or contributed to the Loss.

9.4 Benefit of indemnities

In Clause 9.2, "State", as a Client Party, includes the State of Western Australia, any Parliament, department, agency or instrumentality of the State of Western Australia, any Minister (including the State), whether body corporate or otherwise, and their officers, employees, consultants, contractors, agents, and personnel.

10 TERMINATION AND CONSEQUENCES

10.1 Termination for breach

- (a) Subject to Clauses 10.1(b) and 10.1(c), the State, Project Co and the Security Trustee (together, the **Relevant Parties**) may jointly terminate this agreement immediately by written notice to the Independent Certifier if:
 - (i) the Independent Certifier is in material breach of the terms of this agreement and the breach is, in the reasonable opinion of the Relevant Parties, not remediable;
 - (ii) the Independent Certifier is in material breach of the terms of this agreement and the breach is, in the reasonable opinion of the Relevant Parties, remediable and such breach has not been remedied within 10 Business Days after service by a Client Party of a notice specifying the breach and requiring it to be remedied;
 - (iii) the Independent Certifier fails to provide proof of the Insurance Policies under Clause 8.6;
 - (iv) an Insolvency Event occurs; or
 - (v) there is a Change in Control of the Independent Certifier without the consent of the Client Parties under Clause 15.9(b)(i).
- (b) If this agreement is terminated in accordance with Clauses 6.3A 10.1(a)(i) or 10.1(a)(iv), the Client Parties agree to use best endeavours to:

- (i) jointly agree and procure the appointment of an interim independent certifier on the terms of this agreement to replace the Independent Certifier (**Interim Certifier**) as soon as possible following termination of this agreement from the State's Preferred Panel or as otherwise agreed between the Client Parties; and
 - (ii) thereafter, as soon as possible, undertake the following process to appoint a permanent replacement of the Independent Certifier:
 - (A) undertake a tender process in which proposals are obtained from at least three potential replacement Independent Certifiers acceptable to the Client Parties;
 - (B) consult in relation to the selection of the replacement Independent Certifier, having regard to the cost and the ability of the potential Independent Certifiers to perform the Services; and
 - (C) appoint a replacement Independent Certifier.
- (c) A termination of this agreement in accordance with Clauses 10.1(a)(ii), 10.1(a)(iii), 10.1(a)(v) or 10.4 may not take effect unless and until:
- (i) the Client Parties have:
 - (A) undertaken a tender process in which they have obtained proposals from at least three potential replacement Independent Certifiers acceptable to the Client Parties;
 - (B) consulted in relation to the selection of the replacement Independent Certifier, having regard to the cost and the ability of the potential Independent Certifiers to perform the Services; and
 - (C) appointed a replacement Independent Certifier; or
 - (ii) the Client Parties have jointly waived the requirements under Clauses 10.1(b) and 10.1(c)(i).
- (d) If there is any dispute between the Client Parties regarding the appointment of a replacement Independent Certifier under Clause 10.1(b) or 10.1(c), any Client Party may refer that dispute for resolution in accordance with Clause 12.
- (e) If any monies owed to the Independent Certifier pursuant to Clause 3.3 have remained unpaid for 21 days after the date due for payment in the relevant invoice, the Independent Certifier may serve on the relevant Fee Paying Party notice of breach requiring immediate payment of such unpaid amounts ("Payment Breach Notice"). If the relevant Fee Paying Party fails to remedy the breach by making payment within 30 Business Days after the date of service of the Payment Breach Notice, the Independent Certifier may:
- (i) with immediate effect suspend performance of its obligations under this agreement until such time as all amounts due to be paid by the relevant Fee Paying Party have been paid; and
 - (ii) if such amounts remain unpaid 10 Business Days after the date of service of the Payment Breach Notice, terminate this agreement with immediate effect by serving notice to that effect on the Fee Paying Parties.

10.2 Termination for convenience

- (a) The State, Project Co and the Security Trustee may jointly serve on the Independent Certifier a notice of termination of this agreement and the appointment of the Independent Certifier, on a date specified in the notice, being

not less than 10 Business Days after the date of issue of the notice provided that such termination may not take effect unless and until:

- (i) the State, Project Co and the Security Trustee have:
 - (A) undertaken a tender process in which they have obtained proposals from at least three potential replacement Independent Certifiers acceptable to the State, Project Co and the Security Trustee;
 - (B) have consulted in relation to the selection of the replacement Independent Certifier, having regard to the cost and the ability of the potential Independent Certifiers to perform the Services; and
 - (C) appointed a replacement Independent Certifier; or
 - (ii) the State, Project Co and the Security Trustee have jointly waived the requirements under Clause 10.2(a)(i).
- (b) If there is any dispute between the State, Project Co and the Security Trustee regarding the appointment of a replacement Independent Certifier under Clause 10.2(a), the State, Project Co or the Security Trustee may refer that dispute for resolution in accordance with Clause 12.

10.3 Termination of Project Agreement

If it has not been terminated earlier, this agreement terminates on the date of termination of the Project Agreement.

10.4 Termination if liability cap exceeded

- (a) Subject to Clauses 10.1(c) and 10.4(b), if it has not been terminated earlier, this agreement terminates on the date the Independent Certifier's total liability in accordance with Clause 8.8(d) has been exceeded.
- (b) For the purposes of Clause 10.4(a), the Independent Certifier's total liability will be deemed to have been exceeded in circumstances where the Client Parties and Brookfield Multiplex Engineering and Infrastructure Pty Ltd (or any of them) have, in accordance with this agreement, the Financiers' Certifier Agreement and the Deed of Reliance, brought a Claim or Claims against the Independent Certifier in any amount equal to or exceeding \$30,000,000.

10.5 Termination of appointment of Independent Certifier

- (a) This agreement will terminate on the date specified in the notice of termination under Clauses 10.1 or 10.2, in accordance with Clause 10.3 or 10.4, or the expiry of the Term, whichever is earlier.
- (b) The Fee Paying Parties will each be responsible for payment of its portion of the Fee for the Services (other than amounts payable by the Security Trustee or the Stadium Operator in accordance with Clause 6.9(b), for which the Security Trustee or the Stadium Operator, as applicable, will be responsible) up to the date of termination in accordance with Clause 10.7.

10.6 Delivery of documents

On the date of termination of the appointment of the Independent Certifier, the Independent Certifier:

- (a) must deliver to the Client Parties or their nominee, all books, Records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services, this agreement, the Project Documents and the DBFM Works; and

- (b) acknowledges and agrees that the Independent Certifier permits the Client Parties to use all those documents for the purposes of the Project Documents, the DBFM Works, the DBFM Project and any other related project.

10.7 Payment until date of termination

- (a) Subject to Clause 10.7(b), if the appointment of the Independent Certifier is terminated under this agreement prior, the Independent Certifier is only entitled to be paid the proportion of the Fee for the Services performed up to the date of the termination.
- (b) If the appointment of the Independent Certifier is terminated under Clauses 10.1(e)(ii), 10.2 or 10.3, the Independent Certifier may recover:
 - (i) the proportion of the Fee performed up to the date of the termination from the Fee Paying Parties, determined in accordance with Clause 3.3 (subject to Clause 3.3(c)); and
 - (ii) its reasonable costs arising out of the termination from the Fee Paying Parties as if those costs formed part of the Fee determined in accordance with Clause 3.3.

10.8 Termination without prejudice

Termination of this agreement under this Clause 10 will be without prejudice to:

- (a) any Claim which the Client Parties may have in respect of any breach of the terms of this agreement which occurred;
- (b) any rights or liabilities of the parties under this agreement which may have accrued; or
- (c) any determinations or opinions expressed by the Independent Certifier, before the date of termination.

11 REPLACEMENT OF BUILDER

If the Builder is replaced in accordance with the terms of the Project Agreement, the Independent Certifier undertakes to enter into an obligations deed with the replacement builder on substantially the same terms as the Deed of Reliance.

12 DISPUTE RESOLUTION

12.1 Dispute

- (a) If a Dispute arises between:
 - (i) the Client Parties (on the one hand) and the Independent Certifier (on the other hand) in respect of any fact, matter or thing arising out of or in connection with the Services or this agreement; or
 - (ii) the Client Parties in relation to the appointment of a replacement Independent Certifier under Clause 10.1 or Clause 10.2,and is unable to be resolved, then:
 - (iii) the Dispute must be resolved in the same manner that disputes or differences of opinion are referred to an Independent Expert in accordance with the Project Agreement; and
 - (iv) accordingly, the provisions of Clause 45 (Dispute resolution) of the Project Agreement are incorporated into this document as if:
 - (A) the only persons party to the Project Agreement, and the only persons party to the relevant Dispute or difference of opinion, are the parties to the relevant Dispute; and

- (B) the only matters for determination by the Independent Expert in accordance with those provisions are the matters referred to the Independent Expert in accordance with this agreement.
- (b) For the avoidance of doubt, any decision by the Independent Certifier in respect of the DBFM Works (other than determinations made in accordance with the services referred to in items (a), (b), (c), (e)(ii), (e)(iii) and (i) of Schedule 2) is final and binding on the Client Parties and cannot be the subject of a Dispute, except for manifest error. If the Independent Certifier makes a determination in accordance with item (e)(i) of Schedule 2 of this agreement:
 - (i) except as set out in Clause 12.1(b)(ii), the Independent Certifier's determination is final and binding, provided that:
 - (A) Project Co must promptly give notice to the State and the Independent Certifier of its intention to dispute the Independent Certifier's determination;
 - (B) within 3 Business Days of receipt of the Independent Certifier's determination that there is a Defect, Project Co may present its reasons to the Independent Certifier as to why it considers that there is not a Defect;
 - (C) within 5 Business Days of the State receiving Project Co's notice under Clause 12.1(b)(i)(A), the State may also provide comments to the Independent Certifier in respect of the Defect;
 - (D) the Independent Certifier must consider Project Co's reasons and the State's comments and promptly affirm, reverse or amend its determination, acting in accordance with this agreement; and
 - (E) the Independent Certifier's further determination is final and binding and overrides any previous determination in respect of the same Defect; and
 - (ii) the determination as to methodology for rectifying the Defect is not final and binding on the Client Parties.

12.2 Injunctive or urgent relief

Nothing in this Clause 12 prejudices any party's right to institute proceedings to seek injunctive or urgent declaratory relief in respect of a Dispute or any other matter arising under this agreement.

13 GOODS AND SERVICES TAX

- (a) **(Application of Clause):** This Clause applies as if the GST Law imposed GST, and was able to impose GST, in the circumstances prescribed in the GST Law, on property of any kind belonging to a State (as that expression is used in section 114 of the *Commonwealth of Australia Constitution Act 1900*).
- (b) **(Construction):** In this Clause 13:
 - (i) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (ii) words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

- (c) **(Nominated entity):** The State confirms that the entity nominated to be responsible for the administration of the State's GST reporting obligations **(Nominated Entity)** is registered for GST as at the date of this agreement. The parties acknowledge that the Nominated Entity will be responsible for administering the obligations in accordance with this Clause 13 on behalf of the State.
- (d) **(Additional amount):** Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided in accordance with this agreement are exclusive of GST.
- (e) **(Payment of GST):**
 - (i) If GST is payable on any supply made by a party **(Supplier)** under or in connection with this agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.
 - (ii) The recipient will pay the amount referred to in Clause 13(e)(i) in addition to, and at the same time that, the consideration for the supply is to be provided in accordance with this agreement.
- (f) **(Tax invoices):**
 - (i) The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under Clause 13(e).
 - (ii) The recipient can withhold payment of any amount payable in accordance with this Clause 13 until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (g) **(Adjustment event):** If an adjustment event arises in connection with a taxable supply made by a Supplier in accordance with this agreement, the amount payable by the recipient in accordance with this Clause 13 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient, as the case requires.
- (h) **(Reimbursements):** Where a party is required, in accordance with this agreement, to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

14 NOTICES

14.1 General Notices

- (a) **(Form of Notices):** Each communication (including each notice, consent, approval, request, demand and certificate), in accordance with or in connection with this agreement (in this Clause 14, "**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) except where a Notice relates to Claims, defaults or termination (which in each case must be delivered in accordance with Clause 14.1(b)(i)), sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,

of the addressee set out in Clause 14.2 (or as otherwise notified by that party to each other party from time to time).

- (c) **(Date of receipt):** Subject to Clause 14.1(e), a Notice is deemed 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; and
 - (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 Clause 14.2; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day):** If the communication is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices Sent by email):** In connection with 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 14. Any text in the body of the email or the subject line will not form part of the communication; and
 - (ii) the Independent Certifier 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 10 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any Client Party 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.

14.2 Party details

[Not disclosed]

15 GENERAL

15.1 Relationship of the parties

- (a) Nothing in this agreement gives a party authority to bind the other party in any way.
- (b) The Independent Certifier is an independent contractor. The Independent Certifier's Representative and the Key Personnel will not be deemed to be employees, agents, subcontractors or consultants of the Client Parties each party must pay all costs associated with its employees.

- (c) No duty of good faith is implied on the State in connection with its relationship with the Independent Certifier.
- (d) Neither this agreement, nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership, joint venture or fiduciary obligation with regard to, or as between, the parties.

15.2 State's rights, duties, powers and functions

- (a) **(Benefit of agreement):** The Independent Certifier acknowledges that the State enters into this agreement for the benefit of other State Entities including the Government of Western Australia.
- (b) **(State's rights):** Any right of the State may be exercised for the benefit of any other State Entity and any reference in this agreement to the Loss of, or costs incurred by, the State includes direct Losses of, and direct costs incurred by, these State Entities.
- (c) **(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.
- (d) **(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.
- (e) **(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, or the State Entities' discretion to exercise, or not to exercise, any of its statutory rights, duties, powers or functions.
- (f) **(No Claim):** Subject to Clause 15.2(g), the Independent Certifier will not be entitled to make any Claim against the State for any Loss relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (g) **(Liability for breach):** Clauses 15.2(c) to 15.2(f) do not limit any liability of the State which the State would have had to the Independent Certifier in accordance with this agreement as a result of a breach by the State of a term of this agreement but for Clauses 15.2(c) to 15.2(f).

15.3 Entire agreement

This agreement states all the express terms of the agreement between the parties in respect of its subject matter and it supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this agreement.

15.4 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.

15.5 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.

15.6 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 a party 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 under this agreement.
- (b) A waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- (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.

15.7 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.

15.8 Amendments to this agreement

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

15.9 No dealing

- (a) Project Co and the Stadium Operator may not assign, novate or otherwise transfer any of its rights or obligations under this agreement except in accordance with an assignment, novation or transfer of the Project Agreement or the Operator Agreement in accordance with their relevant terms (as the case may be).
- (b) The Independent Certifier must not, without the prior approval of the Client Parties, and except on such terms and conditions as are determined by the Client Parties:
 - (i) permit a Change in Control of it;
 - (ii) assign, transfer, mortgage, novate, charge or otherwise encumber this agreement or any payment or other right, benefit, money or interest under, or in respect of, this agreement; or
 - (iii) subcontract the performance of any of the Services.
- (c) The Independent Certifier remains responsible for the performance of the Services in accordance with this agreement, despite any subcontracting, and the acts or omissions of any subcontractor will be deemed to be the acts or omissions of the Independent Certifier.

15.10 Joint and several liability

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

15.11 Indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this agreement.
- (d) The State, the Independent Certifier, Project Co and the Stadium Operator agree that:
 - (i) each indemnity or promise referred to in this agreement in favour of indemnified persons is held on trust by the State for the benefit of any of the indemnified persons; and
 - (ii) the consent of the indemnified persons referred to in Clause 15.11(d)(i) will not be required for any amendment to, or waiver of rights in accordance with a Project Document.

15.12 Clauses to survive termination

- (a) Clauses 1 (Definitions and interpretation), 6.8 (Records, access and audit), 6.10 (Confidentiality and publicity), 8 (Insurance), 9 (Liability and indemnities), 10 (Termination and consequences), 11 (Dispute resolution), 14 (Notices) and 15 (General) survive termination of this agreement and will continue in full force and effect.
- (b) Nothing in this Clause 15.12 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.

15.13 Costs and expenses

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

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

15.14 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.

15.15 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.

15.16 Records

- (a) Notwithstanding any other provision of this agreement (other than Clause 15.16(b)), Project Co is not required to provide the Independent Certifier or the State with:

- (i) reports or communications prepared for internal management, internal audit, credit and executive group or board reports in relation to the Builder, the Builder Guarantor, the FM Subcontractor or the FM Subcontractor Guarantor;
 - (ii) any documents or communications where the Project Co, the Builder, the 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;
 - (iii) employment contracts and employment files, unless specific waivers have been obtained from the relevant employee;
 - (iv) any communication subject to legal professional privilege, including any internal information regarding any Dispute or any Claim against the State under this agreement; or
 - (v) documents relating to the Builder, the 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 Independent Certifier's obligations or the DBFM Project.
- (b) Nothing in Clause 15.16(a) prevents:
- (i) the Auditor-General or the Ombudsman from having access to the records described in Clause 15.16(a) which they are entitled to have at Law or for the purpose of satisfying the powers and responsibilities of the Auditor-General referred to in Clause 1.6(c) of the Project Agreement; or
 - (ii) the State from having access to the information contained in the materials described in Clauses 15.16(a)(i) and 15.16(a)(ii) to the extent that information is required by the State under Clause 1.6(c), Clause 48(f) or Clause 48(g) of the Project Agreement and provided that the State cannot obtain the relevant information from other documents that it has been provided with.

Executed as an agreement.

SIGNED for the **STATE OF WESTERN AUSTRALIA** by the Hon. Terrence Keith Waldron MLA,
Minister for Sport and Recreation:

Minister for Sport and Recreation

print name of witness _____

Witness sign here ► _____

Witness address _____

Witness occupation _____

SIGNED for and on behalf of the **MINISTER FOR WORKS** by Michael Anthony Barnes, A/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:

A/Under Treasurer

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

Graham Partridge

sign here ▶

Authorised Representative

print name

David Etherton

Signed 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

Full name of witness

Executed by **[insert Independent Certifier name and ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

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

Full name of attorney

Signature of company secretary/director

Full name of company secretary/director

SIGNED by)
)
 as attorney for **NATIONAL AUSTRALIA BANK**)
LIMITED ABN 112 004 044 937 under power of)
 attorney dated)
)
 in the presence of:)
)
)
)
 Signature of witness)
)
)
)
 Name of witness (block letters))

.....
 By executing this agreement the attorney
 states that the attorney has received no
 notice of revocation of the power of attorney

Schedule 1 – Project Documents and Key Personnel**1. PROJECT DOCUMENTS**

- 1 the Project Agreement; and
- 2 all other 'Project Documents' (other than the 'Financing Documents'), as defined in the Project Agreement.

2. KEY PERSONNEL

Name	Role
[insert]	[insert]
[insert]	[insert]

Schedule 2 – Services

Without limiting its obligations under this Schedule 2 and its other obligations under this agreement, the Independent Certifier's primary functions are to:

- (a) **(Instrumentation and Monitoring Plan, Geotechnical Interpretive Report, Technical Completion Plan, Commercial Acceptance Plan, Operational Handover Plan)**: review and comment on the Instrumentation and Monitoring Plan, Geotechnical Interpretive Report, Technical Completion Plan, Commercial Acceptance Plan and the Operational Handover Plan, and any revisions of those plans, and certify that each of those plans:
- (i) are appropriate for the DBFM Project;
 - (ii) will demonstrate that the Off-Site Infrastructure Works Completion Criteria, the Technical Completion Criteria and the Commercial Acceptance Criteria will be met; and
 - (iii) otherwise comply with the requirements of the Project Agreement, including the Scope of Work and Technical Criteria,
- and if it has identified any issues with, or made any comments on, the Instrumentation and Monitoring Plan, Geotechnical Interpretive Report, Technical Completion Plan, Commercial Acceptance Plan or Operational Handover Plan (or any combination of them), or any revisions or updates of those plans or reports, confirm that it is satisfied as to how the issues and comments are addressed by Project Co;
- (b) **(other D&C Phase Plans)**: in addition to the D&C Phase Plans mentioned in paragraph (a) of this Schedule 2, review and comment on any other D&C Phase Plan (including any revision or update of that D&C Phase Plan) where required to do so by the Project Agreement, in accordance with the requirements of the Project Agreement;
- (c) **(Design Documentation)**: undertake those task and functions assigned to it in connection with the Design Development Process, as required by the Project Agreement;
- (d) **(Monitoring and Testing)**:
- (i) attend the performance of Monitoring and Testing by Project Co in accordance with a program agreed with the State and as otherwise reasonably required to perform its functions;
 - (ii) direct any additional Monitoring and Tests it considers appropriate; and
 - (iii) determine if:
 - (A) the whole or any part of the DBFM Works fails to pass any Monitoring and Testing required under the Project Agreement; or
 - (B) the Monitoring and Testing shows results trending such that the performance of the DBFM Works indicated in the Design Reports or the requirements of the Project Agreement will not be met,

and if the Independent Certifier deems necessary, review the details of any work, replacement, amendment, reconstruction, rectification and making good of any Defects undertaken by Project Co under Clauses 15.6 and 18.8 of the Project Agreement;
- (e) **(Defects)**:
- (i) identify Defects and, if required under Clause 18.8(a) of the Project Agreement, determine the method and program for rectifying a Defect;
 - (ii) without limiting paragraph (e)(i) of this Schedule 2:
 - (A) at any time prior to Technical Completion, identify, and notify the Client Parties of any issues in the DBFM Works or the Design Documentation which may delay or prevent Project Co from achieving Technical Completion by the Date for Technical Completion; and

- (B) recommend steps or remedial work to be undertaken by Project Co to overcome the issues identified by the Independent Certifier in accordance with paragraph (e)(ii)(A) of this Schedule 2 in order to achieve Technical Completion by the Date for Technical Completion and notify the Client Parties of its recommendations;
 - (iii) confirm that it is satisfied as to how steps have, or remedial work has, been undertaken by Project Co to overcome the issue, such that the Independent Certifier is satisfied that the issue will no longer prevent Technical Completion from being achieved by the Date for Technical Completion; and
 - (iv) in accordance with the requirements of Clause 12.1(b)(i) of this agreement, following receipt of a notice from Project Co of its intention to dispute a determination made in accordance with paragraph (e)(i), provide a further determination in respect of the same Defect;
- (f) **(review of construction):**
 - (i) each month during the term of this agreement, in conjunction with performing the services referred to in paragraph (j) of this Schedule 2, review the construction of the DBFM Works, including as requested by the State, to:
 - (A) ensure that the DBFM Works are being undertaken in accordance with the DBFM Works Program, the D&C Documents and the other requirements of the Project Agreement; and
 - (B) determine whether Commercial Acceptance will be achieved by the Date for Commercial Acceptance and if not, the date by which Commercial Acceptance will be achieved,

and give notice to the State and Project Co of its opinion, together with its reasons for forming that opinion; and
 - (ii) review any Explanation or Rectification Plan submitted by Project Co, determine whether or not the relevant plan satisfactorily addresses its concerns and notify the State and Project Co of its reasons for forming that opinion;
- (g) **(Off-Site Infrastructure Completion):**
 - (i) certify whether or not Off-Site Infrastructure Completion has been achieved in accordance with the requirements of the Project Agreement;
 - (ii) notify the Client Parties in writing of its conclusion as to whether Off-Site Infrastructure Completion has been achieved, and if Off-Site Infrastructure Completion has not been achieved, the reason or reasons for its opinion that Off-Site Infrastructure Completion has not been achieved; and
 - (iii) if it determines Off-Site Infrastructure Completion has been achieved but there are Outstanding Items that Project Co needs to rectify:
 - (A) specify the reasonable period of time for rectifying those Outstanding Items; and
 - (B) certify when, in its reasonable opinion, each Outstanding Item has been completed by Project Co;
- (h) **(Technical Completion Report and Technical Completion):**
 - (i) review and comment on the Technical Completion Report (and any revision or update of that report) in accordance with the requirements of the Project Agreement, including Schedule 3 (Review Procedures) of the Project Agreement;
 - (ii) certify whether or not Technical Completion has been achieved in accordance with the requirements of the Project Agreement and notify the Client Parties in writing of its conclusion;

- (iii) if it determines Technical Completion has been achieved, advise the Client Parties of the reason or reasons for its opinion that Technical Completion has not been achieved;
- (iv) if it determines Technical Completion has been achieved, issue to Project Co a certificate of Technical Completion stating the date on which Project Co achieved Technical Completion; and
- (v) if it determines Technical Completion has been achieved but there are Outstanding Items that Project Co needs to rectify:
 - (A) specify the reasonable period of time for rectifying those Outstanding Items; and
 - (B) certify when, in its reasonable opinion, each Outstanding Item has been completed by Project Co;
- (i) **(further Monitoring and Testing)**: if it determines that the requirements of Off-Site Infrastructure Completion or Technical Completion (or both) have not been achieved, then following the completion of any rework, repeat Monitoring and Testing or any other action that may be required to be undertaken by Project Co, the Independent Certifier must provide further certification under paragraphs (g)(i) or (h)(ii) of this Schedule 2 (as applicable). The Independent Certifier must continue to repeat this process and provide further certification until:
 - (i) it certifies that the requirements of Off-Site Infrastructure Completion or Technical Completion (as applicable) have been achieved; or
 - (ii) the Client Parties otherwise agree;
- (j) **(D&C Payment Statement)**: where a D&C Payment Claim has been received:
 - (i) acting reasonably and in accordance with the Project Agreement, determine the payment to be made to Project Co by the State (if any) and within 5 Business Days of the date that the D&C Payment Claim is received:
 - (A) advise that the State must make the payment set out in the D&C Payment Claim and deliver a payment statement to Project Co for the amount of the D&C Payment Claim; or
 - (B) advise that the State is not required to make all or part of the payment set out in the D&C Payment Claim, providing the reasons for its decision, and deliver a payment statement to Project Co and the State for any amounts to which the Independent Certifier advises that Project Co is entitled; and
 - (ii) in accordance with Clause 35.4(c) of the Project Agreement, correct or modify any error in any previous D&C Payment Statement issued by the Independent Certifier under the Project Agreement by adjusting a subsequent D&C Payment Statement;
- (k) **(extension of time claims)**: where Project Co has submitted a Change Notice:
 - (i) determine Project Co's entitlement to an extension of time taking into account all relevant evidence presented by the State and Project Co and having regard to, but not being bound by, the DBFM Works Program; and
 - (ii) where Project Co is entitled to an extension of time in accordance with the requirements of the Project Agreement, extend the Date for Completion by a reasonable period and notify Project Co and the State of the extension granted;
- (l) **(DBFM Works Program)** review and comment on any DBFM Works Program (including any revision or update of that DBFM Works Program) where required to do so by the Project Agreement, in accordance with the requirements of the Project Agreement;
- (m) **(Commercial Acceptance)**:
 - (i) review the certifications provided by Project Co and the Builder under Section 2, Item 1 of Schedule 7 (Completion Criteria) of the Project Agreement;

- (ii) review and comment on the initial Commercial Acceptance Report (and any revision or update of that report) in accordance with the requirements of the Project Agreement, including Schedule 3 (Review Procedures) of the Project Agreement;
 - (iii) attend all tests required for the purposes of determining whether those Commercial Acceptance criteria that the Independent Certifier is responsible for certifying have been met; and
 - (iv) certify whether the Commercial Opportunities are safe, appear complete when viewed externally, have completed facades and are weather proof; and
- (n) **(general):**
- (i) do all things necessary to satisfy itself that Off-Site Infrastructure Completion and Technical Completion have occurred, except that the Independent Certifier is not required to (but may) undertake its own Monitoring and Testing;
 - (ii) perform all of the tasks and functions that are, or may be (in accordance with the provisions of the Project Agreement), assigned to it in the Project Agreement; and
 - (iii) respond to any clarification sought by the Client Parties in respect of the Services provided by the Independent Certifier.

Schedule 3 – Payment Schedule

1. PAYMENT CLAIM

- (a) The Fee payable by the Fee Paying Parties to the Independent Certifier for the provision of the Services will be calculated on a Monthly basis, as specified in Section 6 of this Schedule 3.
- (b) The Independent Certifier must, at least 3 Business Days before the end of each Month and upon termination of this agreement, submit to the relevant Fee Paying Parties separate Payment Claims setting out the Fee:
 - (i) for the Services performed in accordance with this agreement since the last account for which they are responsible under Clause 3.3; and
 - (ii) calculated in accordance with this Schedule 3, **(Payment Claim)**.
- (c) The Payment Claims submitted under Section 1(b) of this Schedule 3 must include:
 - (i) a detailed breakdown of work completed in the previous Month and, if applicable, the calculation of amounts claimed to which rates apply;
 - (ii) any invoices or receipts necessary to substantiate calculation of amounts claimed to which rates apply; and
 - (iii) any other information reasonably required by the Fee Paying Parties.

2. PAYMENT CERTIFICATE

- (a) Within 5 Business Days of receipt of a Payment Claim under Section 1(b) of this Schedule 3, the Fee Paying Party to whom a Payment Claim was issued, acting reasonably, by notice to the Independent Certifier must:
 - (i) advise that the Fee Paying Party intends to make the payment set out in its Payment Claim and deliver a Payment Certificate to the Independent Certifier for the amount of its Payment Claim; or
 - (ii) advise that the Fee Paying Party does not intend to make all or part of the payment set out in its Payment Claim, providing the reasons for its decision, and deliver a Payment Certificate to the Independent Certifier for any amounts to which the Fee Paying Party maintains that the Independent Certifier is entitled (if any), and Section 5 of this Schedule 3 applies in respect of the remainder.
- (b) The amount set out by the Fee Paying Party in its Payment Certificate under Section 2(a) of this Schedule 3 will be adjusted by:
 - (i) any amounts which the relevant Fee Paying Party is owed or entitled to deduct or has deducted under this agreement; and
 - (ii) any correction or modification to previous Payment Certificates of the relevant Fee Paying Party issued under Section 2(a) of this Schedule 3.
- (c) The Fee Paying Party may for any reason in any Payment Certificate correct any error in any of its previous Payment Certificates.

3. TAX INVOICE

- (a) Within 3 Business Days of receipt of a Payment Certificate, the Independent Certifier must provide a tax invoice in a form approved by the Fee Paying Parties and any other documentation necessary for the Fee Paying Parties to be able to claim any applicable GST or have payment of any GST recognised under the applicable GST legislation.
- (b) The amount in the tax invoice must be the same as the amount in the Payment Certificate.

4. PAYMENT

- (a) Within 20 Business Days of receiving a tax invoice from the Independent Certifier under Section 3(a) of this Schedule 3 and any other documentation a Fee Paying Party reasonably requires, the relevant Fee Paying Party must pay the Independent Certifier or the Independent Certifier must pay the relevant Fee Paying Party the amount shown in the Payment Certificate (as adjusted under Section 2(c) of this Schedule 3).
- (b) Any Payment Certificate under Section 2(a) of this Schedule 3 or payment of moneys under Section 4(a) of this Schedule 3 is not:
 - (i) evidence of the value of work or services or that work or services have been satisfactorily performed in accordance with this agreement;
 - (ii) an admission of liability; or
 - (iii) approval by the Fee Paying Parties of the Independent Certifier’s performance or compliance with this agreement,
 but is only to be taken as payment on account.

5. CONDITIONS FOR PAYMENT

Notwithstanding anything else in this agreement and without limiting any other right or remedy of the Client Parties, a Fee Paying Party will not be required to make all or any part of payment to the Independent Certifier required under this agreement unless the Independent Certifier has properly performed all of the Services under this agreement for which the Payment Claim has been issued.

6. MONTHLY PAYMENT SCHEDULE

For the purposes of Section 1 of this Schedule 3 and subject to Clause 7.6 of this agreement, the Monthly payment of the Fee in respect of each of the Services, excluding the services carried out under the Schedule of Rates as listed in Section 7 of this Schedule 3, is as follows:

Month	Payment

provided however that the Independent Certifier is not entitled to make a Claim for payment to the extent that the Services have not been carried out for the Month in question, whether as a result of suspension under Clause 7.6 of this agreement or otherwise. The Monthly payment schedule above will be agreed in writing between the parties and updated accordingly.

7. SCHEDULE OF RATES

Any additional works and works carried out due to a change to the Services referred to in Clause 7.6(a) of this agreement will be charged at the following rates:

Position	Rate \$/Day

Position	Rate \$/Day

These rates:

- (a) are based on an 8 hour day and part days will be paid for on a proportional basis; and
- (b) contain allowances for the provision of all labour, materials, work, disbursements (other than as described in and payable under Section 7 of this Schedule 3) and other costs necessary for, and arising out of or in connection with, the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this agreement.

8. GST

All lump sums, rates and amounts in this Schedule 3 exclude GST.

Schedule 4 – Deed of Accession

Deed of Accession

Stadium Operator	Name	[Insert details]
	ABN	[Insert details]
	Address	[Insert details]
	Fax	[Insert details]
	Attention	[Insert details]
State of Western Australia	Name	The State of Western Australia
	Address	[Insert details]
	Fax	[Insert details]
	Attention	[Insert details]
Minister for Works	Name	The Minister for Works a body corporate constituted under section 5 of the <i>Public Works Act 1902 (WA)</i>
	Address	[Insert details]
	Fax	[Insert details]
	Attention	[Insert details]
Governance Agency	Name	[insert details]
	Address	[Insert details]
	Fax	[Insert details]
	Attention	[Insert details]
Independent Certifier	Name	[Insert details]
	ABN	[Insert details]
	Address	[Insert details]
	Fax	[Insert details]
	Attention	[Insert details]
Security Trustee	Name	[Insert details]
	ABN	[Insert details]
	Address	[Insert details]
	Fax	[Insert details]

	Attention	[Insert details]
Recitals	A.	The ICA was executed by the State, Project Co, the Independent Certifier and the Security Trustee on [Insert date] .
	B.	At that time, the Stadium Operator had not entered into the Operator Agreement with the State.
	C.	The Stadium Operator has now entered into the Operator Agreement.
	D.	As contemplated by Clause 3.2 of the ICA, the Stadium Operator agrees to become a party to the ICA.

1. DEFINITIONS AND INTERPRETATION

Independent Certifier Agreement or ICA	means the Independent Certifier Agreement between the State, Project Co, the Security Trustee and [Insert Independent Certifier] dated [Insert date] .
Operator Agreement	the contract between the State and the Stadium Operator dated [insert date] .
State	means: <ul style="list-style-type: none"> (a) during the D&C Phase, the Minister for Works; and (b) during the Operating Phase, the Governance Agency, and in both the D&C Phase and the Operating Phase, includes the State of Western Australia.

Unless otherwise expressly provided in this deed, definitions in the ICA and Clause 1.3 of the ICA apply in this deed.

2. ACKNOWLEDGEMENTS AND UNDERTAKINGS BY STADIUM OPERATOR

- (a) The Stadium Operator acknowledges that it:
- (i) has read a copy of the ICA before signing this deed; and
 - (ii) is receiving valuable consideration for entering into this deed.
- (b) With effect from and including the date of this deed:
- (i) the Stadium Operator agrees to the appointment of the Independent Certifier under the ICA; and
 - (ii) the Stadium Operator assumes the obligations and acquires the rights of the Stadium Operator under the ICA.

3. ACKNOWLEDGEMENTS AND UNDERTAKINGS BY THE INDEPENDENT CERTIFIER

The Independent Certifier acknowledges that it is receiving valuable consideration for entering this deed.

4. NOTICES

The address for correspondence of the Stadium Operator is the address set out below:

Address: **[insert]**

Fax Number: [insert]

Email: [insert]

Attention: [insert]

5. COSTS

Each party to this deed will bear its own costs arising out of the negotiation, preparation and execution of this deed.

6. GOVERNING LAW

This deed is governed by the law applying to the ICA.

EXECUTED as a deed.

Signing Page

DATED: _____

SIGNED for the **STATE OF WESTERN AUSTRALIA** by the Hon. Terrence Keith Waldron MLA,
Minister for Sport and Recreation:

Minister for Sport and Recreation

*print name of
witness* _____

*Witness sign
here ►* _____

*Witness
address* _____

*Witness
occupation* _____

SIGNED for and on behalf of the **MINISTER FOR WORKS** by 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:

A/Under Treasurer

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 _____
Graham Partridge

sign
here ► _____
Authorised Representative

print
name _____
David Etherton

Executed by [insert Stadium Operator]
ABN [insert] in accordance with section 127 of
the *Corporations Act 2001* (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by [**insert Independent Certifier name and ABN**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Executed by [**insert Security Trustee name and ABN**] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Schedule 5 –Deed of Reliance

Deed poll made at _____ on _____, by:

[insert Independent Certifier], ABN [insert ABN] of [insert address] ("Independent Certifier")

in favour of:

Brookfield Multiplex Engineering and Infrastructure Pty Ltd, ABN 95 095 282 992, of Level 22, 135 King Street, Sydney, NSW 2000 ("**Builder**")

RECITALS

- A. The State and Project Co entered into the Project Agreement in connection with the DBFM Project.
- B. The State and Project Co have appointed the Independent Certifier to perform the Services on the terms and conditions set out in the Independent Certifier Agreement.
- C. The Builder has an interest in the due and proper performance by the Independent Certifier of its obligations under the Independent Certifier Agreement.
- D. The Independent Certifier agrees to enter into this Deed in favour of the Builder.

THIS DEED POLL PROVIDES:

1 DEFINITIONS AND INTERPRETATION

1.1 General

Unless the context otherwise requires, or where defined in Clause 1.2, capitalised terms in this Deed have the meaning given to them in Clause 1.1 of the Project Agreement.

1.2 Definitions

In this Deed:

"**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.

"**Services**" has the same meaning as in the Independent Certifier Agreement.

"**Term**" has the meaning given to it in clause 1.2(a).

1.3 Governing Law

This Deed is governed by and will be construed according to the laws of Western Australia.

1.4 Term

(a) The term of this Deed commences on the date this Deed is executed and will continue until 30 days after the Independent Certifier has completed all the Services and discharged all of its obligations, functions and duties under the Independent Certifier Agreement (as notified in accordance with the Independent Certifier Agreement), subject to the earlier termination of this Deed in accordance with its terms or at Law (**Term**).

(b) This Deed will terminate on the date of termination of the Independent Certifier Agreement.

2 INDEPENDENT CERTIFIER'S OBLIGATIONS

2.1 Acknowledgement

The Independent Certifier acknowledges and agrees that:

- (a) it has received copies of the Project Agreement and the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) it owes a duty of care to the Builder in respect of the obligations, functions, duties and services set out in the Independent Certifier Agreement.

2.2 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that:
 - (i) the Builder is relying upon the skill and expertise of the Independent Certifier in the performance of its obligations under this Deed and the Independent Certifier Agreement; and
 - (ii) the Builder may suffer Loss if it does not perform its obligations in accordance with the requirements of this Deed and the Independent Certifier Agreement;
- (b) warrants to the Builder that, it will act within the time requirements for the performance of its obligations under this Deed and the Independent Certifier Agreement;
- (c) acknowledges that the Builder may provide written comments and submissions to the Independent Certifier and the Independent Certifier must give due consideration to those submissions under the Project Agreement;
- (d) acknowledges that a prerequisite to the achievement of Completion, is its certification that the DBFM Works comply with the requirements of the Project Agreement; and
- (e) without limiting clause 2.2, acknowledges that the Builder is entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to the Project Documents.

3 INDEPENDENCE AND CONFIDENTIALITY

3.1 Independent Certifier to be independent

The Independent Certifier warrants to the Builder that in performing the Services , it will:

- (a) exercise the reasonable skill, care and diligence to be expected from a competent and qualified independent certifier that is experienced in providing services similar to the Services for projects similar to the DBFM Project;
- (b) act independently and impartially of the Builder, the State, the State Associates, Project Co, the Project Co Associates, the Stadium Operator and the Security Trustee;
- (c) comply with all Laws and act honestly and reasonably;
- (d) act within the time prescribed under the Project Documents and the Independent Certifier Agreement; and
- (e) make a reasonable determination on any matter which it is required to make in respect of the Services in any form the Independent Certifier so desires and stating the Independent Certifier's determination.

3.2 Confidentiality

The Independent Certifier must keep confidential details of this Deed and all information and documents provided to, or by, the Independent Certifier relating to the Services and not provide, disclose or use the information or documents except:

- (a) to the Builder, the State, Project Co or the Security Trustee;
- (b) for the purposes of performing the Services under and in accordance with the Independent Certifier Agreement;
- (c) where required by law or to obtain legal advice on this Deed or the Independent Certifier Agreement; or
- (d) with the prior written consent of the Builder.

This obligation will survive completion of the Services or the termination of this Deed.

3.3 Copies of communications

The Independent Certifier will promptly give the Builder a copy of all written communications between:

- (a) the Independent Certifier and Project Co;
- (b) the Independent Certifier and the State; or
- (c) the Independent Certifier and the Stadium Operator,

which relate to the DBFM Works.

3.4 Testing

The Independent Certifier will advise the Builder at the same time as it advises the State and Project Co of any:

- (a) inspection or meeting it proposes to attend arising out of or in connection with the Services; and
- (b) testing it proposes to witness or undertake arising out of or in connection with the Services.

3.5 Insurance

The Independent Certifier must:

- (a) comply with its obligations under clause 8 of the Independent Certifier Agreement; and
- (b) whenever requested in writing by the Builder, the Independent Certifier must produce to the Builder certificates of currency evidencing the insurance effected and maintained.

4 LIMITATION OF LIABILITY

- (a) Subject to clause 4(b), the Independent Certifier's total liability to the Client Parties and Brookfield Multiplex Engineering and Infrastructure Pty Ltd (jointly) under this Deed, the Financiers' Certifier Agreement and the Independent Certifier Agreement combined is limited to the sum of \$30,000,000 with a sub-cap of \$3 million under this Deed.
- (b) The limitation of liability in clause 4(a) does not apply to any Loss (and such Loss is excluded from the calculation of the limit of liability in clause 4(a)):
 - (i) that arises in connection with personal injury or death;
 - (ii) that arises in connection with third party property damage; or
 - (iii) that arises as a direct result of a breach of a third party's intellectual property by, or the fraud or unlawful act of, the Independent Certifier.

Executed and delivered as a deed poll

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **[insert Independent Certifier]**

Director Signature

Director/Secretary Signature

Print Name

Print Name